

THE HON'BLE SRI JUSTICE V.SRINIVAS

CRIMINAL REVISION CASE No.774 of 2007

ORDER:

This Revision is filed by the petitioner/accused aggrieved by the judgment dated 15.06.2007 in CrI.A.No.42 of 2006 passed by the learned I Additional Metropolitan Sessions Judge, Visakhapatnam, wherein the learned Judge has dismissed the appeal by confirming the conviction and sentence imposed against the revision petitioner/accused for the offence punishable under Section 8(b) (ii) of Andhra Pradesh Prohibition Act (hereinafter referred to as “the Act”), in the judgment dated 22.03.2006 in C.C.No.2784 of 1997 passed by the learned Chief Metropolitan Magistrate, Visakhapatnam.

2. The shorn of facts of the case are as follows:

On 24.07.1997 at 20.00 hours, the accused was arrested while she was selling liquor bottles without having any license. On enquiry she disclosed that she used to purchase them from Gajuwaka Wine Shops and selling them in loose for extra profit. The police seized 15 nos. of moonlight whisky, 180 ml. bottles, 3 Nos. of Mc.Dowells 180 ml. whisky bottles and 8 nos. of bag piper 180 ml. whisky bottles. Basing on the same, a case in Crime No.219 of 2007 was registered and sent the samples for chemical analysis. After receiving the laboratory analysis report, charge sheet was filed.

3. During the course of trial, the prosecution examined PW.1 to PW.4 and marked Ex.P1 to Ex.P3 and M.O.1 to M.O.5. On behalf of the accused, no oral or documentary evidence was adduced.

4. The trial Court held that the accused found guilty for the charge under Section 8(b) (ii) of the Act and sentenced her to undergo Rigorous Imprisonment for a period of one year and a fine of Rs.20,000/-, in default, to suffer Simple Imprisonment for a period of two months.

5. Aggrieved by the same, the petitioner/accused preferred an appeal, *vide* Crl.A.No.42 of 2006, before the Court of learned I Additional Metropolitan Sessions Judge, Visakhapatnam and the same was dismissed by confirming the judgment of the trial Court.

6. Against the said judgment of the first Appellate Court, the present criminal revision case was preferred by the petitioner/accused.

7. Heard Sri O.Uday Kumar, learned counsel for the petitioner and Sri Naidana Sravan Kumar, learned Special Assistant Public Prosecutor for the respondent-State.

8. Now the point that arises for determination in this revision is:

“Whether there is any flaw in the findings recorded by the first Appellate Court in confirming the conviction and sentence passed against the petitioner?”

9. Learned counsel for the petitioner, submits that prosecution failed to examine any independent witnesses at the time of arrest, seizure of contraband and preparation of Ex.P.1-mediator report and that though the police officials failed to follow the procedure contemplated under Section 100(4) Cr.P.C., the trial Court as well first appellate Court did not consider the same. He further submits that if in case this Court opines that the Courts below rightly held that the petitioner said to have committed the offence, some lenient view can be taken by imposing fine as the offence said to have committed by the petitioner is compoundable in nature.

10. Per contra, learned Special Assistant Public Prosecutor, submits that the trial Court as well first appellate Court followed the rule of law, perused the evidence placed on record and with sound reasons came to a conclusion that the accused found guilty of the offence, resulting conviction and sentenced the accused and that even first appellate Court also gave categorical finding that the charge made against the accused is properly established by the prosecution and nothing on record to interfere with the findings of the trial Court.

11. Learned Special Assistant Public Prosecutor further submits that, however, in view of the amendment of A.P.P.Act, 2000, it is a compoundable offence and Court can commute the sentence and impose fine on the petitioner under Section 11.B of the Act.

12. In view of the above submissions, this Court perused the material on record.

13. The trial Court, after considering the entire material placed on record, rightly, came to the conclusion that the accused found guilty of the charge leveled against her and convicted the accused and the same was upheld by the first appellate Court. The testimony of prosecution witnesses coupled with Exs.P.1 to P.3 established the charge levelled against the petitioner. Now, there is nothing on record to interfere with the findings recorded by both the Courts below.

14. However, this Court perused amended provisions of the Act and Section 11.B of the Act, reads as follows:

“4. Insertion of new section 11B.- In the principal Act, after section 11A, the following section shall be inserted, namely:-

“Compounding of Offences: 11.B(1) The Collector or any Prohibition and Excise Officer specially empowered “in that behalf may accept from any person ??? is reasonably suspected of having committed ??? offence falling under clause (a) or sub-clause (i) of clause (b) or the proviso to Sub-clause (ii) of clause (b) it was in force, of section or ??? a sum of money as may be prescribed ??? not exceeding the maximum fine which can be imposed for the offence under the provisions of the Act, by way of compensation for the offence which may have been committed and in all cases in

which any property has been seized as liable for confiscation under this Act, may release the same on payment of the value thereof as estimated by such officer:

Provided that where the property so seized is a liquor produced or manufactured in contravention of this Act, such liquor shall not be released but shall be disposed of in such manner, as may be prescribed:

Provided further, that such sum of money shall not be accepted from any person who is reasonably, suspected of having committed an offence under sub-clause (i) of clause (b) of section 8 without the prior approval of the Commissioner of Prohibition and Excise.

(2) On the payment by the person the sum of money or the value or both, as the case may be, such person, if in custody shall be set at liberty, and all the property seized may be released and no proceedings shall be instituted or continued against such person in any Criminal Court. The acceptance of compensation shall be deemed to amount to an acquittal and in no case any farther proceedings be taken against such person or property with reference to the same Act."

15. In the instant case, the petitioner was sentenced to undergo rigorous imprisonment for one (1) year and also to pay a fine of Rs.20,000/-, in default simple imprisonment for two months. However, it should be keep in mind that almost twenty six(26) years have been lapsed from the date of offence.

16. In this context, it is relevant to refer the judgment of the Hon'ble Supreme Court in *Santosh Kumar v. Municipal Corporation*¹, wherein the Apex Court taken a view that though there is a minimum sentence prescribed, the Court can commute the sentence in appropriate cases.

17. In view of Section 11.B of the Act, as the offence is compoundable in nature, this Court is of the considered opinion that this is a fit case to commute the sentence of rigorous imprisonment of one (1) year as fine in exercise of powers under Section 433 Cr.P.C.

18. Accordingly, the Criminal Revision Case is partly allowed by directing the petitioner/accused to deposit a further sum of Rs.5,000/- (Rupees Five Thousand only) as fine in addition to the fine already imposed, instead of awarding sentence of imprisonment of one (1) year for the charge leveled against her, and the said fine amount shall be paid within a period of six (6) weeks from the date of receipt of a copy of this order before the Court of learned Chief Metropolitan Magistrate, Visakhapatnam, in default of payment of fine to suffer simple imprisonment for a period of fifteen(15) days.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE V.SRINIVAS

Date: 29.12.2023
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¹2000 (4) Crime 32 (SC)

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