



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.479 of 2011

Smt. Sanno, W/o Late Banshilal Kalar, aged about 45 years, R/o Village Palora, Police Station Keshkal, District Bastar (C.G.),

---- Applicant

Versus

State of Chhattisgarh through Police Station, Keshkal, District Bastar (C.G.) [wrongly typed as "through: Collector, Bastar, District Bastar (C.G.)"],

---- Non-applicant

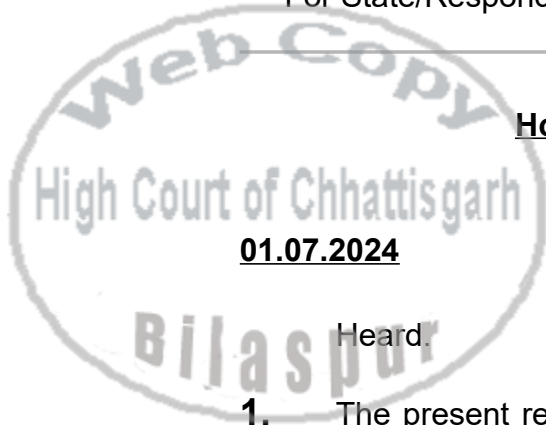
For Applicant : Shri Shashwat Mishra, Advocate on behalf of
Shri Manoj Paranjpe, Advocate.
For State/Respondent : Smt. Pragya Shrivastava, Dy. Govt. Advocate.

Hon'ble Shri Justice Radhakishan Agrawal
Judgment on Board

01.07.2024

Heard.

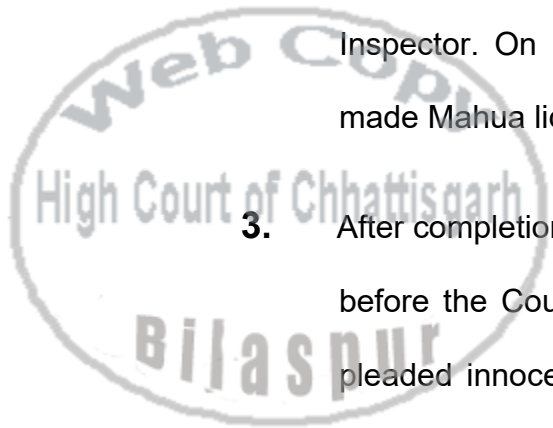
1. The present revision filed under Section 397/401 Cr.P.C. is directed against the judgment of conviction and order of sentence dated 18.08.2011 passed in Criminal Appeal No.05/2011 by the Second Additional Sessions Judge, Jagdalpur, Place – Kondagaon, Bastar (C.G.), whereby judgment dated 07.05.2010 passed by the Judicial Magistrate First Class, Keshkal (C.G.) in Criminal Case No.286/2009 the applicant has been convicted under Section 34(1)(a) of the Chhattisgarh Excise Act, 1915 and sentenced to undergo RI for three months and to pay fine amount of Rs.5,000/- and in default of payment of fine, additional RI for one month. The learned Appellate Court while allowing the appeal in part confirmed the conviction of the applicant whereas reduced the jail sentence from three months RI to one month RI and directed to pay fine of Rs.5,000/-, in default of payment of fine, additional RI





for one month.

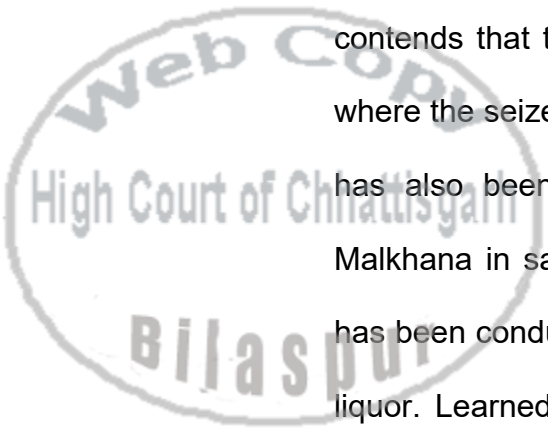
- 2.** Case of the prosecution, in brief, is that on 18.10.2007, Chander Lal Dhruw (PW-02), Assistant Sub-Inspector, Police Station Keshkal along with other Police Officials went for patrolling to village Bahigaon and on the basis of information from the informer that the applicant is involved in keeping and selling the liquor illegally in the market and without obtaining search warrant reached to the spot and seized 3 liters of country made Mahua liquor in jerrycan which was kept in nylon bag and the same was seized in presence of the witnesses i.e. Raj Kumar Netam (PW-1) and Ramesh Kumar (PW-4) at about 16:20 O'Clock. The seized article was sent for chemical examination on 28.10.2007 which was examined by R.K. Bhagat (PW-03), Excise Sub-Inspector. On being examined, the seized article was found to be country made Mahua liquor.
- 3.** After completion of investigation, charge sheet under Section 34 (A) was filed before the Court of JMFC, Kondagaon. The applicant abjured his guilt and pleaded innocence. So as to prove the guilt of the accused/applicant, the prosecution has examined as many as 4 witnesses. Statement of the accused/applicant was also recorded under Section 313 of Cr.P.C.
- 4.** Learned trial Court, after appreciation of oral and documentary evidence, convicted the applicant under Section 34 (1) (a) and sentenced her as mentioned in para 1 of this order. The said judgment was challenged by the applicant in criminal appeal, however, the Appellate Court, vide judgment dated 18.08.2011 has confirmed the conviction but reduced the sentence of the applicant from three months RI to one month RI while maintaining the sentence of fine amount and its default sentence, as awarded by the trial Court. Hence, this revision.
- 5.** Learned Counsel appearing for the applicant submits that the prosecution has





failed to establish its case beyond reasonable doubt. He further submits that in the seizure memo (Ex.P-1) dated 18.10.2007 at 16:20 O'Clock, the Crime No.163/07 is mentioned at Column No.1, but the prosecution has failed to explain as to how the Crime No.163/2007 has been mentioned in the seizure memo before lodging of the FIR (Ex.P-3) dated 18.10.2007 at 17:55 O'clock. It is also submitted by him that the seizure memo also does not bear any sample seal. The prosecution witnesses have also not supported the case of prosecution. He also submits that the alleged Mahua liquor was seized on 18.10.2007 but it was sent to Excise Sub-Inspector R.K. Bhagat (PW-03) for examination on 28.10.2007 and the prosecution has failed to offer any explanation for the delay in sending the same for examination. He further contends that the prosecution has not produced any evidence to show that where the seized property was kept in safe custody and no Malkhana register has also been produced to show that the seized property was kept in Malkhana in safe custody. It is further contended that no chemical analysis has been conducted by the prosecution to show that the seized article was of liquor. Learned counsel for the applicant has also pressed this revision on additional ground of non-compliance of Section 57 (a) of the Excise Act, which vitiates the prosecution case. In support of his arguments, he placed his reliance upon a decision rendered in the matter of *Suresh Kumar vs. State of Chhattisgarh* reported in 2006 (3) CGLJ 259. Lastly, he submits that the fine amount has already been deposited before the trial Court by the applicant.

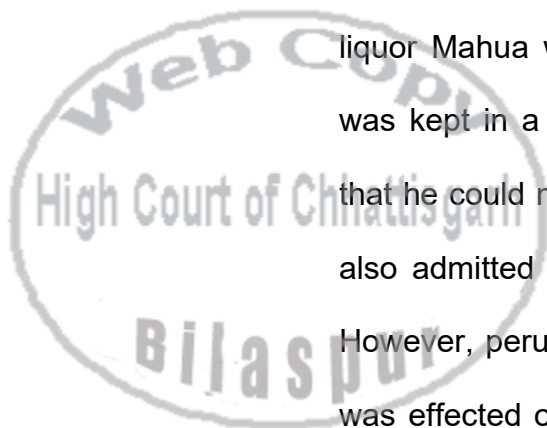
6. On the other hand, learned State Counsel opposed the revision, while supporting the impugned judgment of conviction and order of sentence.
7. I have heard learned counsel appearing on behalf of the parties and perused the record minutely.





8. As per the statement of Chander Lal Dhruw (PW-2), Assistant Sub-Inspector, on 18.10.2007, he reached to the village market accompanied by other staff members where the applicant/accused was selling country made liquor Mahua and from her possession 3 liters of country made liquor Mahua was seized which was kept in white jerrycan. The same was seized by them vide seizure memo Ex.P-1. In his cross-examination, he admitted that there was crowd in the Bahigaon market. He further admitted that he had not seen the applicant/accused selling liquor to any person. He also admitted that he had also not marked any sample seal in the seizure memo (Ex.P-1). Rajkumar Netam (PW-1), who was examined as prosecution witness on 04.04.2008, has stated that prior to 2-3 months from 04.04.2008, 1-1.5 liters country made liquor Mahua were seized from possession of the applicant/accused which was kept in a container vide Ex.P-1. In his cross-examination, he admitted that he could not tell about the exact quantity of liquor which was seized. He also admitted that the police used to take his signature from time to time. However, perusal of seizure memo (Ex.P-1), it would reveal that the seizure was effected on 18.10.2007 at about 16:20 O'clock but the evidence of this witness shows that prior to 2-3 months from the date of his deposition i.e. 04.04.2008 seizure was effected meaning thereby the seizure must have been effected in the month of January or February, 2008 whereas the seizure was in fact effected more than five and half months before his deposition could take place. Further as per his statement, this witness appears to be a pet witness of the prosecution. Ramesh Kumar (PW-04) has also been cited as seizure witness to Ex.P-1 but this witness, in his statement, has stated that no seizure was effected in his presence and he has not put his signature in the seizure memo (Ex.P-1). Thus, this witness has also not supported the case of prosecution.

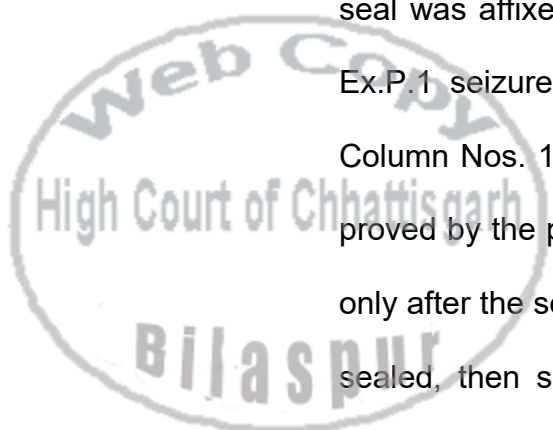
9. As per the statement of Chander Lal Dhruw (PW-02), Assistant Sub-





Inspector, after completion of seizure proceedings, he came to the police station and registered FIR (Ex.P-3) being Crime No.163/2007 on 18.10.2007 at 17:55 O'Clock which was lodged after the alleged seizure proceedings are completed but surprisingly, such Crime No.163/2007 was also mentioned in the seizure memo (Ex.P-1) at Column No.1. The prosecution has failed to explain as to how such crime number was mentioned in the seizure memo despite the fact that after 1 and 1 ½ hours of the seizure proceedings, the FIR was registered and that there is no sample seal affixed in its Column No.12 and 13 of seizure memo (Ex.P-1).

- 10.** Seizure memo (Ex.P-1) also does not transpire that after seizure of liquor, no seal was affixed and that where was the seized liquor kept in safe custody. Ex.P.1 seizure memo shows the signatures of the witnesses, but as per Column Nos. 12 & 13, there was no sample seal affixed and it was also not proved by the prosecution that signature of the witnesses has been obtained only after the seized article is sealed and if the seized article could have been sealed, then sample seal would have certainly been there but in Column No.13, there was no sample seal affixed.
- 11.** As per the statement of R.K. Bhagat (PW-3), Excise Sub-Inspector, on 28.10.2007, seized liquor kept in plastic jerrycan was brought by constable No.32, namely, Om Prakash Nareti and after examination, he found that it was of country made Mahua liquor and the test report submitted by him is exhibited as P-4. However, he admitted that he did not mention as to how jerrycan was sealed which was presented before him. As per the case of prosecution, the article was seized on 18.10.2007 but the same was sent for examination by the Excise Sub-Inspector on 28.10.2007 i.e. after 10 days of the seizure. The prosecution has not offered any explanation for the delay of 10 days caused in sending the seized article for examination nor has





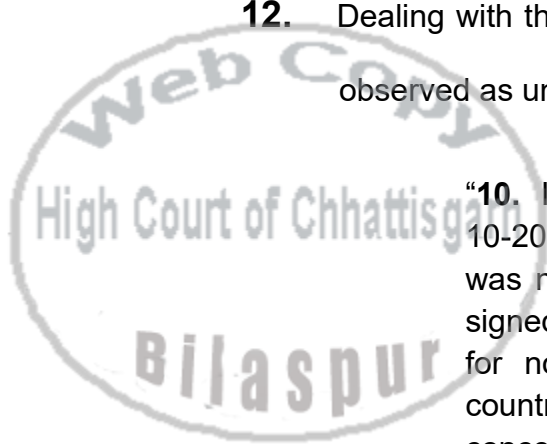
produced any evidence to show that where the seized property was kept in safe custody and that no Malkhana register has also been produced to show that the seized property was kept in Malkhana in safe custody and that no report of the chemical analysis has been produced by the prosecution to show that the seized article was of liquor. It is bounden duty of the prosecution to seal the seized property and to keep the same in safe custody, but the prosecution has failed to discharge its duty. The prosecution has also not been able to show the exact place from where the liquor was seized and that no seal was affixed. This apart, the provisions of Section 57 (a) of the Excise Act have also not been complied with by the prosecution.

- 12.** Dealing with the issue, this Court in the matter of Suresh Kumar (supra) has observed as under:

10. It is pertinent to note from the order sheet dated 01-10-2004 written by the trial Judge that the seized property was not produced before the Court. No reason has been signed by the Excise Sub Inspector Shri K.L. Taram PW-2 for not depositing the Jerrican containing 30 liters of country made liquor with the Officer in charge of the concerned Police Station or to take any samples there from and to seal it. There is nothing on record to show as to where and in whose custody the 30 bulk liters of country made liquor was kept till filing of challan on 01-10-2004. There is also nothing to show that Excise Sub Inspector Shri K.L. Taram PW-2 had, within 24 hours after making the seizure made a full report of all the particulars of arrest, seizure or search to his immediate official superior as required under Section - 57 of the Act. Thus, there is total non-compliance of Section-- of the Act.

11. Having thus considered the evidence led by the prosecution, the following points emerge:

- (A) There is total non-compliance of Section-- of the Act by Excise Sub Inspector K.L. Taram PW-2 which vitiates the prosecution.
- (B) It is not established beyond doubt that the Applicant was found in possession of country made liquor in excess of 25 bulk liters.





(C) Testimony of Shri K.L. Taram PW-2 is rendered doubtful since he did not produce the intoxicant alleged to have been seized from the Applicant in the trial Court.

(D) Independent witness Ishwar Prasad PW-1 and Neeraj Shrivastava PW-3 did not corroborate the testimony of Excise Sub Inspector K.L. Taram PW-2 relating to seizure and test performed upon the intoxicant alleged to have been seized from the possession of the Applicant.

12. In the result, the revision is allowed. The conviction of the Appellant under Section-34(1)(a) of Chhattisgarh Excise Act, 1915 and the sentence awarded there under are set aside. The Applicant is acquitted. Fine if paid, shall be refunded to the Applicant.”

13. By applying the decision to the facts of the present case, this Court is of the opinion that the prosecution has failed to prove its case and the conviction of the applicant under Section 34 (1) (a) of the C.G. Excise Act and the sentence awarded thereunder being contrary to the law is liable to be set aside in exercise of revisional jurisdiction and accordingly, the conviction of the applicant under Section 34 (1) (a) of the C.G. Excise Act and the sentence awarded thereunder is hereby set aside and the applicant is acquitted of the aforesaid charge. Fine if paid, shall be refunded to the applicant.

14. Consequently, the revision is allowed. The applicant is reported to be on bail and his bail bond shall remain in force for a period of six months from today in view of provision of Section 437-A of Cr.P.C. Records of both the Courts be sent back to the concerned Courts along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Radhakishan Agrawal)
Judge