

**(2022) 07 CHH CK 0002**

**Chhattisgarh High Court**

**Case No:** Criminal Revision No. 184 Of 2010

Anurag Lakda

APPELLANT

Vs

State OF Chhattisgarh

RESPONDENT

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Date of Decision: July 4, 2022

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 313, 374, 397, 401
- Chhattisgarh Excise Act, 1915 - Section 34(2)(1), 57A
- Evidence Act, 1872 - Section 154

Hon'ble Judges: Sachin Singh Rajput, J

Bench: Single Bench

Advocate: Shrawan Agrawal, Ashish Tiwari

Final Decision: Allowed

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### **Judgement**

1) Assailing the legality, validity and correctness of the judgment dated 30.03.2010 passed by 3rd Additional Session Judge (F.T.C.), Surguja

(Ambikapur) (C.G.) {for short ASJ} in Criminal Appeal No. 58/2010 by which the learned ASJ has upheld the judgment of conviction dated

19.03.2010 passed by Chief Judicial Magistrate, Ambikapur, District Surguja (C.G.) {for short CJM} convicting the applicant under Section 34 (2) (1)

of the Excise Act and sentencing him to undergo one year rigorous imprisonment with fine of Rs.25,000/-, in default of payment of fine three month

rigorous imprisonment, the applicant has preferred this revision under section 397/401 of Criminal Procedure Code, 1973 {for short Cr.P.C}.

2) Prosecution case in brief is that on the date of incident i.e. 03.12.2009, information was received from an informant that the applicant was going to

sell mahua liquor. The applicant was caught and from the possession 31 liter of hand furnaced mahua liquor was seized. No licence was produced by the applicant and hence he was arrested and after due investigation charge sheet was filed.

3) The prosecution examined as many as 4 witnesses in support of its case. The prosecution exhibited 5 documents in order to bring home the guilt of applicant. Statement of applicant under section 313 Cr.P.C. was recorded in which he has stated that he has been falsely implicated and he is innocent.

4) The learned CJM after appreciation of oral and documentary evidence brought before it, convicted the applicant under section 34 (2) (1) of The Chhattisgarh Excise Act, 1915 (for short Act of 1915) and sentenced him to undergo one year rigorous imprisonment and pay fine of Rs.25,000/-, in default of payment of fine further three months rigorous imprisonment was imposed. Being aggrieved by the judgment of conviction and award of sentence, the applicant preferred an appeal under section 374 of Cr.P.C. before the learned Sessions Judge, Ambikapur, District - Surguja (C.G.). The appeal was heard by the learned ASJ and after due consideration the same was dismissed and the conviction and sentence awarded to the applicant was maintained.

5) I have heard the learned counsel appearing for the parties and gone through the material available on record including the evidence of the witnesses carefully.

6) Learned counsel for the applicant submits that from the evidence available on record the prosecution has not been able to bring home the guilt of applicant without reasonable doubt. The seizure witnesses have not supported the case of the prosecution hence the seizure of mahua liquor cannot be said to be duly proved. He submits that the courts below have committed an error in giving weightage to the statement of investigating officer (PW-3).

It is also not proved beyond reasonable doubt that the seized mahua liquor was properly sealed. He further submits that the mahua liquor so seized was presented for examination on 05.12.2009 and seizure was affected on 03.12.2009 and therefore possibility of tempering with the seized mahua

liquor cannot be ruled out. To buttress his submissions he placed reliance of a judgment of this court in case of Santosh Nirmalkar Vs. State of C.G.

(MANU/CG/0213/2009 = 2009 (3) CGLJ 229).

7. Per contra, learned counsel for the respondent/state supported the impugned judgment and submitted that both the courts below after appreciation of evidence categorically gave finding of guilt of applicant. State counsel submits that even if the seizure witnesses have not supported the prosecution case, conviction can be sustained on the basis of evidence of investigating officer. Hence the seizure of mahua liquor is duly proved and no interference with the same is needed. He further submits that this court is not required to deeply analyze the evidence and may not substitute its own finding in place of well merited finding of conviction arrived at by the courts below. Therefore, revision deserves dismissal from this court.

8) True it is that in the revisional jurisdiction the High Court would not deeply analyze the evidence and normally would not substitute the well merited findings recorded by the two courts below by its own findings. However, at the same time if the findings are perverse and not based on proper appreciation of evidence available on record, this court may analyze the same so as to arrive at a correct conclusion as regards the legality and validity of the same.

9) In the matter of Santosh Nirmalkar (Supra) this court in paragraph 10 held as under:-

“A. the article (country made plain liquor in this case) sent for analysis to the Excise Sub inspector was the same which was seized from the applicant,

B. that the articles seized were kept in safe custody of the Officer in charge of the Police Station till examination by an Excise Officer.

C. that such Excise Officer had affixed his seal to such articles after taking samples, and,

D. the seized articles were produced before the trial Judge so as to facilitate the trial Judge to examine that the seal on the samples taken

from the seized articles were found intact.”

Section 57A of The Chhattisgarh Excise Act, 1915 for ready reference quoted below:

57-A. Police to take charge of articles seized.-An officer in charge of a police station shall take charge of and keep in safe custody pending the orders of a magistrate or an Excise officer, all articles seized under this Act which may be delivered to him, and shall allow any Excise officer who may accompany such articles to the police station, or who may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police station.

10) Thus in the light of the above-mentioned decision, provisions of Act of 1915 and submission of the learned counsel for the applicant, this Court is required to ascertain whether the prosecution was able to bring home the guilt of applicant beyond reasonable doubt by complying the provisions of Act of 1915 or not. The seizure witnesses Mukesh Kumar Talukdar (PW-1) and Raj (PW-2) have utterly failed to support the case of prosecution and they have categorically denied the seizure of mahua liquor. These witnesses were not even declared hostile and prosecution did not ask any question in cross examination under section 154 of Indian Evidence Act, 1872. Samrendra Singh (PW-3) head constable and investigating officer in his statement nowhere says that 31 liters of mahua liquor was entrusted to the Officer in charge of police station Gandhi Nagar, Surguja (C.G.) for being kept in safe custody. He also does not say that the seized mahua liquor was properly sealed after being seized. This witness also does not say that the sample sent for examination to Excise Circle Inspector, Ambikapur Smt. Sheela Bada (PW-4) was taken from the seized mahua liquor. Nothing is available on record to show that the seized mahua liquor was kept in safe custody from 03.12.2009 to 05.12.2009. Even order sheet of learned CJM do not reflect that the seized article was produced before it. Excise Circle Inspector, Ambikapur Smt. Sheela Bada (PW-4) in her statement stated that she does not know as to from whom the sample was seized.

11) From perusal of evidences available on record the following facts emerge:-

- A) Both seizure witnesses have miserably failed to support the case of prosecution.
- B) It is not established that the seized mahua liquor was properly sealed and kept in safe custody.

C) It is not established that the sample sent for examination is taken from the seized mahua liquor.

D) It is not established that the seized article was produced before the learned CJM.

12) Thus in view of the above discussion, possibility of tempering with the seized mahua liquor before it was received by the Excise Circle Inspector,

Ambikapur Smt. Sheela Bada (PW-4) cannot be ruled out. The seizure becomes doubtful when seizure witnesses have totally failed to support the

prosecution case, and testimony of investigating officer Samrendra Singh (PW-3) does not inspire confidence. Learned ASJ and CJM as well have

ignored these legal discrepancies while convicting the applicant. The finding of conviction of the applicant by ignoring the above stated legal

requirement is perverse to the evidence on record. The conviction of the applicant on such flimsy appreciation of evidence is not safe. As fallout of

the above analysis I have no hesitation to hold that the impugned judgment of conviction and order of sentence cannot be sustained. Hence the

impugned judgment dated 30.03.2010 passed by 3rd Additional Session Judge (F.T.C.), Surguja (Ambikapur) (C.G.) is hereby set aside. The applicant

is acquitted of the charge under section 34 (2) (1) of The Chhattisgarh Excise Act, 1915. The applicant is reported to be on bail and his bail bonds are

discharged.

13) Records of the courts below be sent back along with copy of this order forthwith for necessary compliance.

14) Criminal Revision is thus allowed accordingly.