

(2003) 01 BOM CK 0119

Bombay High Court (Nagpur Bench)**Case No:** Criminal Rev. Application No. 154 of 2002

Ratan Durge

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision: Jan. 8, 2003**Acts Referred:**

- Bombay Prohibition Act, 1949 - Section 66(1)

Citation: (2003) BomCR(Cri) 473 : (2003) CriLJ 2639 : (2003) 3 MhLj 247**Hon'ble Judges:** R.S. Mohite, J**Bench:** Single Bench**Advocate:** Dayaramani, for the Appellant; Khade, Assistant Public Prosecutor, for the Respondent

Judgement

R.S. Mohite, J.

Rule, By consent of parties, it is made returnable forthwith.

2. The applicant has been convicted of the offence punishable u/s 66(I)(b) of Bombay Prohibition Act, for carrying 19 bottles (nips) of country liquor on 4-10-1996. He was tried in Summary Case No. 1170 of 1996 and convicted for the offence punishable u/s 66(i)(b) of Bombay Prohibition Act and sentenced to suffer R.I. for a period of 6 months and to pay fine of Rs. 500A. The order was challenged by the present appellant in Criminal Appeal No. 33 of 1998. However, after considering the evidence, the Sessions Court, Gadchiroli, dismissed the appeal and up-held conviction of the Judicial Magistrate First Class. The present revision has been filed against two concurrent judgments.

3. It is submitted on behalf of the applicant that the Chemical Analyser was not examined. I am of the opinion that Chemical Analyser is not required to be examined in view of the provision u/s 293 of Code of Criminal Procedure. It was further submitted that applicant could not cross-examine the police constable, whose evidence is accepted by the lower Court. This also cannot be a ground for

challenge because it was for the applicant to have cross-examined the concerned witness and he cannot take advantage of his default. It is also submitted that sentence of six months is excessive taking into account that only 19 bottles (nips) of country liquor possessed by the applicant. I find that offence is said to have taken place on 4-10-1996, it is over six years since the offence is said to have been committed. The quantity of liquor seized is very small and nature of liquor is country liquor. In the overall circumstances, justice will be met if the sentence is reduced to the period of three months and sentence of fine is to be maintained. Accordingly, the conviction is maintained but the impugned judgment and order is modified and the sentence reduced from 6 months to three months, the sentence of fine being retained. The sentence undergone by the applicant will be set off.

4. Rule is made absolute in the aforesaid terms.