HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Crl.R.C.No.1224 of 2008

ORDER:

1. This Criminal Revision Case is preferred against the concurrent judgments of conviction and sentence passed against the petitioners/A.1 and A.2 for the offences punishable under Section 7 (A) r/w 8 (e) of A.P. Prohibition Act, 1995 in C.C.No.308 of 2006, which was confirmed in Criminal Appeal No.40 of 2007 dated 22.07.2008, wherein the petitioners are sentenced to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.10,000/-, in default to suffer rigorous imprisonment for a further period of three months.

2. The case of the prosecution in nutshell is that on 23.06.2006 on information about illegal transportation of arrack sachets across the border of Karnataka State, the Inspector of Prohibition and Excise, Yemmiganur, along with police officials and excise staff proceeded to the road leading from Yemmiganur to Malapalli village i.e., near L.L.C. Canal Culvert, and found the accused along with three plastic sacks containing 200 arrack sachets of 100ml each.

3. The Excise Inspector for the purpose of analysis collected samples under Mos. 1 to 3. The remaining sacks were seized under the Panchana-EX.P.1., basing on which, a crime was registered under Ex.P.2-FIR. With the permission of the Court, he disposed off the contraband under Ex.P.6 vide Section 13 (2) of the Act after obtaining destruction orders from the Deputy Commissioner of Excise vide Ex.P.5. In the meanwhile, he received the report under Ex.P.4 from the Government Regional Prohibition and Excise Laboratory, Kurnool, stating that the samples seized were diluted arrack which are unfit for human consumption. Thereafter, the Inspector of Prohibition and Excise filed Charge sheet. The accused pleaded not guilty and claimed to be tried before the trial Court. The trial went on. PWs. 1 to 3 were examined and Exs. P.1 to P.6 were marked on behalf of the prosecution. One of the panchayatdars i.e., B. Hanumanna was examined as DW.1. Ex. D.1 is the signature of DW.1 in the panchanama, dated 23.06.2006. The material objects i.e., Mos. 1 to 3 were produced before the trial Court.

4. On appreciation of the evidence on record, and having heard the submissions of both the counsel, the trial Court found the accused guilty

for the offences for which they are charged and sentenced them as referred above.

5. Being aggrieved by the judgment of the trial Court, the matter was carried in appeal viz., Crl.A.No.40 of 2007 before the II Additional Sessions Court, Kurnool at Adoni, wherein concurrent view was expressed in all aspects of the matter.

6. Feeling aggrieved and dissatisfied with the impugned judgment, the accused Nos. 1 and 2 preferred the present revision on the grounds that the prosecution failed to prove the case against the accused beyond all reasonable doubt; that the evidence of DW.1, who is one of the attestor to the panchanama is completely brushed aside without any reason; except the evidence of official witnesses, who are interested, nothing is there against the accused; that the learned Courts placed burden on the accused instead of the prosecution; that the learned trial Court as well as Appellate Court failed to consider the authorities cited on behalf of the accused and no evidence is made out against the accused for the offence punishable under Section 7 (A) r/w 8 (e) of A.P. Prohibition and Excise Act, 1995.

7. Heard Sri Butta Vijaya Bhasker, learned counsel for the Petitioners and the learned Public Prosecutor appearing for the State.

8. Learned counsel for the Revision Petitioners would submit that except the samples under M.O.s. 1 to 3, the police failed to produce the contraband before the Court and except the evidence of the official witnesses, who are interested, nothing is placed on record. He would submit that the evidence of DW.1 was completely ignored without any proper reason and as such, benefit of doubt should be given to the accused.

9. Per contra, learned Public Prosecutor would submit that there is no hard and fast rule that the evidence of official witnesses cannot be believed. The evidence of PWs. 1 to 3 is corroborated with the Mos. 1 to 3 and Ex.P.2, which clearly proves the guilt of the accused. There is nothing to interfere in the impugned Order. The sentence imposed was a minimum sentence. Therefore, he prays for dismissal of the revision.

10. Having heard the submissions of the both counsel, the point that arises for determination in this Revision is;

Whether the learned trial Court and the Appellate Court exceeded their jurisdiction or failed to exercise their jurisdiction, which warrants interference of this Court in this Revision?

11. This Court being a revisional Court cannot substitute its opinion simply because another view is possible. Unless there is any blatant mistake or error on the face of the record which may lead to miscarriage of justice, the Revisional Court shall not exercise its diligence over the matter. This Court cannot touch the factual aspects of the mater and reappreciate the evidence on record unless it is specifically warranted in a particular case, i.e., when it is accepted that the learned Courts failed to exercise the jurisdiction which they suppose to exercise and erred in exercising their jurisdiction.

12. In the present case, there is no force in the argument that basing on the evidence of PWs. 1 to 3, conviction cannot be recorded against the accused simply because they are the official witnesses. There is no hard and fast rule to rely upon the evidence of any witness who deposed before the Court. The test is truthfulness in their evidence. Some degree of scrutiny is essential in appreciation of such evidences. In the present

case, PW.1 and DW.1 being Village Servants acted as mediators at the time of seizure of the property from the possession of the accused. PW.1 corroborated the evidence of PWs. 2 and 3 on the point of seizure of property from the possession of the accused by the excise officials. But coming to the evidence of DW.1, who is also a witness for the prosecution, he deposed completely and diametrically opposite to the version of PW.1. Nothing has been elicited in the cross examination of DW.1 by the learned Public Prosecutor to discord his testimony. DW.1 not only spoke about the present case, but he stated that in several cases also, the police obtained his signatures on blank papers. Nothing has been done in his presence by the Police as to the seizure of the property from the possession of the accused.

13. As rightly argued by the learned counsel for the revision petitioners, the evidence of PW.1 was discarded by the learned trial Judge on the score that without their being any summons from the Court, the witness voluntarily appeared before the Court and deposed in favour of the accused. While saying so, the learned trial Judge opined that he is interested witness in favour of the accused and so his evidence

is ignored. The reason for the trial Judge to disbelieve the evidence of DW.1 is not tenable under law. There is no mandate under the Code of Criminal Procedure that witness has to appear before the Court to give evidence only on receipt of summons. On the request of either side, the Court may issue summons to inform the witness about the date of the case to give their evidence. At the same time, we cannot ignore the right of the accused to place his evidence before the Court in defence under Section 315 of the Cr.P.C. The accused has not produced any witness to surprise the prosecution. DW.1 is the own witness of the prosecution, but the prosecution did not choose to examine him because PW.1 supported their case. Nothing has been attributed against DW.1 to support the accused and to speak contra to the prosecution's version. The point raised by the learned counsel for the revision petitioners is that the Investigating Officer, who filed Charge Sheet was not examined, is not fatal to the prosecution case. The reason being what all deposed by PW.2 is about the investigation done by the Investigating Officer because PW.2 accompanied the Investigating Officer from the beginning till the end. Except filing charge sheet technically, nothing has been done by LW.5-S. Jayaram Naik.

14. A coordinate bench of this Court in CRL.R.C.No.1758 of 2005 (***Pothabathula Abbulu v. The State of Andhra Pradesh***), dated 06.07.2021, held that the when panch witness turned hostile, the seizure of illicit liquor is not proved and the further evidence by the members of raiding party, in the absence of corroboration from the panch witness, would not be acceptable. In a similar case, for the offence punishable under Section 7 (7) r/w 8 (e) of the A.P. Excise Act, the learned Judge opined that it is not correct to record the conviction in absence of corroboration from the panch witnesses to the evidence of the raiding party.

15. In the backdrop of the legal position referred to supra, this Court is of the considered view that the impugned Judgment warrants interference of this Court in the present Revision since when two views are possible in a Criminal case, one which is favourable to the accused has to be considered. In the present case, DW.1 blatantly rejected the case of the prosecution, he being the Village Servant working as a Public servant openly stated in the Court that the excise officials obtained his signatures not only in this case but also in several other cases. Contra

evidence of PW.1 and DW.1, if taken out from the consideration of the Court, except for the evidence of PWs. 2 and 3, who are the police officials and the excise official, nothing is on record. Accordingly, the Point is answered.

16. Accordingly, the present Criminal Revision Case is allowed and conviction and sentence passed against the revision petitioners by the Judicial Magistrate of First Class, Yemmiganur in C.C.No.308 of 2006, which was confirmed by the II Additional Sessions Judge, Kurnool at Adoni in Criminal Appeal No.40 of 2007, dated 22.07.2008 are set aside. The Fine amount, if any paid, shall be returned to the Revision Petitioners.

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

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VENKATA JYOTHIRMAI PRATAPA, J.

Date: 21.06.2023.
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HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Crl.R.C.No.1224 of 2008

Dt.21.06.2023

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