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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Revision No. 830 of 2016

Sukhpreet Singh S/o Guljar Singh Dhillan, aged about 20 years, R/o Sirsa Road, Kohka, Bhilai, Tahsil and District Durg, Chhattisgarh,

--- Applicant

versus

State of Chhattisgarh Through The Station House Officer, Police Station Khairagarh, Police Chowki Jalbandha, District Rajnandgaon, Chhattisgarh,

--- Respondent

Criminal Revision No. 986 of 2016

Nageshwar Lodhi S/o Kamta Lodhi, Aged About 19 Years, R/o Supela, Housing Board, Plot No. 25, Police Station Supela, District Durg, Chhattisgarh,

---Applicant

Versus

State of Chhattisgarh Through The Collector, District Rajnandgaon, Chhattisgarh,

--- Respondent

For Applicant (CRR : No.830/2016)	Mr. Sudhanshu Singh, Advocate on behalf of Mr. B.P. Singh, Advocate,
For Applicant (CRR : No.986/2016)	Mr. Khilendra Sahu, Advocate on behalf of Mr. S.S. Baghel, Advocate,
For Respondent/State	Ms. Pragya Pandey, Dy. Govt. Advocate

Hon'ble Shri Justice Radhakishan Agrawal

Judgment on Board

05.08.2025

1. Since, both the above captioned revisions arise out of same impugned order dated 27.08.2016, they are being heard together and disposed of by this common judgment.

2. The present revisions filed under Section 397/401 Cr.P.C. is directed against the judgment of conviction and order of sentence dated 27.08.2016 passed in Criminal Appeal No.34/2015 (applicant Sukhpreet Singh in CRR No.830/2016) and 39/2016 (applicant Nageshwar Lodhi in CRR No.986/2016) by the Additional Sessions Judge, Khairagarh, District – Rajnandgaon, Chhattisgarh, whereby judgment dated 26.09.2015 and 20.07.2016 passed by the Additional Chief Judicial Magistrate, Khairagarh, District – Rajnandgaon, Chhattisgarh in Criminal Case No.518/2014, convicting the applicants under Section 34(2) of the Chhattisgarh Excise Act, 1915 and sentencing them to undergo RI for two years and to pay fine amount of Rs.25,000/- each, and in default of payment of fine, additional RI for six months each, has been affirmed by the learned Appellate Court. Hence, these revisions.
3. Case of the prosecution, in brief, is that on 18.08.2014 at about 10:00 PM, Purshottam Nirmalkar, Head Constable (PW-05) had gone for patrolling along with other police staff where he received a secret information that two persons were coming from Durg to village Rengakathera, carrying illicit liquor in their motorcycle bearing registration No.CG-07-AF-5735. The said motorcycle was driven by Nageshwar Lodhi (applicant in CRR No.986/2016) and Sukhpreet Singh (applicant in CRR No.830/2016) was the pillion rider. On the basis of said information, the police stopped the said accused persons/applicants and searched them. On being searched, the present applicants were found in joint possession of 139 quarters of country made liquor (each bottle containing 180 ml) total 25.020 liters, which were kept in 3 cartoon boxes inside a white plastic bag. After following the necessary seizure proceedings, seizure memos (Ex.P-1 and Ex.P-2) and spot map (Ex.P-9) were prepared. Thereafter, the accused/applicants were arrested and crime under Section 34(2) of the Chhattisgarh Excise Act, 1915 was registered against the applicants before the police chowki Jalbandha, under

Crime No.0/14 and subsequently, FIR (Ex.P-5) was registered in Police Station – Khairagarh, District - Rajnandgaon. It is alleged that total 9 bottles of the seized article were sent for chemical examination on 30.08.2014 which was examined by S.N. Sahu (PW-02), Excise Sub-Inspector. On being examined, the seized article was found to be country made Mahua liquor.

4. After completion of investigation, charge sheet under Section 34 (2) of the Chhattisgarh Excise Act, 1915 was filed before the Court of Additional Chief Judicial Magistrate, Khairagarh. The applicants abjured the guilt and pleaded innocence. So as to prove the guilt of the accused/applicants, the prosecution has examined as many as 5 witnesses. Statement of the accused/applicants was also recorded under Section 313 of Cr.P.C.
5. Learned trial Court, after appreciation of oral and documentary evidence, convicted the applicants under Section 34 (2) of the Chhattisgarh Excise Act, 1915 and sentenced them as mentioned in paragraph 1 of this judgment. The said judgment was challenged by the applicants in criminal appeal, however, the Appellate Court, vide judgment dated 27.08.2016 affirmed the order of conviction and sentence of the applicants. Hence, these revisions.
6. Learned Counsel appearing for the applicants submit that the prosecution has utterly failed to establish its case beyond reasonable doubt. They further submit that the independent witness in this case, namely, Bhagirathi Verma (PW-01) has turned hostile and not supported the case of the prosecution and further, there is material contradictions and omissions in the statement of Sanjay Singh Chauhan (PW-3) and investigation officer, Purshottam Nirmalkar (PW-05). They further submit that sample seal is not mentioned in Column No.13 of the seizure memo (Ex.P-1) and that the signature of the investigating officer is also not mentioned in the said seizure memo. It is further contended that as per the Thana Malkhana Panji (Ex.P-14C), the seized articles were not kept in “sealed” condition, further, no entry is

mentioned in the said Malkhan Panji with regard to sending of 9 bottles of liquor for chemical examination to S.N. Sahu, Excise Sub-Inspector (PW-02). This apart, the said sample of total 9 quarters which were sent for examination, were not properly "sealed" by the police. They further submit that the alleged articles were seized on 18.08.2014 but it was sent for examination on 30.08.2014 and the prosecution has failed to offer any explanation for the delay in sending the same for examination. Learned counsel for the applicants have also pressed the present revisions on additional ground of non-compliance of Section 57 (a) of the Excise Act, which vitiates the prosecution case. In support of their arguments, they placed reliance upon a decision rendered in the matter of *Suresh Kumar vs. State of Chhattisgarh* reported in 2006 (3) CGLJ 259. Lastly, they submit that the fine amount has already been deposited before the trial Court by the applicants.

7. On the other hand, learned State Counsel opposed the revisions, while supporting the impugned judgment of conviction and order of sentence.
8. I have heard learned counsel appearing on behalf of the parties and perused the record minutely.
9. To deal with the contentions of learned counsel for the parties, it would be apt to discuss the evidence available on record. As per the statement of the investigating officer, Purshottam Nirmalkar (PW-5), Head Constable, on 18.08.2014, after receiving the secret information from the informer, he along with other police staff and seizure witnesses, namely, Bhagirathi Verma (PW-01) and Sanjay Kumar Chouhan (PW-03) resident of Pawantara, stood at a blockade on Khairagarh-Durg main road, where he stopped the applicants, and seized 139 quarter of country made liquor (each containing 180 ml), total 25.020 liters, which were kept in 3 cartoons boxes inside a white plastic bag, from their possession and further seized the motorcycle

bearing registration No.CG-07-AF-5735. Thereafter, seizure proceedings were conducted by him before the seizure witnesses and as per seizure memo (Ex.P-1), total 139 quarter country made liquor kept in different cartoons inside a white plastic bag, was seized from the possession of applicant Sukhpreet Singh, and as per seizure memo (Ex.P-2), one motorcycle bearing registration No.CG-07-AF-5735 was seized from the applicant Nageshwar Lodhi. Subsequently, FIR (Ex.P-5) was registered against the applicants for the offence under Section 34(2) of the Chhattisgarh Excise Act, 1915. This witness further stated that during investigation, he took out 9 quarters bottle from the three cartoons, and sent the same for chemical examination to Excise Sub-Inspector, Khairagarh. He further stated that he had given the seized articles to the Malkhana Moharir, Rajak Lal Yadav, Head Constable No.729 to put necessary entries and keep the said articles into the safe custody.

10. Bhagirathi Verma (PW-01), who is cited as the seizure witness, has deposed that the police has not made any seizure in his presence. He further stated that he has not given any statement regarding any liquor before the police. Thus, as per the statement of this witness, he has turned hostile and has not supported the case of the prosecution.
11. Sanjay Singh Chouhan (PW-03), another seizure witness, has stated that on the date of incident, he was coming from Durg to Khairagarh and on the way, seeing the police checking, he stopped there, at that time, the police were searching the accused/applicants. He further stated that the police seized total two boxes of liquor loaded on a motorcycle from the possession of the accused/applicants on the spot. Contrary to the statement of this witness, the investigating officer, Purshottam Nirmalkar (PW-05) has specifically stated in his statement that on the date of incident, he reached to the spot along with seizure witnesses, Bhagirathi Verma and Sanjay Singh Chouhan.

Furthermore, Sanjay Singh Chouhan (Ex.P-3) has not stated that three boxes of liquor were seized from the accused persons. Thus, there appears material contradictions and omissions in the statements of investigating officer, Purshottam Nirmalkar (PW-05) and seizure witness Sanjay Singh Chouhan (PW-03) and there statements are not duly corroborated with each other.

12. Seizure memo (Ex.P-1) also does not transpire that after the alleged seizure of liquor, no sample seal was affixed in its prescribed place. This apart, the signature of the investigating officer, is also missing in the seizure memo (Ex.P-1). Though, seizure memo (Ex.P-1) shows the signatures of the witnesses, but as per Column Nos. 12 & 13, there was no sample seal affixed on it 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.
13. As per the statement of S.N. Sahu (PW-02), Excise Sub-Inspector, on 30.08.2014, total 9 quarter country made liquor each containing 180 ml which was sealed with the "company's" seal was brought before him for examination and after examination, he found the article to be country made plain liquor and the test report is exhibited as P-4. It is pertinent to mention here that as per the case of prosecution, the article was seized on 18.08.2014 but the same was sent for examination before the Excise Sub-Inspector on 30.08.2014 i.e. after 12 days of the alleged seizure. Further, there is no entry in Thana Malkhana Register (Ex.P-14C) which would show that 9 quarters bottle were separately taken out from the alleged seized 3 cartoon boxes. This apart, there is also no separate entry made in Thana Malkhana Register (Ex.P-14C) which would show that the said 9 quarters were sent to Excise Sub-Inspector for chemical examination.

- 14.** Now, the question remains, whether the seized articles were properly “sealed” by the police? In this regard, the investigating officer, Purshottam Nirmalkar (PW-05) has stated that the seized articles were deposited by him in Thana Malkhana to Malkhana Moharir, Rajak Lal Yadav, Head Constable No.729 to put necessary entries and keep the said articles into the safe custody, and the copy of same is Ex.P-14C. However, in the said Thana Malkhana Register, nowhere it is mentioned that the seized articles were kept in “sealed” condition. This witness has further stated that during investigation, for chemical examination, he has taken out 3-3 quarter (total 9 quarters) liquor from the seized cartoon boxes but in the seizure memo (Ex.P-1), it is not mentioned anywhere that the above 9 quarters liquor was taken out from the said 3 cartoon boxes and also no entry is made in the Thana Malkhana Panji (Ex.P-14C) which would show that the said alleged 9 quarters were deposited in the Thana Malkhana. This apart, it is evident from the liquor examination report (Ex.P-4) that the 9 quarters liquor which were sent as sample for examination, were sealed with the “company’s” seal and not by the seal made by the police. Thus, it is clear that the alleged said seized articles were not properly “sealed” while keeping the same in Thana Malkhana and was also not “sealed” when it was sent for chemical examination. This apart, the Malkhana Moharir, Rajak Lal Yadav, Head Constable No.729 before whom the seized articles were deposited by the investigating officer, has not been examined by the prosecution. From the above discussions, it is clear that the statement of the investigating officer Purshottam Nirmalkar (Ex.P-5) is not duly corroborated with the evidence available on record.
- 15.** 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 corroborate the statements of the prosecution witnesses and that no sample seal was affixed on the seizure

memo (Ex.P-1). This apart, the provisions of Section 57 (a) of the Excise Act have also not been complied with by the prosecution.

- 16.** 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.”

17. 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 beyond reasonable doubt and the conviction of the applicants under Section 34 (2) of the Chhattisgarh Excise Act, 1915 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 applicants under Section 34 (2) of the Chhattisgarh Excise Act, 1915 and the sentence awarded thereunder is hereby set aside and the applicants in both the cases are acquitted of the aforesaid charge on the basis of benefit of doubt. Fine if paid, shall be refunded to the applicants.
18. Consequently, the revisions are allowed. The applicants are reported to be on bail and their 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