

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE RAJENDRA BADAMIKAR

CRIMINAL REVISION PETITION NO. 779 OF 2020

BETWEEN

D.B.RAMESH @ DONI RAMESH

...PETITIONER

(BY SRI. SACHIN B.S, ADVOCATE)

AND

STATE BY EXCISE POLICE
MUDIGERE, CHIKKAMAGALURU,
PIN-577550.
REP. BY SPP HIGH COURT BUILDING,
BENGALURU-01.

...RESPONDENT

(BY SRI. H.S.SHANKAR-HCGP, ADVOCATE)

THIS CRL.RP IS FILED U/S 397 R/W 401 OF CR.PC BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONORABLE COURT MAY BE PLEASED TO SET ASIDE THE IMPUGNED JUDGMENT DATED 30.07.2020 IN CRL.A.NO.213/2019 ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKAMAGALURU THEREBY CONFIRMING THE JUDGMENT OF CONVICTION AND SENTENCE DATED 21.09.2019 PASSED BY THE PRINCIPAL CIVIL JUDGE AND JMFC, MUDIGERE IN C.C.NO.1007/2018 U/S 32(1) OF KARNATAKA EXCISE ACT AND SEC.273 OF IPC AS PER DOCUMENT-A AND B AND CONSEQUENTLY ALLOW CRL.A.NO.213/2019 FILED BY THE PETITIONER AS PRAYED FOR.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 19.06.2023, COMING ON FOR PRONOUNCEMENT, THIS DAY COURT PASSED THE FOLLOWING:

ORDER

This petition is filed by the accused under Section 397 read with section 401 CR.P.C., challenging the judgment of conviction and order of sentence passed by the Principal civil Judge and JMFC, Mudigere, in CC no.1007/2018 and confirmed by the II Additional District and Sessions Judge, Chikkamagaluru, in Crl.A.No.213/2009 vide judgment dated 30.07.2020.

2. For the sake of convenience, the parties herein are referred with the original ranks occupied by them before the Trial Court.

3. The brief factual matrix leading to the case are as under:

4. That on 15.09.2017 at 7.15 a.m. in Daradahalli Colony of Mudigere taluk, the complainant Excise Inspector after receiving a credible information raided the house of the accused and it is found that

accused has stored 30 liters of jaggery wash and 2 liters of illicit liquid in his bed room though he had the knowledge that the said liquor is not safe for human consumption. The complainant seized the contraband properties in presence of the accused and panchas by drawing drawn a mahazar and then he apprehended the accused and lodged a complaint. Thereafter, the Investigating Officer completed the investigation and submitted the charge sheet. The accused was enlarged on bail and prosecution papers were furnished to the accused. The charge was framed and read over to the accused and he pleaded not guilty. Then the prosecution has examined in all five witnesses to substantiate the case and also placed reliance on 21 documents. MOs.1 to 3 were also relied by the prosecution. After conclusion of the evidence of the prosecution, the statement of the accused under Section 313 Cr.P.C. was recorded to enable the accused to explain the incriminating evidence appearing against him in the case of the prosecution. The case of accused is of total denial. However, he did not choose to lead any oral or documentary evidence in support of his defence.

5. Having heard the arguments and after appreciating the oral as well as the documentary evidence, the learned Magistrate has convicted the accused by passing order on sentence as under:-

SENTENCE

"Accused is sentenced to undergo rigorous imprisonment for the period of one year and to pay a fine of Rs. 10,000/-, for the offence punishable U/Sec.32(1) of K.E.Act. In default of payment of fine, he shall further undergo S.I. for three months.

Accused is further sentenced to pay a fine of Rs.500/- for the offence punishable U/Sec.273 of IPC. In default of payment of fine, he shall further undergo S.I. for a day."

6. Being aggrieved by this judgment, accused has approached the learned sessions Judge and appeal came to be dismissed. Hence, he is before this Court by way of revision.

7. Heard the arguments advanced by the learned counsel for the appellant and learned HCGP and perused the record.

8. The learned counsel for the appellant would contend that the recovery itself is not proved by the prosecution as both the panch witnesses have turned hostile and hence, the presumption under Section 54 of the Karnataka Excise Act (for short hereinafter referred to as 'the Act'), cannot be made applicable. He would further contend that rest of the witnesses are official witnesses and their evidence is not corroborated and both the Courts below have ignored this material aspect and erroneously convicted the accused. It is further asserted that the provision of Section 54 of the Karnataka Excise are not strictly complied and hence, he would contend that the entire proceedings are vitiated. Hence, he would seek for allowing the revision petition by setting aside the impugned judgment of conviction and order of sentence of the trial Court and the Appellate Court.

9. Per contra, the learned HCGP would support the judgment of conviction and order of sentence passed by the trial Court and confirmed by the Appellate Court. He would submit that though PWs.1 and 2 have turned

hostile, they admit their signatures on the mahazar and material objects and further they admit their presence at the spot. Hence, it is evident that they are won over by accused and hence they are not supporting the case of the prosecution. But, the other circumstances establish the seizure. He would also contend that other witnesses PWs.3 and 5 though official witnesses no reasons are forthcoming to discard their evidence as no animosity is proved between the petitioner-accused and the official witnesses. Hence, he would contend that both the Courts below have rightly convicted the accused and same does not call for any interference.

10. Having heard the arguments and perusing the records, now the following point would arise for my consideration:-

"Whether the revision petitioner proves that the judgments of conviction and orders of sentence passed by the trial Court and confirmed by the Appellate Court are erroneous

and arbitrary so as to call for any interference?"

11. This is a revision filed by the accused. Though the revision petitioner was convicted for the offence punishable under Section 13(1)(a)(f) r/w 32 of Karnataka Excise Act and Section 273 of IPC, he was acquitted so far it relates to offence under Section 38(a) of the Act. The said acquittal order is not challenged. It is the specific assertion of the prosecution that the complainant having received a credible information, raided the house of the accused on 15.9.2014 at 7.15 a.m. and he was found to be in possession of 30 liters of jaggery wash and 2 liters of illicit liquor stored in the bed room.

12. There is no serious dispute of the fact that the house where the raid was conducted was standing in the name of the wife of the accused and accused was residing there. PWs.1 and 2 are the Mahazar witnesses and both these witnesses have turned hostile. They denied regarding they accompanying the Excise officials for raid and drawing mahazar in their presence. However, they

admitted their signatures on Mahazar Ex.P1 and they have also admitted their presence in Exs.P3 - P10 photographs. It is not the case of the defence that Exs.P3 - P10 are snapped in the Excise Office. There is no explanation from PW1 and PW2 as to why they were compelled to sign on Exs.P1 and P2 and even on MOs.1 to 3. Their cross examination and admission regarding their presence in photographs clearly establish that they were present at the time of drawing the mahazar and now, they are intentionally giving evidence against the documents in order to save to skin of the accused.

13. PW3 is an Excise Guard and PW5 is the Excise Inspector who have conducted the raid. They deposed regarding receiving credible information on 15.09.2017 at 6.30 a.m. and since there is possibility of accused destroying the evidence they proceeded for raid. They have also specifically deposed that 30 liters of jaggery wash in 2 pitchers of 15 liters each and 2 liters of illicit liquor in 5 liters can was being recovered from the house of the accused. Though these two witnesses have been

cross examined at length, nothing was elicited except normal denial. There is no reason for discarding their evidence. Further their evidence is again corroborated by the evidence of PW4.

14. On total analysis of evidence, it is evident that PW1 and PW2 have intentionally turned hostile. But, PWs.3 and 5 have supported and they testified regarding raid conducted by them. Their evidence is not impeached and it is again corroborated by Exs.P1 to P11. Further, there is no serious dispute that the seized materials contain chemical which is not meant for human consumption as per Ex.P15 -FSL report which is not challenged at all. Ex.P18 is the report of the complainant wherein it is specifically asserted that immediately after receipt of the information as there is possibility of destroying the evidence, therefore, without obtaining the search warrant, he was compelled to proceed for the raid. This is inconsonance with Section 54 of the Act. By the evidence of PWs.3 and 5, the recovery of the prohibited materials is established and from Ex.P15, it is evident

that it is not fit for human consumption. As such, both the Courts below have rightly convicted the accused and there is no bar that the evidence of the official witnesses is to be discarded. If the evidence is beyond all suspicious reasons, there is no reason for ignoring the evidence of the official witnesses and in the instant case, no such grounds are forthcoming. Apart from that, there is no animosity between PW5 and petitioner-accused to show that the complainant is prejudiced. Hence, the arguments in this regard holds no water. The accused was found in possession of the contraband, illicit liquor which is not fit for human consumption.

15. The learned Magistrate has also imposed minimum fine prescribed under Section 32(1) of the Act and has imposed only fine of Rs.500/- for the offence punishable under Section 273 of IPC. When statutes itself prescribes minimum sentence, this Court is not empowered to reduce the sentence, and no discretion was given to the Court in this regard. Considering this aspect, the learned Magistrate has imposed the minimum

sentence and the same is confirmed by the First Appellate Court. Both the Courts below have appreciated the oral and documentary evidence in proper perspective and in detail. Further, after proper appreciation of the evidence, they have rightly convicted the accused. The judgment of conviction and order of sentence passed by both the Courts below cannot be said to be erroneous or arbitrary so as to call for any interference by this Court. Under such circumstances, the point under consideration is answered in the negative and accordingly, the petition being devoid of any merits needs to be dismissed. Hence, I proceed to pass the following:

ORDER

The revision petition stands ***dismissed.***

**Sd/-
JUDGE**

Vmb