

Manoj Kumar Vs. The State of Karnataka

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Court : Karnataka

Decided On : Nov-21-2019

Judge : K.Somashekar

Appeal No. : CRL.RP 243/2017

Appellant : Manoj Kumar

Respondent : The State of Karnataka

Judgement :

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE21T DAY OF NOVEMBER, 2019 BEFORE THE HONBLE MR.JUSTICE K.SOMASHEKAR CRIMINAL REVISION PETITION No.243/2017 BETWEEN Manoj Kumar S/o K. Raman Aged about 42 years R/at Rama Nivas Dhoomappa Compound Pandeshwara Mangaluru 575 001. ...

... Petitioner

(By Sri. Umesh P. B., Advocate for Sri Ravindra .B Deshpande - Advocate) AND The State of Karnataka By Mangaluru North Police Station Mangaluru 575 001. (By Sri. Thejesh .P, HCGP) ... Respondent This Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to, set aside the judgment and order of conviction the IV-Additional District and Sessions Judge, Dakshina Kannada, Mangaluru in Crl.A.No.37/2016 confirming the judgment and order dated 22.01.2016 passed by the JMFC-II Court, Mangaluru in

C.C.No.781/2014 05.01.2017 dated passed by

(Convicted for the offence p/u/s 36 of Karnataka Exercise Act) and acquit the petitioner of charged leveled against him. This Criminal Revision Petition Coming on for Admission, this day, the court made the following: ORDER Though this petition is listed for admission, with the consent of learned counsel on both sides, the same is taken up for final disposal.

2. This criminal revision petition is filed by the petitioner/accused challenging the judgment dated 05.01.2017 rendered by the Court of IV Addl.District and Sessions Judge, Dakshina Kannada, Mangaluru in Crl.A.No.37/2016 confirming the judgment of conviction and order of sentence dated 22.01.2016 rendered by the Court of II JMFC, Mangaluru in C.C.No.781/2014 convicting the accused for the offence punishable under Section 36 of the Karnataka Excise Act.

3. The brief facts of the case is that on 01.01.2014 at about 12:05 in the night hours, the accused person in contravention of permit conditions, was selling liquor to the customers in Yashraj bar and Restaurant, situated in Averi Junction, Mangalore city thereby contravening Section 36 of the Karnataka Excise Act. After taking cognizance of the offence, PW.1 being the IO, filed charge sheet against the accused. Subsequently, after recording the plea of the accused, the prosecution examined in all six witnesses as PW.1 to PW.6 and got marked Exs.P.1 to P.9. After hearing the arguments advanced on both sides, the trial Court passed the impugned judgment convicting the accused for the offence punishable under Section 36 of the Karnataka Excise Act and sentenced him to pay fine of Rs.500/-, in default, to undergo SI for a period of 10 days.

4. Aggrieved by the said judgment, the accused preferred an appeal before the lower Appellate Court in Crl.A.No.37/2016. The Court below vide judgment dated 05.01.2017 dismissed the appeal by confirming the judgment and order of conviction and sentence

passed by the trial Court. Hence, this petition by the petitioner/accused on various amongst other grounds.

5. Learned counsel for the petitioner contends that the judgment of conviction and sentence passed by the both the courts are contrary to law, evidence and probabilities of the case. He contends that the courts below erred in convicting the petitioner accused based on the evidence of prosecution which is highly interested, contradictory and unreliable. He further contends that the courts below committed serious error in holding that the prosecution has proved the case beyond reasonable doubt, whereas the prosecution is guilty of suppressing the material evidence and has not come forward with the true version of the incident.

6. The courts below relying on the sole evidence of PW.1, the official witness, has convicted the petitioner, whose evidence is not trustworthy and inconsistent with the contents of the complaint. Further, PWs.2 to 5 have not supported the case of the prosecution and CWs.6

and 7 who are alleged to be accompanied PW.1 have not been examined though they are cited as charge sheet witnesses. On all these grounds, learned counsel for the petitioner seeks for setting aside the judgments passed by the Courts below.

7. Per contra, learned HCGP for the respondent State contends that under the license of competent authority, permission was granted to sell intoxicants from 10.00 am to 11.30 p.m. and the person sitting at the counter of the alleged Bar has admitted his guilt. Merely because the panch witnesses turned hostile is not a ground to disbelieve the drawing of mahazar by the IO and the raid. The evidence of PW.1 cannot be discarded merely because he is a police officer. Evidence of the police officer regarding seizure of articles can be accepted even if the attester does not support him and the evidence of IO cannot be branded as highly interested on the ground that he wants the accused to be convicted. Further it is contended that the evidence produced by the prosecution would clearly

prove that the accused has committed an act of breach of license conditions by selling the intoxicants beyond the permitted hours. The courts below have rightly passed the impugned judgments convicting the accused for the aforesaid offence. Hence, the same does not call for interference of this court. The petition being devoid of merits, deserves to be dismissed.

8. In this context of the contention as taken by the learned counsel for the petitioner and so also, learned HCGP for the State, it is relevant to state that the Act attributed to the accused is that he contravened Section 36 of the Karnataka Excise Act. The case of the prosecution is that the accused has committed an act of breach of license conditions by selling the intoxicant liquor in the bar and restaurant beyond the permitted hours and he was caught red-handed by the police during the raid.

9. PW.1, the IO who investigated the case has stated in his evidence that on the eve of new year day,

i.e., 31.12.2013, he was on patrolling duty along with CW.6 and CW.7. On 01.01.2014 at about 12.05 in the night hours when he reached near Yashraj Bar and Restaurant, Averi Junction, Mangalore, he noticed that the rolling shutter of the bar was partly opened. He entered into the bar along with CW.6 and 7 and saw the person sitting at the bar counter was selling intoxicants to the customers. Soon after the raid, all the customers who were present inside the bar ran away. On enquiry, the said person produced CL-9 license issued to the bar standing in the name of one K.Raman. Under the license, permission was granted to sell intoxicants from 10.00 AM to 11.30 PM. Semi-filled Original whisky bottle of 360 Ml, two glasses and Rs.115-00 were seized under Ex.P1 mahazar with sketch at Ex.P4. PW.1 further states that he prepared a report as per Ex.P2 and registered the case and recorded the statement of witnesses. After completion of the investigation, PW.1 filed charge sheet and he identified the accused and material objects as per M.O.1 to 3.

10. It is relevant to note here that PW.1 in his cross-examination has stated that during the raid, 5 to 6 were present inside the bar and he could not apprehend them as they ran away. There were as many as 15 workers in the bar. M.O.1 is the liquor bottle and M.O.3 is cash of Rs.115/- on the bar counters dias. But the Courts below have gone unnoticed of the contentions taken by the accused that by way of special order on 31.12.2013, the Deputy Commissioner had permitted for sale of liquor till 12.00 hrs in the night. But the Courts below by relying on the sole testimony of PW.1 convicted the accused for the aforesaid offence. It is also

relevant to note that PWs.2, 3 and 5 were working in the Bar as Cleaner, Waiter and Cashier respectively. PW.4 was running a petty shop near the bar and accused is the son of the owner of the Bar and all of them did not support the case of prosecution and they turned hostile.

11. Further, the contention of the learned counsel for the petitioner is that the shutter was partially closed

and there was an ominous order for selling the liquor till 12.00 hrs in the night. In spite of the said fact, the IO has falsely implicated the accused who is not responsible for violation of the permit condition as he is not the owner of the Bar. The IO ought to have arrested the owner and not the person who is an employee. In fact, the IO has not arrested any other person except the petitioner. Only small quantity of liquor around 375 ml was seized along with an empty glass and cash of Rs.115/- which is a meager amount. It is pertinent to note here that except the IO, none of the prosecution witnesses have supported the case. It is evident that the testimonies of PWs. 2 to 5 runs contrary to the testimony of PW.1 and they have turned hostile to the case of prosecution. In the evidence, they have consistently stated that they do not know anything about the case. They have not only contradicted their previous statements but also denied the case of the prosecution in its entirety. Further CWs.6 and 7 who were alleged to be accompanied PW.1 were not examined though they were cited as charge sheet :

witnesses. These circumstances vitiate the entire procedure as well as doesn't repose confidence and the courts below committed error in convicting the accused based on the sole testimony of PW.1 being the IO.

12. Further, the Courts below erred in not noticing that the complainant and the IO were one and the same. The IO who was the complainant himself conducted the investigation which itself is sufficient to cast doubt on the prosecution version. The evidence of PW.1 do not corroborate with the evidence of other prosecution witnesses regarding alleged selling of liquor by the accused as narrated in the substance of the charge-sheet.

13. At a cursory glance of evidence of prosecution witnesses, it could be seen that there appears clouds of doubt. Whenever doubt arises in the evidence of the prosecution, the same should always be in favour of the accused. Therefore, the impugned judgment of the courts below requires intervention of this Court. The :

entire approach of the case by both the courts convicting the petitioner/accused, are found to be erroneous and has resulted in mis-carriage of justice to the case of petitioner/accused, if not set-aside.

14. For the aforesaid reasons and findings, I have to proceed to pass the following: ORDER Criminal Revision Petition preferred by the petitioner under Sections 397 and 401 of Cr.P.C. is hereby allowed. The judgment rendered by the first Appellate Court in Crl.A.No.37/2016 dated 05.01.2017 confirming the judgment of conviction and order of sentence dated 22.01.2016 rendered by the trial Court in C.C.No.781/2014 convicting the petitioner for the offence punishable under Section 36 of the Karnataka Excise act, is hereby set-aside. Consequently, the petitioner/accused is acquitted of the offences leveled against him. :

If any amount is deposited by the petitioner, the same shall be returned to him, on proper identification. DKB Sd/- JUDGE

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