

**Devaraju Vs. The State Of Karnataka**

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**Court :** Karnataka

**Decided On :** Jun-06-2022

**Judge :** Dr.H.B.Prabhakara Sastry

**Appeal No. :** CRL.RP 769/2013

**Appellant :** Devaraju

**Respondent :** The State Of Karnataka

**Judgement :**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 6<sup>TH</sup> DAY OF JUNE, 2022 BEFORE THE HONBLE Dr. JUSTICE H.B. PRABHAKARA SASTRY CRIMINAL REVISION PETITION No.948 OF 2013 c/w. CRIMINAL REVISION PETITION No.769 OF 2013 CRIMINAL REVISION PETITION No.948 OF 2013 BETWEEN: Nagaraju, S/o. Kullappa, Aged about 30 years, R/o. Basavanakeri Ganga Mathstara Beedi, Malavalli Town Mandya Dist. 571

430. ..Petitioner (By Sri. Raja L., Advocate) AND: The State of Karnataka Represented by Malavalli Police Station, Malavalli Taluk, Mandya Dist. 571

430. .. Respondent (By Sri. K. Nageshwarappa, High Court Govt. Pleader) \*\*\*\*\*  
This Criminal Revision Petition is filed under Section 397 (1) of the Code of Criminal Procedure, 1973, praying to call for the records from the Courts below and set aside the conviction Crl.R.P.No.948/2013 c/w.Crl.R.P.No.769/2013 2 order passed by the learned I Additional Civil Judge and JMFC, Malavalli in

C.C.No.673/2010 dated 18-12-2012 and learned 1st Additional Sessions Judge, Mandya in Criminal Appeal No.145/2012 dated 26-06-2013, and pass any other suitable order that is deemed fit on the facts and circumstances of the case by allowing this appeal, in the interest of justice and equity. CRIMINAL REVISION PETITION No.769 OF 2013 BETWEEN: Devaraju, S/o. Puttaraju, Aged about 49 years, R/o. Basavanakeri Ganga Mathstara Beedi, Malavalli Town, Mandya Dist. 571

401. ..Petitioner (By Sri. Raja L., Advocate) AND: The State of Karnataka Malavalli Police Station, Malavalli Taluk, Mandya Dist. 571

430. .. Respondent (By Sri. Nageshwarappa, High Court Govt. Pleader) \*\*\*\* This Criminal Revision Petition is filed under Section 397 (1) of the Code of Criminal Procedure, 1973, praying to call for the records from the Courts below and set aside the conviction order passed by the learned I Additional Civil Judge and JMFC, Malavalli in C.C.No.673/2010 dated 18-12-2012 and learned 1st Additional Sessions Judge, Mandya in Criminal Appeal No.145/2012 dated 26-06-2013, and pass any other suitable order that is deemed fit on the facts and circumstances of the Crl.R.P.No.948/2013 c/w.Crl.R.P.No.769/2013 3 case by allowing this petition, in the interest of justice and equity. These Criminal Revision Petitions coming on for Final Hearing, through Physical Hearing/Video Conferencing Hearing, this day, the Court made the following:

## ORDER

The present petitioners, as accused Nos.1 and 2 respectively, were tried by the Court of the learned I Additional Civil Judge and Judicial Magistrate First Class, Malavalli, (hereinafter for brevity referred to as the Trial Court) in C.C.No.673/2010, for the offences punishable under Sections 32 and 34 of the Karnataka Excise Act, 1965 (hereinafter for brevity referred to as the Excise Act) and were convicted for the said offences by its judgment of conviction and order on sentence dated 18-12-2012. Aggrieved by the same, both the accused persons preferred a Criminal Appeal in the Court of the learned I Additional Sessions Judge, Mandya, (hereinafter for brevity referred to as the Sessions Judges Court) in Criminal Appeal No.145/2012. Crl.R.P.No.948/2013 c/w.Crl.R.P.No.769/2013 4

The learned Sessions Judges Court in its judgment dated 26-06-2013 dismissed the appeal filed by both the accused and confirmed the judgment of the Trial Court in C.C.No.673/2010 dated 18-12-2012. It is challenging the judgments passed by both the Trial Court as well the Sessions Judges Court, both the accused have preferred these two revision petitions.

2. The summary of the case of the prosecution in the Trial Court is that, on 17-07-2010, at about 10:15 a.m., the present petitioner - Sri. Nagaraju, who was accused No.1 in the Trial Court along with one Sri. Devaraju who was accused No.2 in the Trial Court were found carrying in total 66 (sixty-six) bottles of three varieties of whisky at Anantharamaiah Circle, Malavalli, which is a public place, within the limits of the complainant Police Station and thus have committed the alleged offences punishable under Sections 32 and 34 of the Excise Act.

3. In order to prove the alleged guilt against the accused persons, the prosecution got examined in all five CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 5 witnesses from PW-1 to PW-5 and got marked documents from Exs.P-1 to P-6 and Material Objects from MO-1 to MO-4. Neither any witness was examined nor any documents were marked as Exhibits from the side of the accused persons.

4. After hearing both side, the Trial Court by its impugned judgment of conviction and order on sentence dated 18-12-2012 convicted the accused persons for the offences punishable under Sections 32 and 34 of the Excise Act and sentenced them accordingly. As observed above, both the accused persons preferred an appeal before the learned Sessions Judges Court, which after hearing both side, dismissed the appeal, confirming the judgment of conviction and order on sentence passed by the Trial Court. Challenging the judgments of both the Trial Court as well the Sessions Judges Court, both the accused persons are before this Court, in the present revision petitions. CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 6 5. The respondent - State is being represented by the learned High Court Government Pleader.

6. Learned counsel for the revision petitioners/accused persons and learned High Court Government Pleader for the respondent/complainant are appearing physically before the Court.

7. The Trial Court and the Sessions Judges Courts records were called for and the same are placed before this Court.

8. Heard the arguments from both side. Perused the materials placed before this Court including the Trial Court and Sessions Judges Courts records.

9. For the sake of convenience, the parties would be henceforth referred to as per their rankings before the Trial Court. Crl.R.P.No.948/2013 c/w.Crl.R.P.No.769/2013 7 10. After hearing the learned counsels for the parties, the only point that arise for my consideration in this revision petition is: Whether the impugned judgment of conviction and order on sentence passed by the learned I Additional Civil Judge and Judicial Magistrate First Class, Malavalli, dated 18-12-2012, in C.C.No.673/2010, which was further confirmed by the learned I Additional Sessions Judge at Mandya in Criminal Appeal No.145/2012, warrants any interference at the hands of this Court ?.

11. Learned counsel for the petitioners/accused, in his brief argument submitted that, the conviction of the accused persons by the Trial Court since is solely based upon the evidence of the two Police witnesses, who were examined as PW-1 and PW-2 and since the independent witnesses have also not supported the case of the prosecution, the impugned judgment of conviction and order on sentence passed by the Trial Court which was further confirmed by the learned Sessions Judges Court deserves to be set aside. Crl.R.P.No.948/2013 c/w.Crl.R.P.No.769/2013 8 12. Per contra, learned High Court Government Pleader for the respondent complainant, in his brief argument submitted that, merely because PW-1 and PW-2 were the Police witnesses, by that itself, their evidence cannot be doubted or discarded, when in fact, their evidence is also supported by the documentary evidence like the seizure panchanama and the seizure of the articles under the said panchanama including MO-1 to MO-3 and MO-4. He further submitted that, the Police had no reasons for falsely implicating the accused persons, as such, merely because the independent witnesses have not supported the case of the prosecution, the judgment of conviction and order on sentence passed by the Trial Court cannot be held to be erroneous.

13. The case of the prosecution has begun with PW-1 - Sri.M.K. Ramesha, the then Circle Inspector of Police of Malavalli Town. He is said to have received a credible information at 10:15 a.m. on 17-07-2010. Even according to the said Police Officer, who was examined as PW-1 CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 9 (CW-1), on the said day at about 10:15 a.m., while he was on patrolling duty, he received through telephone, a credible information that near Anantharamaiah Circle in Malavalli, two unidentified persons were carrying liquor bottles in a plastic bag and a plastic cover unauthorisedly. It is based upon the said credible information, he, joined by his staff including CW-4 and CW-5, while patrolling in Town Street (pete beedi - m in Kannada), they noticed the accused persons coming on the road from Anantharamaiah Circle, among whom, accused No.1 was carrying a plastic bag on his head with contents in it and accused No.2 was holding a black colour plastic cover in his hand. Both of them were enquired by the Police Officer (PW-1) and that the articles they were carrying were also examined. From the said examination, it was noticed that in the bag the accused No.1 was carrying, there was a carton box which was containing 48 (forty-eight) bottles of Super Jack Classic whisky, each bottle containing 180 ml. of such liquor. In the cover held by the second accused, it had CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 10 12 (twelve) bottles of Original Choice Whisky and six Haywards Tetra pack whisky. When enquired, neither of them could state about the details of they securing those items under any licence or permit nor did they possess any bills, permit or licence for purchase of the said articles. It is further the case of PW-1 that, when the second accused was physically searched, he was found in possession of a sum of `1,700/- in cash. Thereafter, a panchanama was drawn in the presence of independent panchas, as per Ex.P-1. Out of the three categories of whisky that was being transported by the accused persons, two bottles from the carton box and one tetra pack and one bottle original choice whisky from the plastic cover were kept separate as samples for their further scientific examination. Thereafter, the accused persons along with the goods were brought to the Station and a report was prepared as per Ex.P-2 and based upon the said report, an FIR was registered as per Ex.P-3. The articles seized were subjected to the Property Register and the accused were CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 11 produced before the learned Magistrate in

accordance with law.

14. PW-2 (CW-4) - K. Panchalingaiah in his examination-in-chief has corroborated the evidence of PW-1 in total. He has stated that, as a Police Sub-Inspector, while working in the complainant Police Station, on the date of the incident, he has accompanied PW-1 and noticed that both the accused persons were carrying some articles in a public place. After enquiring with them regarding the plastic cover and the bag that were being carried by them, and when the plastic bag and black colour bag were got opened and verified, it was noticed that, both of them were carrying in total 66 (sixty-six) bottles of whisky without any licence, permit or bill for purchase of the said articles. About the seizure of the articles and drawing a panchanama in the presence of the panchas also, PW-2 has repeated exactly what PW-1 has stated in his evidence. CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 12 Both PW-1 and PW-2 in their evidence have identified the sample of the alleged liquor bottles said to have been collected in the spot, under the panchanama at MO-1 to MO-3 and alleged seized currency amount of `1,700/- at MO-4. Both these witnesses were subjected to cross- examination from the accuseds side, however, both the witnesses adhered to their original versions even in their cross-examination also.

15. PW-3 (CW-2) - Vishakanta and PW-4 (CW-3) - Shivanna were examined by the prosecution, projecting them as panchas for the seizure panchanama said to have been drawn in the spot whereunder 66 (sixty-six) liquor bottles including MO-1 to MO-3 and a cash amount of a sum of `1,700/- at MO-4 were said to have been recovered from the possession of the accused persons. However, both these witnesses though have identified their signatures on the panchanama in Ex.P-1 at Exs.P-1(c) and P-1(d), but stated that they have put their signatures at the request of the Police, without knowing for what purpose their CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 13 signatures were obtained by the Police. They have categorically stated that, neither they have seen the accused persons nor the liquor bottles at MO-1 to MO-3 nor even MO-4 at any time earlier. They have also stated that they have not given any statements before the Police. Both these witnesses were permitted to be treated as hostile witnesses at the request of the prosecution and the prosecution was permitted to cross-examine them. However,

the prosecution could not get any further support from them in their cross-examination.

16. PW-5 (CW-6) - D.P. Dhanaraj is the Investigating Officer, who has spoken about he conducting the investigation in the matter and filing a charge sheet.

17. A careful analysis of the above evidence placed by the prosecution would go to show that, among the five witnesses examined by it, PW-5 is the Investigating Officer. The material witnesses are PW-1 to PW-4, among whom, PW-3 and PW-4 who are projected as independent CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 14 witnesses have not supported the case of the prosecution. It is only two Police Officers i.e. PW-1 and PW-2 who have supported the case of the prosecution.

18. Our Honble Apex Court, in the case of Karamjit Singh Vs. State (Delhi Administration) reported in AIR2003 Supreme Court 1311, has observed that, the testimony of police personnel should be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down.

19. In the instant case, it is not denied that PW-1 was the Circle Inspector of Police on duty on the alleged date of CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 15 incident and that he was on patrolling duty. His evidence that on the said date, he received a credible information about two unknown persons carrying unauthorisedly liquor bottles with them, has also not been specifically denied in his cross-examination. His evidence that joined by his staff and panchas, he proceeded to the spot and conducted an enquiry with the accused persons also has not been specifically denied, however, a suggestion was made to the witness suggesting that the accused were not present in the spot on the said date and time. The witness has denied the said suggestion. Except making few general denial suggestions, nothing was elicited from the cross-examination of PW-1 which could have weakened the case of the prosecution or stood in support of the

accused to dilute the credibility of the evidence of PW-1.

20. Similarly, the evidence of PW-2 that at the relevant point of time, he was working as the Police Sub- Inspector in the complainant Police Station and that on the date of alleged incident, he had accompanied his superior CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 16 i.e. PW-1, has not been specifically denied in his cross- examination. Though it was denied that the accused persons were not carrying the liquor bottles un- authorisedly, the witness has not admitted the said suggestion as true. Thus, in the short cross-examination of PW-2, the accused persons could not able to weaken the credibility of the evidence of PW-2 also. Thus, even though PW-3 and PW-4 who are independent panchas have not spoken about the accused persons carrying un-authorisedly the liquor bottles with them and being caught by PW-1 and PW-2 red-handed, however, the evidence of PW-1 and PW-2 though they are Police Officers inspires confidence to believe them. As such, merely because they are Police Officers (Police Witnesses), their evidence cannot be discarded. Thus, it goes to show that on the alleged date, time and place, both the accused were carrying 66 (sixty-six) bottles containing alleged liquor in them without any authority of law or permit or receipt or bill. CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 17 21. The evidence of PW-5 the Investigating Officer coupled with the documentary evidence i.e. Forensic Science Laboratory (FSL) report at Ex.P-6 would go to show that, the Forensic Science Laboratory has examined the contents of all the three bottles and a tetra pack sent to it by the Investigating Officer and has opined that there was presence of ethanol in all the said articles. The percentage of ethanol in articles No.1, 2 and 3 was 42% v/v at 25oC. Therefore, it is further established that the whisky bottles which were being carried by the accused persons when they were apprehended by PW-1 and PW-2 contained ethanol at 42% in them.

22. The next question that would follow is, whether the prosecution has proved that, without possessing any licence or authority or permit to carry those whisky bottles in a public place and being in possession of the same, the accused have committed the offences punishable under Sections 32 and 34 of the Excise Act. CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 18 Section 32 of the Karnataka Excise Act, 1965 reads as follows: 32. Penalty for illegal import, etc.- (1) whoever,

in contravention of this Act, or any rule, notification or order, made, issued or given thereunder, or of any licence or permit granted under this Act imports, exports, transports, manufactures, collects or possesses any intoxicant, shall on conviction, be punished for each offence with rigorous imprisonment for a term which may extend to five years and with fine which may extend to fifty thousand rupees Provided that the punishment.- (i) for the first offence shall be not less than one year rigorous imprisonment and fine of not less than ten thousand rupees; and (ii) for the second and subsequent offences shall be not less than two year rigorous imprisonment and fine of not less than twenty thousand rupees for each such offence. (2) Whoever in contravention of this Act, or of any rule, notification or order made, issued or given thereunder, or of any licence or permit granted under this Act, - (a) save in the cases provided for in Section 37, sells any intoxicant; or Crl.R.P.No.948/2013 c/w.Crl.R.P.No.769/2013 19 (b) cultivates or fails to take the measures prescribed for checking the spontaneous growth or for the extirpation of the hemp plant; or (c) taps or draws toddy from any toddy-producing tree; or (d) constructs or works any distillery or brewery; or (e) uses, keeps or has in his possession any materials, still utensils, apparatus or implement whatsoever for the purpose of manufacturing any intoxicant other than toddy; or (f) removes any intoxicant from any distillery, brewery or warehouse licensed, established or continued under this Act; or (g) bottles any liquor; shall on conviction be punished for each offence with rigorous imprisonment for a term which may extend to five years and with a fine which may extend to twenty thousand rupees: Provided that the punishment, - (i) for the first offence shall be not less than one year rigorous imprisonment and fine of not less than five thousand rupees; and (ii) for the second and subsequent offences shall be not less than one year Crl.R.P.No.948/2013 c/w.Crl.R.P.No.769/2013 20 rigorous imprisonment and fine of not less than ten thousand rupees for each such offence; (3) Whoever, being the owner or in charge of management or control of any public place allows consumption of liquor or whoever consumes liquor in any public place in which consumption of liquor is not permitted under a licence granted by the Excise Commissioner or the Deputy Commissioner, in contravention of the provisions of Section 15-A, shall on conviction be punished with fine which shall not be less than rupees two hundred but which may extend to five thousand rupees. (4)

whoever violates the provisions of Section 13-A or the Rules made thereunder shall on conviction be punished with a fine of rupees five thousand for each time, up to first five offences. In case of subsequent offence, he shall be punished with an imprisonment for a term of six months or with fine which may extend to ten thousand rupees or with both. As analysed above, the accused persons were found in possession and carrying 66 bottles of three brands of whisky without any licence or permit or any appropriate and Crl.R.P.No.948/2013 c/w.Crl.R.P.No.769/2013 21 convincing documents and thus have committed the offence punishable under Section 32 of the Excise Act. Section 34 of the Karnataka Excise Act, 1965, reads as follows: 34. Penalty for illegal possession.- Whoever without lawful authority has in his possession any quantity of any intoxicant knowing the same to have been unlawfully imported, transported, manufactured, cultivated or collected, or knowing the prescribed duty not to have been paid thereon shall on conviction, be punished with imprisonment for a term which may extend to four years and with fine which may extend to fifty thousand rupees. Provided that the punishment, - (i) for the first offence shall be not less than one year imprisonment and fine of rupees ten thousand; and (ii) for the second and subsequent offences shall be not less than imprisonment for two years and fine of not less than rupees twenty thousand for each such offence: Provided further that the fine inflicted, shall not be less than four times the amount of duty leviable on such intoxicant. Crl.R.P.No.948/2013 c/w.Crl.R.P.No.769/2013 22 23. A careful reading of the above Section would go to show that, for constituting an offence under Section 34 of the Excise Act, it is not just sufficient to establish that a person was found in possession with some quantity of any intoxicant without lawful authority, but it is also equally necessary to establish that the possessor should have the knowledge that the articles in his possession have been unlawfully imported, transported, manufactured cultivated or collected, or that he should have the knowledge that the prescribed duty has not been paid on the said articles. Thus, apart from mere possession, the knowledge regarding procuring those articles in an unlawful manner or non- payment of the duty upon the articles in his possession are also necessary ingredients which necessarily have to be proved to convict the accused for the offence under Section 34 of the Excise Act.

24. In the instant case, even though the prosecution through PW-1 and PW-2 could able to establish that the CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 23 present petitioners i.e. accused Nos.1 and 2 were in possession of few varieties of whisky, for which, they could not able to produce any documents including any licence or permit, but the prosecution could not able to establish and prove that the petitioners as accused Nos.1 and 2 had the knowledge that the articles which they were possessing and carrying with them were the articles which were unlawfully imported, transported, manufactured or cultivated or collected or that they had the knowledge that the prescribed duty on those articles was not being paid. However, both the Trial Court and the learned Sessions Judges Court, merely by coming to a conclusion that the accused before them were found in possession and transportation of considerable quantity of whisky bottles (sixty-six), which comes to 66 bottles X180ml. = 11,880 ml., jumped to a finding that, the prosecution has not only proved that the accused have committed the offence punishable under Section 32 of the Excise Act, but also the offence punishable under Section 34 of the Excise Act, even though there was CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 24 total absence on the part of the prosecution proving regarding the knowledge on the part of the accused persons regarding the unlawful possession or transportation of the articles and also the knowledge that the prescribed duty was not being paid thereon, at the time of the alleged offences. Since the conviction of the accused persons with reference to the alleged offence under Section 32 of the Excise Act and the sentence ordered for the proven offence which is proportionate to the gravity of the proven guilt though deserves to be confirmed, but their conviction for the offence punishable under Section 34 of the Excise Act since now proved to be uncalled for and perverse, interference by this Court to that limited extent is warranted. Accordingly, I proceed to pass the following:

## ORDER

[i]. Both these Criminal Revision Petitions stand partly allowed. CrI.R.P.No.948/2013 c/w.CrI.R.P.No.769/2013 25 [ii]. The impugned judgment of conviction and order on sentence dated 18-12-2012, passed by the learned I Additional Civil Judge and Judicial Magistrate First Class, Malavalli, in Criminal

Case No.673/2010, holding the petitioners herein (accused No.1 and accused No.2) guilty for the offence punishable under Section 34 of the Karnataka Excise Act, 1965, which was further confirmed by the learned I Additional Sessions Judge at Mandya, in Criminal Appeal No.145/2012, dated 26-06-2013, is hereby set aside. Both the accused persons (petitioners in these two revision petitions) i.e. Sri. Nagaraju (accused No.1), S/o. Kullappa, Aged about 30 years, R/o. Basavanakeri Ganga, Mathstara Beedi, Malavalli Town, Mandya District and Sri. Devaraju (accused No.2) S/o. Puttaraju, aged about 49 years, R/o. Basavanakeri Ganga, Mathstara Beedi, Malavalli Town, Mandya District, stand acquitted for the offence punishable under Section 34 of the Karnataka Excise Act, 1965. Crl.R.P.No.948/2013 c/w.Crl.R.P.No.769/2013 26 However, the impugned judgment of conviction and order on sentence dated 18-12-2012, passed by the learned I Additional Civil Judge and Judicial Magistrate First Class, Malavalli, in Criminal Case No.673/2010, which was further confirmed by the learned I Additional Sessions Judge at Mandya, in Criminal Appeal No.145/2012 dated 26-06-2013, for the offence punishable under Section 32 of the Karnataka Excise Act, 1965, stands confirmed. Registry to transmit a copy of this order along with the Trial Court and Sessions Judges Courts records to the concerned Courts immediately so as to enable the concerned Trial Court to proceed further in the matter to secure the accused persons, in accordance with law for the accused to serve the sentence. Sd/- JUDGE BMV\*

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