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Ramsis Prasad Vs. State

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Court : Orissa

Decided On : Jun-19-1991

Reported in : 1991(II)OLR169

Judge : B.N. Dash, J.

Acts : Bihar and Orissa Excise Act, 1915 - Sections 2(6), 2(14) and 47

Appeal No. : Criminal Revision No. 354 of 1987

Appellant : Ramsis Prasad

Respondent : State

Advocate for Def. : Sisar Das, Addl. Standing Counsel

Advocate for Pet/Ap. : N.P. Patnaik, Adv.

Disposition : Petition dismissed

Judgement :

B.N. Dash, J.

1. The conviction of the petitioner Under Section 47(a) of the Bihar and Orissa Excise Act, 1915 (hereinafter to be referred to as 'the Act') and imposition of sentence on him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 500/-, in default, to undergo rigorous imprisonment for a further period

of one month which are affirmed in appeal have been assailed in this revision,

2. Prosecution case, in short is that on 24-11-1981 at about 12.15 p. m. while the Sub-Inspector of Excise, Boudh (PW 3) was patrolling at Banisahi near Mahanadi river ghat of Boudh town, he found the petitioner carrying a cartoon. On suspicion he detained the petitioner and on opening the cartoon he found the same to have contained 18 sealed bottles of Diplomat whisky (MOs I to XVIII) and another 18 sealed bottles of Black-knight malt whisky (M. Os. XIX to XXXVI) Since the petitioner had no permit or licence for possession of such contraband articles, PW 3 seized them under the seizure list, Ext. 1 in presence of PWs 1, 2. 4 and 5. After completion of inquiry, prosecution report was submitted and the petitioner was put to trial.

3. The defence was one of denial. During his examination Under Section 313, Cr. P. C, 'the petitioner took the stand that the excise officials demanded money from him and since he did not oblige them, the case was falsely foisted against him. No witness, however, was examined on his behalf.

4. At the trial, five witnesses for the prosecution including PW 3 were examined. PW I and PW 5 are two constables. PW 2 is an outsider and PW 4 is the Excise Sub-Inspector. On a consideration of the evidence of these witnesses, the trial Court believed the prosecution case and convicted and sentenced the petitioner, as stated above. The said order of conviction and sentence having been confirmed by the Sessions Judge, Boudh in appeal, the present revision has been filed.

5. The search and seizure have not been challenged in this revision. Mr. N. P. Patnaik, the learned counsel for the petitioner has raised only one contention and the same is that,the liquid contents of M. Os. I to XXXVI having not been chemically examined, the Courts below were wrong in holding the same to be liquor and as such, the order of conviction and sentence is liable to be set aside.

6. The question as to whether chemical examination is a must to prove a liquid to be liquor or not has been concluded by this Court in a number of decisions In Karpura Senapati v. State, 1987 (II) OLR 589, 64(1987) CLT 763, the question for consideration was whether bhang mixed with ganja was intoxicating drug or not.

There, the article seized was denied to be bhang mixed with ganja and report of the Chemical Analysis had not been brought on evidence and in the absence of such report it was contended that the prosecution had failed to prove that the seized article was bhang mixed with ganga and as such, is not intoxicating drug. The said contention was negatived with the following observation :

'.....It is true that chemical analysis is a surer test and a Court of fact in a given circumstance may draw adverse inference by rejecting other evidence on record that it has not bean proved that the article possessed is not intoxicant drug Whether the article is an intoxicant drug would depend on the facts proved and the explanation of the accused Under Section 313, Cr. P. C. considered together. Chemical analysis is not sine qua non to find the nature of the article possessed.'

In Subash Chandra Panda v. State of Orissa, 1989 (II) OLR 381, 68(1983) CLT 648, eleven varieties of 143 bottles of foreign liquor had been seized. Excepting one bottle which was found broken at the time of seizure, other bottles had been subjected to chemical analysis. In dealing with the question whether the broken bottle had also contained foreign liquor, this Court on the basis of evidence of an Excise Officer which was treated as a piece of expert evidence, rendered a finding in the affirmative relying on a decision of this Court in Abdul Gaffer v. Stats of Orissa, 1987 (I) OLR 281, 63(1987) CLT 370.

In Sukuru Behera v. State, 68(1989) CLT 237 some quantity of liquid said to be I. D liquor had been recovered from the accused and the same having not been subjected to chemical examination, it was contended that the prosecution had failed to establish the seized article to be I. D. liquor. The said contention did not find favour with this Court and it was held that hydrometer test and blue litmus paper test are sufficient to prove whether a liquid is I. D. liquor or not, if the same had been conducted by an Excise Officer who can be treated as an expert.

7. There is no bar in the Act to prove otherwise than by chemical analysis that a liquid is liquor. In the absence of any bar, this Court has observed in several decisions including a few quoted above that when there is no chemical analysis, the Court can fall back upon other evidence on record to hold whether a particular seized article is excisable article within the meaning of Section 2(6) and liquor

within the meaning of Section 2(14) of the Act or not. Strong reliance has been placed by Mr. Patnaik for the petitioner in State of Andhra Pradesh v. Madiga Boosanna and Ors., AIR 1967 SC 1550. In that case, certain quantity of liquid had been recovered from the respondent and the same was said to be liquor within the meaning of Section 3(9) of the Andhra Pradesh' (Arvdbra Area) Prohibition Act, 1937. The seized liquid had not been sent for chemical examination and in order to prove the same to be liquor the prosecution had relied on the smelling test conducted by a Prohibition Officer and the Supreme Court approving the action of the Andhra Pradesh High Court came to hold that merely trusting to the smelling sense of the Prohibition Officers, and basing a conviction on an opinion expressed by those officers, under the circumstances, could not justify the conviction of the respondents. It has not been laid down as a general proposition of law by the Supreme Court in the said case that in the absence of chemical analysis, the Courts cannot fall back upon other evidence on record to render a finding as to whether a particular seized article is liquor and other excisable articles or not.

8. It follows, therefore, on an examination of the aforesaid Supreme Court decision and the other decisions of this Court, that the Courts can fall back upon other evidence on record, even if there is no chemical examination to adjudicate whether a seized article is liquor and other excisable articles or not. Having found as such, the next question that falls for consideration is, whether there is other reliable material on record to prove that the seized liquid contained in M. O. I to M. O. XXXVI was liquor or not.

9. PW 3 claiming to have served in the State Excise Department as an Assistant Sub-Inspector of Excise for about six years and as a Constable in the said department for three years asserted that the liquid contents in the seized bottles were foreign liquor, he, of course, admitted having not undergone any training in bottlirg, manufacturing and processing of Indian made foreign liquor but this evidence alone, without anything more, will not be sufficient to altogether throw away his evidence. His evidence may not be treated as conclusive to prove that the seized liquid contents were foreign liquor but his evidence can be taken in aid, if other reliable evidence is available.

PW 4 is the Excise Sub-Inspector who arrived at the spot when the process of seizure was going on. He claimed that two of the seized bottles M, O. I and M O. XJX) were broken open and due to his personal experience for about 17 years of his service as Sub-Inspector of Excise and on account of testing a few drops by mouth he could opine the liquid contents of those bottles to be Indian made foreign liquor. As to his expertised knowledge, he stated in cross-examination that he had gone on training in manufacturing of foreign liquor in Rayagad distillery in the year 1971 and the said fact was endorsed in his service book and such of his evidence has gone unchallenged. It is also asserted by him that casually he takes liquor. With all these evidence, this witness can be held as an expert in his department and his evidence regarding the nature of the contents of M. O. I and M. O XIX can be safely relied upon without seeking any oorroboration from the evidence of PW 3. That being so, I hold that the Courts below were perfectly justified in their conclusion that the liquid contents of M. Os. I to XXXVI were Indian made foreign liquor particularly when at the time of seizure, all the bottles were sealed and contained labels showing the name of the manufacturing company. Under these circumstances, the contention raised on behalf of the petitioner stands rejected'. The only point raised having thus failed, the revision is liable to be- dismissed.' In view of the large quantity of Indian made foreign liquor seized, no interference on sentence the called for, because the minimum) sentence for the offence has been awarded.

10. In the result, the revision is dismissed.

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