

Jadumani Seth Vs. State

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Court : Orissa

Decided On : Sep-06-1994

Reported in : 78(1994)CLT1000; 1994(II)OLR599

Judge : K.L. Issrani, J.

Acts : Bihar and Orissa Excise Act, 1915 - Sections 47; [Probation of Offenders Act, 1958](#)

Appeal No. : Criminal Revision No. 639 of 1993

Appellant : Jadumani Seth

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : Manoj Mishra, U.C. Patnaik P.K. Dasland and D. Sarangi

Disposition : Petition dismissed

Judgement :

K.L. Issrani, J.

1. The present revision petition is filed against th3 concurrent finding; of facts arrived at by both the Court below and convicting the petitioner for six months R.I. and fine of Rs. 1.000/- in default further S.I. for two months Under Section 47 (a) of

the Bihar and Orissa Excise Act for purchasing 5 litres of liquor without any authority.

2. The submission of the learned counsel for the petitioner is that the independent witnesses in this case does not support the prosecution case. The other submission is that the test was not conducted before the witnesses. The third and the last submission is that the trial Magistrate did not properly consider in giving the benefit to the petitioner under the provisions of the Probation of Offenders Act. For this proposition the learned counsel for the petitioner has cited the following case laws : AIR 1974 SC 1818 (Arvind Mohan Sinha v. Amulya Kumar Biswas and Ors.), AIR 1979 SC 964 (Bishnu Deo Shaw v. State of West Bengal) AIR 1981 SC 643 (Ved Prakash v. State of Haryana), 1990 (I) OLR 424 (Nilamber Sahu v. State of Orissa) 1994 (I) OLR 48 (Girish Naik v. State of Orissa), 1994 (H) OLR 96 (Kanda Khadia v. State of Orissa), and 78 (1994) CLT 277 (Palka Duari v. State of Orissa).

3. The contention that the independent witnesses does not lead to the acquittal of the petitioner has been dealt with by the lower appellate Court also. Relying on 1991 (0) OLR 267 (Jhula Sahu v. State) and also Division Bench case reported in 1990 (3) OCR 290 (Nilambar Sahu v. State) the lower appellate Court has held that the evidence of official witnesses even not supported by any independent witness may be sufficient to base a conviction. In the present case nothing is shown against the two Excise Constables bearing any hostility towards the petitioner. They corroborate each other. They immediately produced the appellant along with the seized property and the seized article before the S.I. of Excise. PW 2 deposed on oath that he and PW 3 were rolling. They found accused coming on a bicycle holding a plastic jerry can. They called the witness PW and on search recovered 5 litres of ID liquor and seized the same along with the cycle in the presence of PWs 1 and 3. He is corroborated by PVV 3. PW 1 though denied knowledge but admitted his signatures on seizure memo, a is a literate man. It is seen that PWs 2 and 3 have also no ill will against the petitioner. The evidence of these witnesses were, therefore held to be sufficient to prove the prosecution case. In view of this there is no material to hold otherwise.

4. Regarding the consideration of the benefit under the provisions of Probation of Offenders Act, the trial Magistrate has held that having regard to the nature of offence for which the accused stands convicted, he was not ready to deal with under the provisions of Probation of Offenders Act. According to the counsel for the petitioner, this much is not sufficient in not giving the benefit to the accused under the provisions of the Probation of Offenders Act. The trial Magistrate should also look to the character of the accused and the document of the case. The submission is that unless the report from the Probation Officer is called for, no such opinion can be found by the Magistrate. Thus, according to the learned counsel for the petitioner the report of the Probation Officer is a must.

5. It is not necessary to call for the report of District Probation Officer before considering the fact as to whether the accused is entitled to the provisions of the Probation of Offenders Act. The rulings cited by the learned counsel for the petitioner in 1994 (I) OLR 48 and 1994 (ii) OLR 96 (supra) only show that the provisions of the Probation of Offender. Act are applicable to the offences under Bihar and Orissa Excise Act, but these cases do not decide that the calling for the report of the District Probation Officer is a condition precedent. These cases only go to show that while considering the provisions not only the nature of the offence but also the character of the offender is also to-be seen. In present according to the learned counsel for the petitioner the trial Magistrate has only considered the nature of the offence and not the character of the offender. The fact that the petitioner was carrying the illicit itself shows the character of the offender. The fact that the trial magistrate has omitted to mention the same will not vitiate the conviction. In such circumstances, the rulings cited by the learned counsel for the petitioner are of no help to the petitioner.

6. Consequently, the revision fails and is hereby dismissed.