

Jhula Sahu Vs. State

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Court : Orissa

Decided On : Feb-08-1991

Reported in : 1991(I)OLR267

Judge : J.M. Mahapatra, J.

Acts : Bihar And Orissa Excise Act, 1915 - Sections 47A

Appeal No. : Criminal Revision No. 160 of 1987

Appellant : Jhula Sahu

Respondent : State

Advocate for Def. : A.N. Misra, Standing Counsel

Advocate for Pet/Ap. : B.B. Mohanty and S.D. Das

Disposition : Revision dismissed

Judgement :

J.M. Mahapatra, J.

1. The revision is directed against the judgment and order dated 6-2-1987 of the learned Sessions Judge, Cuttack maintaining the conviction of the petitioner Under Section 47(a) of the Bihar and Orissa Excise Act and the sentence of six months' R. I. and fine of Rs. 500/- thereunder

2. Briefly stated prosecution case is that on 23-8-1985 the petitioner was found to be in illegal possession of five litres of I. D. liquor contained in a plastic jar. He was detected by the patrol party consisting P. W. 2 the S. I. of Excise, Sadar-A, Cuttack and P. W. 1, the S. I. of Sadar Mobile, Cuttack. After conducting different tests, P. W. 2 found the substance in the custody of the petitioner to be I. D. liquor. Thereafter the Liquor was seized and prosecution submitted against the petitioner.

3. The plea of the petitioner at the trial was one of total denial of his complicity in the crime.

4. In support of its case prosecution has examined three witnesses of whom P. Ws 1 and 2 are the officers of the Excise department who conducted raid and seized the contraband liquor from the possession of the petitioner, and P. W. 3 is a seizure witness. The learned Courts below relying on the evidence of P. Ws. 1 and 2 have accepted the prosecution case that the petitioner was in possession of the contraband liquor and found him guilty Under Section 47(a) of the Bihar and Orissa Excise Act, and convicted him thereunder. The learned Court below has repelled the various contentions raised before it on the question as to whether the substance seized was I.D. liquor or otherwise. Relying on the evidence of various tests conducted by P. W. 2 and having regard to his experience in the field, the learned Court below has accepted his evidence and came to hold that the substance seized was contraband I. D. liquor. On this finding he held that the petitioner was guilty of the offence Under Section 47(a) of the Bihar and Orissa Excise-Act, and maintained the conviction and sentence passed by the trial Court.

5. Mr. Das, the learned counsel appearing for the petitioner has contended before me during the hearing of the case that the learned Court below should not have accepted the evidence of P. Ws. 1 and 2 on the factum of seizure of liquor from the petitioner when the independent witness P. W. 3 has not supported the prosecution evidence regarding seizure. For this he has relied on the authority of two single Judge decisions of this Court reported in (1990) 3 OCR 248 (Biswanath Sahu v. State of Orissa) and 1989 (I) OLR 291 (1989) 2 OCR 215 (Bhajana Sahu v. State of Orissa). No doubt in the decisions, the evidence of the independent witness to seizure not supporting the factum of seizure weighed with the Court to

come to the finding that the factum of seizure from the possession of the accused was not proved to the hilt. With respect, I am of the view that in the light of the pronouncement of the Supreme Court in similar matters, the evidence of official witness alone, if believed, would suffice to prove the factum of possession. In the case of *Nathu Singh v. State of Madhya Pradesh*, AIR 1973 S. C. 2783, the conviction of the accused was maintained relying on the evidence of police officers only. That was a case for illegal possession of explosive substances under the Indian Arms Act. In that case two independent witnesses examined by the prosecution turned hostile, but both the trial Court and the appellate Court relying on the testimony of the two police officers accepted the prosecution case and found the accused guilty of the offence Under Section 25(1)(a) of the Arms Act, 1959. The conviction was affirmed by the Supreme Court and Their Lordships have laid down thus :

'The mere fact that the prosecution witnesses are police officers is not enough to discard their evidence, in the absence of Evidence of their hostility to the accused.'

This view has also been accepted in a decision of this Court 'reported in 1989(2) OCR 375 (*Sakuru Behera v. State*).

6. In the instant case I find no reason as to why the principles of law laid down in the *aforecited* decision should not be 'pressed into service to hold that notwithstanding the independent witness not supporting the factum of seizure and possession, conviction can be based on the testimony of two excise officers, P. Ws. 1 and 2, who have not been shown to be hostile to the petitioner in any manner. On a perusal of the evidence of the official witnesses, P. Ws. 1 and 2, I find no material to suggest that they were in any manner hostile to the petitioner. It was only in course of the patrol duty that they came across the petitioner moving in a suspicious manner which impelled them to conduct the raid and take search of the petitioner, whereupon the contraband liquor contained in a plastic jar was found to be in his possession. In such state of evidence, I have absolutely no hesitation in my mind to hold that prosecution has proved its case beyond all reasonable doubt against the petitioner, and as such the conviction of the petitioner is quite well-founded. In view, however, of the low quantity of the

contraband article seized from the petitioner, I am of the view that the sentence of six months R. I. be reduced to one month and the sentence of fine be maintained.

7. In the result, the revision is dismissed with the aforesaid modification in the sentence.

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