S. Obsarathi Reddy Vs. the State

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Court : Orissa

Decided On : Feb-12-1998

Reported in : 1998CriLJ1810

Judge : S.C. Datta, J.

Acts : Bihar and Orissa Excise Act, 1915 - Sections 47

Appeal No. : Criminal Revn. No 124 of 1995

Appellant : S. Obsarathi Reddy

Respondent : The State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : Prafulla Kumar Parida, ;Prasanta Kumar Parida, ; B.N. Muduli and ; A.K. Behara, Advs.

Disposition : Petition allowed

Judgement :
ORDER

S.C. Datta, J.

1. This revision petition is directed against the order of the Additional Sessions Judge, Berhampur affirming the order of conviction and sentence passed by the

Judicial Magistrate First Class.

2. Briefly stated the facts of the case are that on 7-10-1992 at about 6 p.m. Sub-Inspector of Excise Bajant Kumar Sethi (P.W. 3) searched the betel shop of the accused situated near Ashoka Cinema Hall, asks in presence of independent witnesses and recovered one plastic jerrican containing 3 litres of I.D. liquor. The liquor was measured and tested by blue litmus paper which turned to red. On hydrometer test the strength of the liquor was found to be 510 U.P. The result of these tests together with his experience as on officer of the Department and in the background of his distillery training, the Sub-Inspector of Excise gathered that the seized liquor was nothing but I.D. liquor. He seized the jerrican containing liquor in presence of witnesses and prepared seizure list a copy of which was handed over to the accused. Other formalities were also observed and on completion of enquiry, he submitted prosecution report against the accused which, eventually led to his conviction under Section 47(a) of the Bihar and Orissa Excise Act. He was sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 500/- in default to undergo R.I. for one month.

3. The accused preferred appeal before the; Sessions Court but become unsuccessful. Hence the accused has moved this Court in revision.

4. It is contended on behalf of the petitioner that the seized liquor was not sent for chemical examination and as such, it cannot be hold to be I.D. liquor. Learned counsel appearing for the petitioner submits that in the absence of any chemical test of the seized liquor, it cannot be consciously held that what was seized from the accused was really I.D. liquor. He submits that when scientific methods are available to prove the fact of alcoholic content of an article the Excise Officials should not be allowed to define proof of such an article by their mere oral statements because the primary duty of the prosecution is to exclude every possibility of a doubt or suspicion before they ask for the conviction of a person charged under the Act. He submits also that when the prosecution seized any liquor, they should get it examined by the chemical examiner. They should not be allowed to adopt an easier course of examining its own officers to prove the contents of jerrican by smell. He submits further that in that event, it would be

giving a very large latitude to the Excise officials to prove alcoholic content of any prohibited article or drug under the Act by mere smell. In support of his contention, he has referred to a case reported in AIR 1964 Andh Pra 429 : 1964 (2) Cri LJ 271 (in In Re: Medigo Goosona). He has also referred to a case reported in 1977 Cri LJ 528 (State of Haryana v. Radhey Shyam) wherein it has been held that chemical analysis is always the surer test to declare as to what the commodity actually recovered from the accused is. It was further held that hydrometer test was neither safe nor conclusive. It appears that a Division Bench of Punjab and Haryana High Court, reported in 1977 Cri LJ 528 held as follows (para 8):-.In these days when the facilities of chemical analysis are available it is neither prudent nor safe to depend on such test which is considered unsafe and not considered sure by the I.S.I. In the tests' bf liquor the absence of furfural copper and iron is important. The strength of Volatile acidity and total acidity is also very relevant. These cannot be ascertained without a chemical test. Unless a proper test is conducted the prosecution cannot legitimately ask the Court to accept its case that whatever was recovered from the accused was liquor. The prosecution has in any case to rule out the possibility that the material recovered from; the accused was only that for which he is being charged and nothing else....

5. Here in this case, it is not disputed that no chemical analysis was done. What was done by the Excise Sub-Inspector was litmus paper test and hydrometer test. It is not explained as to why the seized liquor was not sent to the Chemical Examiner for examination. He, however, claims that he had training in distillery and he had 11 years experience at his credit in the department. Besides this bald statement there is nothing to show that he had actually received training in a Branch of the Excise Department which is directly connected with the testing of liquor. Such a bald statement without any particulars of training or type of service does not make him an expert witness. It may be observed that in case of this nature, where substantive sentence of imprisonment is compulsory after conviction, a heavy duty is cast upon the prosecution to establish beyond any reasonable doubt that what was recovered from the accused was illicit liquor, Here in this case, the evidence is lacking with regard to it. This being the position, it seems that the order of conviction and sentence passed by the trial Court and affirmed by the superior court cannot be sustained.

6. For the reasons aforesaid, the revision petition succeeds and the order of conviction and sentence is set aside. The petitioner be discharged from Bail Bond.