

Mohan Behera Vs. State

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Court : Orissa

Decided On : Jan-22-2003

Reported in : 2003(I)OLR344

Judge : A.S. Naidu, J.

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

Appeal No. : Criminal Revision No. 566 of 1996

Appellant : Mohan Behera

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : S.K. Padhi, ;S. Parida, ;S.K. Mohapatra and ;D. Mohapatra

Disposition : Petition allowed

Judgement :

A.S. Naidu, J.

1. This Criminal Revision has been filed challenging the order of the Additional Sessions Judge, Bargarh in Criminal Appeal No. 35 of 1994 confirming the order of conviction passed by the J.M.F.C, Sohella in 2 (a) CC No. 22 of 1993, while

reducing the sentence of imprisonment, but maintaining the sentence of fine.

2. Prosecution case is that on 13-11-1992 at about 11.30 a.m. while the S.I. of Excise was on patrol duty along with his staff found the petitioner carrying I.D. liquor in a motor-cycle. The same was seized and on hydrometer test and blue litmus paper test, was found to be I.D. liquor. On the basis of investigation, 2 (a) CC No. 22 of 1993 was initiated and the petitioner was prosecuted under Section 47 (a) of the Bihar and Orissa Excise act.

3. To substantiate the case, in course of trial the prosecution examined four witnesses, of whom P.Ws. 3 and 4 were the Excise staff and P.Ws. 1 and 2 were independent witnesses. Prosecution also exhibited the seizure-list Ext. 1/1 containing the signature of Soukilal Bagh, P.W. 1.

The plea of the petitioner was denial.

4. The trial Court, relying on the evidence of P.Ws. 3 and 4 and the tests said to have been made by the S.I. of Excise (P.W.4), found the petitioner guilty under Section 457 (a) of the Bihar and Orissa Excise Act and sentenced him to undergo S.I. for a period of six months and to pay a fine of Rs. 500.00, in default to undergo S. I. for two months more. On appeal preferred by the petitioner, the Additional Sessions Judge, Bargarh by his judgment dated 9.10.1996 in Criminal Appeal No. 35 of 1994 confirmed the order of conviction, but reduced the sentence of imprisonment to one month while maintaining the fine as stated above.

5. Learned counsel for the petitioner strenuously took me through the evidence of the witnesses and relying upon two decisions of this Court reported in 67 (1989) CUT 620 (Bhajana Sahu v. State) and 27 (1961) CLT 74 (State of Orissa v. Chandan Tola) submitted that as there was no independent corroboration and the two independent witnesses did not support the prosecution case, it should have been held that the prosecution failed to prove its case beyond all reasonable doubts and the petitioner should have been acquitted. At the other hand, learned counsel for the State supported the judgment of conviction and sentence and submitted that from the statements of the two official witnesses, P.Ws. 3 and 4, it is clear that the petitioner was going on a cycle with a motor-tube containing I.D.

liquor. After seizure, the contents of the said motor-tube were put to blue litmus paper test and hydrometer test which are accepted as correct tests, the Excise staff came to the conclusion that the said contents were I.D. liquor. Though both P.Ws. 3 and 4 were cross-examined in extenso, nothing was brought out to contradict their statements. Accordingly, learned counsel for the State submitted that the Criminal Revision should be dismissed and the order of conviction and sentence as modified by the appellate Court should be upheld.

6. After hearing the learned counsel for both sides and perusing the materials on record, I find that prosecution has totally failed to establish its case by adducing independent evidence. Admittedly the two independent witnesses, P.Ws. 1 and 2, have not supported the prosecution case. Surprisingly, one of them was also a seizure witness but he has categorically stated that nothing was seized from the petitioner in his presence. Admittedly the seizure was made on a road and it is strange that no other independent witness was examined who had seen the occurrence. The report of the chemical tests of the article seized from the petitioner was not produced in Court. Law is well settled that in absence of cogent independent evidence bringing home the guilt, no person can be convicted. Taking into consideration all the aforesaid lacunae in the prosecution case, I am satisfied that prosecution has totally failed to establish its case against the accused-petitioner beyond all reasonable doubts.

7. Accordingly the Criminal Revision is allowed. The order of conviction of the petitioner and the sentence passed thereunder are set aside. The petitioner is acquitted of the charge. The bail-bond of the petitioner be discharged.