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Court : Rajasthan

Decided On : Apr-07-1982

Reported in : 1982WLN(UC)32

Judge : Kanta Bhatnagar, J.

Appeal No. : S.B. Criminal Revision Petition No. 113 of 1978

Appellant : Bachaya Khan

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. K.C. Gaur

Disposition : Petition allowed

Judgement :

Kanta Bhatnagar, J.

1. The petitioner Bachaya Khan was tried for the offence under Section 4(2) of the Rajasthan Prohibition Act, 1969 by the Chief Judicial Magistrate Jaisalmer and by his judgment dated 21-7-1977 held guilty for the charge and sentenced to six months' simple imprisonment and a fine of Rs. 300/-, in default to undergo three months' simple imprisonment.

2. Being aggrieved by his conviction and sentence petitioner filed an appeal. The learned Additional Sessions Judge No. 1, Jodhpur (camp Jaisalmer) by the judgment dated 15-4-1978 upheld his conviction and affirmed the sentence passed by the trial Magistrate. It is in grievance of the appellate court's judgment that the petitioner has invoked the revisional jurisdiction of this Court.

3. The allegations against the petitioner are that on 13-7-75 he was carrying 8 bottles of illicit liquor in a jericance. On a telephonic information by constable Bheem Singh (P.W.3) to effect that Baehaya Khan would be passing the way with illicit liquor, Jawan Singh, Station House Officer, Police Station, Jaisalmer directed Bheem Singh (P.W. 3), Ishwar Singh (P.W 2) Bhanwar Singh, and Deep Singh constables and Seshkaran Head Constable of Police (P.W.I) to arrange a raid and apprehend the suspected person When those persons reached near Talariya Pada at culvert of the road, Bheem Singh (P.W 3) pointed at Bachaya Khan, who was having a jericane on his back at the time. On search the jericane was found to contain 8 bottles of illicit liquor. One bottle out of it was taken as a sample and sealed separately The jericane was also sealed. The petitioner was arrested and along with the seized articles and the memos were prepared at the site and the first information report scribed by Seshkaran (P.W 1) was presented before the Station House Officer, Police Station, Jaisalmer Seshkaran (P.W 1) was entrusted with the investigation. Upon completion of necessary investigation charge sheet against the petitioner was filed in the Court of the Chief Judicial Magistrate, Jaisalmer. The learned Magistrate proceeded with the trial finding the guilt against the petitioner duly established passed the judgment of conviction as stated above As observed earlier the petitioner filed an appeal, but did not succeed.

4. Mr. K.C. Gaur, learned Counsel for the petitioner has assailed the findings of the Court below mainly on the ground that there is no evidence that any article was seized from the petitioner and even if it is held that some article was seized, still there is no evidence of its being sealed or remaining in sealed condition till it reached the office of the Chemical Analyser. It has been vehemently urged that the report of the Chemical Analyser has not been exhibited to substantiate the contention that the sample sent to him was illicit liquor and therefore there is no justification for the conviction of the petitioner.

5. The learned Public Prosecutor controverting these contentions submitted that from the statement of Seshkaran (P.W.1) it is established the articles seized and the sample taken were sealed at the spot and therefore it just be presumed that it must have been kept in the same condition till it reached the office of the Chemical Analyst. The learned Public Prosecutor in this way tried to justify the conviction of the petitioner

6. At the very outset it may be observed that the two witnesses to the recovery viz. Tagga Ram (P.W.4) and Ridmal Singh (P.W.5) have turned hostile to the prosecution and the prosecution case hinges on the testimony of Ishwar Singh (P.W.2), Bheem Singh (P.W.3) and Seshkaran (P.W.1), the three police personnel. These three witnesses have of course stated about the articles being sealed at the spot, but they have further stated that the articles and memo were entrusted to Jawan Singh, Station House Officer, at the Police Station. It was Jawan Singh, who is said to have entrusted the investigation to Seshkaran Head Constable of Police (P.W.1) later on. It is pertinent to note that Jawan Singh, an important witness, who would be in a position to say as to in what condition the sealed articles were produced before him and where did they remain subsequent to that, has not been examined by the prosecution for the reasons best known to it. Two witnesses have been examined to substantiate the Prosecution case that the sample reached the office of the Chemical Analyst in sealed condition. I am constrained to observe that both these witnesses have instead of help in the prosecution, damaged its case. Kan. Singh (P.W.6) has stated that in September 1975 he had taken the wine bottle to Jaipur Laboratory, but the same was not accepted there because of some defects in the papers. The witness could not point out what the defect was. Learned Counsel for the petitioner emphasized that the defect might not be in the papers rather on the seal of the bottle itself and in the absence of any witness to say as to what that defect was, it should be inferred that the bottle did not reach under proper seal to the office of the Chemical Analyst. Be that as it may, there is no evidence to throw light as to where did that bottle remain from 13-7-75 the date of seizure, till September 1975, when Kan Singh (P.W.6) took the bottle to the office of the Chemical Analyst. Sesh Karan has simply stated about his sending the sample to the office of the Superintendent of Police, to be sent to Jaipur for analysis. As to who took the sample and to whom

it was entrusted is not known. Coming to the statement of Vikram Singh it is to be noted that he took the sample to Jaipur Laboratory on 27-10-1975. Where did the sample remain after September 1975 when Kan Singh brought it back from the office of the Chemical Analyser for it is not being accepted on account of defect, is not known. Vikram Singh (P.W.6) could also not say as to how many days prior to his being entrusted with the article it was lying there in the Crime Bench of the office of Superintendent of Police. This being the position, there is full force in the argument of the learned Counsel for the petitioner that the prosecution has failed to establish that throughout the period from seizure to the article reaching the office of the Chemical Analyser, that is, a period of more than three months the sample bottle remained in sealed condition. Failure of the prosecution to get the report of the Chemical Analyser exhibited at the trial is a grave infirmity in the prosecution case. In that circumstance, it cannot be said as to what exactly the article alleged to have been seized from the possession of the petitioner was. In such circumstances the conviction of the petitioner is not sustainable.

7. Consequently, the revision petition is allowed and the conviction and sentence passed against the petitioner is set aside and he is acquitted of the charge. He is on bail and need not surrender to it. His bail bonds stand cancelled.