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Court : Rajasthan

Decided On : Sep-10-1986

Reported in : 1987(1)WLN511

Judge : Sobhag Mal Jain, J.

Appeal No. : S.B. Cr. Revision No. 250 of 1979

Appellant : Mala Ram

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

Sobhag Mal Jain, J.

1. The petitioner stands convicted and sentenced by the judgment dated 20th December, 1978 of the Munsif and Judicial Magistrate, Ratangarh, affirmed in appeal by the Sessions Judge, Churu by the judgment dated July 19, 1979 for the offence under Section 4(1)(e) of the Rajasthan Prohibition Act to three months rigorous imprisonment and a fine of Rs. 200/- in default of payment of fine to go one month's further rigorous imprisonment and under Section 4(2) of the said Act to six months rigorous imprisonment and a fine of Rs. 200/- and in default of payment of fine to one month's further rigorous imprisonment. Both the sentences

were ordered to run concurrently.

2. The case relates to the incident which took place on August 2, 1977. The prosecution case, in brief, was that the petitioner on the date of the incident was manufacturing liquor in a field of village Bandwa. Shri Karam Singh Head constable, police station, Rajaldesar found the accused manufacturing liquor. He took in possession one bottle of liquor and the implements used in the manufacture of liquor. Shri Karam Singh lodged a report at police station, Ratangarh on which a case under the Prohibition. Act was registered and investigation started. After investigation the police filed a charge sheet against the accused in the court of Munsif and Judicial Magistrate Ratangarh. After trial the learned Magistrate convicted and sentenced the petitioner as aforesaid. On appeal, the learned Sessions Judge upheld the order of conviction and sentence passed by the learned Munsif Magistrate. Aggrieved, the petitioner has filed the present revision in this Court.

3. The learned courts below have come to a concurrent finding that the accused was found in possession of one bottle of liquor and the implements for manufacturing liquor, learned Counsel for the petitioner has urged that the prosecution has not led evidence to show that liquor and implements were duly sealed. I have gone through the statement of Karam Singh who in terms has stated that the bottle of liquor and the implements were duly sealed. There is no reason to disbelieve the testimony of this witness, more so when this point was not urged before the learned court below. Learned Counsel has further urged that the search of the accused was illegal. I have gone through the judgments of the learned courts below. No prejudice has been shown by the seizure at the spot by the Head constable. I do not, therefore, find any substance in this contention either.

4. Learned Counsel has next urged that the occurrence took place in 1977, a period of nine years has elapsed since then the accused has already served a sentence of one month and twenty days and no previous conviction was proved against the accused and therefore, the petitioner may be enlarged on probation. This Court has consistently taken the view that benefit of Section 4 of the

Probation of Offenders Act, 1958 can be granted to accused who is convicted under Section 4(2) of the Rajasthan Prohibition Act, 1969 though the offence is punishable with two years imprisonment and with fine extending to Rs. 2000/- (see 1984 Cr.LR (Raj.). 744).

5. Admittedly no previous conviction was shown to exist against the petitioner. The offence was committed as back as in August, 1977. The accused has already undergone a sentence of one month and twenty days. It would not be in the interest of justice to send the accused to jail again after a lapse of more than nine years. While upholding the order of conviction, I allow the revision petition on the question of sentence. The conviction of the petitioner for the offence under Section 4(1)(e) and (2) of the Rajasthan Prohibition Act, 1969 is maintained. However, instead of sentencing him at once to imprisonment, I direct that the petitioner shall be released on probation of good conduct on his entering into a bond of Rs. 2000/- with one surety in the like amount to the satisfaction of the Munsif Judicial Magistrate, Ratangarh, to appear and receive sentence when called upon during the period of two years as the said court may direct and in the meantime to keep the peace and be of good behaviour. Learned Counsel for the petitioner pray that two month's time may be allowed to the petitioner for furnishing the bond and surety. Two months time is allowed as prayed for. In case the petitioner fails to do so he will undergo the sentence awarded by the Judicial Magistrate and upheld by the Sessions Judge as aforesaid.