

Ania Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-23-1985

Reported in : 1985WLN(UC)638

Judge : Kishore Singh Lodha, J.

Appeal No. : S.B. Criminal Jail Revision No. 466 of 1984

Appellant : Ania

Respondent : State of Rajasthan

Judgement :

Kishore Singh Lodha, J.

1. The petitioner Ania has been convicted under Section 66(l)(b) of the Bombay Prohibition Act (here in after called' the Act') and sentence to one year's RI and a fine of Rs. 1,000/- in default of payment of fine to further R1 of three months by the learned Munsif & Judicial Magistrate, Abu Road, by his judgment dated 7-1-1981. His appeal has been dismissed by the learned Sessions Judge, Sirohi, on 5-11-1984. He has filed this revision through jail.

2. I have heard Mr. Harish Mathur as Amicus Curiae and the learned Public Prosecutor and have gone through the record.

3. The case against the accused-petitioner is that when a search of his house was made by the Excise Inspector Shri Madan Singh on 1-12-1973, illicit liquor contained in an earthen bedia was recovered from his house. It contained about eight bottles of liquor. The usual sample was taken and was sent for chemical analysis. It was found to be illicit liquor.

4. Two contentions have been raised before me by the learned Amicus Curiae. His first contention is that recovery of the liquor is not proved in as much as the motbirs have not supported the prosecution story and the courts below should not have relied on the partisan evidence of the excise officials. His second contention is that the courts below have taken it to be a case of third offence and have accordingly, sentenced the petitioner of punishment under Section 66 of the Act but as a matter of fact, there is absolutely no evidence nor even a challan of its being a third offence and, therefore, the sentence awarded to the petitioner is certainly uncalled for.

5. Having heard the learned Amicus Curiae and the learned Public Prosecutor and having gone through the record, I do not find any force in the first contention. The recovery is fully proved by the two excise witnesses. Both the courts below have relied on them and sitting in revision. I would not re-appreciate the evidence. Merely because the excise officials, their testimony cannot be discarded. It is to be considered on its merits.

6. So far as the second contention goes, I find considerable force in this. There is absolutely no material on the record neither in the complaint nor in the evidence nor by way of a challan that this was the third offence of the petitioner. Only at the time of arguments, it appears that the learned Asstt. Public Prosecutor stated before the Court that the accused had previously been convicted in two cases and the learned counsel for the accused did not dispute that fact and the courts below have taken it to be a third offence. In my opinion, this is not the way for proving the previous offence. The accused must have been informed in the beginning that this was the third offence sought to be proved against him and the particulars of the first two offences should have been furnished to him by framing a charge and then proving the same after they were denied by the petitioner. If the fag end of the trial

and during the course of arguments the Assistant Public Prosecutor contended that the accused had earlier been convicted in two cases, then either the court should have stayed its hands and should framed a charge Under Section 75 IPC or Under Section 16 of the Act and should have recorded the plea of the petitioner. Nothing of this sort was done and merely on verbal assertion, the petitioner was held to be guilty of the third offence. In whose circumstances, the punishment awarded to the petitioner cannot be sustained and requires to be modified.

7. I, therefore, partly allow this revision and reduce the sentence of the petitioner to six months' RI and a fine of Rs. 500/-, in default of payment of fine, he will undergo one month's R.I.

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