

Godhu Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-25-1985

Reported in : 1985WLN(UC)640

Judge : Kishore Singh Lodha, J.

Appeal No. : S.B. Criminal Revision Petition No. 72 of 1985

Appellant : Godhu

Respondent : State of Rajasthan

Judgement :

Kishore Singh Lodha, J.

1. The petitioner Godhu has been convicted under Section 16/54 of the Excise Act and sentenced to six months simple imprisonment and a fine of Rs. 250/- and in default of payment of fine to further simple imprisonment of one month by the learned Munsif and Judicial Magistrate, Balotra on 9-1-1985 and appeal before the learned Sessions Judge, Balotra has been dismissed on 21-2-1985. Hence this revision.

2. Although in the memo of revision, the conviction of the petitioner has been challenged but at the time of arguments, the learned counsel for the Petitioner gave up this contention and only prayed that looking to all the facts and

circumstances of the case the petitioner may be granted benefit of probation.

3. I have heard the learned counsel for the petitioner and the learned Public Prosecutor who has accepted notice, in respect of this contention.

4. The case against the petitioner is that on the search of his Dhani on 31-5-1983 by the Excise Inspector a pitcher of fermented work and a Jerrycan containing one bottle of illicit liquor were recovered. The accused is a young man of about 25 years. He is not a previous convict. Looking to the quantity of the wash and the illicit liquor and the fact that the petitioner has already undergone imprisonment for a few days, I am of the opinion that he may be granted the benefit of probation. The courts below refused probation to him on the supposition that he was engaged in the manufacture or sale of illicit liquor but such a presumption cannot be said to be justified on the facts of the case as he has not been found in possession of workable still nor the quantity of the wash and the illicit liquor recovered are such which may give rise to the only presumption that he was selling or possessing for sale the recovered articles.

5. I, therefore, partly allow this revision and while maintaining the conviction of the petitioner under Section 16/54 of the Excise Act, set aside the sentence awarded to him. He is not sentenced to any punishment forthwith but shall be released on his entering into a personal bond in the sum of Rs. 3000/- (Rupees three thousand) with a surety in the like amount to the satisfaction of the learned Munsif and Judicial Magistrate, Balotra to appear and receive sentence whenever called upon to do so within a period of two years and in the meantime to maintain the peace and be of good behaviour.

6. I, further direct that he shall pay a sum of Rs. 250/- by way of costs of the proceeding to the State.