

Ramu Vs. State of Madhya Pradesh

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Court : Madhya Pradesh Gwalior

Decided On : Jul-28-2011

Judge : G.D. Saxena, J.

Acts : [Code of Criminal Procedure \(CrPC\) 1973](#) - Sections 397, 401, 391; M.P. Excise Act - Section 34(A)

Appeal No. : Criminal Revision No.421/06

Appellant : Ramu

Respondent : State of Madhya Pradesh

Advocate for Def. : Shri R.K.Shrivastava, Adv.

Advocate for Pet/Ap. : Shri R.K.Upadhyay, Adv.

Judgement :

(1) This revision petition under Section 397/401 of the Code of Criminal Procedure 1973, preferred by the petitioner/accused is directed against Judgment dated 04 th May 2006 passed in Criminal appeal No. 75/2006 by the Additional Sessions Judge Chachoda, district Guna, setting aside thereby the Judgment dated 27 th January, 2006 passed in Criminal Case No. 411/2001 by the Judicial Magistrate First Class, Chachoda, convicting the appellant for commission of offence punishable under Section 34(A) of the M.P. Excise Act and sentencing him to suffer one year's R.I. with a fine of Rs. 500/-, and in default to suffer three months'

rigorous imprisonment, while remanding the case back to the trial court for fresh trial and decision as per law.

(2) In brief, the facts of the case are that on 6th April 2000, at about 4.30 p.m., at Lambachak Badoda Road, on information from reliable sources, Manoj Mishra, the Incharge of Police Station Kumbhraj, intercepted the Jeep No. MP 08/F 1293, which was being driven by Ramu (the present appellant) and seized 23 boxes out of which 21 were containing around 48-48 quarters of Piano Company and two boxes were containing quarters of XXX Champion. It is alleged that the accused-petitioner was indulged in transporting the liquor in an illegal manner and driving the said vehicle without any valid licence. He was arrested on the spot. After investigation, the chargesheet was filed before the criminal court. The trial court after trial, found the appellant guilty and hence convicted and sentenced him for the said offence. On appeal, the appellate court by the impugned judgment while setting aside the Judgment of conviction and sentence, remanded the case back to the trial court with a direction to provide an opportunity to prosecution for exhibiting and proving the report of examination of seized liquor by the Excise Department and decide the case on merits afresh.

(3) The contention of the learned counsel for the petitioner is that the impugned judgment is manifest illegal, arbitrary and contrary to law. It is contended that the appellate Judge prima facie, exceeded his jurisdiction by providing an opportunity to the prosecution to fill-up the lacuna. In support of his submission, learned counsel placed reliance on the decision of the Apex Court in the case of D.G.D.U. v. State of Maharashtra (AIR 1997 SC1579). Hence, it is prayed that by allowing the petition, the appellate court be directed to pass the judgment on the basis of the material available on record.

(4) The leaned Panel lawyer, on the other hand, supported the impugned judgment and prayed for dismissal of the revision.

(5) Heard the learned counsel for the parties and perused the records of both the courts as well as the law governing the situation.

(6) On perusal, it appears that alongwith the chargesheet, the report dated 22 nd April 2000 submitted by A.W. Khan Assistant Excise Inspector has been filed, but the prosecution did not bother to produce the said witness for examination before the trial court, despite pendency of the case for six years before the trial Magistrate. Hence, there was ample time for the prosecution to deal with every possible point in the case but it failed to establish the essential parts thereof. The section is not intended to remedy the negligence or laches of the prosecution. Therefore, in the opinion of this court, the appellate court may take the additional evidence itself, as the intention of the Legislation in enacting the section is to empower the appellate court to see that justice is done between the prosecutor and the person prosecuted. It nowhere authorises the appellate court to set aside the conviction and remand the whole case back to the trial Judge for the sole purpose of examining a particular witness and then deciding the matter afresh after recording his evidence.

(7) In the case of Manchander v. State of Hyderabad (AIR 1955 SC 792), the Hon. Apex court held that Justice is not one side, while it is incumbent on court to see that the guilty do not escape, it is even more necessary to see that persons accused of crime are not indefinitely harassed.

(8) The present case is also governed by the decision of the Apex Court in the case of Man Chander (supra). Thus, in the background of the case, the lower appellate court seems to have committed an error in remanding the whole matter for the sole purpose of examining the witness by setting aside the conviction and sentence of the appellant. The appellate court, in the facts and circumstances, if thinks additional evidence of an Expert to be necessary for proving the contraband article, it shall call a witness under the relevant provisions contained in Section 391 Cr.P.C., within a period of one month from the receipt of order of this Court and decide the case, in accordance with law.

(9) In the result, the revision stand allowed and the impugned judgment passed by the appellate court is hereby set aside.