

IN THE COURT OF JUDL. MAGISTRATE FIRST CLASS, BANPUR.

Present. : Miss Sarmistha Dash, LL.B.,
Judl. Magistrate First Class,
Banpur.

Date of argument. : 02.08.2014

Date of Judgment. : 12.08.2014

2(a)cc No. 24/2006

T.R. No. 338/2007

State ... Prosecution
-Versus-

Ranju Naik, aged about 28 years, S/o Panu Naik
Vill: Dasarathipur, Po/P.S:Banpur, Dist: Khurda.

..... Accused.

Offence: U/s.47 (a) of the Bihar & Orissa Excise Act, 1915.

For the Prosecution. :Sri Jaladhar Pradhan, APP

For the Defence : Sri S.K.Pattnaik & others.

J U D G M E N T.

01. The accused stands charged for the offence punishable Under Section 47 (a) of Bihar and Orissa Excise Act, 1915.

02. The case of the prosecution in brief runs thus:

On 23rd day of November, 2006 at 4pm the S.I of Excise Balugaon, Karuna Sankar Tiwari and his staff while performing patrolling duty at Banabaspur village canal side they found a person coming in a cycle by holding two jar bags in the handle of the cycle in a suspicious manner. So they detained him and on search they recovered two plastic jar containing ten liters of I.D liquor each. After conducting various tests on it and found it to be nothing but I.D. liquor. He seized the same in presence of witnesses. After completion of investigation he submitted P.R. against the accused U/s.47 (a) of Bihar and Orissa Excise Act. 1915.

03. The plea of defence denial one and false implication.

04. The point for determination in this case emerges as follows:

- (a) Whether 23.11.2006 at 4 pm at Banabaspur Canal road 20 liters of I.D.liquor was seized from the conscious and exclusive possession of the accused?
- (b) Whether the seized liquor was nothing but I.D. liquor?

05. In order to prove its case, prosecution has examined two P.Ws. in its favour where as defence has examined none. P.W. 1 is constable of Excise who was accompanied with the patrolling party and P.W.2 is the informant.

06. In order to prove a case U/s 47(a) Bihar and Orissa Excise Act, it is for the prosecution to prove not only the fact of seizure from the exclusive and conscious possession of the accused but also the seized articles to be nothing but I.D. liquor.

07. This is a case U/s 47(a) Bihar and Orissa Excise Act. In order to substantiate the case against the accused, it is necessary to scrutinize the case of prosecution. During the course of the trial P.W.2 deposed that on 23.11 2006 at 4pm he along with his staffs while performing patrolling duty at Banabaspur village canal side they found a person coming in a cycle by holding two jar bags in the handle of the cycle in a suspicious manner. So they detained him and on search they recovered two plastic jar containing ten liters of I.D liquor each. After conducting various tests on it and found it to be nothing but I.D. liquor. He seized the same in presence of witnesses. P.W.1 deposed that on the alleged date he along with S.I of Excise while performing patrolling duty at Banabaspur canal road at 4 pm they found the accused was coming by a cycle by carrying 20 liters of liquor in a plastic bag by hanging the bag on the cycle handle. The S.I of Excise seized the liquor and prepared the seizure list at the spot.

On perusal of the evidence it is found that the prosecution has failed to examine the independent seizure witnesses in whose presence the articles were seized from the possession of the accused. The S.I of Excise reported to have been examined the liquor through blue litmus paper test and hydrometer test but the said S.I was not produced the same before this court. Hence, there is no proof in the record to prove that the seized liquids were nothing but the I.D liquor. Further the fact of seizure from the conscious and exclusive possession of the accused is also not proved as none of the independent witnesses have been examined by the prosecution. Hence in view of the above discussion and due to lack of independent

corroboration, I am of the opinion that the prosecution has failed to prove its case against the accused beyond all reasonable doubts.

07. In the result, the accused is found not guilty for the offence U/s.47 (a) of Bihar and Orissa Excise Act, 1915 and acquitted thereof U/s.248 (1) of Cr.P.C. He be set at liberty and discharged from his bail bond.

The seized materials, if any be destroyed after four months of the appeal period, if no appeal is preferred and if preferred be dealt as per the order of the appellate court.

Enter the case as mistake of fact.

Judicial Magistrate First Class,
Banpur

This judgment typed to my dictation, corrected by me and pronounced in the open court, given under my hand and seal of this court, this the 12th day of August, 2014.

Judicial Magistrate First Class,
Banpur

List of witnesses examined for Prosecution.

PW.1 Prasanna Kumar Jally
P.W.2 Karuna Sankar Tiwari

List of witnesses examined for the Defence.

Nil

List of Exhibits marked for Prosecution.

Ext.1 Seizure list.
Ext 1/1 Signature of P.W.2 on Ext.1.
Ext. ½ Signature of P.W.2 on Ext.1.
Ext.2 C.E.Report.

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil.

Judicial Magistrate First Class,
Banpur.