

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

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

Date of argument. : 06.08.2014

Date of Judgment. : 16.08.2014

2(a)cc No. 28/2005

T.R. No. 156/2009

StateProsecution

-Versus-

Nakul Das, aged about 32 years, S/o Kesab Das

Vill: Salapadhia, 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 01.04.2005 at 6 pm the S.I of Excise Balugaon, Sadananda Samal and his staff while performing patrolling duty at Salapadiha village they found the accused was going to his house holding a Jari bag in a suspicious manner. So they detained him and on search they recovered one plastic jar containing five liters of I.D liquor. 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 1.4.2005 at 6 pm at Salapadiha five 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 one P.W. in its favour where as defence has examined none. P.W. 1 is constable of Excise who was accompanied with the patrolling party.

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.1 deposed that on the alleged date he along with S.I of Excise while performing evening patrolling duty they saw the accused was carrying a jari bag towards his house in a suspicious manner. The informant stopped him and in presence of witnesses made search and found five liters of desi Mahuli liquor in a plastic jarkin. Then S.I measured and conducted blue litmus paper test and hydrometer test. He also conducted smell and tongue test and from service experience he conformed that the said liquor was desi mahuli liquor. Then the informant seized it and prepared the seizure list in presence of the witnesses.

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 examined by the prosecution. 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 16th day of August, 2014.

Judicial Magistrate First Class,

Banpur

List of witnesses examined for Prosecution.

PW.1 Satyanarayana Mahapatra

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.1 on Ext.1.

Ext. 1/2 Signature of S.I of Excise on Ext.1.

Ext. 1/3 Signature of accused on Ext.1

Ext. 1/4 Signature of Chintamani Nayak on Ext.1.

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil.

Judicial Magistrate First Class,

Banpur.