

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

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

Date of argument :05.08.2014
Date of Judgment. :18.08.2014

G.R. No. 353/2008
T.R. No. 538/2008

State Prosecution

-Versus

Kasinath Naik, aged about 46 years,
S/o Late Jaga Naik.
Vill: Rajeebnagar, P.S: Balugaon,
Dist: Khurda.

Accused.

Offence:Under Section 47(a) of the B & O Excise Act, 1915.

For the Prosecution. : Sri J.Pradhan, APP
For the Defence. : Sri G.S.Ram & others

J U D G M E N T.

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

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

One Sisir Kumar Mohanty, constable of police Balugaon P.S on 24.11.2008 at 4 Pm on the direction of I.I.C, Balugaon he along with other police staffs performing patrolling duty at Balugaon NAC area got reliable information that the accused was illegally selling liquor at Gandhi Market. So they proceeded to the spot and saw that one person selling liquor kept in a jari bag. On search they found that the accused was possessed 20 packets of I.D. liquor each containing 200ml. On demand he failed to show any license or authority for such possession and selling of liquor. After due verification he brought the accused along with the liquor to the P.S.

Upon such report P.S. Case No.149/2008 was registered and investigation was carried out and after completion of investigation as prima facie evidence is well made out against the accused, the I.O. submitted charge sheet against him. Hence this trial.

03. The plea of defence is one of complete denial and false implication.
04. The point for determination in this case emerges as follows:
- (a) Whether on 24.11.2008 at 4.45pm 20 packets 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 as many as three P.Ws in its favour where as defence has examined none. All are independent witnesses to the occurrence.

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 C.S 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 course of the trial P.W1, 2 & 3 deposed that they do not know anything with regard to this case and nothing has been seized in their presence. Though they admitted their signatures on the seizure list but during their cross examination said at the instance of police they signed on a paper and that they have no idea about the contents of seizure list and the contents of the seizure.

The witnesses to the seizure list did not support the fact of seizure of liquor from the possession of the accused in their presence. The prosecution has not been examined the informant who seized the liquor in this case. Further the seized article were not produced before this court for its perusal. 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 corroborated the prosecution version. Hence in view of the above contradictions and due to lack of independent corroboration and in absence of any test, 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 18th day of August, 2014.

Judicial Magistrate First Class,

Banpur

List of witnesses examined for Prosecution.

PW.1 Pradeep Behera

PW.2 Sudarsan Sahu

P.W.3 Rajkishore Sahu

List of witnesses examined for defence.

None.

List of Exhibits marked for Prosecution.

Ext.1 Signature of P.W.1 on seizure list.

Ext.1/1 Signature of P.W.2 on seizure list.

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil

Judicial Magistrate First Class,

Banpur.