



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 27TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL REVISION PETITION NO. 200173 OF 2024

(397(Cr.PC)/438(BNSS))

BETWEEN:

SRI.KHOBBANNA
S/O MADEV KOLI
AGED ABOUT 43 YEARS
OCC: COOLIE, R/O SHIRNAL VILLAGE
TQ: INDI, DIST: VIJAYAPURA-586101.

...PETITIONER

(BY SRI. S S MAMADAPUR, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH THE EXCISE SUB-INSPECTOR
INDI, REP. BY ITS
ADDL. STATE PUBLIC PROSECUTOR
ADVOCATE GENERAL'S OFFICE
HIGH COURT BUILDING
KALABURAGI-585107.

...RESPONDENT

(BY SRI.JAMADAR SHAHABUDDIN, HCGP)

THIS CRL.RP IS FILED U/S 397 (1) OF CR.P.C (OLD),
U/SEC. 438 R/W SEC. 442 OF BNSS, 2023 (NEW),
PRAYING TO SET ASIDE THE JUDGMENT DATED
08.11.2024 PASSED BY THE HONOURABLE I ADDL.
SESSIONS JUDGE, VIJAYAPUR IN CRIMINAL APPEAL
NO.42/2024 AS WELL AS THE JUDGMENT DATED





14.03.2024 PASSED BY THE HONOURABLE CIVIL JUDGE AND JMFC, INDI, IN CC NO.2707/2019.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL ORDER

The revision petitioner has filed this petition against the judgment of conviction and order of sentence dated 14.03.2024 passed in C.C.No.2707/2019 by the learned Civil Judge and JMFC, Indi (for short, 'the Trial Court'), which is confirmed in Criminal Appeal No.42/2024 by the I Addl. Sessions Judge, Vijayapura (for short, 'the First Appellate Court'), dated 08.11.2024.

2. The brief facts leading to this appeal is that, the Excise Sub-Inspector of Police, Indi, submitted the charge sheet against the accused for the offence punishable under Sections 32(1), 34 and 38-A r/w 13 and 14 of the Karnataka Excise Act, 1965 (for short, 'the K.E.Act'). It is alleged by the prosecution that on 24.08.2019 at 6:20 p.m., the accused was in transporting 120 illicit liquor



packets containing 100 ml each on a two wheeler bearing registration No.MH-13/W-8582, near Bandar Village of Indi Taluk. Thus, the accused has committed the alleged offence. After filing the charge-sheet, a case was registered in C.C.No.2707/2019 on the file of Civil Judge & JMFC, Indi. The accused was arrested on 24.08.2019 and thereafter he was enlarged on bail.

3. On hearing, the Trial Court has framed the charges for the alleged commission of offences. The same was read over and explained to the accused. Having understood the same, the accused pleaded not guilty and claimed to be tried.

4. To prove the guilt of the accused, the prosecution has examined 4 witnesses as PWs.1 to 4; got marked 14 documents as Exs.P1 to P14 and material object as MO.1. The accused has totally denied the evidence of prosecution witnesses appearing against him. However, accused did not choose to lead any defence evidence on his behalf.



5. Having heard both sides, the Trial Court has convicted the accused for the offences punishable under Sections 32(1), 34 and 38 read with Section 13 and 14 of the K.E.Act and passed the sentence as under:

"Accused is sentenced to undergo rigorous imprisonment for 1 year and sentenced to pay a fine of Rs.10,000/- for the offence punishable U/s.32(1) of Karnataka Excise Act. In default to pay fine accused shall undergo simple imprisonment for six months.

Accused is sentenced to undergo rigorous imprisonment for 1 year and sentenced to pay a fine of Rs.10,000/- for the offence punishable U/s.34 of Karnataka Excise Act. In default to pay fine accused shall undergo simple imprisonment for six months.

Accused is sentenced to undergo rigorous imprisonment for 1 year and sentenced to pay a fine of Rs.10,000/- for the offence punishable U/s 38(A) of Karnataka Excise Act. In default to pay fine accused shall undergo simple imprisonment for six months.

The sentence shall run concretely.

The default sentence shall run consecutively.

Office is directed to furnish free certified copy of this judgment to accused.

Bail bond and surety bonds stands cancelled."

6. Being aggrieved by this judgment of conviction and order on sentence, the accused had preferred the



appeal in Crl.A.No.42/2024 before the First Appellate Court. The same came to be dismissed on 08.11.2024. Being aggrieved by the same, the accused has preferred the present revision petition.

7. Learned counsel for the accused has urged the following grounds, which are shown in the memorandum of revision petition:

- (i) *That the impugned judgments convicting the petitioner for the offence punishable under Section under Section 32(1), 34 & 38 R/w section 13, 14 of the Karnataka Excise Act and the order of sentence being contrary to facts, circumstances of the case and the material evidence on record are liable to be set aside.*
- (ii) *That the courts below have not properly and correctly appreciated the entire evidence on record in the right perspective which has resulted in miscarriage of justice.*
- (iii) *It is submitted that both the courts below committed a grave error in law in convicting the petitioner for the alleged offences. The reasons assigned and the conclusions arrived thereon being legally unsustainable and result of non-application of mind to the facts and circumstances of the case are liable to be set aside.*



- (iv) *It is submitted that the courts below failed to see that there is absolutely no material to hold the petitioner guilty of the above offences. The necessary ingredients to attract the penal provisions of alleged offences are patently absent and that the courts below were legally not justified in convicting the petitioner.*
- (v) *It is submitted that both the courts below failed to see that the evidence on record is wholly insufficient to bring home the guilt of the accused beyond all reasonable doubts. It is submitted that the courts below committed a grave error in law in relying upon the self interested testimony of the official witnesses.*
- (vi) *It is submitted that the courts below have not properly and correctly appreciated the material evidence on record. It is relevant to mention that the prosecution has not examined any independent witnesses in support of the case. there was absolutely no impediment for the prosecution to cite independent witnesses which clearly indicate that the petitioner has been falsely implicated in the crime.*
- (vii) *It is submitted that the court below ought not to have relied upon the self interested testimony of the official witnesses to base conviction of the petitioner.*
- (viii) *It is submitted that both the courts below failed to appreciate that there is absolutely nothing on record to indicate that the seized article contained illicit liquor. The prosecution has not examined the forensic expert who issued the certificate at Ex-P7. Non examination of the*



author of Ex-P7 was fatal to the case of prosecution and that the petitioner is entitled for acquittal. As such also the impugned judgment of conviction being bad in law is liable to be set aside.

- (ix) *It is submitted that the courts below committed an error in law in convicting the petitioner. It is relevant to mention that the prosecution has also not seized the motor cycle alleged to have used for transporting illicit liquor. In the absence of seizure of the motor cycle, it cannot be said or concluded that the petitioner was carrying such illicit liquor. However, the courts below without taking the same into consideration has erroneously convicted the petitioner which has resulted in miscarriage of justice.*

8. In addition to these grounds, the learned counsel for the revision petitioner has contended that, the Investigating Officer has not complied the mandatory provision of Section 43-A, 54 of the K.E.Act, and also the provision of Section 102 of Cr.P.C. As per Ex.P9 one Rajendra Balkrishna Pandhare is the owner of the vehicle bearing No.MH-13-W-8582 without any evidence, the Trial Court has convicted the accused without proper appreciation, the First Appellate Court has also confirmed



the same, which is not sustainable under law. On all these grounds, prays to allow the revision petition.

9. To substantiate his arguments, he has relied on the judgments of the Co-ordinate Bench of this Court in the case of ***Kullegowda vs. State of Karnataka [Crl.P.No.597/2014]***.

10. As against this, learned High Court Government Pleader would submit that the Trial Court has properly appreciated the evidence on record and same is confirmed by the First Appellate Court. That there are no grounds to interfere with the impugned judgment of conviction and order on sentence passed by the Trial Court. Hence, prays to dismiss the revision petition.

11. Having heard the arguments on both sides and perusal of materials on record, the following points arise for consideration:

- 1) *Whether the judgment of conviction and order on sentence passed by the Trial*



Court, which is confirmed by the First Appellate Court is perverse, capricious, illegal is sustainable under law?

2) *What order?*

12. My findings to the above points are as under:

Point No.1 : In Affirmative

Point No.2 : As per final order

Reasons to Point No.1:

13. I have examined the materials placed before this Court.

14. The Trial Court has convicted the accused for the offences punishable under Sections 32(1), 34 and 38 read with Section 13 and 14 of K.E.Act and passed sentence for the offences punishable under Sections 32(1), 34 and 38-A of the K.E.Act. Section 38 of the K.E.Act, is not applicable to the case on hand. However, the Trial Court has passed sentence to undergo rigorous imprisonment for 1 year and sentence to pay fine of



Rs.10,000/- for the offence punishable under Section 38-A of the K.E.Act.

15. Section 38-A of the K.E.Act, reads as under:

"38A. [Penalty for allowing premises, etc, to be used for the purpose of committing an offence under this Act.-Whoever, being the owner or occupier or having the use or care or management or control, of any place, room, enclosure, space, vessel, vehicle , or place knowingly permits it to be used for the purpose of commission by any other person of an offence punishable under sections 32, 33, 34, 36 and 37 shall, on conviction, be punished as if he has committed the offences punishable under the respective sections."

16. In the case on hand, the prosecution has produced Ex.P9-Register particulars of vehicle bearing No.MH-13-W-8582, which reveals that one Rajendra Balkrishna Pandhare, A/P Shaankargon P-Puluj, Tal.Pandharpur, Dist. Solapur, is the owner of the vehicle bearing No.MH-13-W-8582. Ex.P10 the notice issued by the Inspector of Excise, Indi Range, reveals that Sub-Inspector of Police, Indi Range, has addressed a letter to



the Rajendra Balkrushna Pandhare on 27.09.2019, which reads as under:

*"To,
Rajendra Balkrushna Pandhare
A/P- Shankargon P-Puluj)
Tq-Pandarapur Dist-Solapur*

Dear sir,

Subject: Notice to the owner of seized vehicle bearing No MH-13- W-8582 HIRO HONDA CD 100 COMPANY TWOWHEELER Vehicle, Under CR No-13/2019-20, Date: 24-08-2019 under Karnataka State Excise Act, 1965 13,14,32(1),34,38(A).

Reference: Regional transport Officer, Motor Vehicles Department, Solapur, Letter Dated-20/09/2019.

With respect to the above subject, Under Investigation of the case filed by Excise Authority at Shiranal Tal. Indi, Dist. Vijayapura, State Karnataka CR No-13/2019-20, Date: 24-08-2019 under Karnataka State Excise Act 1965 13,14,32(1),34,38(A), seized vehicle bearing No MH-13- W-8582 HIRO HONDA CD 100 COMPANY IWO WHEELER Vehicle, along with illegal transporting 12 Ltr ID. Under Investigation of the following case, through Regional Transport Office(RTO Motor Vehicles Department, Solapur, we Come to know that the above Vehicle is in your ownership

For further investigation informing you to attend before investigating officer of the following case and give your statement if any within 10 days after reach of this notice to you without fall, if you fail to appear before investigating officer within given



period of time we will initiate further action as per Karnataka State Excise Act."

17. Ex.P11 is the reply letter filed by the Rajendra Balkrushna Pandhare, which is addressed to the Sub-Inspector of Indi Range, Indi in which it is stated as under:

*"To,
The Sub-Inspector
Indi Range, Indi-586209,
Taluka-Indi, Dist-Vijayapur.*

*Subject: Answer to your notice regarding
the vehicle MH-13-W-8582
Ref. - Your office notice dated 27-9-2011*

R/Sir,

With reference to above cited subject I the undersigned Rajendra. s/o. Balakrishna Pandare R/O.Shankargon P-Puluj, Talyka-Pandharapur, District-Solapur (M.S) most humbly respectfully submits my humble request answer is as under ;-

Sir, I am owner of the vehicle bearing Regn. No. MH-13-W-8582 and its RC book is standing in my name. I am suffering from Paralises. Hence I am not liable to run the said vehicle and not use the same. My relative person by name Khobanna s/o Madev Koli is took the said vehicle for his personal work and he has use the said Hiro Honda vehicle. But the said Khobanna Madev Koli has done the offence of excise. Hence the excise officer have seized the vehicle in Cr.No.13/2019-20 dt.24-8-2019. I am not liable to walk one or other place.

Hence it is prays that you sir pleased be considering my humble request and disposes to me



from this case to leave the hand to me from this case.

Thanking you sir."

18. Though the Investigating Officer has issued notice to the owner of the vehicle bearing No.MH-13-W-8582, the Investigating Officer has not submitted the charge-sheet against the owner of the vehicle Rajendra Balkrushna Pandhare for the offence punishable under Section 38-A of the K.E.Act. Admittedly, the accused is not the owner of the vehicle bearing No.MH-13-W-8582.

19. The Investigating Officer has not submitted the charge sheet against the owner of the vehicle. The Investigating Officer has not explained anything as to not filing the charge sheet against the owner of the vehicle. Investigating Officer has blindly submitted the charge sheet against the accused for the offence under Section 38-A of the K.E.Act., against the present accused. Both courts have not observed the same and mechanically convicted the accused for the offence under Section 38 of



the K.E.Act and passed a sentence for the offence under Section 38-A of the K.E.Act, which is not sustainable under law. Accordingly, prosecution has miserably failed to prove the guilt of the accused for the offence under Section 38-A of the K.E.Act.

20. With regard to the offences under Sections 32 and 34 of the K.E.Act, is concerned it is the case of the prosecution that the accused was transporting 120 illicit distilled liquor packets contains each 100 ml. The excise authorities have apprehended the accused along with 120 illicit distilled arrack packets.

21. To prove this fact, the prosecution has produced panchnama dated 24.08.2019 as per this panchnama, Investigating Officer has seized 120 alleged illicit arrack packets, which contains 100 ml each, in presence of panchas under Mahazar Ex.P1. After seizure of the properties, the accused produced before the Sub-Inspector of excise along with the seized properties.



22. On the basis of this complaint, Sub-Inspector of excise Indi Division, Indi has registered the case in Crime No.13/2019-20 and submitted the FIR to the Court on 25.08.2019. The Investigating Officer has not complied the mandatory provisions of Section 54 and 43-A of K.E.Act. The Investigating Officer has not send all the seized arrack packets for chemical examination. The Investigating Officer has seized only one packet which contains 100 ml.

23. Soon after the seizure of properties, the Investigating Officer ought to have intimated the same to the concerned authority as required under Section 43-A of the K.E.Act and also Section 102 of the Cr.P.C. to the jurisdictional Magistrate. In the case on hand, the Investigating Officer has reported the seizure of properties to the higher authority on 02.10.2019 as per Ex.P14. That there is 39 days delay in submitting the seizure report to the concerned authority which is clear violation of the provisions of Section 43-A of the K.E. Act. The



Investigating Officer has not explained anything as to non-sending of all the alleged arrack packets for chemical examination. All these lapses committed by the Investigating Officer will create doubt as to the Act of the accused. The benefit of doubt shall go to the accused. Both the Courts have not properly appreciated the provisions of the K.E.Act and Rules and also facts of the case. Hence, the judgment of conviction passed by the Trial Court, which is confirmed by the Appellate Court are not sustainable under law. The judgments of both the Courts are perverse, capricious, illegal and not sustainable under law. Accordingly, I answer Point No.1 in the ***Affirmative.***

Point No.2:

24. For the aforesaid reasons and discussions, I proceed to pass the following:

ORDER

(a) The Criminal Revision Petition is ***Allowed.***



- (b) The judgment of conviction and order on sentence dated 14.03.2024 passed in C.C.No.2707/2019 by the Civil Judge and JMFC Court, Indi which is confirmed by the I Additional Sessions Judge, Vijayapur in Criminal Appeal No.42/2024 dated 08.11.2024 are set aside.
- (c) The accused/revision petitioner is acquitted of the offences under Sections 32(1), 34 and 38-A read with Sections 13, 14 of the Karnataka Excise Act, 1965.
- (d) The bail bond of the accused/revision petitioner shall stand cancelled.
- (e) The Trial Court is directed to refund the fine amount, if any, deposited by the revision petitioner.



- (f) The Registry is directed to send a copy of this order along with TCR to the concerned Court.

**Sd/-
(G BASAVARAJA)
JUDGE**

MSR/SDU/TIN/RSP
LIST NO.: 1 SL NO.: 35
CT: BH