



HIGH COURT OF CHHATTISGARH AT BILASPUR

CRR No. 833 of 2016

Basant Suryawanshi S/o Gendram Suryawanshi, Aged About 31 Years,
R/o Village - Awaspara, Newara Police Station - Kota, Civil and
Revenue District – Bilaspur, Chhattisgarh,

... Applicant

versus

State of Chhattisgarh Through The Station House Officer, Excise Circle
Takhatpur (Wrongly Mentioned Through The District Magistrate
Bilaspur) Civil and Revenue District – Bilaspur, Chhattisgarh,

... Respondent

For Applicant : Mr. Vishwanath Prasad, Advocate on behalf of
Mr. Paras Mani Shrivastava, Advocate

For Respondent/State : Ms. Avelin Juneja Gambhir, Panel Lawyer

Hon'ble Shri Justice Radhakishan Agrawal,

Order on Board

13/04/2026

1. The present revision filed under Section 397/401 Cr.P.C. is directed against the judgment of conviction and order of sentence dated 24.08.2016 passed in Criminal Appeal No.02/2016 by the 5th Additional Sessions Judge, District – Bilaspur (C.G.), whereby judgment dated 28.11.2015 passed by the Chief Judicial Magistrate, District – Bilaspur (C.G.) in Criminal Case No.896/2013 has been affirmed by the learned Appellate Court wherein the applicant has been convicted under Section 34(2) of the Chhattisgarh Excise Act, 1915 and sentenced R.I. for 1 year &



fine of Rs.25,000/-, in default of payment of fine, additional R.I. for 6 months.

2. According to the prosecution, on 31.12.2012, during a special mission against illegal liquor, Ajay Dhurve (PW-4), Excise Sub-Inspector, and other staff were on patrolling near Radhika Water Park on the Bilaspur–Kota main road. At that time, one accused person was seen riding an L.M.L. Freedom motorcycle towards Nevra. He was signaled to stop the vehicle, upon which he parked the motorcycle and fled towards the adjoining fields near the water park. The officials chased the accused/applicant and made efforts to apprehend him; however, he managed to escape from the spot. Thereafter, in the presence of witnesses, the said vehicle was searched. Upon search, liquor was recovered as per the seizure memo (Ex.P-1). Based on the vehicle and the description (appearance) of the accused, local witnesses identified the accused as Basant Suryavanshi. As the accused was found to be in possession of more than 5 liters of liquor (48 quarters of country made liquor), an offence under Sections 34(1)(a)(2) and 59(a) of the Excise Act was registered against him, and investigation was initiated. Subsequently, on the basis of secret information, on 24.03.2013 vide arrest memo (Ex.P-9), applicant - Basant Suryavanshi was arrested.
3. After completion of investigation, complaint was filed before the Court of Chief Judicial Magistrate, District - Bilaspur. The applicant abjured the guilt and pleaded innocence. So as to prove the guilt



of the accused/applicant, the prosecution has examined as many as 5 witnesses. Statement of the accused/applicant was also recorded under Section 313 of Cr.P.C.

4. Learned trial Court, after appreciation of oral and documentary evidence, convicted and sentenced the accused-applicant. The said judgment was challenged by the accused in criminal appeal, however, the Appellate Court, vide judgment dated 24.08.2016 affirmed the conviction and sentence passed by the Trial Court. Hence, this revision.
5. Learned counsel for the applicant submits that the Trial Court as well as the Appellate Court, without properly appreciating the evidence available on record, were not justified in convicting and sentencing the applicant for the aforesaid offence. He further submits that there are material contradictions and omissions in the statements of the prosecution witnesses and their statements do not corroborate with each other, this apart, the seizure witnesses have turned hostile. It is further contended that there is no evidence available on record which could show that the seized property was kept in "sealed" condition nor sample seal is affixed in the seizure memo. He further submitted that no test identification has been conducted by the police. As such, the prosecution has failed to establish its case beyond reasonable doubt. On these premises, it is prayed by counsel for the applicant that applicant be acquitted from the offence leveled against him. In support of his arguments, he placed his reliance upon a



decision rendered in the matter of *Suresh Kumar vs. State of Chhattisgarh* reported in 2006 (3) CGLJ 259. Lastly, he submits that the fine amount has already been deposited before the trial Court by the Applicant.

6. On the contrary, learned State Counsel, while supporting the impugned judgments, submits that the learned Trial Court as well as Appellate Court have rightly convicted and sentenced the Applicant and there is no illegality or infirmity in the same warranting interference by this Court.
7. I have heard learned counsel appearing on behalf of the parties and perused the record.
8. As per the statement of Ajay Dhurve (PW-4), Excise Sub-Inspector, on 31.12.2012, during a patrolling conducted under the mission against illegal liquor, he noticed a person, riding LML Freedom motorcycle and on the basis of suspicion, he was signaled to stop the vehicle. However, the suspect stopped the motorcycle and fled towards the fields adjoining the Water Park. Despite making efforts to chase and apprehend him, he succeeded in escaping from the spot. Thereafter, Sarpanch of the village Nevra and other witnesses were orally summoned. In their presence, he conducted a search of himself, the staff, and the government vehicle thereafter, he prepared seizure memo (Ex.P-1) wherein in column 7, the names of seizure witnesses are mentioned as Vikash Yadav, Ravindra Nishad, Pradeep Singh and Kuldeep. This witness in his cross-examination has however,



admitted that Vikash Yadav has seen the alleged incident and rest of the other witnesses were not present at the spot.

9. Ravindra Kumar Nisad (PW-1) in his statement has deposed that he did not know the applicant. He further stated that before him nothing has been seized from the applicant. As such, this witness has not supported the case of the prosecution and has turned hostile.
10. Vikas Yadav (PW-2), in his testimony, stated that the seizure memo was prepared in his presence. He further deposed that while the police were chasing the accused/applicant, he was following them on his motorcycle, and when the police stopped, he also stopped. He further stated that the box which was seized was not opened in his presence. Thus, on perusal of his statement, it appears that at the time of the alleged incident, he was following behind the police vehicle. However, as per the seizure memo (Ex. P-1), this witness was called by the police to the spot much after the alleged incident, and at a time when the accused had already fled away from the spot. This apart, Ajay Dhurve, Excise Sub-Inspector has stated that Vikas Yadav is the eye witness of the alleged incident, however, as per the particulars of the seizure memo (Ex-P1), this witness was called by the police after the alleged incident.
11. Thakur Pradeep Singh Parihar (PW-3), in his statement has deposed that on 31.12.2012, when he was going Ganiyari, police called him near Radhika Water Park, where he saw accused



Basant Suryavanshi was standing there, and the alleged liquor was kept in a white sack in the motorcycle. He further stated that when he went closer, the accused ran away from there. This witness in his cross-examination has admitted that when he reached at the spot and was talking the police officials, at that time, the accused was present there. On perusal of his statement, it appears that at the time of the alleged incident, he was called by the police at the spot, where he saw the accused standing there. However, as per the statement of other prosecution witnesses as mentioned above and the seizure memo (Ex. P-1), this witness was called by the police to the spot much after the alleged incident, and at a time when the accused had already fled away from the spot.

12. Thus, there appears contradictions and omissions in the statement of the witnesses whose names are mentioned in the seizure memo (Ex.P-1) as the same is not duly corroborated with the statement of Ajay Dhurve (PW-4). This apart, there appears differences in the statement of Ajay Dhurve with that of the contents of seizure memo (Ex.P-1) which itself has been prepared by him.

13. Furthermore, as per the seizure memo (Ex. P-1), on the date of the incident, the driver of the LML Freedom motorcycle bearing registration No. CG-10-BA-4822, on which the alleged liquor was being carried, had fled away from the spot. With regard to the ownership of the seized vehicle is concerned, no document has



been placed on record which could establish that the alleged liquor which was being seized from the motorcycle, belongs to the accused. However, one Vijay Bahadur Singh (PW-5) has been examined who has stated that he has sold one LML Freedom motorcycle bearing registration No.CG-10-BA-3318 to accused Basant Suryavanshi, which is different from the motorcycle which has been seized by the police. This apart, as per arrest memo (Ex.P-9), accused Basant Suryavanshi was arrested by the police on 24.03.2013 i.e. about three months of the alleged incident. As such, police ought to have conducted test identification parade of the accused, but the police has failed to do so.

- 14.** Seizure memo (Ex.P-1) also does not transpire that after seizure of liquor, no seal was affixed and that where was the seized liquor or the alleged samples kept in safe custody. There was no sample seal affixed and it was also not proved by the prosecution that signature of the witnesses has been obtained only after the seized article is sealed and if the seized article could have been sealed, then sample seal would have certainly been there but, there was no sample seal affixed on it.
- 15.** It is bounden duty of the prosecution to seal the seized property and to keep the same in safe custody, but the prosecution has failed to discharge its duty. This apart, the provisions of Section 57 (a) of the Excise Act have also not been complied with by the prosecution.
- 16.** Dealing with the issue, this Court in the matter of Suresh Kumar



(supra) has observed as under:

“10. It is pertinent to note from the order sheet dated 01-10-2004 written by the trial Judge that the seized property was not produced before the Court. No reason has been signed by the Excise Sub Inspector Shri K.L. Taram PW-2 for not depositing the Jerrican containing 30 liters of country made liquor with the Officer in charge of the concerned Police Station or to take any samples there from and to seal it. There is nothing on record to show as to where and in whose custody the 30 bulk liters of country made liquor was kept till filing of challan on 01-10-2004. There is also nothing to show that Excise Sub Inspector Shri K.L. Taram PW-2 had, within 24 hours after making the seizure made a full report of all the particulars of arrest, seizure or search to his immediate official superior as required under Section - 57 of the Act. Thus, there is total non-compliance of said Section of the Act.

11. Having thus considered the evidence led by the prosecution, the following points emerge:

(A) There is total non-compliance of Section-- of the Act by Excise Sub Inspector K.L. Taram PW-2 which vitiates the prosecution.

(B) It is not established beyond doubt that the Applicant was found in possession of country made liquor in excess of 25 bulk liters.

(C) Testimony of Shri K.L. Taram PW-2 is rendered doubtful since he did not produce the intoxicant alleged to have been seized from the Applicant in the trial Court.

(D) Independent witness Ishwar Prasad PW-1 and Neeraj Shrivastava PW-3 did not corroborate the testimony of Excise Sub Inspector K.L. Taram PW-2 relating to seizure and test performed upon the intoxicant alleged to have been seized from the possession of the Applicant.

12. In the result, the revision is allowed. The



conviction of the Appellant under Section-34(1)(a) of Chhattisgarh Excise Act, 1915 and the sentence awarded there under are set aside. The Applicant is acquitted. Fine if paid, shall be refunded to the Applicant.”

17. By applying the decision to the facts of the present case, and considering the material facts as discussed above, this Court is of the opinion that the prosecution has failed to prove its case beyond reasonable doubt. Therefore, the conviction of the applicant under Section 34 (2) of the C.G. Excise Act and the sentence awarded thereunder being contrary to the law is liable to be set aside in exercise of revisional jurisdiction. Accordingly, the conviction of the applicant under Section 34 (2) of the C.G. Excise Act and the sentence awarded thereunder is hereby set aside extending him benefit of doubt and he is acquitted of the aforesaid charge. Fine if paid, shall be refunded to the applicant.
18. Consequently, the revision is allowed. The applicant is reported to be on bail and his bail bond shall remain in force for a period of six months from today in view of provision of Section 481 of the BNSS, 2023. Records of both the Courts be sent back to the concerned Courts along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Radhakishan Agrawal)
Judge