THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL REVISION CASE NO: 1060 of 2008

ORDER:

The Revision has been preferred under Sections 397 and 401 of Code of Criminal Procedure, 1973 (for brevity 'the Cr.P.C') challenging the judgment dated 14.07.2008 in Crl.A.No.62 of 2007 passed by the learned Metropolitan Sessions Judge-Cum-I Additional District and Sessions Judge, Visakhapatnam, confirming the judgment dated 11.06.2007 in C.C.No.1011 of 2006 passed by the learned Special Judicial I Class Magistrate (Prohibition and Excise), finding the revisionists guilty of the offence punishable under Section 34 (a) of A.P. Excise Act, 1968 (for brevity 'the Act') and convicted the revisionists under Section 248 (2) of 'the Cr.P.C.,' and sentenced them to undergo rigorous imprisonment for a period of six months each and to pay a fine of Rs.5,000/- (Rupees Five Thousand Only) each, and, in default, to undergo simple imprisonment for a period of 15 days each.

2. I have heard the arguments of the learned counsel for the petitioner and the learned Assistant Public Prosecutor.

3. Sri U. Sai Kumar, the learned counsel for the petitioners, while reiterating the grounds of the revision, submitted that the learned Appellate Court failed to appreciate the fact that the prosecution filed to conduct any test identification parade to identify the accused by P.Ws.2 and 3; the learned Appellate Court ought to have seen that according to P.W.5, who was the Spl. M.R.I., MRO Office, Visakhapatnam Urban, testified that on 27.02.2006 the Excise Police destroyed the contraband in his presence under Panchanama

report under Ex.P7, he did not say anything about the accused; the evidence of P.Ws.2 to 5 did not disclose any incriminating material against the accused; the prosecution did not follow the procedure established under law in the alleged arrest and the seizure of the contraband.

4. Alternatively, it is submitted that the petitioners were in incarceration for more than 15 days. The petitioners' right to speedy disposal of the criminal revision case as guaranteed by Article 21 of the Constitution of India is infringed and urged to impose the sentence of imprisonment to which they had already undergone, while volunteering that an amount of Rs.10,000/- (Rupees Ten Thousand Only) each may additionally be imposed as a measure of penance and urged thus to dispose of the revision case in the interest of justice.

5. *Per contra*, Ms. P. Akila Naidu, learned Assistant Public Prosecutor vehemently argued that the learned Appellate Court having gone through the evidence of the prosecution witnesses and the judgment of the learned Trial Court rightly passed the judgment confirming the conviction for the offence charged and urged to dismiss the revision case as there are no material irregularities, flagrant miscarriage of justice and misreading of the evidence.

6. Thoughtful consideration is bestowed on the arguments advanced by the learned counsel for the petitioners and the learned Assistant Public Prosecutor. I have perused the record.

7. Now the point for consideration is:

> *"Whether the judgment in Crl.A.No.62 of 2007 dated 14.07.2008 passed by the learned Metropolitan Sessions Judge-Cum-I Additional Sessions Judge, Visakhapatnam, is correct, legal, and proper with respect to its finding, sentence, or judgment, and there are any material irregularities? And to what relief?"*

8. It is apposite to refer to the judgment of the Hon'ble Apex Court in **Bindeshwari Prasad Singh v State of Bihar**[1] wherein at Paragraph No.13 it is held as under:

> *"13.... In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in the exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not re-appreciate the evidence to reach a finding different from the trial Court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted."*

9. The Hon'ble Supreme Court in **D Stephens v Nosibolla**[2] at Paragraph No.10 held as under:

> *"… It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or mis-appreciated the evidence on record."*

10. This Court, while exercising its jurisdiction under Section 397 read with Section 401 of 'the Cr.P.C.,' cannot invoke its revisional power as a Second Appellate Court and re-appreciation of evidence is not possible in the revision case as laid down in the decisions in ***Bindeshwari Prasad Singh***, and ***D Stephens***.

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[1](2002) 6 SCC 650
[2]AIR 1951 SC 196

11. To prove the guilt of the petitioners the prosecution had examined P.Ws.1 to 7, got marked Exs.P1 to P14 and M.O.No.1. It is the case of the prosecution that the petitioners were found in possession and transportation of liquor bottles without valid and permit license from Kakinada to Visakhapatnam. The evidence of P.Ws.2 to 4 coupled with Exs.P2 to 5 clearly established the same. As seen from the averments of the Ex.P11 coupled with the testimony of P.Ws.6 and 7, it is obvious that on 12.10.2005 the excise officials led by P.W.6 along with P.W.7 while patrolling during Dussehra festivities, noticed ambassador car bearing No. AP 5Y 5328 coming from R.K Beach at about 2:15 p.m., on suspicion the vehicle was intercepted and noticed three gunny bags and A1 to A4 were present in the car. P.W.7 proceeded to secure mediators, but in vain as it was midnight during Dussehra festivities. Therefore, the riding officials were constrained to draft special proceedings. It is axiomatic that the petitioners were found in possession of huge quantity of liquor without valid license, therefore, the learned Trial Court found the petitioners guilty for the offence under Section 34(a) of 'the Act'. The learned Appellate Court also rightly confirmed the judgment of the learned Trial Court. Hence, the conviction for the offence under Section 34 (a) of 'the Act.,' shall be maintained.

12. Indeed, Section 34 (a) of 'the Act.,' mandates that the offenders have to be punished with an imprisonment not less than one year, but it may extend up to five years, along with a fine, which is not less than Rs.10,000/-, but it may extend up to Rs.1,00,000/-. Ironically, the learned Trial Court imposed

only Rs.5,000/- which is less than the minimum statutory prescription of fine and also the imposed rigorous imprisonment of six months which is less than statutory prescription of minimum one year.

13. Be that as it may, in regard to imposition of sentence on the petitioners, in **Santhosh Kumar v. Municipal Corporation**[3] the Hon'ble Apex Court while referring judgment in **N. Sumumaran Nair v. Food Inspector Mavehkara**[4] had commuted the sentence under Clause (d) of Section 433 of 'the Cr.P.C.,' and imposed Rs.10,000/- as fine in commutation of the sentence of 6 months imprisonment.

14. Yet, a learned Single Judge of this Court in **Guthula Ramakrishna v. State of A.P**[5], while dismissing the criminal revision case held that the minimum sentence provided by law cannot be reduced further by quoting the judgments of the Apex Court in **State of MP v. Vikram Das**[6] and **Meera v. State of Tamil Nadu**[7] wherein it is held that merely because long time has passed in concluding the trial and/or deciding the appeal by the High Court, is no ground not to impose the punishment and/or to impose the sentence already undergone.

15. However, another learned single judge of this Court in **Kesuboyina Kanakayya v. A.P**[8] instead of awarding sentence of imprisonment of one year, the accused therein was directed to pay fine of Rs.5,000/-.

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[3] 2000 (9) SCC 151
[4] Air 1995 SCW 1983
[5] 2022 SCC online AP 156
[6](2019) 4 SCC 125
[7] 2022 SCC online SC 31
[8]Crl.R.C.No.2145 of 2009 dated 29.01.2024

16. The Hon'ble Supreme Court in ***Santhosh*** *supra* commuted the sentence of imprisonment of fine and sentenced the petitioner therein to undergo the imprisonment which he had already undergone, even though there was statutory prescription of imposition of minimum sentence of imprisonment.

17. Of course, in a different context relating to Prevention of Food Adulteration Act, the Hon'ble Supreme Court in **Braham Dass v. State of Himachal Pradesh**[9], in para-Nos. 5 & 6 held as under:

> *"5. Coming to the question of sentence, we find that the appellant had been acquitted by the trial court and the High Court while reversing the judgment of acquittal made by the appellate Judge has not make clear reference to clause (f). The occurrence took place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act the Court should take strict view of such matter.*
>
> *6. While dismissing the appeal, we would, however, limit the sentence of imprisonment to the period already undergone and sustain. the fine along with the default sentence."*

18. Further, the High Court of Punjab and Haryana in **Des Raj v. State of Haryana**[10], in para-Nos.8 & 9 held as under:

> *"8. The respective arguments have been considered carefully. It is not disputed that the sample in question was taken on 29-8-1987 and the prosecution was launched against him on 9-10-1987. After a long and protracted trial, the petitioner was convicted and sentenced by order dated November 7, 1992 which has been confirmed by the appellate Court by order*

[9] AIR 1988 SCC 1789
[10] 1996 CRI.L.J.2720

dated November 17, 1995. In other words, the petitioner has been undergoing the turmoil of a criminal prosecution for the last about eight years.

9. Now, it is well settled that the right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. Fundamental rights are not a teasing illusion to be mocked at. These are meant to be enforced and made a reality. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any-the-less the right of the accused. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry trial, appeal, revision and retrial. This is how the Courts shall understand this right and have gone to the extent of quashing the prosecution after such inordinate delay in concluding the trial of an accused keeping in view the facts and circumstances of the case. Keeping a person in suspended animation for 8 years or more without any case at all cannot be with the spirit of the procedure established by law. It is correct that although minimum sentence to be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof qua the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony which he undergoes on account of protracted trial due to the fault of the prosecution by this Court in the exercise of its extra-ordinary jurisdiction."

19. The Hon'ble Apex Court in **Haripapda Das v. State of West Bengal**[11], in para No.6 held as under:

"6. This appeal is directed against the conviction of the appellant under Prevention of Food Adulteration Act for selling adulterated mustard oil. Although in the samples drawn by the Food Inspector, no impurity or objects injurious to health could be detected but it was found that the saponification value exceeded marginally than the prescribed limit and the B.R. reading also exceeded marginally than the prescribed limit. Considering the facts and circumstances of the case and also considering that the appellant was released on bail by this Court long back and because of the protracted litigation up to

[11] AIR 1999 SCC 1482

this Court he has also suffered a lot of mental agony and also financial hardship and also considering the fact that he had already undergone imprisonment for more than three weeks, we feel that in the facts of the case the ends of justice will be met if the sentence of imprisonment is reduced to the period already undergone. We, however, direct that besides the fine imposed by the Courts below, the appellant will have to pay a fine Rs. 5,000/- within four weeks from today, in default he will have to undergo imprisonment for three months. The appeals are disposed of accordingly. The bail bonds stand discharged."

20. The learned counsel for the revisionist has also relied on the judgment of the High Court of Rajasthan at Jodhapur in **Swaroopa Ram v. State of Rajasthan** in CRL.R.P.No.115 of 2007 dated 05.02.2025 wherein at page No.9 it is held as under:

"*9. This Court finds that the petitioner was a milk vendor and there is no reason available with it to disbelieve the report of the Public Analyst, wherein the sample of milk drawn from the petitioner was found to be Adulterated. However, in the opinion of this Court, since the incident relates to the year 1997 and the petitioner has suffered the agony and trauma of protracted trial for about 27 years coupled with the fact that the petitioner has spent some period in custody, it will be just and proper if the sentence awarded to him by the learned trial Court for the offence under section 7/16 of the Prevention of Food Adulteration Act, 1954 is reduced to the period already undergone by him."*

21. In fact, the right to speedy trial is a fundamental right as per the decision of the Hon'ble Supreme Court in **Hussainara Khatoon (IV) v. Home Secretary State of Bihar**[12]. This right includes speedy disposal of appeals. In addition to the appeals, the right to a speedy trial also includes criminal revisions as per the decision of the Hon'ble Apex Court in **Rajdeo Sharma v.**

[12] Air 1979 SC 1360

State of Bihar[13]. The petitioners were in incarceration for a period of more than 15 days. There are no similar adverse antecedents reported against the petitioners as fairly conceded by the learned Assistant Public Prosecutor.

22. In the facts and circumstances of the instant case, for the above reasons, this criminal revision case is disposed of confirming the conviction for the offence under Section 34 (a) of 'the Act.,' and sentencing the petitioners to suffer imprisonment to which the petitioners had already undergone, while imposing an additional amount of Rs.10,000/- towards fine each on the petitioners excluding the fine amount paid by petitioners pursuant to the judgment of the learned Appellate and Trial Courts.

23. The petitioners shall pay the additional fine amount of Rs.10,000/- (Rupees Ten Thousand Only) each within two months from the date of the receipt of this order before the learned Trial Court, failing which, the petitioners shall suffer three more months rigorous imprisonment.

24. The learned Special Judicial First Class Magistrate (Prohibition & Excise) Visakhapatnam shall take necessary follow-up steps.

25. There shall be no order as to costs. As a sequel, interlocutory applications, if any pending, shall stand closed.

Dr. Y. LAKSHMANA RAO, J

Dt: 16.06.2025
KMS

[13] 2000 (1) BLJR 37

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL REVISION CASE NO: 1060/2008

16.06.2025

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