HC-KAR

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 6TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO.200009 OF 2021

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

BETWEEN:

1. ANILKUMAR S/O BASAPPA BASGONDA,
   NOW AGED:38 YEARS, OCC: TAILOR,

2. SANJEEVKUMAR S/O BASAPPA BASGONDA,
   NOW AGED:32 YEARS, OCC: HOTEL BUSINESS,
   BOTH R/O. KANDGUL VILLAGE, TQ. HUMANABAD,
   DIST. BIDAR-585 330.

...PETITIONERS

(BY SRI ANIL KUMAR NAVADAGI, ADVOCATE)

AND:

Digitally signed by SUMITRA SHERIGAR
Location: HIGH COURT OF KARNATAKA

THE STATE THROUGH
MANNA-EKHELLI POLICE STATION,
TQ. HUMNABAD DIST. BIDAR,
BY THE ADDL. SPP HIGH COURT OF KARNATAKA,
KALBURAGI BENCH-585 103.

...RESPONDENT

(BY SRI JAMADAR SHAHABUDDIN, HCGP)

THIS CRIMINAL REVISION PETITION IS FILED U/S 397 R/W SECTION 401 OF CR.P.C PRAYING TO, SET ASIDE THE JUDGMENT AND ORDER DATED 05.03.2020 OF ADDL. CIVIL

JUDGE AND JMFC, HUMNABAD IN C.C.NO.82/2018 CONVICTING THE PETITIONERS HEREIN FOR OFFENCES U/SEC. 32 AND 34 OF K.E. ACT AND SENTENCING THEM TO SI FOR A PERIOD OF ONE YEAR AND FINE OF RS.6,000/- EACH AND CONSEQUENTLY BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER DATED 17.10.2020 PASSED BY II ADDL. DIST. AND SESSIONS JUDGE, BIDAR, BASAVAKALYAN BENCH IN CRL. APPEAL NO.18/2020 CONFIRMING THE JUDGMENT AND ORDER DATED 17.10.2020 OF ADDL. CIVIL JUDGE AND JMFC, HUMNABAD AND FURTHER BE PLEASED TO ACQUIT THE PETITIONERS ON ALL THE CHARGES FOR WHICH THEY WERE CONVICTED.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

(PER: HON'BLE MR. JUSTICE V SRISHANANDA)

Heard Sri Anil Kumar Navadagi, learned counsel for the revision petitioners and Sri Jamadar Shahabuddin, learned High Court Government Pleader for the respondent.

2. Revision petitioners are accused Nos.1 and 2, who suffered an order of conviction under Sections 32 and 34 of the Karnataka Excise Act in C.C.No.82/2018, on the file of learned Additional Civil Judge and JMFC, Humnabad by judgment dated 05.03.2020, confirmed by the First Appellate Court in Criminal Appeal No.18/2020 by judgment dated 17.10.2020.

3. Facts of the case for disposal of the revision petition are as under:

A charge sheet came to be filed by Manna-Ekhelli Police Station, Humnabad against the revision petitioners alleging that on 08.10.2017 Manna-Ekhelli police received a credible information about sale of illicit liquor and accordingly a raid team was formed and in the successful raid, 60 U.S. Whiskey bottles each containing 90 ML worth of Rs.1,687/- were seized in the presence of panchas. Admittedly, said seizure is from accused No.1 and even according to the panchanama, accused No. 2 ran away

from the spot and based on the information received from accused No.1, police filed charge sheet against accused Nos. 1 and 2 for the offences punishable under Sections 32 and 34 of the Karnataka Excise Act.

4. After due trial, both the accused persons were convicted, which was confirmed in the criminal appeal. Being further aggrieved by the same, accused persons are before this Court.

5. Learned counsel for the revision petitioners vehemently contended that both the Courts have not properly appreciated the material evidence on record and wrongly convicted the accused persons, resulting in miscarriage of justice and sought for allowing the revision petition.

6. He would further contend that even assuming that the entire case of the prosecution is to be accepted as true, insofar as accused No. 2 is concerned, the only material that is found in the charge sheet is the

information provided by accused No.1 and there is no independent enquiry conducted by the Investigation Officer insofar as accused No.2 is concerned to establish the nexus between accused No.2 and the incident and therefore, sought for allowing the revision petition at least insofar as the accused No. 2 is concerned.

7. *Per contra*, learned High Court Government Pleader supports the impugned judgments. He would further contend that absolutely there is no explanation forthcoming from accused No.1 for possession of 60 U.S. Whiskey bottles each containing 90 ML worth of Rs.1,687/-, which was seized under panchanama and therefore, the case of the prosecution stands established in toto.

8. He would further contend that accused No. 2 was present at the spot along with accused No.1 and he ran away from the spot. Therefore, it must be presumed that accused No.2 had also a hand in sale of illicit liquor

along with accused No.1, which has been rightly appreciated by both the Courts and sought for dismissal of the revision petition in toto.

9. Having heard the arguments of both sides, this Court perused the material on record meticulously. On such perusal of the material on record, it is crystal clear that under the panchanama, head of the raid party was able to seize 60 U.S. Whiskey bottles each containing 90 ML worth of Rs.1,687/-, in the presence of the panchas. Admittedly, accused No.1 did not possess the license or permit to possess such huge quantity of whiskey with him and therefore, it is termed as illicit liquor and rightly seized by the head of the raid party.

10. Admittedly, head of the raid party, police and panchas did not possess any animosity or previous enmity as against accused No.1 to depose falsely. Therefore, placing reliance on the testimony of the prosecution witnesses coupled with the seizure of illicit liquor under the

panchanama is sufficient enough to maintain the conviction in favour of the accused No. 1 is concerned.

11. However, with regard to accused No.2 is concerned, as rightly contended by learned counsel for the revision petitioners, there is no independent evidence placed on record except the confession statement made by accused No.1 before the Investigation Officer.

12. Mere confession statement made by accused No.1 about involvement of accused No.2 in the incident, in the absence of any sufficient corroboration, would not be sufficient enough to record an order of conviction as per the settled principles of law.

13. Therefore, conviction as against accused No.2 cannot be countenanced in law. Unfortunately, learned Judge in the First Appellate Court did not consider the arguments addressed on behalf of accused No.2.

14. Under such circumstances, the conviction order recorded by the learned Trial Judge confirmed by the First Appellate Court insofar as accused No.2 needs to be set aside. Hence, the following:

ORDER

a. Revision petition filed by petitioner No.1/accused No.1 is hereby dismissed.

b. Petitioner No.1/accused No.1 is granted time till 10.07.2025 to surrender before the Trial Court for serving the remaining part of sentence.

c. Revision petition insofar as petitioner No.2/accused No.2 is allowed and conviction of accused No.2 is hereby set aside and he is set at free if he is not required in any other case.

d. Bail bonds, if any, executed by accused No.2 stand cancelled.

e. Fine amount deposited by accused No.2 is ordered to be returned to him under due identification.

f. Order accordingly.

Sd/-
(V SRISHANANDA)
JUDGE

SRT
List No.: 1 Sl No.: 74
CT:PK