

**In the Court of Mrs. Amandeep Kaur, PCS,
Judicial Magistrate Ist Class, Jalandhar.
(UID No.PB0607)**

Case Type	CHI
Filing No.	26831/2019 Filing Date:16.12.2019.
Registration No.	2010/2019 Registration Date: 16.12.2019.
CNR No.	PBJL03-026831-2019
Date of Decision	21.4.2022.

State	VERSUS	Bunty son of Shashi Pal, resident of House No.B-11 685 Gandhi Camp, Jalandhar.
		 Accused.

FIR No.17 dated 4.2.2019.
U/s 61/1/14 of the Punjab Excise Act, 1914
and under section 188 IPC.
P.S. Division No.2, Jalandhar.

Present; Sh. Nikhil Nahar, Learned APP for the State.
Accused on bail with counsel Sh. Satnam, Advocate.

JUDGMENT:

1. The above-named accused has been sent to face trial for the offence under Section 61/1/14 of The Punjab Excise Act, 1914 and under section 188 Indian Penal Code by the Officer Incharge of Police Station, Division No.2, Jalandhar.

2. Tersely, the case of the prosecution is that on 4.2.20-19, ASI Gursharan Singh alongwith other police officials, on private vehicles, in connection with patrolling and checking of bad elements was present at Workshop Chowk, Jalandhar, where one informer gave secret information that Bunty son of Shashi Pal is present at Dana Mandi and is selling liquor and

(Amandeep Kaur), PCS
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china dor on vehicle bearing No.PB08- AU-8545 make Tempu Trex. He further stated that if raid is conducted immediately, he can be apprehended with huge quantity of liquor and china door. Thereafter, on finding the information to be credible and trustworthy *ruqa* was sent to the police station by hand, through C Amarjit Singh for registration of FIR. Thereafter, ASI Gursharan Singh along with police party reached at the disclosed place as informed by the informer, they saw that one person was seen sitting in Tempu Trex bearing No.PB08-AU-8545 white in colour and on seeing the police party, he tried to flee away but he was apprehended by ASI Gursharan Singh with the help of other police officials. On inquiry, he disclosed his name as Bunty son of Shashi Pal. During investigation, he disclosed that the vehicle i.e. Tempu Trex bearing No.PB08-AU-8545 belonged to his friend Harjinder Singh in which he had to sell liquor and china dor to unknown person at Dana Mandi, Jalandhar. He also stated that he has purchased the said liquor and dor from one person at Railway Station, Jalandhar but whereabouts and name of said person is not known to him. Before conducting the search of said vehicle, ASI Gursharan Singh tried to join independent public witness, but nobody was ready to join and thus in the presence of the police party search of Tempu Trex bearing No.PB08-AU-8545 was conducted and 5 bottles of liquor make First Choice Whiskey was recovered from the said vehicle measuring 750-750 ml each. Accused could not produce any licence or permit for keeping the possession of said liquor. Thereafter, Investigating Officer arranged for one bucket, one empty plastic cane and one pawa and liquor amounting to 3750 ml was poured in bucket and one sample of

180 ml was separated as sample and sealed with seal bearing impression 'GS' and remaining liquor i.e. 3570 ml of liquor mark First Choice Whiskey was put in the plastic canny by the IO and same was sealed with seal bearing impression 'GS'. Seal after use was handed over to HC Gurmit Singh. Sample seal was prepared and form M-29 was prepared at the spot. Thus, the accused was found to have committed an offence under section 61/1/14 of The Punjab Excise Act, 1914 being in possession of 5 bottles of liquor mark First Choice Whiskey without any permit or license. Thereafter, IO ASI Gursharan Singh also conducted the search the backside of the said Tempu and plastic bora was recovered on the back of Tempu which was checked and same was containing 60 gattus of China dor and they were put into the same bora plastic and same was sealed with his seal bearing impression 'GS'. Seal after use was handed over to HC Gurmit Singh. Case property was taken into police possession vide separate recovery memo. Accused was arrested, memos were prepared. Site plan of the place of recovery was also prepared. The case property was deposited with MHC of Police Station Division No.2, Jalandhar. Sample parcel was deposited by hand through C-Manpreet Singh with office of Chemical Examiner, Kharar. After completion of the Investigation and other formalities, challan has been presented against the accused in the court for judicial verdict.

3. On the presentation of challan, copy of report under Section 173 CrPC and documents were supplied to the accused, free of costs, as provided under Section 207 CrPC.

4 After hearing Learned APP for the State and Counsel for the

accused, as the *prima-facie* case was made out against the accused, charge under section 61/1/14 of The Punjab Excise Act, 1914 and notice under Section 188 of Indian Penal Code was framed against the accused to which he pleaded not guilty and claimed trial.

5. In order to prove its case and to bring home the guilt of the accused, prosecution has examined PW1 MHC Gurdarshan Singh, PW2 ASI Gursharan Singh- Investigating Officer, PW3 Arvinder Singh, Jr. Assistant from the office of RTA, Jalandhar, PW4 ASI Gurmeet Singh- recovery witness and PW5 C- Manpreet Singh- sample carrier. Thereafter, learned APP for the State, vide his separate statement, closed the prosecution evidence.

6 After closure of prosecution evidence, statement of the accused under Section 313 Cr.P.C. was recorded by putting all the incriminating evidence appearing against him to which he denied alleging the same to be incorrect and pleaded his false implication. Accused pleaded that he is innocent and has committed no offence. A false case has been registered against him.

7. In defence evidence, accused did not examine any witness and closed the same.

8. I have heard the arguments of learned APP for the State as well as learned counsel for accused and gone through the evidence and documents on file carefully.

9. From the arguments of learned APP for state and learned defence counsel for accused following fact in issue emerges:

(i) On 4.2.2019 at about 4:20 PM in the area of Dana Mandi, Jalandhar, within the ambit of PS Div no.2 Jalandhar accused was found in conscious possession of 5 bottles of liquor mark First Choice Whiskey measuring 750/750 ml each without any permit or license and thereby committed an offence punishable under Section 61(1) of the Punjab Excise Act, 1914.

ii) On 4.2.2019 at about 4:20 PM in the area of Dana Mandi, Jalandhar, within the ambit of PS Div no.2 Jalandhar accused violated the order No.17633-73 dated 27.11.2018 passed by the Commissioner of Police, Jalandhar by selling restricted Chinese Kite String (dor)

10. Learned APP for the State has vehemently contended that the Investigating officer as well as recovery witness examined by the prosecution have proved the factum of recovery of 5 bottles of liquor mark First Choice Whiskey from the possession of accused. He has further argued that it has been proved on record that accused has violated the order No.17633-73 dated 27.11.2018 passed by the Commissioner of Police, Jalandhar by selling restricted by selling restricted Chinese Kite String (dor). He has prayed that the accused be convicted and sentenced accordingly.

11. On the other hand, learned defence counsel has argued that nothing was recovered from the accused. He has argued that accused has been falsely implicated in this case and nothing has been recovered from him. Learned defence counsel has argued that the prosecution case is

based on the statements of official witnesses only and it is not supported by any independent corroboration. He argued that no reliance can be placed on the statements of official witnesses which are not corroborated by any independent testimony. He has prayed that case of the prosecution is doubtful and accused be acquitted by giving him benefit of doubt.

12. In order to prove its case, prosecution has examined PW1 MHC Gurdarshan Singh, who deposed that on 4.12.2019, he was posted as MHC at P.S. Division No.2, Jalandhar. On that day, IO ASI Gursharan Singh deposited with him case property of the present case i.e. one sample paau measuring 180 ml duly sealed with seal impression 'GS' containing liquor mark First Choice Whiskey, one plastic cane duly sealed with seal impression 'GS' containing liquor measuring 3570ml mark First Choice Whiskey, one bora plastic duly sealed with seal impression 'GS' containing 5 empty bottles of liquor mark First Choice Whiskey, form M29 and sample seal and one vehicle bearing No.PB08-AU-8545. He further deposed that IO ASI Gursharan Singh also deposited with him one gunny bag duly sealed with seal impression 'GS' containing 60 gattu of china dor. Regarding the same entry was made by me in the register No.19 on the same day. He further deposed that on 14.2.2019, he acquired the above said sample paau of liquor mark First Choice Whiskey duly sealed with seal impression 'GS' along with form M-29 and sample seal from the Malkhanna of the police station and handed over the same to Ct- Manpreet Singh for depositing the same with FSL Kharar vide RC

No.42/21. He further deposed that Ct. Manpreet Singh, after depositing the same with FSL Kharar brought the receipt and handed over the same to him on the same day. He further stated that neither he has tempered the case property nor allowed anyone to temper the case property till the same remained with him.

13. Thereafter, prosecution examined PW2 ASI Gursharan Singh- Investigating Officer and during his examination-in-chief, he supported the prosecution version. He further proved on record *ruqa* as Ex.P1, FIR as Ex.P2, recovery memo of sample nip and vehicle as Ex.P3, recovery memo of bora plastic containing 60 gattus of Chinese Kite String as Ex.P4, arrest-cum-intimation memo as Ex.P5, personal search memo as Ex.P6, disclosure statement of accused as Ex.P7, site plan as Ex.P8, application regarding verification of number of recovered Tempu Trex as Ex.P9, copy of order of DC as Ex.P10, complaint under section 195 CrPC as Ex.P11, Copy of form M-29 as Ex.P12, Chemical Examiner Report as Ex.P13, case property i.e. cane as Ex.Mo1, Tempu Trex as Ex.Mo,2 and Chinese Kite String (dor) as Ex.Mo3. He further identified the accused present in the court.

14. Thereafter, prosecution examined PW3 Arvinder Singh, Jr. Assistant from the office of RTA, Jalandhar who brought the record i.e. computerized report of registration certificate bearing No.PB08-AU-8545 which stand in the name of Surinder Singh Arora. He further deposed that he has seen the report from Secretary RTA, Jalandhar on the

judicial file and copy of the same as EX.PW3/A.

15. Thereafter, prosecution examined PW4 ASI Gurmeet Singh member of the police party headed by ASI Gursharan Singh, while stepping into witness box, has fully corroborated the version of PW2 ASI Gursharan Singh- Investigating Officer.

16. Thereafter, prosecution examined PW5 C- Manpreet Singh, who deposed that on 14.2.2019, MHC Gurdarshan Singh handed him one sample parcel containing 180 ml liquor mark First Choice Whiskey sealed with the seal bearing impression 'GS' along with form M-29 and sample seal and deposited the same vide road number 42/21 in the office of Chemical Examiner, Kharar. Thereafter, after depositing the sample with Chemical Examiner, Kharar on 14.2.2019, he handed over the receipt to MHC in the evening. He further stated that neither has he tempered with the case property nor allowed anyone to temper with the case property till the same remained with him.

17. As per the case of prosecution, recovery of 5 bottles of First Choice Whiskey and 60 gatts of Chinese Kite String was effected from the possession of accused on 4.2.2019 and same were taken into possession vide recovery memo Ex.P3 and Ex.P4 respectively. The case of the prosecution is simply based on the testimony of PW1 MHC Gurdarshan Singh, PW2 ASI Gursharan Singh, PW3 Arvinder Singh, Clerk, PW4 ASI Gurmeet Singh and PW5 Manpreet Singh.

18. I have heard the submissions addressed by the Learned APP for

the State and by the Learned counsel for the accused and carefully perused the documents on record. I have given my thoughtful consideration to the rival contentions of both the counsels.

19. The rival contentions raised by Learned counsel for the accused have been discussed threadbare hereinafter.

20. Firstly, the learned counsel for the defence has argued that the accused has been falsely implicated and nothing has been recovered from him. This court is of the considered view that the counsel for the accused has neither led any defence evidence nor has he been able to prove on judicial record any ill-motive, malafide or enmity with the police officials which would have led to his false implication in the present case.

21. Secondly, the contention of learned defence counsel is that no independent witness has been joined by the police party and this fact creates doubt on the story of prosecution. The said contention carries no weight. No doubt police did not join any independent witness at the time of alleged recovery, but the aforesaid infirmity in the investigation has not caused any dent to the prosecution version because the accused has not proved on record that he has been prejudiced with non-joining of independent witness. So far as the evidence of the official witness is concerned it cannot be discarded in absence of any contradictory evidence that the official witnesses have any enmity with the accused person. Further, the learned counsel for the accused had opportunity to cross examine the prosecution witnesses but he failed to point out any material

discrepancy in the testimony of official witnesses. Merely because PW1, PW2, PW3, PW4 and PW5 are official witnesses this does not mean that their evidence will not be taken into consideration. When the evidence of prosecution witnesses is consistent, cogent and flawless, then such evidence is to be taken into consideration. There is no rule of law that the accused cannot be convicted on the statement of official witnesses without independent corroboration, when the evidence of official witnesses is cogent, convincing and reliable. This court is inclined to mention the findings of Hon'ble Punjab & Haryana High Court given in a case titled as **Davinder Kumar vs State of Punjab 2012(1) PLR 419** wherein it has been held that :

“The testimonies of police officials having no infirmity in their evidence. These inspire confidence. Examination of independent witness is a rule of prudence and not of necessity. In case where deposition of official witness is found reliable and credible by the court it will not discard the same mere on the ground that an independent witness has not been examined. It is only in cases where there is some doubt, the court will insist for the testimony of independent witness. In the given facts and circumstances of each case while applying rules of appreciation, the court may ignore non examination of independent witness or may insist for his examination”

The Hon'ble High Court has again affirmed its observation in a case titled as **Major Singh vs State of Haryana 2013(1) RCR (Cr) 141** by holding:

“all the prosecution witnesses have duly corroborated its

*version on all vital counts, their testimony cannot possibly
discarded merely on the ground that they are police officials.”*

The Hon’ble Supreme Court in the case of ***Appa Bai and Ors. v. State of Gujrat, AIR 1988 SC 696***, observed “the prosecution story cannot be thrown out, on the ground that an independent witness had not been examined by the prosecution. It was further held in the said authority that the civilized people, are generally insensitive when a crime is committed, even in their presence, and they withdraw from the victim’s side, and from the side of the vigilant. They keep themselves away from the Courts, unless it is inevitable. Moreover, they thinking the crime like a civil dispute between two individuals and do not involve themselves, in it.” Further, in the case of ***State, NCT of Delhi v. Sunil and another, (2001)1 SCC 652*** it was observed “it is an archaic notion that action of the police officer should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police record was untrustworthy. As a proposition of law, the presumption should be the other way round. The official acts of the police have been regularly performed is a wise principle of presumption and recognized even by the legislature.”

Moreover, the presumption that a person acts honestly applies as much in favour of a police personnel as of any other person. It is not a proper

judicial approach to distrust and suspect them without reasonable grounds. In the given circumstances, testimonies on record all the prosecution witnesses neither can be said to be unreliable nor can be merely discarded on the ground that they are police officials.

22. Thirdly, the contention of learned counsel for the defence is that there are discrepancies in the testimonies of prosecution witnesses. The Hon'ble Supreme Court in **Sohrab S/o Beli Nayata and Anr Vs. The State of Madhya Pradesh (1972) 3 SCC 751**, held about minor contradiction in the statements of prosecution witnesses that merely because there have been discrepancies and contradictions in the evidence of some or all of the witnesses it does not mean that entire evidence of the prosecution had to be discarded. It is only after exercising caution and care and shifting the evidence to separate the truth from untruth exaggeration, embellishments and improvement, the Court comes to the conclusion that what can be accepted implicates the appellants and it will convict them. The Hon'ble Supreme Court has also held that *falsus in uno falsus in omnibus*, is not a sound rule for the reason that hardly anyone comes across a witness whose evidence does not contain a grain of untruth or at any rate some exaggeration, embroideries or embellishments. Moreover, the learned counsel could not raise any inconsistency with regard to mode and manner of the recovery effected from the accused and said recovery has been duly proved by the prosecution.

23. As per the case of prosecution, the accused has violated order No.

17633-73 dated 27.11.2018 issued by DCP, Jalandhar by selling restricted Chinese Kite String (dor). In order to prove the same, the prosecution examined above-mentioned witnesses. The very basis of the case is the order of DCP, Jalandhar No.17633-73 dated 27.11.2018, wherein, restriction regarding the usage of Chinese Kite String (dor) have been made. PW2 ASI Gursharan Singh-Investigating Officer and PW4 ASI Gurmeet Singh-recovery witness has proved on record Ex.10 copy of order No.17633-73 dated 27.11.2018. Perusal of said order reveals that the restrictions regarding selling, storing and purchase of Chinese Kite String (dor) have been laid down. PW1 MHC Gurdarshan Singh, PW2 ASI Gursharan Singh-Investigating officer, PW3 Arvinder Singh, PW4 ASI Gurmeet Singh-recovery witness and PW5 C- Manpreet Singh have proved on record that on 4.12.2019 accused Bunty was found selling restricted Chinese Kite String (dor) and has thus violated the order of DCP, Jalandhar. The complaint under section 195 CrPC Ex.11 has been duly proved on record. The learned counsel for defence has failed to extract anything material from the cross-examination of these witnesses favourable to accused leading to his acquittal. As such, from the cogent and convincing testimony of prosecution witnesses, it has been proved on record that the accused on 4.12.2019, despite the order of DCP, Jalandhar, was found selling restricted Chinese Kite String (dor) and has thus violated the said order.

24. In order to attract Section 188 IPC, the following ingredients have to be proved, namely:- (1) that there must be an order promulgated by the public servant; (2) that such public servant is lawfully empowered

to promulgate it ; (3) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management has disobeyed; and (4) that such disobedience causes or tends to cause (a) obstruction, annoyance or risk of it to any person lawfully employed; or (b) danger to human life, health or safety; or (c) a riot or affray as held in **Ram Manohar Lohia Vs. State of U.P. AIR 1968 All 100: 1968 CrLJ 281 (DB)**. In the instant case, from the testimony of PW2 ASI Gursharan Singh- Investigating Officer and PW4 ASI Gurmeet Singh-recovery witness, the prosecution has proved that there was an order duly promulgated by the public servant and the said public servant was lawfully empowered to promulgate the said order. The accused Bunty has disobeyed the order with the knowledge of the said order and sold restricted Chinese Kite String (dor) in disobedience of the said order and the said disobedience committed by the accused causes or tends to cause obstructions, annoyance or risk of it to any person lawfully employed, or causes danger to human life, health of safety. The restricted Chinese Kite String (dor) often causes, immense physical damage to humans animals and birds.

25. In view of my above made discussion, judicial precedents and from the testimonies of prosecution witnesses, this court is of the considered view that there remains no doubt in the mind of the court that recovery of liquor i.e.,5 bottles of liquor mark First Choice Whiskey

resembling Whiskey and 60 gattus of Chinese Kite String were effected from the accused without any permit or licence the prosecution has been able to prove that accused has violated the order No.17633-73 dated 27.11.2018 passed by the Deputy Commissioner of Police, Jalandhar by selling restricted Chinese Kite String (dor) in his house and as such he has committed offence under section 61/1/14 of Excise Act and section 188 IPC. Accordingly, I convict the accused for offence punishable under Section 61/1/14 of Excise Act and under section 188 of Indian Penal Code. Let he be heard on the quantum of sentence.

Pronounced.
21.4.2022
Sukhwinder Singh

(Amandeep Kaur), PCS,
Judicial Magistrate Ist Class,
Jalandhar/UID No.PB0607

QUANTUM OF SENTENCE:

Present:- Convict with defence counsel.
Learned APP for the State.

The convict has been heard on the quantum of sentence. The convict has prayed that he is poor person and is only bread winner of his family. He prayed that lenient view be taken. With regard to sentence for offence under section 61/1/14 of the Punjab Excise Act, the court is of he considered view that keeping in view the nature of offence under Section 61/1/14 of Excise Act, family circumstances of convict, this court is of the view that it is a fit case where benefits of probation can legitimately be granted to the convict. As such, the convict is ordered to be released on probation on his furnishing personal probation bond in the sum of

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Rs.10,000/- for a period of six months with an undertaking to be of good behavior and to maintain peace and tranquility during said probation period, failing which, he would come to the Court to receive the sentence as and when so called by the Court to do so. The convict is also burdened to pay Rs.500/- as costs of litigation. With regard to sentence for offence under section 188 IPC the court is of the considered view that keeping in view the nature of offence under section 188 IPC, I sentence the convict, to pay fine of Rs.200/- and in case of default in payment of fine, he shall undergo simple imprisonment for a period of five days. Costs of litigation paid and fine deposited against proper receipt. The case property, if any, be disposed of as per rules after the expiry of period of appeal/revision, if any. File be consigned to the record room, after due compliance.

Pronounced.
Dt:21.4.2022.
Sukhwinder Singh

(Amandeep Kaur), PCS,
Judicial Magistrate Ist Class,
Jalandhar/UID No.PB0607