

**IN THE COURT OF GAURAV KHATANA, SUB DIVISIONAL
JUDICIAL MAGISTRATE, MOHINDERGARH**

Crl. Case No.517 of 2022

Date of Institution: 12.10.2022

Date of Decision: 16.10.2024

State Vs. Mahender son of Rampat,
Resident of Pathera, Police Station
Sadar, Mohindergarh.
.....accused

FIR No.303 dated 19.09.2022

Under Section: 72 (C) Excise Act & 294
IPC

Police Station: City Mahendergarh.

Present: Sh. Praveen Kumar, Ld. Assistant Public Prosecutor for
the State.
Accused person namely Mahender on bail with Sh. Sant
Kumar Yadav, Advocate.

JUDGMENT :-

On being sent up by Police Station City Mahendergarh, the
above named accused person is facing trial under Section 72 C Excise Act
and 294 IPC. The case of the prosecution as made out from the complaint
lodged by the complainant SI Abdul Majeed be first noticed as under:-

2. As per the complainant, on 19.09.2022, upon receiving a
secret information, a raiding party was organized and a raid was
conducted at night, at Chamdhera Road, Mohindergarh and it was found
at the spot that one person was roaming on his Motorcycle bearing No.

HR-34H-7843 and upon checking, smell of alcohol was coming from the mouth of aforesaid person. On demand, aforesaid person could not produce the requisite documents of his aforesaid Motorcycle. On enquiry, aforesaid person disclosed his name and address as Mahender son of Rampat, Resident of Pathera, Mohindergarh. Motorcycle got impounded. Aforesaid Mahender got medically examined. Thereafter, the present FIR was registered. Investigation was carried out. Site plan was prepared. Statements of the witnesses were recorded. On finding incriminating evidence against said Mahender, he was arrested. On the basis of statement, Section 294 IPC was added. Accused was released on police bail. After completion of the necessary formalities, Challan under Section 173 Cr.p.c. was presented before this Court.

3. Copy of challan was supplied to the accused person as envisaged under Section 207 Cr.P.C free of cost.

4. On finding a prima-facie case against the accused person under Section 72C (A) of the Excise Act and 294 IPC, the charge against the accused was framed on 15.03.2023, to which, he pleaded not guilty and claimed trial.

5. In order to bring home the guilt of accused, the prosecution has examined a total of **four** witnesses.

L/ASI Snehlata, the Investigating Officer of the present case (hereinafter referred in short 'IO') while being examined as **PW1** proved the Site Plan as Ex. PW1/A. She fully corroborated the

entire prosecution version. During her cross examination, she deposed that no independent witnesses were joined during the investigation of the present case despite availability. She further deposed that she did not take into possession anything from the accused. She denied all the other suggestions put to her by the defence counsel.

Dr. Vivek Sharma, Medical Officer, Government Hospital, Mohindergarh (hereinafter referred in short 'MO') while being examined as **PW2** proved medical examination as Ex. PW2/A and deposed that the same bears his signatures. During his cross-examination, he deposed that such type of smell may also be detected after consuming some homeopathic medicine and cough syrup.

HC Anil while being examined as **PW3** proved the FIR Ex. PW3/A and FIR Endorsement Ex. PW3/B and deposed that the same bears his signatures. During his cross-examination, he deposed that he was not involved in the investigation of the present case.

Retd. SI Abdul Majeed, the complainant of the present case while being examined as **PW4** proved the application given to Doctor for conducting medical examination of accused as Ex. PW4/A and application/complaint as Ex. PW4/B. He fully corroborated the entire prosecution version. During his cross examination, he deposed that in the present case, complainant as well as the IO is the police itself. He further deposed that accused did not consume alcohol in their presence. He further deposed that no independent witnesses were joined during the

investigation of the present case. He denied all the other suggestions put to him by the defence counsel.

Thereafter, the evidence of the prosecution was closed by learned APP for the State by making a separate statement dated 15.10.2024.

6. Statement of accused under Section 313 Cr.P.C. was recorded, wherein the accused denied all the allegations of the prosecution and pleaded innocence. He opted to lead evidence in his defence. However, accused did not lead any evidence in defence and he closed the same vide a separately recorded statement.

7. I have given a thoughtful consideration to the contentions raised by learned APP for the State and learned defence counsel and have gone through the record available of case file very carefully.

8. Learned Assistant Public Prosecutor for the State submitted that the prosecution has successfully established the charge against the accused by examining all the relevant prosecution witnesses. He further prayed that the accused may be held guilty and stringent punishment may be awarded to him.

9. To counter poise, learned defence Counsel submitted that the accused has been falsely implicated in this case. He further prayed that benefit of doubt may be extended to the accused and he may kindly be acquitted.

10. After having considered the testimonies as well as documents

placed on record, this Court is of the considered view that the prosecution has failed to prove the charge against the accused for the reasons mentioned here in after.

11. In the present case, the police was duty bound to join independent witness to ensure the authenticity of this case. Further, it has come on record that the IO did not take in possession anything from the accused. Even complainant in the present case is the police itself. The IO L/ASI Snehlata while being examined as PW1 has categorically testified during her cross-examination that no independent witnesses were joined during the investigation of the present case despite availability and that she did not take into possession anything from the accused. For lack of independent witnesses the entire prosecution version turned Topsy-turvy. In these circumstances, a shadow of doubt has been cast on the version of prosecution.

Moreover, in the present case, SI Abdul (now Retd.) the complainant of the present case while being examined as PW4 testified during his cross-examination that in the present case, complainant and IO is the police itself and that accused did not consume alcohol in their presence and that no independent witnesses were joined during the investigation of the present case.

Moreso, Dr. Vivek Sharma while being examined as PW4 testified during his cross-examination that such type of smell may also be detected after consuming some homeopathic medicine and cough syrup.

A perusal of the testimony of the IO reveals that he did not take in possession anything from the accused. Further, he did not join any independent witnesses in the present case. A perusal of the testimony of the complainant reveals that accused did not consume liquor in their presence. A perusal of the testimony of the Doctor reveals that such type of smell may also be detected after consuming some homeopathic medicine and cough syrup.

The statement given by witnesses during their examination does not inspire confidence and creates suspicion in the mind of the Court.

12. Further no independent witnesses were joined in the present case. In **“State of Punjab Vs. Gurmej Singh” 1991(2) RCR 361**, it has been held that where the police has not joined any person as independent witness of the recovery from the possession of the accused the the whole case of the prosecution becomes doubtful. The witnesses examined by the prosecution are official witnesses who are always interested in success of the official version. Therefore, mere statements of police officials were not sufficient to maintain conviction of the respondent. The demanding degree of proof traditionally required in a criminal case and the devaluation suffered by a witness who is naturally involved in the fruits of his investigative efforts suggests the legitimate search for corroboration, from any independent or unfaltering source, the human or circumstantial, to carry conviction in the mind of the Court,

which is lacking in the present case. The accused cannot be held guilty on the basis of their uncorroborated testimonies.

13. Further, in the present case it is quite apparent from the facts of the case that the complainant i.e. SI Abdul Majid PW4 is also the initial IO of the accused and he arrested the accused in the present case and later on the IO was called to the spot and he handed him over to the IO. Further, a perusal of the record reveals that no one was even found drinking liquor at the spot and nothing was taken from the possession of the accused, the same also weakens the prosecution version. Moreover, all the witnesses being official witnesses also weakens the prosecution version and in the absence of the independent corroboration, the prosecution version becomes highly suspicious and accordingly, loses the confidence of the court. However, if testimony of Doctor is taken into consideration, but at this stage, he in his cross-examination has categorically stated that such type of smell may also be detected after consuming some homeopathic medicine and cough syrup.

In case titled as **Megha Singh Versus State of Haryana 1997 (2) RCR Criminal 3** Hon'ble Supreme Court discouraged such practice and held that such practice should not be resorted to so that there may not be occasion to suspect fair and impartial trial. In **Mukhtiar Ahmed Anshari Versus State (N.C.T. of Delhi) 2005(2) RCR (Criminal) 863**, in which Hon'ble Supreme Court of India held that where the Investigation was conducted by the very same police official

who had lodged the complaint there is an absence of independent corroboration, accordingly no conviction can be recorded in such cases, **1997(2) RCR (Cr1.) 3(SC)**. Therefore, there are various flaws in the case of the prosecution, which cannot be ignored.

In view of the testimonies of the prosecution witnesses it was pertinent for the prosecution to corroborate the prosecution version through some independent source but they have miserably failed to do so.

14. In view of foregoing discussion, this Court is of the considered opinion that in such circumstances accused is entitled for benefit of doubt because case of the prosecution, in absence of joining of independent witnesses and for being supported only by police officials, is doubtful in nature and accused deserves to be acquitted of all the charges framed against him.

15. No doubt wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent man, the consequences of conviction of an innocent man are far more serious and its reverberations cannot but be felt in a civilized society, therefore, it is the duty of the court to avoid any wrongful convictions and to grant benefit of doubt wherever the need arises.

16. In view of the aforesaid discussion, the prosecution has failed to prove its case against the accused beyond reasonable shadow of doubts. It is settled principle of law that where the prosecution fails to dispel the

doubts, the benefits must be given to the accused. Hence, *the accused namely Mahender son of Rampat is hereby acquitted of the charges framed against him*. Accused is directed to furnish bail bond in the sum of Rs.20,000/- with one surety for compliance under Section 437-A Cr.P.C. Bonds shall remain enforceable for a period of six months in order to secure his presence before the learned Appellate Court, if required. At this stage, the accused has submitted before the court that he has no arrangements for surety and his previous furnished bail bonds surety bonds may kindly be restored in compliance of the Order of the Court. Heard. Keeping in view the facts and circumstances, the bail bonds and surety bonds already on record furnished on behalf of the accused are accordingly restored. Bonds shall remain enforceable for a period of six months in order to secure his presence before the learned Appellate Court, if required. The accused be set at liberty. Case property, if any on record, be dealt with as per law and *file be consigned to the record room after due compliance*.

Announced in the open court.
Dated: 16.10.2024

Gaurav Khatana,
SDJM, Mohindergarh
(UID No. HR-0426)

Note: All the pages of this Judgment have been checked and signed by me.

Gaurav Khatana,
SDJM, Mohindergarh
(UID No. HR-0426)

(Meena, Stenographer-II)