IN THE COURT OF MS. NEETU SHARMA, ADDITIONAL CHIEF JUDICIAL MAGISTRATE-01, TIS HAZARI COURT, CENTRAL: DELHI.

STATE VS. VIJAY KUMAR
FIR No. 306/2023
PS: Pahar Ganj

J U D G M E N T

(a)	Cr. Case No.	3759/2026
(b)	CNR No.	DLCT020005992026
(c)	Date of offence	05.05.2023
(d)	Name of complainant	**ASI RANBIR SINGH**
(e)	Name of accused	**VIJAY KUMAR** S/o Lt. Sh. Jagdish Singh, R/o H. No. 230, Ghee Mandi, Paharganj, Delhi.
(f)	Offence	Section 33 of Delhi Excise Act, 2009.
(g)	Plea of accused	Pleaded not guilty.
(h)	Final Order	**ACQUITTED**
(i)	Date of institution	19.02.2026
(j)	Date when judgment was reserved	16.05.2026
(k)	Date of judgment	03.08.2026

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1. Vide the present judgment, the case instituted on the basis of FIR No. 306 of 2023 registered at Police Station Paharganj.

2. Case as emerging from the chargesheet is that on 05.05.2023, ASI Ranbir Singh and HC Ashok Kumar were on routine patrolling duty pursuant to DD No. 74A. At about 4:30 PM, while they were present near the Outer Circle, Connaught Place, behind the shops adjacent to the public toilet, a secret informer approached them and conveyed that a person was storing and selling illicit liquor from behind the shops. The information was immediately conveyed telephonically to the SHO, who directed the police officials to conduct a raid without delay. Acting on the information, the raiding party reached the indicated spot along with the secret informer. At the spot, the police noticed one person sitting behind the shops with three white plastic sacks. On seeing the police party, the person allegedly attempted to remove the sacks from the spot but was apprehended with the assistance of HC Ashok Kumar. On enquiry, he disclosed his name as Vijay Kumar. When questioned regarding the contents of the sacks, he allegedly failed to furnish any satisfactory explanation. The police checked the sacks and allegedly recovered liquor bottles bearing labels indicating that they were meant for sale only in the State of Haryana.

3. The first sack was found to contain 75 bottles (180 ml each) of W&B White & Blue Reserve Whisky Blended with Scotch – For Sale in Haryana Only, out of which two bottles were separated as sample bottles and marked A-1 and A-2. The second sack contained 42 bottles (180 ml each) of All Seasons Golden Collection Reserve Whisky – For Sale in Haryana Only,

from which two bottles were drawn as samples and marked B-1 and B-2. The third sack contained 24 bottles of 180 ml and 8 bottles of 375 ml of OCB Officer's Choice Blue Exquisite Grain Whisky – For Sale in Haryana Only. One 180 ml bottle and one 375 ml bottle were taken as samples. Thus, a total of 149 bottles of liquor were allegedly recovered from the possession of the accused, and six sample bottles were prepared.

4. Police registered an FIR and investigated the matter. During interrogation, the accused allegedly disclosed that he had become unemployed during the COVID period and had been induced by an unknown person named Bhura to sell liquor brought from Haryana near the Railway Station and Connaught Place on a profit-sharing basis. He expressed regret for his conduct. The investigating officer thereafter completed the arrest formalities, informed the accused's brother regarding the arrest, and released the accused on police bail since the offence was bailable. The seized case property was deposited in the malkhana in sealed condition, statements of witnesses under Section 161 Cr.P.C. were recorded, and the sealed sample bottles were forwarded to the Delhi Excise Laboratory, ITO for chemical examination. The Excise Laboratory subsequently reported that all the six samples tested positive for ethyl alcohol and possessed the composition of whisky. Upon completion of investigation and finding sufficient material against the accused, the Investigating Officer concluded that Vijay Kumar had committed an offence punishable under Section 33 of the Delhi Excise Act by possessing liquor meant for sale in Haryana without lawful authority. Accordingly, the present charge-sheet has been filed before the Court seeking his trial.

5. Court took cognizance and supplied copy of chargesheet to the accused. Charge was framed against accused for offence under Section 33 of Delhi Excise Act to which he pleaded not guilty and claimed trial.

6. Matter was put up for trial during which the prosecution examined 3 witnesses and relied upon certain documents. The same are given in Annexure-A herewith.

7. After conclusion of evidence, statement of accused was recorded for the purpose of Section-313 CrPC. He denied his involvement and claimed false implication. He however did not lead any evidence in defence. Both the sides have advanced their final arguments. This judgment will dispose of the case.

8. Perusal of the record shows that the prosecution has not been able to prove its case.

<u>Failure to associate any independent public witness</u>

9. The alleged recovery was effected at about 4:30 PM near the Public Toilet, Outer Circle, Connaught Place, one of the busiest commercial areas of Delhi. Despite the availability of numerous shopkeepers, passers-by and other members of the public, no independent witness was joined at any stage of the recovery, seizure, sealing or arrest proceedings. PW-3 candidly admitted that no public person was examined by him and that no notice under Section 160 Cr.P.C. was served upon any person who allegedly refused to join the investigation. He further admitted that he did not even note down the names and addresses of such persons. PW-1 and PW-2 also admitted that no public witness had been joined during investigation. Such admissions assume significance because there was sufficient opportunity to

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associate independent witnesses and no convincing explanation has been offered for their non-joining.

Absence of proof showing presence of police

10. The entire prosecution story begins with the police party allegedly being on routine patrolling duty. However, both PW-1 and PW-2 admitted during cross-examination that no duty roster or roznamcha entries showing the place of duty, nature of duty and duty hours of the recovery witnesses form part of the judicial record. PW-3 also admitted that such entries are not on record. Copy of a DD 74A is though available but it does not show the place, nature of duty or duty hours of the patrolling. In the absence of these official records, the prosecution has failed to corroborate the presence of the recovery witnesses at the alleged place and time of occurrence. This omission strikes at the very foundation of the prosecution version.

Defective handling of the seal

11. Although the prosecution asserts that the case property was sealed with the seal "RS", the evidence regarding the custody and return of the seal is deficient. PW-3 admitted in cross-examination that **he had not prepared any returning-over memo of the seal**. PW-1 and PW-2 also stated that they did not know whether any such memo had been prepared and admitted that no such document exists on the judicial file. The absence of a proper seal-return memo leaves open the possibility of access to the seal after the alleged recovery and weakens the sanctity of the sealing process.

Recovery proceedings not photographed or videographed

12. PW-1 and PW-2 admitted that they did not know whether ASI Ranbir had photographed or videographed the recovery

proceedings. The investigation record does not contain any photographs or video recording. Considering that the recovery allegedly took place in a public place in broad daylight, the failure to preserve any electronic evidence is a significant omission and deprives the prosecution case of objective corroboration.

Entire prosecution case rests only on police witnesses

13. The prosecution has examined only police officials and the subsequent Investigating Officers. No independent witness from the locality, no shopkeeper, no passer-by and no other civilian has been examined to corroborate the alleged recovery. Consequently, the prosecution version remains dependent entirely upon official witnesses, requiring closer judicial scrutiny. In the absence of public witness and electronic evidence of recovery, testimony of police witnesses does not inspire confidence.

Chain of custody not completely proved through oral evidence

14. Although the case property was allegedly deposited in the malkhana and the samples were sent to the Excise Laboratory, the prosecution has not examined the MHC(M) or the Chemical Examiner in the evidence produced before the Court. Consequently, the oral evidence available on record does not establish every link in the chain of custody from seizure till laboratory examination.

No investigation regarding source of liquor

15. According to the disclosure statement referred to in the charge-sheet, the accused allegedly disclosed that one "Bhura" used to supply the liquor. However, the investigation did not identify, trace or apprehend this alleged supplier, nor was any

effort shown to verify this information. The prosecution has therefore failed to investigate the source of the alleged illicit liquor.

<u>No corroborative evidence regarding alleged sale of liquor</u>

16. The prosecution alleges that the accused was selling liquor from behind the public toilet. However, there is no evidence of any customer, decoy purchaser, surveillance, recovery of sale proceeds or any other circumstance indicating that actual sale was taking place. The allegation of sale remains unsupported except by the testimony of the police officials.

<u>Recovery from an open public place</u>

17. The alleged recovery was effected from behind shops near a public toilet, an open and accessible place. The prosecution has not led evidence excluding the possibility of access by others to the place where the plastic sacks were allegedly lying. In the absence of independent witnesses, this aspect assumes significance as punishment is for conscious and exclusive possession.

<u>Disclosure statement has negligible evidentiary value</u>

18. The prosecution relies upon the disclosure statement of the accused. However, no recovery pursuant to that disclosure has been shown. Therefore, except to the limited extent permitted under Section 27 of the Evidence Act (now Section 23 of the Bharatiya Sakshya Adhiniyam), the disclosure statement does not constitute substantive evidence against the accused.

19. The aforesaid shows that claim of prosecution regarding recovery of illicit liquor from the possession of accused is largely doubtful. However, the case has further deficiencies.

20. Entire case of the prosecution is that the liquor bottles so recovered was meant only for sale in Haryana. However, the prosecution has failed to prove this claim.

21. Even if it is accepted that the bottles had some sticker showing sale in Haryana, the same was required to be established that it was manufactured in Haryana and was released for sale only in Haryana. No evidence has been led. Police never traced the source of manufacturing of liquor. Police has also not traced the supplier. No evidence has been led to establish that the liquor was imported through another state.

22. Prosecution has not been able to produce any customer or even a decoy to show that there was any sale. In such circumstances, the prosecution could only claim a guilty verdict for possession. If the prosecution wanted to claim that without taxation, the accused imported the liquor, it must have proved the same but it failed. If the prosecution wants to claim conviction simply for possession, it has to prove that accused was in possession of liquor in excess of prescribed limit.

23. Though the police claimed that several bottles were recovered, it only sent 6 bottles for forensic examination. Even if forensic report is accepted, the same will show that 6 bottles were containing liquor. The total weight of 6 bottles liquor would be 1275 ml as appearing from the report itself. Rule 20 of Delhi Excise Rules allows a person to possess 9 litters. Law nowhere says that a court has to presume that if several bottles are in one sack, all will contain the same liquid which one bottles contains. Therefore, even if the recovery and forensic report is accepted, the resultant possession of 1275 ml will be well within the prescribed limit.

Result

24. As a consequence of the aforesaid discussion, it is held that the prosecution has not been able to establish its case as there are several deficiencies. As such, the prosecution fails. Accused is acquitted from the charge of the present case.

Announced in the open Court today
i.e. on 03.08.2026

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ANNEXURE 'A'

Prosecution Witness No.	**Name of Witness**	**Description**
1.	HC Satvir	Ist Investigating Officer
2.	HC Shiv Kumar	Other Investigating Officer.
3.	ASI Ranbir	Complainant.

Exhibited Documents:-

Exhibit No.	**Description of the Exhibit**	**Proved by/Attested by**
Ex. PW1/A, Ex. PW1/B, Ex.PW1/C, & Ex.PW1/D	Site plan, arrest memo, personal search & disclosure statement	PW1
Ex. PW3/A, Ex. PW3/B,	Seizure memo, Tehrir, form M-29 & seal handing over memo.	PW3

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Ex. PW3/C, & Ex. PW3/D		
Ex.A1	FIR	Admitted by accused.
Ex. A2	Certificate u/s 63(4) BSA	
Ex. A3	Endorsement of rukka	
Ex.A4	GD no. 74A & 99 A (colly)	
Ex.A5	Copy of RC bearing no. 12/21/24.	
Ex.A6	Excise Lab Report dated 28.05.2024	

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