

**In the Court of Ms. Ekta, PCS,
(Unique Identity Code: PB0463)
Judicial Magistrate Ist Class-NRI,
Jalandhar.**

Filing No. 64 dated 04.01.2021
Case No. CHI/2/2021
CNR No. PBJL03000064-2021
Date of Decision : 20.07.2026

State Versus Malkiat Singh son of Lakhi Ram, resident of
Hambhowal, PS Subhanpur, District
Kapurthala.

.....Accused.

**F.I.R No. 83 dated 21.04.2020
Under Section 61 of Punjab Excise Act, 188 IPC
Police Station Kartarpur, District Jalandhar.**

Present: Sh. Nikhil Nahar, APP for the State.
Accused on bail with Counsel Sh. S. S. Dhaliwal, Advocate.

JUDGMENT

1. The accused, named above, has been sent up by the SHO of Police Station Kartarpur to face trial for the commission of offence punishable under Section 61 of the Punjab Excise Act and Section 188 of IPC.

2. In nutshell, the case of the prosecution is that on 21.04.2020, SI Kulbir Singh alongwith other police officials was present in connection with patrolling, barricading and lockdown imposed in India at Bholath Turn, Kartarpur where from the side of Village Dyalpur, one car make Tata Indica, silver in colour, bearing number PB-10-BU-7002 was seen coming. On seeing the police party, the driver of the car tried to turn back the car, but he was apprehended by SI Kulbir Singh with the help of other police officials. On inquiring his whereabouts, he disclosed his name as Malkiat Singh. On the

backseat of the car, cardboard boxes were kept. Before conducting checking, SI Kulbir Singh tried to join independent witness into the police party but due to imposition of curfew, nobody could be joined as an independent witness. Thereafter, SI Kulbir Singh in the presence of other police officials conducted checking of car and from the backseat of car, 07 boxes containing 12 bottles each of 750 ML each of Punjab Landlord Rum manufactured by Jagjeet Industries Limited, Hamira, District Kapurthala were recovered and out of the said boxes, one bottle of 750 ML was taken out as sample from one box and the remaining 11 bottles contained in the said box were put into a plastic bag and the said sample bottle and plastic bag containing 11 bottles were sealed by SI Kulbir Singh with his seal bearing impression "KS". Remaining 06 sealed boxes containing liquor were kept as it is. Form M29 was prepared. Thereafter, sample bottle, plastic bag containing 11 bottles, 06 boxes and car make Indica bearing no. PB-10-BU-7002 were taken into police possession vide separate recovery memo. Seal after use was handed over to ASI Pipal Singh. Accused Malkiat Singh could not produce any bill or permit for being found in possession of the 07 boxes of liquor containing total 84 bottles and he also violated order no. 23414-64 dated 23.03.2020 issued under Section 144 of Cr.P.C. with regard to imposition of curfew and thus, offences punishable under Section 188 of IPC and Section 61 of Punjab Excise Act, 1914 were made out. Ruqa was sent through C Gurdev Singh on the basis of which, FIR was registered. Site plan was prepared. Accused was arrested and his personal search was conducted. Memos were prepared to that effect which were attested by the witnesses.

Statements of witnesses under Section 161 of Cr.P.C were recorded. On return to Police Station, case property was handed over to MHC Manjit Singh. During the course of investigation, the ownership of car bearing no. PB-10-BU-7002 was got verified. The sample bottle was sent to chemical examination. After receiving the report of Chemical Examiner and after completion of the investigation and other formalities, the final report under Section 173 of Cr.P.C against accused Malkiat Singh was presented in the Court.

3. On presentation of challan, copies of challan and documents as relied upon by the prosecution were supplied to the accused, free of cost, as enshrined under Section 207 of Cr.P.C.

4. The arguments on charge were heard. After hearing submissions and going through the file of the case, this Court was of the opinion that there were sufficient grounds to presume that the accused has prima-facie committed an offence punishable under Section 61 of Punjab Excise Act, 1914 and Section 188 of IPC. The accused was duly served with the charge sheet, to which he pleaded not guilty and claimed trial.

5. To prove its case, prosecution got examined PW1 MHC/ASI Manjit Singh, PW2 C Gurdev Singh, sample carrier, PW3 Arun, Clerk, DC Office, Jalandhar and PW4 SI Kulbir Singh, Investigating Officer. Thereafter, learned APP for the State closed the prosecution evidence.

6. PW1 MHC/ASI Manjit Singh deposed to the effect that on 21.04.2020, he was posted as MHC at Police Station Kartrapur. On the said date, the Investigating Officer SI Kulbir Singh deposited one sample bottle of 750 ML

make Punjab Landlord Rum sealed with his seal bearing impression 'KS' alongwith two plastic bags containing 07 boxes of liquor i.e. 83 bottles of liquor, car make Tata Indica, silver in colour, bearing number PB-10-BU-7002 and form 29-M for depositing the same in Malkhana. He deposited the same and made an entry in register no. 19. On 01.05.2020, he handed over one sample bottle of 750 ml of Punjab Landlord Rum sealed with seal bearing impression 'KS' alongwith Form M 29 to C Gurdev Singh vide Rod No. 170/21 for depositing the same in the office of Chemical Examiner, Kharar and he had deposited the same with Chemical Examiner, Kharar and obtained a receipt to that effect and handed over the same to him. Till the time the case property remained with him, neither he himself nor he let anyone else to tamper with the same.

7. PW2 C Gurdev Singh, sample carrier, deposed to the effect that on 01.05.2020, MHC Manjit Singh handed over one sample bottle of 750 ML of liquor sealed with seal bearing impression 'KS' alongwith Form 29 M after taking out the same from the Malkhana vide RC no. 170/21 and he deposited the same at the office of Chemical Examiner on the same day and handed over the receipt to MHC ASI Manjit Singh on return. He further deposed to the effect that till the time the case property remained with him, neither he himself nor he let anyone else to tamper with the same.

8. PW3 Arun, Clerk, DC Office, Jalandhar brought the original record pertaining to order number 3062-85/MC-4MA dated 23.03.2020 passed by worthy Deputy Commissioner, Jalandhar with regard to the COVID-19

pandemic. He has also proved the copy of the said order Ex. PW3/A upon which, he identified the signatures of Sh. Varinder Kumar Sharma, IAS, the then DM, Jalandhar at point A.

9. PW4 Retired Inspector Kulbir Singh, Investigating Officer, proved the mode and manner in which he conducted the investigation of the present case and deposed to the effect that on 21.04.2020, during checking, accused was apprehended on the basis of suspicion and 84 bottles of liquor make Punjab Landlord Rum were recovered from the car make Indica bearing no. PB-10-BU-7002 of accused Malkiat Singh without any permit or license. He has also proved recovery memo Ex. PW4/A vide which, one sealed sample bottle, one sealed plastic bag containing 11 bottles, 6 boxes of liquor each box containing 12 bottles and car bearing no. PB10-BU-7002 were taken into police possession, ruqa Ex. PW4/B, FIR Ex. PW4/C, site plan Ex. PW4/D, arrest-cum-intimation memo Ex. PW4/E, personal search memo Ex. PW4/F, FSL report Ex. PW4/G, Form M29 Ex. PW4/H, RTA report Ex. PW4/I, copy of DC order Ex. PW3/A, complaint under Section 195 of Cr.P.C. by SHO Ex. PW4/K and order of District Magistrate Ex. PW4/L, case property i.e. one bora plastic containing 11 bottles Ex. MO1 and six case box of liquor containing 12-12 bottles each Ex. MO2.

10. Statement of accused under Section 351 of BNSS was recorded in which all the incriminating evidence adduced and proved against the accused was put across to him. The accused pleaded his innocence and false implication.

11. Despite giving due opportunity, accused did not lead any evidence in his defence and he closed the same by suffering a statement to that effect.

12. I have heard the submissions made by learned APP for the State, learned Defence Counsel and have also gone through the record.

13. The following points arose for determination in this case:-

- 1. Whether on 21.04.2020 at about 04:00 PM, in the area of Bholath Turn, Kartarpur, accused Malkiat Singh was roaming alongwith liquor without any permit and without following guidelines issued by the government in the wake of pandemic of COVID-19 and thereby, disobeyed order no. 23414-64/MC-4/MA dated 23.03.2020 passed by worthy District Magistrate, Jalandhar and was found in possession of seven boxes of liquor make Punjab Landlord Rum (total 84 bottles of 750 ML each) without any valid permit or license and as such, committed an offence punishable under Section 188 of IPC and Section 61 of Punjab Excise Act, 1914?*
- 2. Conclusion.*

14. The learned APP for the State argued that the case of the prosecution is fully proved against accused with regard to recovery of 84 bottles of Punjab Landlord Rum without any valid permit or license. On the other hand, learned defence Counsel vehemently argued that no independent witness was joined at the time of recovery. Only one bottle was taken out as sample from the entire case property which is against the established procedure. Thus, the prosecution has miserably failed to prove its case against the accused. Accordingly, he prayed that the accused may kindly be acquitted.

15. I have heard the submissions made by learned APP for the State, Learned Defence Counsel and have also gone through the record. My findings on the aforesaid points are as under:-

Point of determination no. 1:-

16. It is a well settled principle of law that prosecution has to prove its case beyond the shadow of reasonable doubt. In order to prove its case, the prosecution has got examined PW1 MHC/ASI Manjit Singh, PW2 C Gurdev Singh, sample carrier, PW3 Arun, Clerk, DC Office, Jalandhar and PW4 SI Kulbir Singh, Investigating Officer.

17. Accused has been put to trial in this case for the offences punishable under Section 61 of Punjab Excise Act, 1914 and Section 188 of IPC on the allegations that on 21.04.2020, accused Malkiat Singh was apprehended on the basis of suspicion and from his car bearing number PB-10-BU-7002 make Tata Indica, silver in colour, 07 boxes of liquor containing total 84 bottles of liquor were recovered from the back seat of his car and he had also violated order no. 23414-64 dated 23.03.2020 issued by District Magistrate with regard to imposition of lockdown.

18. The case of the prosecution is that during nakabandi, one person was seen coming on Tata Indica car and on seeing the police party, the driver of the car tried to turn back the car, but he was apprehended by SI Kulbir Singh with the help of other police officials. On conducting search of the car, from the backseat of car, 07 boxes containing 12 bottles each of 750 ML each of Punjab Landlord Rum manufactured by Jagjeet Industries Limited, Hamira, District

Kapurthala were recovered. As per the prosecution version, out of the said boxes, only one bottle of 750 ML was taken out as sample from one box. Thus, only one sample bottle of 750 ml of liquor make Punjab Landlord Rum was taken out as sample from 84 bottles of the same brand, whereas the police was required either to take sample from each bottle or to note down batch number, manufacturing date, expiry date and manufacturing unit of each bottle. However, no such thing has been done. Even in recovery memo Ex. PW4/A, no batch number, manufacturing date or any other particulars of the recovered liquor has been mentioned. Rather only one sample was taken out which is against the prescribed procedure. Even PW4 SI Kulbir Singh, Investigating Officer, has admitted in his cross-examination that he had not taken samples from all the 84 bottles allegedly seized by him. In this regard, this Court would like to place reliance upon the judgment of Hon'ble Punjab & Haryana High Court in case titled as ***"Shishpal and another Versus State of Haryana 2011 (1) R.C.R. (Criminal) 267,"*** wherein it has been held by the Hon'ble High Court that there was recovery of 3000 pouches and 96 bottles of liquor and the Investigating Officer took out one pouch and one bottle as sample and sent the same to Chemical Examiner. The Investigating Officer deviated from his duty and did not take any sample from all the pouches and the bottles with a purpose to know whether the contents of the aforesaid articles were containing liquor.

19. Furthermore, as per the case of the prosecution, no independent witness was joined into police party. Apparently, the spot from where the alleged recovery has been affected from the accused is a public place but the police

party did not make any attempt to join any neighbour, chowkidar, member, Sarpanch or respectable of the village at the time of alleged recovery. So, this vital lacuna shaking very foundation of the prosecution case is non-compliance of provisions of Section 50 of Punjab Excise Act which makes the provisions of Code of Criminal Procedure relating to arrest and search applicable to all the actions taken under this Act. Section 100(4) of Code of Criminal Procedure 1973 envisages that before making any search, the officer or other person about to make the search shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality, if no such inhabitant of said locality is available or is willing to be a witness to the search, to attend and witness the search and may also issue an order in writing. In the absence of any plausible explanation being available for non-joining of such witness, serious suspicion is cast upon the prosecution version. Support is drawn from *JARNAIL SINGH VERSUS STATE OF HARYANA REPORTED 2000(1) RCR (CR.) 442* wherein it was observed that at the time of recovery of illicit liquor, no independent witness was joined to corroborate the testimony of the police officials. Such an investigation amounts to camera proceedings or ex-parte proceedings against a citizen. Accused was acquitted in the instant case in the facts and circumstances of the case. This also casts a serious doubt on the entire version of the prosecution.

20. Furthermore, as per the case of prosecution, seal was handed over to ASI Pipal Singh and the recovery memo Ex. PW4/A, arrest-cum-intimation memo Ex. PW4/E, personal search memo Ex. PW4/F also bears the signatures

of ASI Pipal Singh and C Manpreet Singh but both the said witnesses have also not been got examined by the prosecution in this case for the reasons best known to it.

21. Prosecution was required to prove its case against the accused by way of clinching and convincing evidence. But as already discussed above, the version of the prosecution is not proved on record to be believable. As such in view of the aforesaid discussion, the prosecution has miserably failed to prove its case against the accused, what to talk of beyond reasonable doubt. Accordingly, the point of determination no. 1 is answered negatively.

CONCLUSION:-

22. In view of my findings on point of determination no. 1, the prosecution has miserably failed to prove the guilt of accused beyond reasonable doubt. Accordingly, accused Malkiat Singh is acquitted of the charge framed against him. He and his surety also stand discharged. FDR/cash, if any, furnished at the time of furnishing surety bonds on behalf of accused be released to the respective surety/accused against proper receipt and identification as per rules after the expiry of period of appeal or revision, if any, as the case may be. Case property be disposed of as per rules after the expiry of period of appeal or revision, if any, as the case may be. File be consigned to the record room.

Pronounced in open Court.

Dated : 20.07.2026

Anju

(Ekta)
(Unique Identity Code: PB0463)
Judicial Magistrate Ist Class-NRI,
Jalandhar.