

HRJRA10031672020



Presented on : 24-11-2020
Registered on : 24-11-2020
Decided on : 15-07-2026
Duration : 5 years, 7 months, 21 days

**In the Court of Vivek Tomar
Sub Divisional Judicial Magistrate
at Bahadurgarh, Jhajjar**

CHA/272/2020

State of Haryana vs Manoj s/o Raj Singh r/o Daboda
Khurd, District Jhajjar, Haryana.

...Accused.

FIR No.281 dated 09.11.2020
u/s 61 Excise Act
Police Station: Sadar Bahadurgarh

Present: Sh. Anil Siwach, Ld. APP for the State.
Accused Manoj on bail with Sh. Rahul Dhankhar, Advocate.

Judgment

Accused Manoj has been sent before this court by the Station House Officer, Police Station Sadar Bahadurgarh to face trial for commission of offence punishable u/s 61 Excise Act.

(Vivek Tomar)
SDJM, Bahadurgarh
15.07.2026

Facts

2. Brief facts of the case of the prosecution are that on 09.11.2020 a telephonic information was received in the police station that illegal liquor has been caught in Dev Bhumi Hotel in Daboda Khurd. On receiving information, HC Ravinder, EASI Virender and EHC Sanjay reached Dev Bhoomi Hotel, Daboda Khurd where SI Jai Bhagwan and HC Pradeep from CM Flying squad Rohtak met them and produced one person who was found selling illicit liquor in the Hotel. On inquiry the person disclosed his name as Manoj and from his possession 12 bottles, 15 half bottles and 25 quater bottles of country made liquor (Taza Santra); five Tuborg beer, seven Thunderbolt beer and three bottles of White Blue were recovered. The case property was sealed with the seal of 'RK' and the seal was handed over to EHC Sanjay. Information was sent and FIR was registered the investigation was carried out by HC Ravinder Kumar. Accused, Manoj was arrested and investigation was completed and challan was filed.

3. Copy of challan was supplied to the accused free of costs as envisaged under section 207 Cr.P.C. Having completed all the codal formalities accused was charge sheeted for the commission of offence u/s 61 of Excise Act. Accused pleaded not guilty, claimed trial and the case was fixed for the evidence of the prosecution.

4. Brief summary of prosecution evidence is as follows:

- **PW1 SI Satyabir Singh** was examined to prove FIR (Ex.P1/PW1) and endorsement (Ex.P2/PW1).
- **PW2 ASI Rajpal** deposed that on 09.11.2020 he was deputed as MM in Police Station Sadar Bahadurgarh and the case property and sample was handed over to him by HC Ravinder. Thereafter vide RC no.109 dated 18.11.2020 sample was deposited with Chemical Examiner, Rohtak. PW2 deposed that he did not tamper with sample till the time it remained in his possession. PW2 was examined to prove document (Ex.P1/PW2) i.e. entry made in Register no.19.
- **PW3 SI Jai Bhagwan** deposed that on 09.11.2020 while working with CM Flying Squad he received information regarding sale of illicit liquor at Dev Hotel and he alongwith HC Pradeep reached spot and informed local police. PW3 reiterated the contents of challan.
- **PW4 HC Pardeep** deposed that on 09.11.2020 while working with CM Flying Squad he received information regarding sale of illicit liquor at at Dev Hotel and he alongwith SI Jai Bhagwan reached the spot and informed the local police. PW4 reiterated the contents of challan.

- **PW5 HC Ravinder Kumar**, IO was examined to prove the complaint (Ex.P2/PW5), seizure memo (Ex.P1/PW5), site plan (Ex.P3/PW5) and case property (Ex.MO1 to Ex.MO62).

5. Witnesses SI/SHO Surender Kumar, Chemical Examiner were given up by the learned APP for the state. Statement of accused u/s 313 Cr.P.C was recorded and accused denied all the incriminating evidence and pleaded innocence and false implication. No evidence in defence has been led by the accused.

Arguments

6. Learned APP for the State argued that through the testimony of prosecution witnesses the case of the prosecution has been duly proved and the accused should be convicted. On the other hand learned counsel for accused argued that whole case of the prosecution is based on conjectures and surmises. No public witness was joined during alleged recovery and false recovery has been planted upon accused. Accused has been falsely implicated in this case and prosecution has failed to prove its case beyond reasonable doubt. The testimony of prosecution witnesses is full of contradictions and accused is entitled to benefit of doubt.

Point for determination

7. Whether on 09.11.2020 accused was found in conscious possession of 12 bottles, 15 half bottles and 25 quater bottles of country

made liquor (Taza Santra); five Tuborg beer, seven Thunderbolt beer and three bottles of White Blue without any permit or licence.

Appraisal of Evidence and Findings of the Court

8. In the present case prosecution has examined total five witnesses. PW1 SI Satyabir Singh is a formal witness who was examined to prove FIR and Endorsement. PW2 ASI Rajpal, MM is also a formal witness who was examined to prove the fact that the case property and sample was handed over to him by IO and thereafter vide RC no.109 dated 18.11.2020 sample was deposited by him for chemical examination at Rohtak.

9. Firstly, in the present case complainant and Investigating officer are the same person namely PW HC Ravinder Kumar, who in cross-examination deposed that when he reached at the spot accused has already been apprehended by CM Flying squad. It is settled law that complainant being the Investigating Officer should not be investigating officer because in such a case accused as well as prosecution are deprived of their valuable rights of contradiction and corroborating the previous information recorded under Section 154 and 155 of Cr.P.C and this fact gives rise to an occasion to suspect fair and impartial investigation and in this regard, reliance can be placed on case law authority titled as **Xavier V/s State of Kerala, 1993 RCR (Criminal) 66 and Megha Singh V/s State of Haryana, AIR 1995 (SC) 2339 and**

Naushad Vs. State of Karala 2000(2) RCR, 573. Further reliance can be placed on the case law authority titled as **Mukhtiar Ahmed Anshari vs State (N.C.T. Of Delhi) 2005(2) RCR (Criminal) 863 (SC)**, wherein it was held that in the absence of independent corroboration, no conviction can be recorded in the cases where investigation is conducted by the very same police official, who had lodged the complaint. Without any independent corroboration it will not be legally justified to convict the accused on the basis of testimony of eight police officials witnesses.

10. Secondly, in the present case accused was allegedly arrested from a hotel with liquor but no independent public person was joined during the arrest and recovery proceedings. In cases when police party arrests accused from public place then they have ample opportunity to join independent witness. The Hon'ble Punjab & Haryana High Court in **Partap Singh vs State of Haryana, 1997(4) (Criminal) 401** has held that, "Where no independent witness was joined and the explanation by police that Lambardar, Sarpanch and two or three other persons also refused. It was not explained who were those 2 or 3 persons and what action was taken against Labardar and Sarpanch. Explanation of police not correct. Prosecution case became shaky."

11. The Hon'ble Punjab & Harayna High Court in **Angrej Kaur vs State of Haryana, 2013(1) CCC 677** has held that, "when recovery was made from the bus stand which is a busy place and many witnesses from

the public must be available at the bus stand then non-joining of independent witness proves to be fatal to the case of the prosecution”.

12. The Hon'ble Punjab and Haryana High Court in **Passi alias Parkash vs State of Haryana, 2000(1) RCR (Criminal), 435** held that, “The Investigating Officer, had sufficient time and opportunity to join any independent witness and it was imperative upon him to get independent corroboration to reinforce the case of the prosecution against the accused. It was also acknowledged that non-joining of any independent witness does not ipso-facto discredit the prosecution case but it surely casts a dent in the same.”

13. In criminal law, police plays a significant role and the powers in their hands are unfettered. To obviate false implication, certain safeguards either by way of enactments or by judicial pronouncements have been provided to the accused. Though the testimonies of police officials are not waste papers of record but the court while considering its probative value, must be at guard against false implication. The joining of independent witness is not a ritual. In its roots, lies an object. Reliance placed upon the decision of The Hon'ble Punjab & Haryana High Court in **Mukhtiar Singh vs State of Punjab, 2014(2) CCC 329(P&H)**.

14. The rule of prudence requires that testimony of police officials should be corroborated by some private witness specially in such cases when whole case of the prosecution is based on their

testimony but there is no such corroboration in the present case. Reliance placed upon the decision of the Hon'ble Punjab and Haryana High Court in **Kuldip Singh versus State of Haryana, 2004(4) RCR (Criminal), 103**, wherein it has been held that, “Non-joining of any independent witness, on the facts and circumstances of the present case, would be sufficient to discard the case of the prosecution, especially when there were various discrepancies in the statements of various witnesses examined by the prosecution. All these discrepancies, in my opinion would assume importance considering that the police party had failed to join any independent witness to witness the recovery proceedings even though it was not difficult for the police party to join an independent witness to witness the recovery proceeding.”

15. Thirdly, in the present case 12 bottles, 15 half bottles and 25 quater bottles of country made liquor (Taza Santra), five Tuborg and seven Thunderbolt beers and three bottles of White Blue was allegedly recovered but the IO has only taken only one sample from each brand. Taking of just one sample does not amount to proof that the same substance is present in the all remaining bottles.

16. Fourthly, as per the case of the prosecution the sample and case property were sealed with the seal of 'RK' and the seal and sample and case property were handed over to EHC Sanjay. In other words the seal and case property remained in the possession of the police official

who was part of the team which allegedly affected recovery. Further, the recovery was effected on 09.11.2020 but the sample was sent for chemical examination on 18.11.2020 and delay of nine days has not been explained. In other words it has not been proved by the prosecution that no tampering was done with case property and possibility of tampering and manipulation cannot be ruled out.

17. Lastly, the chemical examination report has not been proved by examining the chemical examiner in court. Neither any photography nor videography was done of alleged recovery. The disclosure statement of accused could not be proved against the accused and the bar of Section 26 of The Indian Evidence Act applies as no recovery has taken place in pursuance of the disclosure statement. All these factors raise enough doubt upon the whole case of the prosecution.

18. Considering all these aspects the court is of the considered and confirmed view that the prosecution has failed to prove the charges against the accused. The fundamental principal of criminal law is that the prosecution has to prove its case beyond reasonable doubt and accused is presumed to be innocent until proved guilty beyond reasonable doubt by the prosecution.

19. As a necessarily corollary of the above discussion accused, Manoj is hereby acquitted from the charges framed against him u/s 61

Excise Act. Old bail bond and surety bond stand discharged. File be
consigned to records after due compliance.

Pronounced in open Court.
Date of order: 15.07.2026

(Vivek Tomar)
Sub Divisional Judicial Magistrate,
Bahadurgarh.UID No.HR-0437

Note: This judgment contains 10 pages and each page has been duly
checked and signed by me.

(Vivek Tomar)
Sub Divisional Judicial Magistrate,
Bahadurgarh.UID No.HR-0437

Shrikant Ojha
Stenographer-Gr-11

(Vivek Tomar)
SDJM,Bahadurgarh
15.07.2026