

State v. Raghbir Singh
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HRKH030071242022



IN THE COURT OF PRINCE KUMAR, JUDICIAL MAGISTRATE
FIRST CLASS, KAITHAL, UID HR0605.

CIS No.	CHA/610/2022
CNR No:	HRKH03-007124-2022
Criminal Case No.	377 of 2022
Date of Institution:	15.09.2022/04.09.2024
DATE OF DECISION:	28.07.2026

State Versus

Raghbir Singh son of Ganga Bishan,
resident of village Guliyana, P.S.
Rajound, District Kaithal.

....Accused.

FIR No.: 0203 dated 22.07.2022.
Under Section: 61 of The Punjab
Excise Act, 1914.
Police Station: Rajound, Kaithal.

Present : Ms. Sangeeta, learned APP for the State.
Accused Raghbir Singh on bail represented by Sh. S.V.
Ravesh, Advocate.

JUDGMENT:

The above named accused has been sent to face trial by the Station House Officer of Police Station Rajound, Kaithal, for the commission of offence punishable under Section 61 of Punjab Excise Act, 1914.

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2. Brief facts of this case as revealed from the Final Report submitted under Section 173 of Cr.P.C. are that on 22.07.2022, HC Sandeep Kumar No.722/KTL and SPO Satish Kumar No.07/KTL had reached near village Guliyana Hanuman Temple on crime and patrolling duty in a private vehicle No.HR08W-4060 brand Maruti white colour with laptop printer, the statement of Constable Rajbir Singh No.765/KTL Police Post Kithana got recorded by HC Sandeep Kumar near village Guliyana Hanuman Temple to the effect that he is posted in General Duty Police Post Kithana. Today, on the orders of higher officers, he was present near the Hanuman temple of village Guliyana to collect secret information regarding prevention of crime and for patrolling when a secret informer met him and gave him secret information that Raghbir Singh son of Ganga Bishan, resident of Guliyana, Police Station Rajound, District Kaithal, sells illegal liquor in his shop Khurda located in village Guliyana. If a raid is conducted at Raghbir Singh's shop Khurda located in village Guliyana, a huge quantity of liquor can be seized. The information is from a reliable and trustworthy person. His statement was recorded near the Hanuman temple of village Guliyana, who, after reading his statement and accepting it as correct, signed his statement in English and the same was verified by HC Sandeep. Constable Rajbir Singh No.765/KTL was included in the raiding party and a raid was conducted at the shop

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Khurda in village Guliwana, where a person was found sitting on a chair. In front of him, a heavy open cardboard box of khaki colour was seen under the counter. On checking it, 13 bottles of country-made liquor make Club Malta were found in the heavy open cardboard box, one of which was protruding. On asking his name and address, he told his name as Raghbir Singh son of Gangabishan, resident of Guliwana, Police Station Rajound, District Kaithal. License and permit were asked from Raghbir Singh about the liquor received. Raghbir Singh could not produce any license or permit about this recovered liquor. HC Sandeep Kumar took out one bottle of country-made liquor make Club Malta from the open cardboard box of country-made liquor as a sample and prepared a parcel by tying the neck of the sample bottle with a white cloth and thread and stamped it with the seal SV/1 and put the remaining 12 bottles of liquor of the country-made liquor make Club Malta in the cardboard box in the same cardboard box and tied the neck of the cardboard box with a white cloth and prepared the parcel. HC Sandeep stamped the liquor parcel with SV/1 and two sample seals were prepared separately with SV/1 each. After stamping, the parcel was handed over to SI Rajbir Singh No.765/KTL. It was taken into possession vide seizure memo and accused Raghbir Singh and witness Constable Rajbir Singh signed the same. Raghbir Singh son of Gangabishan, resident of Guliwana, Police Station Rajound, District

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Kaithal, had committed the crime under Section 61 of the Punjab Excise Act 1914 by keeping a total of 13 bottles of country-made liquor make Club Malta without license and permit.

3. On the aforesaid complaint, formal FIR under Section 61 of Punjab Excise Act, 1914 was registered. The matter was investigated. Statements of witnesses were also recorded. Site-plan was prepared by the investigating officer. The accused was joined into investigation. After the completion of other formalities and investigation the final report was prepared by the SHO and same was filed in the court against accused.

4. Copy of final report and other accompanying documents were supplied to the accused, free of costs, as is mandatory under Section 207 Cr.PC.

5. Finding prima-facie case against the accused, the accused was charge sheeted under Section 61 of Punjab Excise Act, 1914, to which he pleaded not guilty and claimed trial.

6. To substantiate its allegations the prosecution examined following witnesses:-

PW1 EASI Rajesh Kumar, who tendered his duly sworn affidavit Ex.PW1/A in his examination-in-chief to the effect that on 22.07.2022, he was posted as Malkhana Moharrar. On that day, Investigating Officer HC Sandeep Kumar handed over him 12 bottles of

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country-made liquor and one bottle/sample of country-made liquor Club Malta duly sealed with impression 'SV/1'. On 27.07.2022, one sample of country-made liquor make Club Malta was taken out and sent the same through Constable Sushil Kumar No.660/KTL for depositing the same to Chemical Examiner, Hissar vide RC No.414 dated 27.07.2022 and after depositing the same to Chemical Examiner, Hissar, he handed over the receipt of the same to him.

PW2 SI Ishwar, who supported the case of prosecution in his examination-in-chief. He proved formal FIR Ex.PW2/A and endorsement Ex.PW2/B.

PW3 EHC Sushil Kumar, who tendered duly sworn affidavit Ex.PW3/A in his examination-in-chief to the effect that on 27.07.2022, he was posted on General Duty. On that day, MHC Rajesh Kumar handed over him one sample bottle of country-made liquor make Club Malta duly sealed with impression SV/1 vide RC No.414 dated 27.07.2022 for depositing the same to Chemical Examiner, Hisar. On the same day, after depositing the same, handed over the receipt to MHC Rajesh Kumar.

PW4 HC Sandeep Kumar, who being the Investigating Officer has proved the investigation whatsoever was conducted by him in the present case. He proved seizure memo of country-made liquor Ex.PW4/A, Tehrir Ex.PW4/B, rough site-plan of the place of occurrence

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Ex.PW4/C, confessional/disclosure statement of accused Ex.PW4/D and case property Ex.MO/1.

PW5 HC Rajbir Singh, who supported the case of prosecution in his examination-in-chief. He proved his statement Ex.PW5/A and seizure memo of country-made liquor Ex.PW4/A (already exhibited).

7. Chemical Examiner Report was tendered on file as Ex.PA by Id. App for the State vide her statement and given up PW Chemical Examiner, Hisar being unnecessary witnesses and thereafter, closed the prosecution evidence, after exhausting the list of prosecution witnesses.

8. All the incriminating facts which appeared in evidence against the accused was put to him and his statement under Section 313 of Cr.P.C. was recorded. The accused pleaded innocence and opted to lead evidence. However, no evidence in defence was led by the accused and it was closed by accused vide separate statement. Accordingly, the arguments advanced by learned APP for the State and learned Counsel for the defence were heard and the case file perused carefully.

9. Learned Assistant Public Prosecutor has contended that the prosecution witnesses have duly supported the case of the prosecution and as the accused were found in possession of 13 bottles country-made liquor make Club Malta, hence he be convicted for the said offence.

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10. Per contra, learned defence counsel has contended that the prosecution has miserably failed to prove guilt against the accused for the commission of said offence. He further argued that despite availability of independent witnesses at the spot of recovery, no independent witness was joined in the investigation and merely on the basis of the testimonies of official witnesses, it is not safe to convict the accused and hence, prayed for acquittal of accused.

11. This Court has heard the learned APP for the State and learned defence counsel and gone through the case file carefully.

12. The prosecution version is that on 22.07.2022, the accused was alleged to be found in his possession of 13 bottles of country-made liquor make Club Malta during search of crime on the information of the secret informer. However, no independent witness has been joined by the Investigating Officer. PW4 & PW5 have admitted in their cross-examinations that no independent witness was joined in the investigation at the spot. Undisputedly, public person could be joined but no such public witness has been joined in the investigation nor any plausible explanation has been furnished on record. Without joining independent witness a doubt is created about the veracity of prosecution case. Reference may in this context be made to the provision of sub-Section (8) of Section 100 Cr.P.C., which provides that any person, who without reasonable cause, refuses or neglects to attend and witness a

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search under Section 100 of the Code, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under Section 187 IPC. In the instant case, there is nothing to indicate that the authorized officer had served or even attempted to serve an order in writing upon any public witness as envisaged by sub- Section (8) of Section 100 Cr.P.C. As observed in *Amrik Singh v. The State of Punjab, 1999(4) RCR (Criminal) 797 (P&H), Aroor Singh v. State of Haryana, 2000 (3) RCR (Criminal) 433 (P&H) and Jeet Singh v. State of Punjab, 1998 (2) CCC 439 (P&H)*, in the absence of independent corroboration, accused cannot be convicted solely relying upon the testimony of the official witnesses.

13. It would not be safe to convict the accused because recovery of the bottles of liquor does not inspire confidence, supported as it is, by depositions of police officials alone, unassociated by the testimony of any independent witness.

14. As per the version of the prosecution witnesses, after sealing the case property with the seal of "SV/1", by Investigating Officer HC Sandeep Kumar, the seal was handed over to Constable Rajbir Singh No.765/KTL. However, Constable Rajbir Singh No.765/KTL was a part of the investigation in the present case. Thus, the seal was not handed over to any independent witness. There is nothing on record to suggest that Investigating Officer had made efforts

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to handover the seal to any independent witness. Further, though the handing over memo is on record but there is no taking over memo on record to show as to when the seal was taken back from Constable Rajbir Singh No.765/KTL or if it remained with him forever. In such a factual backdrop, since the seal was given to Constable Rajbir Singh No.765/KTL, the seal remained with the police officials of the same police station and therefore, the possibility of tampering with the case property cannot be ruled out. Moreover, it is not even the case of the prosecution that the seal was not within the reach of the Investigating Officer and thus, there was no scope of tampering of case property. In this regard, judgment in case titled as **Ramji Singh v. State of Haryana 2007 (3) RCR (CRIMINAL) 452**, may be adverted to, wherein it was observed in paragraph 7 that:

"....The very purpose of giving seal to an independent person is to avoid tampering of the case property. It is well settled that till the case property is not dispatched to the forensic science laboratory, the seal should not be available to the prosecuting agency and in the absence of such a safeguard the possibility of seal, contraband and the samples being tampered with cannot be ruled out. In the present case, the seal of Investigating Officer-Hoshiar Singh bearing impression HS was available with Maha

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Singh, a junior police official and that of Deputy Superintendent of Police remained with Deputy Superintendent of Police himself. Therefore, the possibility of tampering with seals as well as seized contraband and samples cannot be ruled out."

15. Furthermore, the delay in dispatching the sample Chemical Examiner, Hisar is an aspect, which looms large against the case of the prosecution. Perusal of the statement of PW1 EASI Rajesh Kumar shows that sample was dispatched to Chemical Examiner, Hisar on 27.07.2022 vide R.C. No.414 dated 27.07.2022, whereas the alleged recovery was effected on 22.07.2022. There is no explanation, much less a satisfactory explanation available on the record to show why delay of **five days** occurred in dispatching the sample, which was required to be dispatched at the earliest possible so as to rule out the possibility of its being tampered with. In such type of cases, the courts will have to circumspect in accepting the evidence of official witnesses, particularly when the same are not corroborated by independent witnesses. In a case titled **Balwinder Singh alias Billa vs State of Haryana 2009(2) RCR(Criminal) 730**, it was observed that when the sample parcel was sent to FSL after delay of six days from the date of alleged recovery and the delay was unexplained, then tampering with

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the sample parcels cannot be ruled out and such delay certainly proved fatal to the prosecution case.

16. According to the prosecution story, on the date of alleged recovery, accused was apprehended on the basis of secret information as he was allegedly involved in illegal sale of liquor. It is further, the case of the prosecution that on the date of alleged recovery, at village Guliwana, District Kaithal, where he was found in possession of 13 bottles of country-made liquor make Club Malta. However, the investigation of the prosecution is conspicuously silent about the source where from the said bottles of liquor were purchased/procured by the accused. This was an important link evidence for the case, which has not been gathered by the Investigating Officer. This raises suspicion about the story of the prosecution.

17. In the present case, there is only one bottle of sample out of 13 recovered country-made liquor make Club Malta. This doubt becomes graver as the samples from each one of the alleged recovered bottles were not obtained by the Investigating Officer. In this regard, the law is well settled that the sample is required to be drawn from each bottle of the alleged recovered case property. However, that was done for the reasons best known to the Investigating Officer. Therefore, it cannot be concluded with certitude that the material contained in all the alleged recovered bottles was same.

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18. Also, perusal of the Chemical Examiner Report tendered on file as Ex.PA shows that it is a stamp not a handwritten or typed report. The Chemical Examiner has put a stamp in place of report. This stamp can not be taken as a report of chemical examiner because stamp gives an impression that the chemical examiner is giving same report in each and every case by just putting stamp. This report also says that the contents of the sample are of illicit liquor, but which content was the part of illicit liquor is not mentioned anywhere. Hence, the report Ex.PA cannot in any way be considered as a report of the sample sent to the lab.

19. Notwithstanding the above, there are many material contradictions in the version of prosecution witnesses, which also renders the story of the prosecution highly doubtful.

20. In a criminal case mere suspicion however, strong cannot take the place of proof. Between what may be true and what must be true, there is inevitably a long distance to travel and whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted. Such a distance has not been covered by the prosecution in the present case. It has been laid down by the Hon'ble Supreme Court of India in *Harijana Thirupala & Ors. Vs. Public Prosecutor, High Court of A.P., Hyderabad 2002 AIR (SC) 2821* that an accused is presumed to be innocent unless such a

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presumption is rebutted by the prosecution. Further, if two views are possible one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted.

21. Since prosecution has miserably failed to prove the guilt of accused beyond the shadow of reasonable doubt, thereby weakening the case of prosecution, hence, by extending the benefit of doubt, **accused Raghbir Singh is hereby acquitted** from the charge served upon him under Section 61 of Punjab Excise Act, 1914. Earlier bail bonds and surety bonds already furnished stands discharged. The case property, if any, be disposed of as per rules after the expiry of period of appeal/revision, if any. Superdiginama, if any shall also stands discharged after the expiry of period of appeal/revision, if any. File be consigned to the record room, after due compliance.

Pronounced in open Court.
Dated: 28.07.2026.

(Prince Kumar)
Judicial Magistrate Ist Class
Kaithal, (UID No.HR-0605)

Note: Certified that all 13 pages of this judgment have been checked and signed by me.

Virender Kumar

(Prince Kumar),
Judicial Magistrate Ist Class
Kaithal, (UID no.HR-0605)
28.07.2026.

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(Prince Kumar)
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28.07.2026, (UID No.HR0605)