

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
TARN TARAN
(PRESIDED OVER BY MS. MANJOT KAUR)
(UID No. PB0596)

PBTT030025162025



Presented on : 07.05.2025
Registered on : 07.05.2025
Decided on : 25.03.2026
CNR No. PBTT03-002516-2025

CHA-76-2025

State of Punjab

VERSUS

ACCUSED:

Sunny Singh son of Resham Singh resident of village Sakkri, Tehsil and District Tarn Taran.

FIR No.58 dated 12.05.2024

Excise Act, 1914,

Police Station: Sarhali, Tarn Taran

Present: Sh. Jasmine Singh, Ld. APP for the State.
Accused Sunny Singh on bail with counsel Sh. Ajaypal Singh
Saggu, Advocate.

JUDGMENT:

The above named accused has been sent up by the Station House Officer, Police Station Sarhali to face trial in case of FIR No. 58 dated 12.05.2024 registered under Section 61-1-14 of the Punjab Excise Act, 1914 (hereinafter referred to as 'the Act'), Police Station Sarhali on the

allegations that on 12.05.2024, the police party was present at T-point, village Thathiyan Mahanta in search of bad elements, where a secret informer gave secret information to ASI Dilbagh Singh that the accused Sunny Singh son of Resham Singh resident of Sakkri is habitual of distilling and selling illicit liquor in his house, if raid be conducted, accused could be apprehended with huge quantity of illicit lahan/liquor. Thereafter, police party conducted the raid at the house of accused Sunny Singh where a person was found distilling illicit liquor by means of working still and on seeing the police party, he fled away from the spot. On search, there was found 100 Kg. illicit liquor (lahan) in an iron drum, matchbox, two half burnt wooden logs, one shakala along with chapni, one plastic pipe, one teen box for changing the water, one bottle of illicit liquor as receiver containing 750 ML of illicit liquor. As the accused was found in possession of illicit lahan without having any license and permit to possess the same and thereby, he contravened the provisions of the Act. Ruka was sent FIR was registered. Investigation of the case was initiated. Accused was arrested. Statements of the witnesses were recorded and after completion of necessary formalities of the investigation, challan against the accused Sunny Singh was prepared and presented in the Court.

2. On appearance of the accused in the Court, copies of necessary documents as relied upon by the prosecution were supplied to him free of costs in compliance of under Section 230 of Bharatiya Nagrik Suraksha Sanhita (for short 'BNSS').

3. Finding a prima facie case under Section 61/1/14 of the Punjab Excise Act, 1914 against the accused, he was charge-sheeted accordingly, to

which he pleaded not guilty and claimed trial.

4. In order to bring home the guilt of the accused, prosecution has examined PW-1 ASI Jaspal Singh No.175/TT, PW-2 SI Dilbagh Singh No.1748/TT, HC Jugraj Singh No.403/TT as PW3 (wrongly mentioned as PW2), ASI Beer Singh no.806/TT as PW4 (wrongly mentioned as PW3) & MHC Dilbagh Singh as PW5 (wrongly mentioned as PW4). Thereafter, the evidence of the prosecution was closed by order of this court as all the material witnesses were examined.

5. On closure of prosecution evidence, statement of the accused under Section 351 of BNSS was recorded wherein the accused denied the evidence brought against him and pleaded his false implication and opted to lead no evidence in defence.

6. After having heard the Ld. APP and Ld. Counsel for the accused and having gone through the record of the case with his able assistance, following point of determination arises before this Court:-

“A. Whether the prosecution has been able to prove beyond all reasonable doubt that on 12.05.2024 in the area of village Sakkri, P.S. Sarhali, the accused was found in possession of 100 Kg. of lahan/illicit liquor without having any license and permit to possess the same and thereby, he contravened the provisions of the Punjab Excise Act?”

7. Learned counsel for the accused has argued that the accused has been implicated falsely and case of the prosecution cannot be said to be proved only on the basis of the testimony of the official witnesses as no independent witness has been joined by the Police. He further argued that testimony of prosecution witnesses has not found any corroboration from any independent witness and no conviction can be based solely upon the

testimony of official witnesses and even the essential ingredients of search of an accused and the premises were not taken care of as per the provisions of Section 103 of BNSS. Moreover, there are many contradictions in the versions of these official witnesses regarding the occurrence, safe custody of the case property, place of occurrence and arrest of the accused. As such, the prosecution has miserably failed to prove beyond all reasonable doubt that the accused has committed the offence in question as the onus of proving the same lies heavily on it.

8. To refute these contentions, learned APP for the State has argued that there is no rule of law that uncorroborated testimony of an official witness cannot be accepted. All the witnesses produced by prosecution have categorically deposed as per the prosecution story. Further, arguing that one credible witness outweighs testimony of number of witnesses of indifferent character. Thus, Ld. APP for the State has prayed to convict the accused and punish him as per law.

9. I have considered the arguments advanced by the learned APP for the State as well as learned counsel for the accused and have also gone through the judicial file.

10. The prosecution by examining PW-1 ASI Jaspal Singh, PW-2 SI Dilbagh Singh, HC Jugraj Singh as PW3, ASI Beer Singh as PW4 & MHC Dilbagh Singh as PW5 has tried to build its case against the accused. Further, the prosecution has proved on record ruqa Ex.PA, FIR Ex.PB, endorsement thereon Ex.PC, recovery memo Ex.PD, rough site plan Ex.PE, FORM M29 Ex.PF, chemical examiner report Ex.PG and case property Ex.MO1 to MO9.

11. It is the case of the prosecution that on the given date, PW-2 SI Dilbagh Singh alongwith other police officials was present at T-point Patti, Thathian Mahanta, where he received secret information regarding the offence in question, leading to conduct a raid upon the premises of the house of accused Sunny Singh wherein the accused Sunny Singh was found distilling illicit liquor by means of working still, who on seeing the police party fled away from the spot. He dismantled the working still and articles of working still were taken into possession i.e., one iron drum containing 100 Kg lahan, one match-box, two half burnt wooden logs, one shakala alongwith chapni, one plastic pipe, one iron balta, one tin box, one bottle of illicit liquor, which was used as receiver containing 750 ml illicit liquor, got recovered. During his examination in chief, PW2 i.e., Investigating Officer has stated that before conducting raid at the house of accused, he tried to join independent witness/respectable of the village but no one was ready to join. However, during his cross-examination, PW2 has stated that, he cannot tell the name of any person, whom he tried to join as a witness. He has stated further that he had called Gurmeet Singh, *sarpanch* at the spot but he did not cite him as a witness in the proceedings of the case and did not mention anything about said Gurmeet Singh in the zimminies or in his investigation. However, he has not mentioned the name of Gurmeet Singh during his examination in-chief and same appears to be an improvement. Therefore, the prosecution has failed to prove that the Investigating Officer had tried to join any independent witness while conducting proceedings in the present case. It is relevant to mention that as per Section 103 (4) of BNSS, before making a search, the officer or other person about to make it shall call upon two or

more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or willing to be a witness to the search, attend and witness the search and may issue an order into writing to them so to do. However, the said provision of Section 103(4), BNSS is admittedly not complied with in the present case. As per Section 105 of BNSS, the process of conducting search of a place or taking possession of any property, any article or any things including preparation of the list of all things seized in the course of such search and seizure and signing of such list by witnesses shall be recorded through any audio-video electronic means preferably mobile phone and the police officer shall without delay forward such recording to the District Magistrate, Sub-Divisional Magistrate or Judicial Magistrate of the Ist Class. However, this provision has not been complied with as there is no such videography/photographs are on record. Hence, the best evidence is withheld by the prosecution which puts a dent in the prosecution case.

12. Further, the case property in the present case has not been proved as Investigating Officer PW2 during his cross-examination has stated that today, he has seen the case property in the Court, but *lahan* is not present in the drum. During cross-examination, he has admitted that the case property produced in the Court does not bear any identification, judicial malkhana number or police malkhana number to connect the same with the present case. He admitted further that the drum produced in the Court is totally empty and does not contain any lahan or its residue and drum produced in the Court does not has any seal on it and it is open. It is also relevant to

mention that during his examination-in-chief, PW2 had stated that he had sealed the sample nip 180 ML, bottle containing illicit liquor 570 ML and drum of lahan with seal impression 'DS'. Admittedly, an empty drum in the form of case property has been produced by the prosecution. It is pertinent to mention that there is nothing on record that I.O. SI Dilbagh Singh PW2 had taken any permission from any Senior Police officer/Competent Authority/Court to destroy the case property pertaining to the present case and admitted that the drum plastic produced in the Court is neat and clean and there is no residue of the lahan in the said plastic drum.

13. Even MHC Dilbagh Singh PW5 as well as ASI Jaspal Singh PW1 in their examination-in-chief have stated that mouth of iron drum was closed with jute sack and bottle containing illicit liquor was closed with lid and both were sealed with seal impression "DS" alongwith sample seal. He (PW5) personally took it into custody and placed it in the police malkhana and made an entry in register no. 19. However, no such entry is proved by the prosecution. It is very strange that 100 kg lahan was allegedly recovered from the accused but the drum produced in the Court did not contain any lahan or its residue.

14. During examination-in-chief, PW1 ASI Jaspal Singh has stated that at the time of raid, mother of the accused was present in the house but she was not joined in the proceedings of the case and I.O. did not record her statement. However, the name of the mother of the accused is nowhere mentioned by the prosecution during evidence.

15. Even no independent witness has been examined in the instant case. As such, it is safe to hold that the police party has not got joined any

independent witness into investigation before conducting the raid at the house of the accused Sunny Singh. Meaning thereby, mandatory provisions of Section 103 (4) of BNSS have not been complied with neither the prosecution has come up with any specific or valid reason for the failure of the police party in that regard. It is a settled proposition of law that non-joining of the independent witness upon receipt of secret information is violative of mandatory provisions of section 103(4) of BNSS and prosecution version cannot be relied upon in the absence of corroboration when the offence is punishable with minimum sentence. For this, reliance can be placed upon “Jagsir Singh Vs. State of Punjab, 2000(3) RCR 693. 1999(2) RCR 631 Baaj Singh Vs. State of Haryana, “Hukam Singh Vs. State of Punjab (P&H) Law Finder Doc Id # 13078, Jit Singh Vs. State of Punjab (P&H) Law Finder Doc ID # 47289 and Rattan Vs. State of Punjab (P&H) Law Finder Doc Id # 49073.

16. The link evidence is missing in this case. Even in site plan Ex.PE, number of FIR has been wrongly mentioned and mark A mentioned in the notes, is not reflected in the site plan. Even PW5 MHC Dilbagh Singh has mentioned during his cross-examination that he had affixed serial no. 19 on the case property. However, no case property bearing such number is produced in the Court. Surprisingly, an empty drum i.e., case property was produced in the Court by the prosecution. All these facts have created a reasonable doubt in the version of the prosecution.

17. The whole edifice of the prosecution's claim totally blew up by the cross-examination of PW1 to PW5. It is settled law that prosecution has to prove its case beyond shadow of reasonable doubt by proving on

record that investigation was done as per the mandatory requirement enshrined in law. In the present case, both investigating officer as well as recovery witness have admitted that they have not complied mandatory provisions of section 103(4) of BNSS before conducting raid at the house situated in the village of accused, which itself causes doubt in the case of the prosecution and the manner in which the raid was conducted, recovery was effected and investigation was done, benefit of which must go to the accused. No independent witness was got joined into the investigation by the police party. The admissions on the part of the prosecution witnesses further create doubts in the version of prosecution, which in itself is a major blow to the case of prosecution, nonetheless reasonable doubts in the version of the prosecution. Further, during their cross-examinations, the prosecution witnesses have completely destroyed the case of the prosecution.

18. In the above said facts and circumstances of the instant case, as the case of the prosecution is dented by various reasonable doubts as discussed above, this court finds no sense in convicting the accused under the given section. Reliance in this regard can also be placed on “Shishpal and another Versus State of Haryana” 2011 (1) RCR (Criminal) 267 and “Chander Bhan Versus State of Haryana” 2015 (1) RCR (Criminal) 301.

19. In view of the above said discussion, this Court is of the considered view that the arguments raised by the Ld. Counsel for the accused carries weight and the prosecution has failed in proving the case against the accused beyond all reasonable doubts. The evidence on record is definitely not sufficient to bring home the guilt of the accused. Accordingly, the accused **Sunny Singh** is hereby **acquitted** of the charge framed against

them punishable under Section 61-1-14 of the Excise Act. The case property be disposed of as per rules after the expiry of period of filing appeal/revision against this judgment, if any. The file be consigned to the Record Room.

Note: Certified that all the ten pages of this judgment are signed by me, which have been dictated by me and typed by Judgment writer directly on computer

Pronounced in open Court.
Dated: 25.03.2026

Stenographer G-III (Harpreet Kaur)

(Manjot Kaur)
Judicial Magistrate Ist Class,
Tarn Taran/(UID No.PB0596)

CHA-76-2025 State vs. Sunny Singh

Present: Sh. Pankaj Sharma, Ld. APP for the State.
 Accused Sunny Singh on bail with counsel, Sh. Ajaypal Singh
 Saggu, Advocate.

PW5 MHC Dilbagh Singh is present and cross-examined completely. No other PW present. Material prosecution witnesses are already examined by the prosecution. Today, it was the last and final opportunity to the prosecution to lead its evidence. No further adjournment is justified for prosecution evidence. Therefore, the evidence of the prosecution is hereby closed by order.

Statement of the accused has been recorded under Section 351 of BNSS. Accused opted not to lead any defence evidence.

Arguments heard. Vide my separate detailed judgment of the even date, accused Sunny Singh stands acquitted from the charges as mentioned in the judgment itself. The case property be disposed of as per rules, subject to the final outcome of appeal or revision preferred by any party, if any. Compliance has been made under Section 483, BNSS. File complete in all respects be consigned to the Record Room.

Pronounced in open Court.

Dated: 25.03.2026

Stenographer G-III (Harpreet Kaur)

(Manjot Kaur)
Judicial Magistrate Ist Class,
Tarn Taran/(UID No.PB0596)