

**IN THE COURT OF RENU GOYAL, PCS, JUDICIAL MAGISTRATE, FIRST
CLASS, DASUYA, UID PB0553.**

CNR NO. PBH0A1-000639-2018

CIS No. CHA/77/2018

Act Ch. No. :

Date of Decision: 6-5-2019

State Vs. Surjit Kaur wife of Prem chand resident of ward No. 3,
Urmur, PS Tanda, Distt. Hoshiarpur.

..... Accused

FIR No. : 222 Dated 4-9-2015
U/S : 61 (1) (14) of Excise Act.
PS Tanda District Hoshiarpur.

Present: Sh. Bharat Sahota, APP for the State.
Accused on bail with counsel Sh. RS Abhi Advocate

JUDGMENT:

The above named accused have been sent up by the SHO of Police Station Tanda, District Hoshiarpur to face trial for the offence punishable under sections 61 (1) (14) of Excise Act.

2. Brief facts of the case are that on 4-9-2015, the police party headed by HC Gurmit Singh along with the other police officials were on patrolling duty on their private vehicles and were present at Darapur Bypass Tanda and the police received a secret information to the effect that Surjit Kaur wife of Prem chand resident of ward No. 3, Urmur, PS Tanda, Distt. Hoshiarpur, used to sell illicit liquor in her house and if the raid is conducted she can be apprehended red handed. The information was reliable and upon this the police party raided the house of the accused at disclosed place and saw that one lady was having his hand in the plastic cane which was having open mouth and was mixing some liquid and on seeing the police party she tried to fled away from the spot,

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but she was apprehended at the spot by the police. On inquiry by the police, she disclosed her name as Surjit Kaur wife of Prem chand resident of ward No. 3, Urmur, PS Tanda, Distt. Hoshiarpur. Before conducting the search of the accused the investigating officer tried to join the police party, but nobody was ready. Thereafter, on search of the accused, lahan (illicit liquor) was recovered from the said accused. On measurement the lahan came out to be 44 litres in possession of the accused. Ruqa was sent to police station for the registration of FIR. Investigation into the offence was initiated by the IO.

During the course of investigation, statements of witnesses under section 161 CrPC were recorded. Accused was arrested from the spot. Recovered lahan was checked and tested by Excise Inspector. After completion of remaining investigation and other formalities challan was prepared and presented against the accused in the Court for offence Under section 61 of Punjab Excise Act.

3. On the presentation of challan in the Court, the copies of documents relied upon by the prosecution were supplied to the accused as per the necessary compliance of Section 207 Cr.P.C. free of costs.

4. From the perusal of documents on the record, prima-facie a case Under Section 61 (1) of Excise Act was made out against the accused. Charge was framed accordingly to which accused pleaded not guilty and claimed trial.

5. To prove the guilt of the accused, the prosecution examined following witnesses:-

Sr. No.	Name of the witness.	Documents.
1.	HC Balkar Singh as PW1	• Recovery memo as Ex. PW1/A. • Arrest memo as Ex. PW1/B. • Personal Search memo as Ex. PW1/C
2.	HC Gurmeet Singh as	• Ruqa as Ex. PW2/A.

	PW2 (Investigating Officer)	• Recovery memo as Ex. PW1/A. • Copy of the FIR as Ex. PW2/B • Site plan as Ex. PW2/C. • Arrest memo as Ex. PW1/B • Personal Search memo as Ex. PW1/C. • Report of the Excise Inspector as Ex. PW2/D. • Case property Ex. MO-1
3.	Aruna Rani Excise Inspector as PW3	• Report of the Excise Inspector as Ex. PW2/D.
4.	HC Pawan Kumar as PW4	• Report of the Excise Inspector as Ex. PW2/D

Thereafter, the learned APP for the state closed the prosecution evidence vide separate statement.

6. After closure of the evidence of the prosecution evidence, the statement of the accused under section 313 Cr.P.C was recorded, wherein, all the incriminating evidence against the accused was put to him, but the accused pleaded his false implication, but did not lead any evidence in defence.

7. Ld. APP for the State has argued that the accused was found in possession of without any permit or license and thereby accused has committed an offence punishable under section 61 (1) 14 Excise Act.

8. On the other hand, Ld. Defence counsel has argued that accused is innocent and since the prosecution failed to prove the case against the accused beyond reasonable doubt, he is entitled to be acquitted.

9. I have heard learned APP, learned defence counsel and have gone through the record carefully.

10. The prosecution case in brief is that 4-9-2015 in the area of village PS Tanda, accused was found in possession of illicit liquor without any permit or licence.

11. Learned defence counsel has further argued that the in the present case, as per the FIR, it is clear that the complaint was moved by HC Gurmeet Singh and he himself is the investigating officer of the present case and this fact is serious violation of the rights of the accused. Reliance is placed on the judicial pronouncement reported as **2003(1) CRIMINAL COURT CASES 661 (P&H)**, wherein, it is held as under:-

“ Offence under Punjab Excise Act,--FIR lodged at the instance of Police officer, who himself investigated the case-- Charge against the accused quashed”.

Hence, the IO as well the complainant in the present case are one and the same person, which has to made the prosecution case highly doubtful in view of the law discussed above.

12. Learned defence counsel further argued that the alleged recovery has been made from the busy place, but no independent witness has been joined or examined by the prosecution in the present case though availability. Prosecution witnesses examined by the prosecution have testified that the recovery was effected from the busy place and efforts were made to join independent witness, but no one was ready. The Investigating officer could have easily join any independent witness and he has further failed to explain non joining of the said witness. He should have atleast offered a reasonable explanation for non inclusion of independent witness. So, the non joining of the independent witness is also a fatal to the prosecution case. Reliance in this regard is placed on the Judicial Pronouncement reported as **State of HP vs. Smt. Usha reported as 1989(2) RCR Criminal 438.**

13. Keeping in view of discussion made above, this Court is of the considered view that the prosecution has failed to prove its case, against accused beyond, the shadow of reasonable doubt. In criminal jurisprudence, the accused is proved to be innocent until and unless his guilt stands established beyond reasonable doubt. Since, the prosecution failed to discharge the onus of establishing the guilt of the accused beyond reasonable doubt, hence, accused Surjit Kaur is held not guilty and acquitted from the charges framed against him. Case property if any be disposed of as per law after expiry of period of appeal/revision, if any. File be consigned to the record room.

Pronounced in open court:- 6-5-2019

Renu Goyal, PCS,
Judicial Magistrate First Class,
Dasuya.
UID PB0553.

Varun Talwar.

STATE VERSUS SURJIT KAUR

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Present: Sh. Bharat Sahota, APP for the State.
Accused on bail with counsel Sh. RS Abhi Advocate

Arguments heard. Vide my separate judgment of the even date accused Surjit Kaur is held not guilty and acquitted from the charges framed against him. Case property if any be disposed of as per law after expiry of period of appeal/revision, if any. File be consigned to the record room.

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