

**IN THE COURT OF MS.NIRMALA DEVI, PCS,
JUDICIAL MAGISTRATE IST CLASS, SUNAM
(Unique Identification No.PB-0411)**

Challan No.33 dated 12.02.2018,
CIS No.79/2018,
CNR No. PBSGA1-000304-2018,
Decided on: 13.03.2019.

State

Versus

Jagdish Singh son of Gurjant Singh, resident of Village Chatha Nanhera,
P.S. Chhajli.

...Accused.

**F.I.R.No. 55 dated 03.06.2017,
Under Section 61/1/14 of Punjab Excise Act,
Police Station, Chhajli.**

Present: Sh. Pushvinder Singh, Ld. APP for the State.
Accused on bail with counsel Sh. P.S.Chhahar Adv.

JUDGMENT:-

The accused named above, has been sent up by the SHO of Police Station, Chhajli, to face trial for the commission of an offence punishable Under Section 61/1/14 of Punjab Excise Act.

2. The brief facts of the prosecution case are that on 03.06.2017, at about 07:30 PM, in the area of Village Khadial, after receipt of secret information, the accused was apprehended along with 36 bottles of country made liquor, by the police party headed by HC Jatinder Singh. Separate sample nips were prepared and the case property was sealed with the seal of IO and was taken into police possession, vide separate recovery memo. A ruqa was sent to the police station for registration of the formal FIR. Site plan was prepared. Accused was

arrested and his personal search was conducted. Statements of witnesses were recorded. On completion of investigation, challan was presented in the court.

3. On appearance, accused was supplied copies of challan, as required under Section 207 of Cr.P.C.

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

5. To prove its case, prosecution has examined PW1 HC Jatinder Singh, IO, PW2 HC Harinder Singh and PW3 C Gurbeant Singh. No other witness has been examined by the prosecution and remaining prosecution evidence was closed by order.

6. The statement of accused under Section 313 Cr.P.C was recorded, in which he pleaded innocence and false implication. However, accused did not lead any evidence in his defence.

7. I have heard the APP for the State, defence counsel and perused the file carefully. The point for determination in this case is that:

“Whether, on 03.06.2017, at about 07:30 PM, in the area of Village Khadial, 36 bottles of country made liquor, were recovered from the possession of the accused?”

8. In support of the charge, prosecution has examined PW1 HC Jatinder Singh, who was the Investigating Officer of the present case, who has duly proved the mode and manner in which, he conducted the entire investigation of the present case. He has duly unfolded the layers of prosecution story, while proving on file ruqa Ex.P1, FIR Ex.PW1/A, disclosure statement of accused Ex.P3, recovery memo Ex.P4, sample

seal chit Ex.P3, rough site plan Ex.P5, arrest memo cum personal search memo Ex.P6, chemical report Ex.PX and case property Ex.MO-1.

9. Further prosecution has examined PW2 HC Narinder Singh, who is recovery witness, who has duly corroborated the testimony of PW1 stating that on 03.06.2017, on receipt of secret information, accused was apprehended along with 36 bottles of country made liquor without any license or permit. He has duly proved on record recovery memo Ex.P4 besides proving other documents.

10. Thereafter, prosecution has examined PW3 C Gurbeant Singh, who has tendered his affidavit Ex.PW3/A, whereby he has deposed regarding deposit of the case property with the FSL. He also deposed regarding not tampering with the case property and its intact condition, till it remained in his custody.

11. On the contrary, accused while recording statement under Section 313 Cr. P.C. stated that he is innocent and has been falsely implicated in this case but no evidence, in defence, was led by him.

12. APP for the state on the strength of evidence mustered by prosecution submitted that case against the accused is fully proved beyond shadow of doubt as the recovery has been fully proved by recovery witnesses, as well as I.O and no link evidence is missing and as such accused is liable to held guilty U/S 61 of Punjab Excise Act.

13. On the other hand, Ld. Defence counsel strenuously urged that prosecution has miserably failed to prove its case beyond the shadows of reasonable doubt. Moreover, there are material discrepancies in the depositions of the witnesses examined by the prosecution, which

strike the root of the case of prosecution. It is further argued that prosecution has failed to join any independent witness or effort was made and all these facts cumulatively entail to acquittal of accused.

14. After having heard Ld. APP for the State, Ld. Defence counsel and going through the record, I am of the view that the prosecution has miserably failed to bring home the guilt of the accused. The perusal of the testimonies of the prosecution witnesses reveals that there are material contradictions in the testimonies of the prosecution witnesses. Firstly, prosecution examined Investigating Officer HC Jatinder Singh as PW1, who during cross-examination has admitted that he did not take into police possession the record of ownership from which place the recovery was effected but this seems to be a serious lap on the part of the Investigating Officer as it was his first duty to collect the record of place, wherefrom the recovery has been effected but no such effort has been made by the IO. PW-2 further admitted that they have not shown any field of any neighbor and even did not mention khasra, khatauni or motor number and this fact also goes against the prosecution story as what was the hitch to the IO in recording or mentioning the khasra number or ascertaining the same to give authentic fact to the prosecution's case but of no use. PW-1 has admitted that without breaking the seal of the case property, anything can be reduced or added therein and meaning thereby that the prosecution has failed to preserve the case property and any kind of tampering can be made with the same. PW-1 further admitted that no statement of any Patwari, Kanungo, Panch, Sarpanch or Numberdar was recorded regarding the

ownership of the property wherefrom recovery was effected, whereas such statement was necessary to prove the case of the prosecution. PW-1 further deposed that the bucket was present in the motor kotha of the accused and the measurement was done with the same but the same was not taken into police possession and at this junction, a question arises as the bucket was present in the Motor Kotha and the measurement was done with the same, then why it was not taken into police possession and even the IO has failed to explain in this regard. PW-1 further admitted that there is no mention in the recovery regarding the liquor to be of Punjab or Haryana made which is also a serious lack on the part of investigating agency as from the perusal of the recovery memo, generally, it can not be said that whether the liquor belongs to Haryana or Punjab whereas this fact should have been definitely mentioned therein but no such effort has been made. PW-1 further deposed that Panch Gurpiar Singh had visited the place of occurrence and he is not a witness, in any other case but unfortunately, Panch Gurpiar Singh has not been examined in the present case to give independent corroboration to the version of prosecution. Furthermore, PW-2 HC Narinder Singh during cross-examination has deposed that the articles for the measurement of liquor were present at the spot. He also admitted that anything can be added or reduced from the case property, without tampering with the seal. No statement of any private person was recorded at the spot. Spade, Bucket and Motor Starter were present in the Motor Kotha. Further he could not tell whether the liquor was of Punjab Or Haryana made. Thereafter, PW-3 C Gurbeant Singh during cross-examination has

deposed that he has not seen the case property in the court. He has not identified the accused present in the court. He even deposed that he has no knowledge of the facts of case. Clearly, from the depositions of above said witnesses, the case of prosecution does not prove. The Ld. Counsel for the accused has argued that in the present case, the case property has not been produced, in the court as deposed by PW-3 C Gurbeant Singh, who during cross-examination has deposed that he has not seen the case property in the court. Thus, the same has been tampered with and meaning thereby, the case property was not produced, when the statements of the witnesses were recorded. The non production of the case property, in the court has caused serious prejudice to the accused and false implication cannot be ruled out. The non production of the case property is fatal to the story of the prosecution. Reference in this respect, can be made to the law laid down in 1997 RCR(CrI), 400, in which, it is held that:-

“Punjab Police Rules, R.22.15 and 27.17 Punjab Excise Act, 1914, Section 61(1)(a), Recovery of lahan-Case property not produced in court. It was stated that lahan leaked. Under Rule 22.15, it is the responsibility of officer incharge of Police Station to examine the property twice a month. Under Rule 27.17, it is his duty to maintain case property till such time the final orders are passed. Accused acquitted in the instant case.”

15. Case property not produced in court. Trial may not be vitiated. If however, prejudice is caused, benefit should go to the accused. Omission is fatal to the prosecution story. Furthermore, no independent witness has been associated by the police party to prove the genuineness of the occurrence. When the recovery was effected from a thoroughfare place, it is obligatory on the part of IO to join independent witness, but

the investigating agency did not join any independent witness for the reasons best known to it. IO did not explain that he was not in a position to arrange an independent witness at any stage of investigation. There is no dispute with the proposition of law that official witnesses are as good as any other witness from the public, but where the IO had ample opportunity to co-opt independent witness but he had not done so, makes the story of the prosecution doubtful. Furthermore, it was imperative for the Investigating Officer to collect the record of ownership from where the recovery has been effected but no such record has been obtained by the IO and even no statement of the neighbour adjoining to the fields/ place of recovery has been recorded. From the cross-examination of witnesses as well record, it is clear that the prosecution has failed to prove the allegations against the accused person and accordingly, the point of determination is answered negative.

16. In view of my discussion, the case of prosecution can not be taken to be proved beyond shadow of doubt. Therefore, by giving benefit of doubt, accused is acquitted of the charge framed against. His bail bond and surety bond stand discharged. Case property be disposed of, as per rules, after the expiry of period of appeal/ revision, if any. File be consigned to the record room after due compilation within time prescribed as per rules.

Pronounced in open Court on 13.03.2019.

(Jaswinder Singh),
Stenographer Gr.II.

Nirmala Devi, PCS,
Judl. Magistrate Ist Class,
Sunam, UID No. PB-0411.

State Vs. Jagdish Singh.

Present: Sh. Pushvinder Singh, Ld. APP for the State.
Accused on bail with counsel Sh. P.S.Chhahar Adv.

The accused does not wish to lead any evidence in his defence and as such, the same is closed by order.

Arguments heard. Vide my separate judgment of even date, the accused is acquitted of the allegations, as detailed therein. File be consigned to record room.

Pronounced in open Court on 13.03.2019.

Nirmala Devi, PCS,
Judl. Magistrate Ist Class,
Sunam, UID No. PB-0411.

(Jaswinder Singh),
Stenographer Gr.II.