

**IN THE COURT OF SH. HIMANSHU ARORA
SUB DIVISIONAL JUDICIAL MAGISTRATE
GIDDERBAHA**

Challan Act No. :8/2024.

CNR No. : PBSMA1-000143-2024.

Date of Institution : 02.02.2024.

Date of Decision : 04.01.2025.

State **Versus** Mani Singh son of Jasvir Singh resident of
Ghumiara Road, Near Dharamshala, Village
Faqarsar, Police Station Gidderbaha, District Sri
Muktsar Sahib.

FIR No.26 dated 16.12.2023.

U/s 61 of the Punjab Excise Act.

Police Station GRP Abohar.

Present :- Sh. Jashandeep, APP for State.

Accused Mani Singh on bail with counsel Sh. M.S. Sidhu,
Advocate.

JUDGMENT:-

1. Accused Mani Singh (the accused) in the present case was sent before this court to face trial for offence punishable u/s 61 of the Punjab Excise Act (the Act).
2. Brief facts of the prosecution case were that on 16.12.2023 the accused was apprehended and 9 bottles of country liquor were recovered from his possession.
3. The FIR was registered, investigation carried out and upon the completion of investigation challan was presented in the court.
4. Upon finding a prima facie offence punishable u/s 61 (1) (a) of the Act charge was framed against the accused to which he pleaded not guilty and claimed trial.
5. To prove its case the prosecution examined PW1 ASI Surinder Singh, PW2 Constable Lakhwinder Singh and PW3 HC

Sukhwinder Singh.

6. Upon the closure of prosecution evidence all the incriminating circumstances were put to the accused and his statement u/s 313 Cr.P.C. recorded wherein he denied the allegations leveled against him and pleaded false implication.
7. He, however, did not lead any evidence in his defence.
8. I have heard Learned APP for the State and Learned Counsel for the accused and have gone through the record of the case.
9. The prosecution has been able to prove its case against the accused beyond all reasonable doubt. Apprehension of the accused was duly established by the testimony of PW1 ASI Surinder Singh deposed that the accused was arrested vide arrest memo (Ex.P7) and his personal search memo (Ex.P8) was prepared. Thereafter, the accused was released on bail on his furnishing personal bond (Ex.P10) and surety bond (Ex.P9). The memos were proved by the witness by identifying his signature thereon, being the investigating officer of the case.
10. Recovery of liquor from the accused was also duly proved by the prosecution. PW1 ASI Surinder Singh deposed that on 16.12.2023 when the police contingent was on patrol a person was seen coming on foot with a plastic bag who was apprehended and who disclosed his name as Mani Singh. From him the plastic bag was recovered which was found to be containing 9 bottles of country liquor. Upon recovery, all the

bottles were emptied into a plastic can and from this homogeneous mixture 1 sample measuring 180 ML was drawn out and was sealed with seal bearing impression SS. The remaining liquor was kept in the plastic can which was then separately sealed with seal bearing impression SS. The empty bottles were put back into the plastic bag which was then separately sealed with seal bearing impression SS. Sample seal (Ex.P1) and Form No.29 (Ex.P2) were prepared. The representative sample and the plastic can and the plastic bag, all separately sealed with seal bearing impression SS, and sample seal SS (Ex.P1) and Form No.29 (Ex.P2) were taken into possession vide memo (Ex.P3). The memo was proved by the witness by identifying his signature thereon being the investigating officer of the case. The witness identified the accused present in the court and brought on record the case property as MO1. Recovery of liquor from his possession was not disputed in the least by the accused. Nothing controverting to the recovery could be brought on record. As such, recovery of liquor from the accused stood duly established.

11. Ruqa (Ex.P4) was sent to the police station on the basis of which FIR (Ex.P5) was registered. Rough site plan (Ex.P6) was prepared.

12. Report of the Chemical Examiner, *per se* admissible into

evidence by virtue of Section 293 Cr.P.C., was brought on record by PW1 ASI Surinder Singh as Ex.PX and it came armed with due evidentiary value certifying that the representative sample was country liquor. As such, nature of contents of recovery effected from the accused stood proved as country liquor.

13. Chances of false implication and tampering were ruled out by the testimonies of PW3 HC Sukhwinder Singh and PW2 Constable Lakhwinder Singh. PW3 HC Sukhwinder Singh deposed that on 16.12.2023 PW1 ASI Surinder Singh had deposited with him one plastic can containing 8¾ bottles of country liquor, a plastic bag containing 9 empty bottles and a sample measuring 180 ML, all separately sealed with seal bearing impression SS, along with sample seal SS and Form No.29. As long as the sample was in his possession it was not tampered with by anyone or in any manner. It was only on 19.12.2023 that the sample sealed with seal bearing impression SS and sample seal SS and Form No.29 were handed over by him to PW2 Constable Lakhwinder Singh for deposit with the Chemical Examiner, vide road no.58 dated 19.12.2023, which was done by him on 20.12.2023 against receipt and the receipt was handed by PW2 Constable Lakhwinder Singh to him. In this PW2 Constable Lakhwinder Singh corroborated the

prosecution version by deposing that on 19.12.2023 the representative sample sealed with seal bearing impression SS along with sample seal SS and Form No.29 was handed over to him by PW3 HC Sukhwinder Singh for deposit with the Chemical Examiner, vide road No.58 dated 19.12.2023. On the same day he has gotten the docket forwarded from the Office of Senior Superintendent of Police, Sri Muktsar Sahib and on 20.12.2023 the said sample was deposited by him with the Chemical Examiner against issuance of receipt which was given by him to PW3 HC Sukhwinder Singh. As long as the sample was in his possession, it was not tampered with by anyone or in any manner. As such, sealed and untampered condition of the representative sample since its creation on 16.12.2023 till its deposit with the Chemical Examiner on 20.12.2023 stood duly established.

14. It was contended by Learned Counsel for the accused that no independent witness was joined by the police during the investigation and in this light, Learned Counsel for the accused prayed for his acquittal.
15. The very purpose of joining an independent witness is to rule out chicanery on part of the investigating agency and to obliterate chances of false implication of the accused. In cases where the entire prosecution story is unblotted, non joining of

an independent witness would not come crashing down on the otherwise authentic, credible and legitimate prosecution case and thus entitle the accused to an acquittal, as is the scenario at hand. The contention of Learned Counsel for the accused that no independent witness was joined in the investigation was not tenable in the light of ruling of the Hon'ble Punjab and Haryana High Court in ***Basharat Ali v. Inspector of Customs 2006 (4) RCR (Criminal) 250 (DB)*** wherein the Hon'ble High Court held that an accused is not entitled to an acquittal merely because independent witnesses have not been joined in the investigation. The Hon'ble High Court further went on to observe that the testimony of a prosecution witness cannot be rejected merely because of the colour of his uniform. They are as good as independent witnesses. In ***Shiv Lal v. State of Haryana 2006 (2) R.C.R. (Criminal) 224 (P&H)*** it was held that there is no absolute rule of law, that the absence of independent witnesses, must result in the prosecution case being discarded. In ***Sheela v. The State of Haryana 2010 (1) R.C.R. (Criminal) 315 (P&H)*** it was held that mere fact that the evidence of the official witnesses was not corroborated through independent source cannot be said to be sufficient to disbelieve and distrust the prosecution version. In both these cases, conviction of the accused therein was upheld for testimony of the official

witnesses was found to be reliable and solitude of non joining of independent witness was not made a ground for acquitting the accused. In the present case as well when the prosecution version stood authenticated to the fullest and case against the accused stood proved to the hilt as a result of unprejudiced and unbiased testimony of the official witnesses appraised earlier, to discredit and disbelieve whom nothing could be elicited in their cross-examination, merely because no independent witness was joined did not hinder it, particularly when nothing was brought on record to prove even a scintilla of prejudice that was caused to the accused as a result of this omission. Thus, mere non joining of independent witnesses did not destroy the prosecution version given the sterling evidence led by the prosecution against the accused.

16. As such, the prosecution case stood established to the effect that recovery of country liquor was effected from the accused and representative sample was drawn out and sealed. The same was not tampered with till it reached the Chemical Examiner and report of the Chemical Examiner pertained to this sealed and untampered representative sample, certifying recovery effected from the accused as illicit liquor.
17. As an upshot the above observations, it is held that the prosecution proved its case against the accused Mani Singh

beyond all reasonable doubt. As such, the accused is convicted
u/s 61 of the Act. Let he be heard on quantum of sentence.

**Pronounced in Open Court
January 4, 2025**

**(Himanshu Arora)
Sub Divisional Judicial Magistrate
Gidderbaha**

Munish STG-II

QUANTUM OF SENTENCE:-

Present: Shri Jashandeep, APP for State.

Convict Mani Singh with counsel Sh.M.S. Sidhu, Advocate.

The convict pleaded that he is a first time offender. He is also the sole bread earner of his family and has to look after his family. Therefore, a lenient view be taken while imposing a sentence upon him. APP for the State has not opposed this plea. Heard. Recent trend of criminal penology is highly inclined towards affording the offenders an opportunity to reform themselves and rehabilitate into the society instead of sentencing them to short tenures of imprisonment where in the company of hardened criminals they may deteriorate further. Keeping this in view and circumstances narrated by the convict along with the fact that his incarceration would not only deprive him of a fair chance to reform and assimilate back into the world but would also rather enhance his probability of turning into a hardened criminal by coming in contact with recidivists, and would thus be at loggerheads with the reformatory theory of punishment, coupled with the fact that his antecedental track does not suggest anything which can deprive him of benefit of probation, I deem it a fit case to give benefit of Probation of Offenders Act to the convict. Also, the convict has stated that he is not previous convict and also there is nothing on record to show that he is a previous convict. The convict is, as such,

directed to be released on probation of good conduct for a period of 1 year upon his furnishing personal bonds u/s 3 and 4 of Probation of Offenders Act in the sum of ₹20,000/-, undertaking to be of good behaviour for a period of 1 year from today and to come and receive sentence, as and when passed by this court. Personal probation bonds furnished. Accepted and attested. Costs of the proceedings are assessed as Rs.1,000/- to be paid by convict Mani Singh. Costs paid by convict Mani Singh against receipt. Case property, if any, be disposed subject to the decision of appeal/revision, if any. File be consigned to record room.

Pronounced in Open Court
January 4, 2025

Munish STG-II

(Himanshu Arora)
Sub Divisional Judicial Magistrate
Gidderbaha