

IN THE COURT OF MISS RAMANDEEP KAUR, PCS JUDICIAL
MAGISTRATE FIRST CLASS, TALWANDI SABO, (BATHINDA)
UID NO. PBO764

CHA-83-2023

CNR No. PBBTA1-001467-2023

Date of Institution : 19.08.2023

Date of Decision :
29.04.2026

State of Punjab Vs. 1. Jaswinder Singh @ Laddi son of Darshan
Singh
2. Jagsir Singh @ Seera son of Darshan Singh
both resident of Maur Kalan.
3. Jaspreet Singh @ Jassi son of Gurdeep Singh
resident of Maur Khurd.

.....Accused on
bail

FIR No.112 dated 14.07.2015
Under Section 61/1/14 of The Excise Act
Police Station: Maur, District Bathinda.

Date of Offence	14.07.2015
Date of FIR	14.07.2015
Date of Chargesheet	19.08.2023
Date of Framing of Charges	01.03.2024
Date of Commencement of Evidence	15.03.2024
Date on which Judgment is reserved	NA
Date of the Judgment	29.04.2026
Date of the Sentencing Order, if any	NA

ACCUSED DETAILS:

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during
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State of Punjab Vs. Jaswinder Singh @ Laddi & Ors.

							trial for purpose of Section 428 Cr.P.C.
1.	Jaswinder Singh @ Laddi	31.07.2015	31.07.2015	Section 61/1/14 of The Excise Act	Acquitted	NA	NA
2.	Jagsir Singh @ Seera	14.07.2015	23.07.2015	Section 6/1/14 of The Excise Act	Acquitted	NA	NA
3.	Jaspreet Singh @ Jassi	22.08.2015	22.08.2015	Section 61/1/14 of The Excise Act	Acquitted	NA	NA

Present: Mr. Rupinder Singh, Ld. APP for the State.
 Ms. Veerpal Kaur, Advocate for accused Jagsir Singh @
 Seera, Jaswinder Singh @ Laddi and Jaspreet Singh @ Jassi
 on bail (present).

JUDGMENT

1. The above named accused have been sent up to the Court by the SHO of Police Station Maur to face trial for an offence punishable under Section 61/1/14 of The Excise Act.
2. The brief facts of the prosecution version are that on 14.07.2015, ASI Iqbal Hussain 798 along with the police party were present at Bus Stand Maur Mandi in connection with patrolling cum checking of suspicious men, where he received secret information that Jagsir Singh, Jaswinder Singh @

Ramandeep Kaur, PCS,
JMIC, T.Sabo, 29.04.2026

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Laddi sons of Darshan Singh, Jassi Singh son of Gurdeep Singh, Kala Singh son of Ajmer Singh resident of Maur Khurd are habitual of selling illicit liquor. If raid is conducted at their houses, then huge quantity of country made liquor can be recovered from their houses. The information being reliable and the accused persons were found to commit an offence punishable under Section 61/1/14 of The Excise Act, investigating officer sent ruqa to police station for registration of case against the accused persons. ASI Iqbal Hussain along-with police party conducted raid at the house of the accused Jagsir Singh where one person tried to ran away from the spot on seeing the police party. He was apprehended by ASI Iqbal Hussain with help of the police party. On asking, that person disclosed his name as Jagsir Singh @ Seera son of Darshan Singh resident of Maur Kalan and other person succussed in flee away from the spot ,who is identified as Jaswinder Singh @ Laddi. On checking the house of Jagsir Singh and Jaswinder Singh, 12 boxes of country made liquor of Marka Desi Mota Santra were recovered. Since all recovered bottles of country made liquor were of same Marka, one bottle was separated as sample and sample parcel was prepared separately and rest of the bottles were kept in four sacks (bori) and these were converted into bulk parcels. The said parcels were sealed by Investigating Officer with his seal bearing impression 'IH' and sample seal was separately prepared. Form No. M-29 was completed. Seal after use was handed over to HC Kulwinder Singh 2109. All the sealed parcels were taken into police possession vide separate recovery memo. The accused Jagsir Singh was arrested and relevant memos were prepared. The rough site plan was prepared. The statements of witnesses were recorded. Then ASI Iqbal Hussain conducted raid at the house of the accused Kala Singh, who on seeing the police party successfully flee away form the spot. On checking his house, 3 boxes of country made liquor of Marka Desi Mota Santra were recovered. Since all recovered bottles of country made liquor were of same Marka, one bottle was separated as sample and sample parcel was prepared separately and rest of the bottles were kept in one sack (bori) and it was converted into bulk parcel. Both the parcels were sealed by Investigating Officer with his seal bearing impression 'IH' and sample seal was separately prepared. Both the sealed parcels were taken into police possession vide separate recovery memo and rough site plan was prepared. The statements of witnesses were recorded.

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Thereafter ASI Iqbal Hussain conducted raid at the house of the accused Jaspreet Singh Jassi, who on seeing the police party successfully fled away from the spot. On checking his house, 5 boxes of country made liquor of Marka Desi Mota Santra were recovered. Since all recovered bottles of country made liquor were of same Marka, one bottle was separated as sample and sample parcel was prepared separately and rest of the bottles were kept in two sacks (bori) and these were converted into bulk parcel. All the parcels were sealed by Investigating Officer with his seal bearing impression 'IH' and sample seal was separately prepared. The rough site plan was prepared. The statements of the witnesses were recorded. On returning to the police station, the case property was deposited with MHC. On 15.07.2015 the accused Jagsir Singh was produced before the Hon'ble court Talwandi Sabo and he was sent to central jail Bathinda. On 31.07.2015 the accused Jaswinder Singh @ Laddi was joined in investigation and was arrested and relevant memos were prepared. He was released on bail as per court order. On 22.08.2015 the accused Harpal Singh @ Kala and Jaspreet Singh @ Jassi were released on bail. The sample parcel was deposited with Chemical Examiner Kharar and its report has been received. The statements of witnesses were recorded. On 01.07.2022, Amritpal Singh son of Babu Singh resident of village Maur Khurd produced death certificate of accused Harpal Singh @ Kala S/o Ajmer Singh R/o Maur Khurd, as per death certificate, accused Harpal Singh had expired on 21.02.2017. The death certificate taken into police possession vide separate memo. The statements of witnesses were recorded. After completing all formalities of the investigation, challan against the accused was presented in the court .

3. Upon appearance of accused in the Court, copies of challan and necessary documents as relied upon by the prosecution were supplied to accused free of cost in compliance of Section 207 of The Code of Criminal Procedure. The statements of accused in this aspect were also recorded.

4. After hearing of Ld. APP for State and defence counsel and after perusing the Police Report and documents appended with it. On finding a prima facie case against the accused is made out. The charge against the accused for offence punishable under Section 61/1/14 of The Excise Act, framed accordingly. The contents of the charge were read over and explained to the

accused in simple Punjabi language which is understood by them. The accused pleaded not guilty and claimed for trial.

5. In order to prove alleged allegations/ accusation against the above mentioned the accused, the prosecution has examined following witnesses as : -

i) Retired Inspector Iqbal Hussain (Investigating Officer) as PW-1 who deposed as per relevant aspects of investigation of the present case conducted by him and he proved upon certain documents i.e. ruqa as Ex.P1, FIR as Ex.P2, endorsement on ruqa as Ex.P3, sample seal chit as Ex.P4 & Ex.P9 & Ex.P12, Form No.M-29 as Ex.P5 & Ex.P10 & Ex.P13, recovery memo as Ex.P6 & Ex.P11 & Ex.P14, arrest memo as Ex.P7 & Ex. P18 & Ex. P20 & Ex.P21 , personal search memo as Ex.P8 & Ex.P19 & Ex.P22 & Ex.P23, rough site plan as Ex. P15 to Ex. P17, chemical report as Ex.P24 to Ex.P26 and DDR No. 18 dated 01.07.2022 as Ex.P27.

ii) HC Balwinder Singh 2391/BTI (Sample Carrier) as PW-2 who deposed vide his affidavit-cum-deposition sheet Ex.PW-2/A, depositing of sample parcels by him with Chemical Examiner Kharar in intact condition.

iii) SCT Sukhdev Singh 1997/BTI (Recovery Witness) as PW3 who was member of police party and remained with IO throughout the investigation at the spot and to whom seal after use was handed over by the investigating officer. This witness duly supported and corroborated the version of the investigating officer. This witness has relied upon certain documents i.e. ruqa as Ex.P1, FIR as Ex.P2, endorsement on ruqa as Ex.P3, sample seal chit as Ex.P4 & Ex.P9 & Ex.P12, Form No. M-29 as Ex.P5 & Ex.P10 & Ex.P13, recovery memo as Ex.P6 & Ex.P11 & Ex.P14, arrest memo as Ex.P7, personal search memo as Ex.P8, rough site plan as Ex. P15 to Ex. P17.

iv) Kulwinder Singh (Clerk PSPCL) as PW4, who deposed that he has brought summoned record i.e. electricity bill of connection No.3005599494 is in the name of Jagsir Singh S/o Darshan Singh resident of village Maur Kalan and connection No. 3005608675 in

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the name of Kulwinder Kaur W/o Gurdeep Singh R/o Maur Khurd and attested copy of the same are Ex.PW4/A & Ex. PW4/B which are true and correct as the original record.

v) Teja Singh (Sr. Assistant of Commissioner Office, Faridkot Division, Faridkot) as PW-6 who deposed that he has brought the summoned record pertaining to sanctioned granted vide memo number Excise Branch-2021/448 dated 11.08.2021 in case FIR No.112/2015 U/s 61 Excise Act, P.S. Maur, State versus Jaswinder Singh and he has seen the sanction on the judicial file as Ex. PW5/A and also identified signature of Sh. RK Kaushik IAS Commissioner, Faridkot Division, Faridkot which is Ex.PW5/A and covering letter as Ex. PW5/B.

vi) Retired ASI Sulakhan Singh (MHC) as PW6 who deposed vide his affidavit-cum-deposition sheet Ex.PW-6/A regarding depositing the case property in the police Malkhana by investigating officer and he handed over sample parcels to HC Balwinder Singh for depositing the same with Chemical Examiner, Kharar.

Thereafter, the prosecution evidence has been closed by APP for state on behalf of the prosecution on 05.01.2026.

6. After the closure of prosecution evidence, the statement of accused as required under Section 313 of The Code of Criminal Procedure, was recorded wherein the entire incriminating material appearing in evidence against the accused persons during prosecution evidence has been put to the accused, to which the accused persons have denied its correctness and have pleaded false implication and they are innocent. The accused persons opted not to lead any evidence in their defence. Thereafter, the case was fixed for arguments.

7. I have heard learned APP for the State as well as learned counsel for the accused and has carefully gone through the entire evidence and documents on record.

8. Ld. APP for the State has argued that the prosecution has duly proved the case of prosecution and there is no discrepancy in the testimony of PW's. He has further argued that accused have been found in illegal possession

of alleged recovery of country made liquor marka Mota Santra without any license and permit. He has further argued that the accused persons have been duly identified by the material prosecution witnesses at the time of evidence. To prove its case regarding recovery in question, prosecution got examined Retired Inspector Iqbal Hussain (Investigating Officer) as PW1 and SCT Sukhdev Singh 1997/BTI (Recovery witness) as PW-3 who in their examination-in-chief have not only deposed regarding alleged recovery has been effected from accused persons, but have also identified accused before the Court. So, the guilt of the accused for committing offence under Section 61/1/1/4 of The Excise Act, has been proved on record beyond doubt. Hence, the accused persons are liable to be convicted.

9. On the other hand, in order to disprove the prosecution version, the Ld. Counsel for the accused has argued that the accused are innocent and they have been falsely implicated in the present case and nothing was recovered from the accused persons. He further argued that sample taken by the investigating officer in the present case is not proper and said procedure is unknown to law. The investigating agency had not complied with the provisions of Section 100 (4) Cr.P.C. and the case property was not produced in the court during trial. Ld. counsel for defence has further argued that the prosecution story is meritless and prosecution has failed to prove the case beyond reasonable doubt and no conviction should be passed against the accused. So, he prayed for acquittal of the accused persons.

POINTS FOR DETERMINATION

10. After thoughtfully considering the rival submissions made by both the parties and minutely appraising the entire oral as well as documentary evidence placed on record, following point requires determination in the present case:-

(i) Whether on 14.07.2015, at about 11.15 AM in the area of PS Maur, the accused Jaspreet Singh @ Jassi was found in possession of 5 boxes of country made liquor marka Mota Santra and the accused Jaswinder Singh and Jagsir Singh were found in possession of 12 boxes of country made liquor marka Mota Santra and the co-accused Kala

Singh (now died) was found in possession of 3 boxes of country made liquor marka Mota Santra (each box containing 12 bottles) without any license and permit, in contravention of provisions of The Punjab Excise Act or rules made thereunder?

(ii) Whether the prosecution has been able to prove its case against the accused beyond reasonable doubt?

(iii) Conclusion?

Finding on Point No.(i) and Point No.(ii) for Determination

11. The prosecution version in present case against the accused is that they have been charged with an offence punishable under section 61/1/4 of The Excise Act, on the allegation that they were found in possession of alleged recovered boxes of country-made liquor marka Mota Santra. The cardinal provision of the criminal law is that one can be convicted for commission of offence charged of till the same is established beyond reasonable doubt. In order to prove its case, the prosecution has examined as many as six witnesses i.e. Retired Inspector Iqbal Hussain (Investigating Officer) as PW-1, HC Balwinder Singh 2391/BTI (Sample Carrier) as PW2, SCT Sukhdev Singh 1997/BTI (Recovery Witness) as PW-3, Kulwinder Singh (Clerk PSPCL) as PW4, Teja Singh (Sr. Assistant of Commissioner Office, Faridkot Division, Faridkot) as PW5 and Retired ASI Sulakhan Singh (MHC) as PW6.

It is pertinent to mention here that as per version of prosecution, the FIR in the present case was registered against the accused persons on basis of statement of complainant ASI Iqbal Hussain (now retired Inspector) who was investigating officer of the case. In order to prove that alleged recovery has been effected from the possession of the accused persons, the prosecution has examined Retired Inspector Iqbal Hussain as PW1 who deposed that on 14.07.2015 he was posted as ASI at PS Maur and on that day, he along with police party headed by him present at Bus Stand Maur Mandi for the purpose patrolling-cum-checking suspicious persons, where he received secret information that Jagsir Singh, Jaswinder Singh both S/o Darshan Singh R/o Ward No.6 Maur Kalan, Jassi Singh S/o Gurdeep Singh, Kala Singh S/o Ajmer Singh R/o Village Maur Khurd are

habitual of selling country made liquor and if raid would be conducted, huge quantity of liquor can be recovered from their houses. PW-1 further deposed that he sent ruqa Ex.P1 through PHG Harbans Singh for lodging of FIR and FIR as Ex.P2 by ASI Jagsir Singh was registered and also made endorsement on ruqa Ex.P3 and he identified his signature. This witness further deposed that thereafter, he along-with the police party conducted raid at the house of accused Jagsir Singh and while watching the police party one accused fled from the spot and he with the help of police party apprehended the other accused and asked, his name and addressed, who disclosed his name Jagsir Singh @ Seera S/o Darshan Singh R/o village Maur Kalan and C Sukhdev Singh tried to catch the accused Jaswinder Singh but he successfully fled from the spot to whom C Sukhdev Singh identified as Jaswinder Singh @ Laddi S/o Darshan Singh. This witness further deposed that he checked the house and recovered 12 boxes of country made liquor of marka Mota Santra from the room and he took sample of one bottle as all the bottles are of same marka and prepared sample parcel of that and also prepared bulk parcel of the remaining bottles and he put his seal with bearing impression 'IH' on parcels. This witness further deposed that sample seal chit as EX.P4, Form No. M-29 as Ex.P5 and seal after use handed over to C Sukhdev Singh and he took the case property into possession the case property vide memo Ex.P6, which was attested by C Sukhdev Singh and C Kulwinder Singh and he arrested the accused Jagsir Singh vide arrest memo as Ex.P7, personally search him vide memo Ex.P8, memoes were signed by the accused Jagsir Singh and attested by C Kulwinder Singh and prepared rough site plan as Ex.P15, he recorded statement of witnesses. This witness further deposed that he conducted the raid at the house of accused Kala Singh and while watching the police party accused Kala Singh successfully fled from the spot and on checking his house, recovered 3 boxes of country made liquor marka Mota Santra, he took sample of one bottle as all the bottles are same marka and prepared separate parcel of that and also prepared the parcel of the remaining 35 bottles, sample seal chit as EX.P9, Form No. M-29 as Ex. P10 and seal after use handed over to C Sukhdev Singh and he took into possession case property vide memo as Ex.P11, which was attested by C Sukhdev Singh and C Kulwinder Sing and he prepared the rough site plan Ex.P16 and recorded the statement of witnesses. This witness further deposed that he conducted raid at the house of accused Jaspreet Singh @ Jassi and while

watching the police party accused Jaspreet Singh @ Jassi successfully fled from the spot and on checking his house, recovered 5 boxes of country made liquor marka Mota Santra, he took sample of one bottle as all the bottles are same marka and prepared the separate parcels of the remaining 35 bottles, sample seal chit as Ex.P12, Form No. M-29 as Ex. P13 and seal after use was handed over to C Sukhdev Singh and he took into possession case property vide memo as Ex.P14, which was attested by C Sukhdev Singh and C Kulwinder Singh and prepared rough site plan as Ex.P17 and he recorded the statement of witnesses and on 31.07.2015 he arrested the accused Jaswinder Singh and joined him in the investigation vide memo Ex.P18 and personally search him vide memo Ex.P19. This witness further deposed that on 22.08.2015 he arrested the accused Harpal Singh and Jaspreet Singh vide memo as Ex.P20 & Ex.P21 and personally search them vide memo Ex.P22 & Ex.P23, memoes were attested by C Jagdeep Singh and signed by the accused, Chemical Examiner Reports are Ex.P24 & Ex.P25 & Ex.P26 and he recorded the statements of witnesses and he deposited the case property with the malkhana munshi and handed over the accused at police station and he identified the accused Jagsir Singh, Jaspreet Singh & Jaswinder Singh present in the court and case property i.e. gatta plastics is not able to produce in the court, in this regard DDR No.18 dated 01.07.2022 was entered into roznamcha which is Ex.P27. The statement of investigating officer as PW-1 is duly corroborated by SCT Sukhdev Singh 1997/BTI (Recovery Witness) as PW-3, who has deposed on the similar lines as deposed by PW-1. PW-3 was member of police party and remained with Investigating Officer throughout the investigation at the spot and to whom seal after use was handed over by the investigating officer. This witness has relied upon certain documents ruqa as Ex.P1, FIR as Ex.P2, endorsement on ruqa as Ex.P3, sample seal chit as Ex.P4 & Ex.P9 & Ex.P12, Form No.M-29 as Ex.P5 & Ex.P10 & Ex.P13, recovery memo as Ex.P6 & Ex.P11 & Ex.P14, arrest memo as Ex.P7, personal search memo as Ex.P8, rough site plan as Ex. P15 to Ex. P17.

The prosecution has examined HC Balwinder Singh 2391/BTI (Sample Carrier) as PW-2 who deposed vide his duly sworn affidavit Ex.PW-2/A that on 05.08.2015 MHC Sulakhan Singh 1578/BTI handed over sample parcels for depositing the same with Chemical Examiner, Kharar and on 06.08.2015 he deposited the sample parcels with Chemical Examiner, Kharar in intact

condition.

The prosecution has further examined Kulwinder Singh (Clerk PSPCL) as PW-4 who deposed that he has brought the summoned record i.e. electricity bill of connection No.3005599494 is in the name of Jagsir Singh S/o Darshan Singh R/o village Maur Kalan and connection No.3005608675 in the name of Kulwinder Kaur W/o Gurdeep Singh R/o Maur Khurd and attested copy of the same are Ex.PW4/A and Ex.PW4/B, which are true and correct as per the original record.

The prosecution has further examined Teja Singh (Senior Assistant, of Commissioner, Faridkot Division, Faridkot) as PW-5 who deposed that he has brought the summoned record pertaining to sanctioned granted vide memo number Excise Branch-2021/428 dated 11.08.2021 in case FIR No. 112/2015 U/s 61 Excise Act, P.S. Maur, Stated Versus Jaswinder Singh and he has seen the sanction on the judicial file as Ex. PW5/A and also identified signature of Sh. R.K. Kaushik IAS Commissioner, Faridkot Division, Faridkot is Ex.PW5/A and covering letter as Ex. PW5/B and he has worked under him and he is well acquainted with his hand writing and signatures.

The prosecution has further examined Retired ASI Sulakhan Singh (MHC) as PW6 who deposed vide his affidavit-cum-deposition sheet Ex.PW-6/A wherein he stated that on 14.07.2015 he was posted as MHC at police station Maur and on that day, ASI Iqbal Hussain (Investigating Officer) deposited the case property in the Malkhana, Police Station Maur. This witness further deposed that on 05.08.2015, he handed over the sample parcels along with sample seal to SCT Balwinder Singh for depositing the same office of Chemical Examiner, Kharar and on 06.08.2015 SCT Balwinder Singh deposited the said sample parcels in the office of Chemical Examiner Kharar in intact condition and he handed over its receipt to him on return to police station.

12. After carefully going through the case file and hearing the arguments put forth by Ld. Counsel for the both the parties, this Court does not find any weight in the arguments put forth by Ld. APP for the State. It is settled law that prosecution has to prove its case beyond reasonable shadow of doubt and benefit of doubt always goes to accused. There are material lapses in the investigation conducted by the investigating agency. It is the case of

prosecution that the above said boxes of country made liquor Marka Mota Santra have been recovered from the possession of the accused. Retired Inspector Iqbal Hussain who was investigating officer of the present case, has stepped into witness box witness as PW-1, deposed in his examination that he took sample of one bottle from recovered 12 boxes and took sample of one bottle from recovered 5 boxes and he also took sample of one bottle from recovered 3 boxes, since all the recovered boxes/bottles of the same marka. However, procedure adopted by the prosecution agency is unknown to law. To prove alleged recovery has been recovered from the possession of the accused, it was required that sample from each bottle should have been taken or the investigating officer could have made the homogeneous mixture of all the bottles of the same Marka in a large drum and thereafter one sample of the said Marka should have been taken from the drum and send the same to chemical laboratory for analysis. Perusal of the recovery memoes as Ex.P6, Ex.P11 & Ex.P14 clearly show that Investigating officer took sample of one bottle from recovered 12 boxes and took sample of one bottle from recovered 5 boxes and he also took sample of one bottle from recovered 3 boxes, since all the recovered boxes/bottles of the same marka, without preparing any homogeneous mixture for the reason that it is of same marka, but no batch number of each bottle has been mentioned in the said recovery memo. PW-1 has not deposed in his testimony that all the recovered bottles were of same batch number and said fact is also not mentioned anywhere in the recovery memo Ex.P6, Ex.P11 & Ex.P14, therefore, sample taken by the prosecution agency in present case is not proper and it cannot be said in any manner that all the remaining recovered bottles were also containing same country made liquor.

The Hon'ble Punjab and Haryana High Court in case titled as ***Shish Pal and Another Versus State of Haryana reported as 2011(1)RCR(Criminal) 267***, wherein it has been observed that recovery of 3000 pouches and 96 bottles of liquor, the Investigating officer took out one pouch and one bottle as sample and sent the same to chemical examiner. The Investigating officer deviated from his duty and did not take away any sample from all the pouches and bottles with a purpose to know whether the contents of above said articles were containing liquor. The accused acquitted inter-alia

on this ground alone.

The above said observations are also applicable to the facts of present case. Perusal of the record on file reveals Instead of drawing samples from each of recovered bottles, investigating officer took sample of one bottle from recovered 12 boxes and took sample of one bottle from recovered 5 boxes and he also took sample of one bottle from recovered 3 boxes, since all the recovered boxes/bottles of the same marka. Thus, investigating officer has failed to take samples from all the recovered bottles which was required to establish the alleged recovery of all bottles from the possession of the accused persons. Moreover, nothing on record which shows that remaining bottles contained the liquor of the same nature. Therefore, the remaining liquor cannot be presumed to be the same.

13. The learned counsel for the accused has argued that that the FSL report are also not proper. Perusal of FSL reports as Ex.P24, Ex.P25 & Ex.P26 brought on the case file nowhere show that the sample parcels received by Chemical Laboratory, Kharar were properly sealed or that seals on the parcel which were received on 06.08.2015 were intact or that weight of the sealed parcels were duly checked or that parcels were having such seal impression when received at FSL. Therefore, in the absence of any such fact mentioned on the reports itself, the reports placed on the case file mentioning merely that sample resembles country made liquor cannot be relied upon.

14. Ld. Counsel for the accused has further argued that prosecution has failed to comply with the provision of Section [100\(4\)](#)CrPC. It is pertinent to discuss Section [100\(4\)](#), of The Code of Criminal Procedure, 1973 which provides :-

"100(4) Before making a search under this Chapter, 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 any other locality if no such inhabitant of the locality is available or is willing to be a witness to the search, to attend and witness the search and may issue order in writing to them or any of them so do ."

As per section 100 of Code of Criminal Procedure, it is the duty of the police to arrange two independent witness from the locality where search is to be

conducted. As such non-joining of the independent witness could not be a valid ground to acquit the accused but the law and prudence requires corroboration of the official witnesses from some independent source.

It has been held in case titled as “*Gurnam Singh versus State of Punjab* 1981 C.L.R. 438”, wherein the Hon’ble Punjab & Haryana High Court has held that “*there should be recording of fact of non-availability of independent and respectable inhabitants by the police*”. Moreover, it has been held in case titled as “*Isher Singh versus State of Punjab, 1984(2) RCR 516*” by Hon’ble Punjab & Haryana High Court that “*Investigating officer not joined independent witnesses available in the locality, this conduct renders the prosecution story highly doubtful*”. In view of law laid down by Hon’ble Punjab and Haryana High Court in case law titled as *Shishpal and another Versus State of Haryana reported in 2011(1) RCR(Criminal) 267*, the investigating Officer was bound to make some efforts to join independent witness as place of recovery was a through fare, but no such effort has been made by the investigating officer in the present case. As such, to say that prosecution agency has made earnest efforts to join the independent witness is nothing but a farce.

Perusal of the record on file reveals that the police had prior secret information in this case, therefore, police had sufficient time to call the two independent witnesses as per the requirement of law but has failed to do so. Moreover, no serious effort for joining public witnesses appears to have been made. Section 100 (4) of the Cr.P.C also casts a statutory duty on an official conducting search to join two respectable persons of the locality. Further, there is nothing on record to show that police officials had served any notice under Section 160 Cr.P.C. upon the persons who refused to join the investigation. No explanation or reason has been put-forth by the prosecution as to why they have not joined or examined any independent witness. No doubt, non examination of the independent/private witness could not be a valid ground to acquit the accused, but the law and prudence requires corroboration of the official witnesses from some independent source.

It is worth to mention here that presence of independent/private witness is safeguard envisaged under law to ensure transparency and impartiality in the recovery of incriminating material. Their role is to corroborate the seizure,

attest to the condition of the property and prevent any subsequent dispute or allegation of tampering. Joining of independent witnesses would have given credibility to the recovery in question. In view of above discussed circumstances, the considered view of this court is that there was failure on part of the police to make any efforts to join person as independent witness which creates doubt in the story of prosecution and therefore, the accused are entitled to benefit of doubt.

15. The learned counsel for the accused has further argued that the case property has not been produced in the Court at any point of time during trial. This contention of learned counsel for the accused is correct as the case property was not produced in the Court during trial. Though Retired Inspector Iqbal Hussain (Investigating Officer) as PW-1 deposed in his evidence that the case property i.e. gatta plastics is not able to produce in the court and he proved one DDR No.18 dated 01.07.2022 as Ex.P27, wherein it has been mentioned that the case property was damaged due to heavy rains. However, no such intimation regarding the damaging of the case property has been given at any point of time to the concerned trial Court or to the Illaqa Magistrate and this fact only came on record when case property was summoned for examination of prosecution witnesses in the trial and no explanation in this regard has been given. The Hon'ble Punjab and Haryana High Court in case titled as ***Singara Singh Versus State of Haryana reported in 1997(2) RCR(Criminal) 783*** has laid down that as per Rule 22.15 of Punjab Police Rules, it is responsibility of the Officer in Charge of the Police Station to examine the property twice a month because he is supposed to be in charge of the same and if the property is found to be incomplete or to be damaged, he shall add to his report names of persons responsible for the loss or damage. All the damages and shortages must then be carefully noted and reported to Superintendent of the police. In such circumstances, the conduct of the concerned SHO as well as the MHC, in whose supervision the case property was lying requires an explanation.

16. The learned counsel for accused has further argued that in the present case, challan was presented in the court after more than 8 years and no prosecution can be launched in a case after the expiry of three years and thus, the present case is time barred. Before coming to any conclusion , it would be

appropriate to discuss the relevant provisions of Excise Act as well as Section 468 to 473 of Code of Criminal Procedure Code, 1973 which provides for limitation period for taking cognizance of offence. Section 75 of the Excise Act, 1914 is reproduced as under:-

75. (1) No Judicial Magistrate shall take cognizance of an offence punishable-

(a) under [Section 61](#) or [Section 66](#) except on his own knowledge or suspicion or on the complaint or report of an excise officer; or

(b) under [Section 62](#), [Section 63](#), [Section 64](#), [Section 65](#), [Section 68](#) or [Section 70](#), except on the complaint or report of the Collector or an excise officer authorised by him in that behalf.

(2) Except with the special sanction of the State Government no Judicial Magistrate shall take cognizance of any offence punishable under this Act, unless the prosecution is instituted within a year after the date on which the offence is alleged to have been committed.

Section 468 and Section 470(3) of the Code of Criminal Procedure Code also deals with the period of limitation and these provisions are reproduced as under:-

468 (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation, (2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year.

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or as the case may be, the most severe punishment.

Section 470 of the Code is in these terms 470 (3), Where notice

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of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation:- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

The Hon'ble Punjab and Haryana High Court in case of **Pritam Singh and others vs. State of Punjab**, 1981 CriLJ 545 and in CRM M 23553 of 2019(O &M) titled as **Manish Kumar @Mani and Others Vs State of Punjab** (decided on 20.03.2023) and **Gurdarshan Singh Vs State of Punjab** in CRM- M- 6058 of 2023(decided on 28.02.2024) held that -

“ Since the period of limitation for institution of prosecution has been dealt with in the Excise Act, as also in the Criminal Procedure Code, so, if possible, a construction that would not only not tend to exclude the application of the provisions of either of the statutes but would harmonise the relevant provisions has to be put upon the said provisions. When these provisions are so read, the conclusion is inescapable that the prosecution for the offence dealt with under the Excise Act has to be launched within one year, as envisaged by Sub-section (2) of Section 75 of the Excise Act and if that is not done and special sanction, as envisaged by Sub-section (2) of Section 75, of the State Government is not forthcoming, then even if Clause (c) of Sub-section (2) of Section 468 of the Code envisages a period of three years for the launching of the prosecution for the kind of offences, with which the petitioners are charged herein, no prosecution can be launched after the expiry of the period of

one year and the Court would stand debarred from taking cognizance of the offences in question. However, where special sanction of the State Government had been sought for by the prosecuting agency and the sanction had been given by the State Government and the period envisaged by Section 468 of the Code for launching of the prosecution had not run out, then the Court could still take cognizance of the offence. But if the limitation period envisaged by the provisions of Section 468 had expired before the special sanction of the kind had been granted by the State Government, then the Court would be debarred from taking cognizance of the offence unless the provisions of Sub-section (3) of Section 470 of the Code are attracted, for where the provisions of Section 470(3) are attracted, then the period spent in securing sanction of the State Government, while computing the period of limitation, shall have to be excluded and if after so doing period of limitation was still available.”

Therefore, as per the brief facts of present case, FIR No.112 regarding alleged offence has been registered on 14.07.2015 by the police station Maur. On completion of investigation, the present final police report (challan) has been presented in the court on 19.08.2023 after the period of more than 8 years. Therefore, the same has been clearly filed after the expiration of limitation prescribed under Section 468 Cr.P.C as the Special Sanction has been obtained by the prosecution in this case in year of 2021. Even if the period mentioned by the prosecution is taken into consideration, then also the special sanction has been obtained after the expiry of limitation period of 3 years from date of commission of offence alleged. As discussed above, if the limitation period envisaged by the provisions of Section 468 Cr.P.C had expired before the special sanction of the kind had been granted by the State Government, then the Court would be debarred from taking cognizance of the offence, unless the provisions of Sub-section (3) of Section 470 of the Code are attracted.

Now Come to discuss the question as to whether provision of Section 470(3) of Code of Criminal Procedure Code is attracted to the facts of present case. It is

argued by the Ld. Counsel for the accused that said provision is also not applicable to the present case. The said contention of Ld. Counsel for the accused also appears to be correct as previous consent or sanction of the Government or any other authority is necessary only for launching the prosecution and not for extending the period of limitation given in the statute. The special sanction envisaged in Sub-section (2) of section 75 of the Excise Act is a sanction for permitting prosecution beyond the period of limitation envisaged by the said Sub-section. That is a kind of sanction that is needed not for launching the prosecution which could be done without any prior consent or sanction of the Government, but for permitting the launching of prosecution after the expiry of the period of limitation envisaged in the statute in question's. Provisions of Sub-section (3) of Section 470 of the Code thus not being applicable to the present case and the challan has been presented in the court after a period of more than 8 years ,well beyond the period of three years envisaged by Clause (c) of Sub-section (2) of Section 468 of the Code, the Court is not competent to take cognizance of the offence, unless it availed itself of the powers under Section 473 of the Code which is in the following terms:

473. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

In the present case, no satisfactory reason has been explained for such a huge delay in presentation of final police report (challan). Thus, the arguments of the learned counsel are sustainable that the present case is time barred.

17. It is cardinal principle of criminal jurisprudence that prosecution has to prove its case beyond reasonable doubt by leading cogent and convincing evidence. Further, it is settled proposition of criminal law that in order to successfully bring home the guilt of the accused, the prosecution has to stand on its own legs and it cannot drive any benefit whatsoever from the weakness, if any, in the defence of the accused. The accused is entitled to the benefit of reasonable doubt in the prosecution story and any such doubt in the prosecution case entitles the accused to be acquitted.

It may be noted that the standard of proof in a criminal case is 'beyond

any reasonable doubt'. In "State of Haryana Vs Shamshish Singh 2006 (3) RCR (criminal) 346 (P&H) (DB)", the Hon'ble Punjab and Haryana High Court held that in a criminal trial, prosecution is cast with very serious duty to bring on record quality evidence in order to substantiate its allegation against an accused person. It cannot seek conviction of any person without bringing substantial evidence on record as it becomes extremely difficult for the Court to pronounce a person guilty in the absence of fool-proof evidence proving guilt of the accused person.

Finding on Point No.(iii) -CONCLUSION

18. Consequently and in view of the aforesaid discussion, the prosecution has miserably failed to establish the guilt of the accused persons beyond shadow of reasonable doubt and accused persons Jaswinder Singh @ Laddi, Jagsir Singh @ Seera and Jaspreet Singh @ Jassi are clearly entitled for benefit of doubt. **Accordingly, point of determination is decided against the prosecution and the accused Jaswinder Singh @ Laddi, Jagsir Singh @ Seera and Jaspreet Singh @ Jassi are hereby acquitted of the charges framed against them under Section 61 /1/14 of The Excise Act.** Their bail/surety bonds shall remain effective under Section 437 A Cr.P.C. for the purpose of appeal and revision if any. The case property, if any, be dealt with as per the rules, after the expiry of period of limitation for filing appeal/revision. File be consigned to record room after due compliance.

Pronounced in open court

29.04.2026

**(Ramandeep Kaur), PCS
Judicial Magistrate Ist Class,
Talwandi Sabo.
(UID no. PB0764)**

Note:- This judgment consists of 20 pages and all the pages have been checked and signed by me.

**(Ramandeep Kaur), PCS
Judicial Magistrate Ist Class,
Talwandi Sabo.
(UID No. PB0764)**

Typed by: Rinu, St.

ANNEXURE -A

CASE MANAGEMENT

LIST OF PROSECUTION/DEFENCE/COURT WITNESS

A. LIST OF PROSECUTION WITNESS

Rank No.	Name of Witness	Nature of Evidence
PW-1	Retired Inspector Iqbal Hussain	Investigating Officer
PW-2	HC Balwinder Singh 2391/BTI	Sample Carrier
PW-3	SCT Sukhdev Singh 1997/BTI	Recovery Witness
PW-4	Kulwinder Singh	Clerk PSPCL
PW-5	Teja Singh	Sr. Assistant, Commissioner Office Faridkot Division, Faridkot
PW-6	Retired ASI Sulakhan Singh	MHC

B. DEFENCE WITNESS, IF ANY

Rank No.	Name	Nature of Evidence
	None	

A. LIST OF PROSECUTION EXHIBITS

SR.No	Exhibits	Description of document
.		
1.	Ex. P1	Ruqa
2.	Ex. P2	FIR
3.	Ex. P3	Endorsement on ruqa
4.	Ex.P4, Ex.P9 & Ex.P12	Sample seal chit
5.	Ex.P5, Ex.P10 & Ex.P13	Form No.M-29
6.	Ex.P6, Ex.	Recovery memo

	P11 & Ex. P14	
7.	Ex.P7, Ex.P18, Ex.P20 & Ex.P21	Arrest memo
8.	Ex.P8, Ex.P19, Ex.22 & Ex.P23	Personal search memo
9.	Ex.P15 & Ex.P17	Rough site plan
10.	Ex.P24 to Ex.P26	Chemical Report
11.	Ex.PW2/A	Affidavit
12.	Ex.PW4/A	Attested Copy of Electricity bill
13.	Ex.PW4/B	Attested Copy of Electricity Bill
14.	Ex.PW5/A	Sanction on judicial file
15.	Ex.PW5/B	Covering Letter
16.	Ex.PW6/A	Affidavit

B. DEFENCE EXHIBIT IF ANY:

Rank	Name	Nature of Evidence
	None	

(Ramandeep Kaur), PCS
Judicial Magistrate Ist Class,
Talwandi Sabo.
(UID No. PB0764)