

**IN THE COURT OF DAVINDER SINGH, P.C.S.,
JUDICIAL MAGISTRATE 1st CLASS, AMRITSAR
(UID NO. PB0569)**

Case Details	
Case Type:	CHA
Filing No.:	7645/16 Filing Date: 17/09/2016
Registration No.:	896/16 Date of Registration: 17/09/2016
CNR No.	PBAS03-007254-2016
Date of Decision:	30.03.2019

Applicant : STATE OF PUNJAB

Accused : Jassa Singh son of Charan Singh, resident of
village Himmat Pura, Bodhi Wala Bhatha,
P.S. Gate Hakima, Amritsar.

FIR No. : 30, dated 07.02.2015

Under Section:- ; 61 of The Excise Act

Police Station: Gate Hakima, Amritsar

Present Sh. Arun Kumar, APP for the State.
Accused Jassa Singh on bail with counsel Sh B.S. Gill.

J U D G M E N T

The accused named above has been sent to this court by Sh. Parvesh Chopra SHO Police Station 'Gate Hakima' to face trial for the commission of offence punishable under Section 61 of Punjab Excise Act, 1914.

PROSECUTION STORY

2. The present FIR emanates from the fact that on 07.02.2015 HC Harpal Singh along with police party was present on private vehicle in search of suspicious elements at Railway crossing Bhagtanwala and was going towards village Mule Chak. From Gate no. 1 of Grain Market a Hindu youngster came with a plastic Cane in his right hand. On seeing the police party, he got perplexed and started walking fast. On suspicion, he was apprehended by the police. On inquiry, he disclosed his name as

Jassa Singh son of Channan Singh president of village Himmatpura, Bohri wala Bhatha, Gate Hakima Amritsar. Investigating officer tried to join independent witness before doing his search. None was ready to join the investigation. HC Harpal Singh along with police party opened the cap of plastic cane and found illicit liquor in plastic cane. Means of measurement were arranged by the IO. The entire liquor was put in a tub. A sample of 180 ML was separated. The remaining 20 bottles of 750/750 ML were put in the same plastic cane. IO sealed the plastic cane with his seal bearing impression "HS". He filled form no. M-29 at the spot. The seal was handed over to HC Sukhwant Singh at the spot. The case property was taken into police possession vide separate memo. Ruqa was scribed at the spot and was sent through PHG Bhinder Singh. FIR got register. Accused Jassa Singh was taken into police custody. Rough site plan of the place of recovery was prepared. On dated 16.02.2015 the sample was sent to Chemical Examiner, Kharar through HC Rakesh Kumar. The report of Chemical Examiner will be attached with file with supplementary challan. During the investigation, the statements of the witnesses were recorded. SHO P.S. Gharinda prepared the challan and presented the same in the Court for Judicial Verdict. The challan has been forwarded by ACP (Central), Amritsar.

COMPLIANCE OF SECTION 207 Cr.P.C

3. After presentation of challan, copies of challan and other documents attached therewith were supplied to the accused free of costs in compliance to Section 207 Cr.P.C. A separate statement of the accused has been recorded on 17.9.2016 in this regard.

CHARGE SHEET

4. Finding a prima facie case having been made out against the accused for the offence punishable under Section 61 of Punjab Excise Act, 1914 necessary charge was framed on 16.7.2018 against the accused to which he has pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE

5. In order to connect the accused with his guilt, prosecution examined as many as four witnesses. Initially, **PW-1 HC Harpal Singh** appeared in the witness box and has deposed on the lines of police report. He has brought on record form M29 as Ex P1, recovery memo Ex. P2, ruqa Ex. P3, FIR Ex. P4, arrest cum intimation memo of accused Ex. P5, personal search memo of the accused Ex. P6, rough site plan of place of recovery Ex. P7, report of Chemical examiner Ex. P8 and the case property as Ex. MO1 on record. **PW2 HC Sukhwant Singh** is the next witness of the prosecution. He is the recovery witness in this case. He has deposed on the lines of Investigating Officer in his examination in chief. He has corroborated the version of Investigating Officer. He has also proved all the memos as proved by the Investigating Officer. He has identified the accused in the court. **PW3 HC Rakesh Kumar** is the sample carrier. He took the sample to the office of Chemical Examiner, Kharar on dated 16.2.2015. MHC Parminder Kumar handed over a sample of 180 ml. and form M-29 vide road no. 40/21 to him. He has not tempered with the sample while in his custody. Lastly, **ASI Parwinder Kumar**, the then MHC of P.S. Gate Hakima appeared in the witness box. He has stated in his examination in chief

that on dated 07.2.2015 Investigating Officer Harpal Singh handed over to him case property containing plastic Cane with 20 bottles of illicit liquor, form M-29, sample seal and a sample of 180 ml. He made an entry in register no. 19 and deposited the case property. On dated 16.2.2015, he handed over the sample to HC Rakesh Kumar alongwith form M-29 vide road no. 40/21 to deposit in the office of Chemical Examiner, Kharar. After depositing the same HC Rakesh Kumar handed over to him the slip of receiving of sample and form M-29 to him on same day.

6. No other evidence was produced by the prosecution. Ld. APP for State has closed the prosecution evidence vide his separate statement dated 29.03.2019.

STATEMENT OF ACCUSED UNDER SECTION 313 CR.P.C

7. On conclusion of prosecution evidence, entire incriminating evidence as has come on record was confronted to accused during his statement under Section 313 Cr.P.C. recorded on 29.3.2019. Accused has replied the questions in negative. He has stated that a false case has been registered against him. He is innocent and he has been falsely implicated in the present case.

DEFENCE EVIDENCE

8. In his turn of evidence, the accused has not examined any witness. Defence evidence of accused is closed by order.

ARGUMENTS

9. During the course of arguments, Sh. Arun Kumar, Ld. APP for the State has submitted that the prosecution has examined as many

as four witnesses. The witnesses have duly proved the case of prosecution. The oral testimony as well as the documentary evidence is sufficient to prove the guilt of the accused beyond reasonable doubt. He has prayed that the accused may be convicted in this case.

10. Arguments have not been raised on behalf of the accused in rebuttal to the arguments of the prosecution.

APPRECIATION AND ADJUDICATION

11. The rival contentions so raised on either side are heard in the light of police report and the evidence as has come on record. In order to decide this case, this Court would frame following points of determination are as under:-

Q. I. Whether the accused have committed an offence punishable under Section 61 of Punjab Excise Act, 1914 ?

DISCUSSION

12. In this case, the allegations against the accused are that he was found in possession of 20 bottles of illicit liquor. He was caught red handed by the police. It was a chance recovery effected by the police. In order to prove its case, the prosecution has examined as many as four witnesses in this case. Initially, Investigating Officer HC Harpal Singh appeared in the witness box and has deposed on the lines of police report. He has brought on record form M-29 as Ex P1, recovery memo Ex. P-2, ruqa Ex. P-3, FIR Ex. P-4, arrest cum intimation memo of accused as Ex. P5, personal search memo of the accused as Ex. P6, rough site plan of place of recovery as Ex. P7, report of Chemical examiner as Ex. P8 and the case property as Ex. MO-1 on record. He has not been cross examined by the counsel for accused. His evidence

has gone un rebutted and unchallenged on record against the accused. Thereafter, PW2 HC Sukhwant Singh appeared in the witness box. He is the recovery witness in this case. He has deposed on the lines of Investigating Officer in his examination in chief. He has corroborated the version of Investigating Officer. He has also proved all the memo's as proved by the Investigating Officer. He has identified the accused in the court. I.O. recorded his statement. He has also not been cross examined by the counsel for the accused. His evidence has remained unchallenged on record against the accused. Up next, HC Rakesh Kumar, the sample carrier appeared in the witness box. He took the sample to the office of Chemical Examiner, Kharar on dated 16.2.2015. MHC Parminder Kumar handed over a sample of 180 ml. and form M-29 vide road no. 40/21 to him. He has not tempered with the sample while in his custody. Ld. Counsel for the accused did not wish to cross examine the sample carrier. The link evidence of sample carrier has remained intact in favour of the prosecution and against the accused. Lastly, ASI Parminder Kumar, the then MHC of P.S. Gate Hakima appeared in the witness box. He has stated in his examination in chief that on dated 07.2.2015 Investigating Officer Harpal Singh handed over to him case property containing plastic Cane with 20 bottles of illicit liquor, form M-29, sample seal and a sample of 180 ml. He made an entry in register no. 19 and deposited the case property in police Malkhana. On dated 16.2.2015 he handed over the sample to HC Rakesh Kumar alongwith form M-29 vide road no. 40/21 to deposit in the office of Chemical Examiner, Kharar. After depositing the same HC

Rakesh Kumar handed over to him the slip of receiving of sample and form M-29 to him on same day. Alike other witnesses, Ld. Counsel for the accused has not cross examined ASI Parminder Kumar. His evidence has gone unrebutted and and unchallenged.

13. In this case, the recovery of 20 bottles of illicit liquor has been effected from the accused. It was a chance recovery. In order to link the entire evidence against the accused the prosecution has examined as many as four witnesses. Initially, I.O. HC Harpal Singh and recovery witness HC Sukwant Singh appeared in the witness box. They have proved the recovery of illicit liquor 20 bottles from the accused. Their evidence has gone unrebutted and unchallenged on record against the accused. To link the evidence of I.O. and the recovery, HC Rakesh Kumar sample carrier and ASI Parvinder Kumar, the then MHC appeared in the witness box. They have corroborated the chain of events. They have completed the chain of events against the accused. None of the witness has been cross examined by the accused. The evidence of the witnesses has been admitted by the accused by not cross examining them. The case property has been produced in court as Ex. MO-1. The report of Chemical examiner has come on record as Ex. P-- 8. The report of chemical examiner has proved that recovery of illicit liquor has been effected from the accused. The prosecution has discharged the burden of proof against the accused. The burden has shifted against the accused. The accused has not led any evidence in his defence. The evidence of the accused has been closed by order. The evidence of the prosecution has remained unrebutted on record.

14. From the above said discussion, this court has reached to a considered opinion that the prosecution has discharged the onus of point of determination against the accused. Therefore, this point of determination is decided in favour of the prosecution and against the accused.

CONCLUSION

15. From my above discussion, this Court has arrived at the conclusion that the prosecution has succeeded in proving the guilt of the accused in this case and it has been proved on record that the accused was found in possession of 20 bottles of illicit liquor, which is punishable under section 61 of Punjab Excise Act, 1914. Therefore, the accused is hereby convicted under section 61 of Punjab Excise Act, 1914. He be taken into custody. Let, he be heard on quantum of sentence.

Announced in open Court

Dated 30.03.2019

Naresh Stenographer-II

Davinder Singh

Judicial Magistrate Ist Class, Amritsar

(UID NO. PB0569)

IN THE COURT OF DAVINDER SINGH, P.C.S., JUDICIAL
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QUANTUM OF SENTENCE

I have heard the convict on the question of sentence. The convict has prayed for pardon as it is his first offence and the offence is not of serious in nature. He has prayed that he be given a chance to live a normal life of persons with dignity. Lastly, he has prayed for releasing him on probation. On the other hand Learned APP for the State opposed these contentions and prayed for sentencing the convict for maximum imprisonment.

2. I have heard the submissions. There is nothing brought on record by the prosecution that he is a previous convict, therefore, the benefit of probation can be extended to the convict. Accordingly, the convict is hereby ordered to be released on probation on furnishing his personal probation bonds in the sum of Rs. 25,000/- thereby undertaking to keep peace and be of good behavior for a period of one year and he has to come and receive the sentence

as and when called upon to do so during the said period of one year. He is further directed to pay litigation cost of Rs. 1000/-. Bonds furnished. Litigation cost paid. Accused be released from custody on probation. On expiry of period of appeal/revision, as the case may be and outcome thereof, case property be dealt with as per rules. File be consigned to the Record Room, Amritsar after it's due compliance as per rules.

Announced in open Court
Dated 30.03.2019

Naresh Stenographer-II

Davinder Singh
Judicial Magistrate Ist Class, Amritsar
(UID NO. PB0569)