

CNR No.
PBBR030007372021



Case No. CHA/89/2021

Presented on : 23-02-2021

Registered on : 23-02-2021

Decided on : 13-12-2023

**IN THE COURT OF SH. AJAY MITTAL , P.C.S,
JUDICIAL MAGISTRATE 1st CLASS, BARNALA.
UID No.PB0257**

CASE No. 737 of 23.02.2021
CNR No. PBBR03-000737-2021
Computer ID No. CHA-89-2021
DATE OF DECISION:- 13.12.2023

**State Versus Jaswant Singh @ Satwant son of Jaggar
Singh son of Bisan Singh resident of Mandi
Pasa, Tajo.**

---Accused.

**FIR No. 138 dated 23.10.2020
U/s- 61 of Punjab Excise Act, 1914
Police Station- Tapa.**

Present :

Mr.Guriqbal Singh, APP for the State.

Accused on bail with Mr.Bvanshu Goyal, Adv.

JUDGMENT

1. The above named accused has been sent up by SHO PS Tapa to face trial for commission of offence U/s 61/1/14 of Excise Act.
2. Briefly stated the facts of the prosecution case are that on 23.10.2020 ASI Gurdeep Singh along with police party and laptop and

printer and dragon light etc. was present at Bus Stand Tajoke in connection with patrolling and checking of suspicious persons on private vehicle and at about 09:15 PM, he received the secret information that Satwant Singh son of Jaggar Singh resident of Tajoke is habitual of distilling and selling illicit liquor at his motor room and if raid be conducted in his field then the accused can be apprehended. Finding information reliable, he scribed ruqa and sent through SC Jaswinder Singh for registration of FIR. Thereafter, he called Excise Inspector Rajesh Kumar on his mobile and requested him to reach at the spot and in the meantime one person was seen coming barefoot and in inquiry he disclosed his name as Mana Singh chowkidar son of Dhanna Singh resident of Tajoke who was apprised of the facts of this case and was joined in the investigation. Thereafter, Rajesh Kumar Excise Inspector along with police party reached at the spot on private vehicle who were also joined with the police party and thereafter they reached in the field of accused and one person who on seeing the vehicle of police party fled away from the crops. ASI Gurdeep Singh sent SC Deepak Singh to chase the accused and the accused was also identified by Mana Singh as Satwant Singh son of Jaggar Singh resident of Tajoke. Thereafter, they entered in the motor room of fields where two plastic dhols containing 200 litres and 150 litres lahan respectively were found and were converted into parcels and one plastic dholi containing 40 bottles of illicit liquor was recovered. Then he arranged one tub and pour all the 40 bottles in the same and took 180 ml of illicit liquor as sample parcel and remaining illicit liquor were put in the same plastic dhol. Thereafter, Inspector Rakesh Kumar tested both the dhols of lahan and gave test report. All the parcels were sealed with his seal bearing impression GS. The sample seal was prepared and seal after use was handed over to HC Jaswinder Singh. The case property was taken into possession. Rough site plan was prepared. Statements of witnesses were recorded. Investigation was done

and after completion of investigation, challan was presented against the accused.

3. On appearance, copies of the challan as required under Section 207 Cr. P.C. were supplied to the accused free of costs.

4. Finding prima facie case against the accused, charge was framed against him under Section 61/1/14 of Punjab Excise Act 1914 to which the accused pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined PW1 ASI Jaswinder Singh, PW2 SC Pargat Singh, PW3 Retired Excise Inspector Rakesh Kumar, PW4 Mana Singh Chowkidar, PW5 Patwari Iqbal Singh, PW6 SC Deepak Singh and PW7 HC Tejinder Singh. Thereafter, Ld.APP for the State closed prosecution evidence, vide statement.

6. On closure of prosecution evidence, statement of accused U/s 313 Cr.P.C. was recorded wherein incriminating material appearing against him was put to him to which, he denied and pleaded innocence and false implication and opted not to lead defence evidence.

7. I have heard both the sides and have gone through the evidence on record carefully. The points of determination in the present case arise as under:

1. Whether on 23.10.2020 after 09:15 PM in the area of Village Tajoke, accused was found in the possession of two dhols containing 200 litres lahan and 150 litres lahan and 40 bottles of illicit liquor, without any valid permit or authority?

2. Whether the case of the prosecution is fully proved beyond all reasonable doubts?

3. Conclusion.

POINTS NO. 1 AND 2 :

8. Both these points are taken up together for purpose of decision and in order to avoid repetition of evidence. To prove these points, prosecution has examined PW1 ASI Jaswinder Singh who deposed

that on 23.10.2020 he was posted at PS Tapa and on that day he along with the police party headed by ASI Gurdeep Singh was present at Bus Stand Tajoke in connection of patrolling and checking of suspicious persons on a private vehicle along with laptop, printer, Investigation kit and dragon light and at about 9:15 PM Investigating Officer received secret information that Satwant @ Jaswant Singh son of Jaggar Singh resident of Tajoke is habitual of distilling illicit liquor at motor room situated in his fields on road to Gharaili Tajoke and if raid be conducted he could be apprehended along with lahan and illicit liquor. Finding information credible, Investigating Officer sent ruqa Ex.PW1/A and sent through SC Jaswinder Singh to Police Station for registration of FIR and FIR Ex.PW1/B was registered by ASI Jagpal Singh and endorsement for FIR is Ex.PW1/C. Then Investigating Officer called Excise Inspector Rajesh Kumar on his mobile and requested him to come on the spot and in the meantime one person was seen coming barefoot and on inquiry by Investigating Officer, he disclosed his name as Mana Singh Chowkidar son of Dhanna Singh residence of Tajoke and he was appraised of the facts of this case and was joined in the police party and Excise inspector Rajesh Kumar along with Inspector Rakesh Kumar and their team came at the spot and who were also joined in the police party. Thereafter, raid was conducted at the instance of secret informer and when police party reached at the fields of the accused then the accused present in the Court fled through the crops in the fields on the seeing the police party. Investigating Officer sent SC Deepak Singh to chase the accused and the accused was also identified by Mana Singh as Satwant @ Jaswant Singh son of Jaggar Singh residence of Tajoke. Then Investigating Officer inspected the motor room in the fields of the accused, from where two plastic Dhols containing two hundred litre and 150 litres Lahan respectively and one plastic Dholi

containing 40 bottles of illicit liquor was recovered. Investigating Officer took 180 ml as sample from the recovered plastic Dholi containing illicit liquor and the remaining liquor was kept in the same plastic Dholi and was converted into parcel. Above mentioned recovered two Dhols were also converted into parcel. Investigating Officer sealed all the parcels with his seal bearing impression GS. Sample seal Ex.PW1/D and form No. M29 Ex.PW1/E were prepared and seal after use was handed over to him. The recovered case property was taken into possession vide memo Ex.PW1/F. In the meantime, SCT Deepak singh came back and informed Investigating Officer that accused was successful in fleeing taking the advantage of dark and crops. Rough site plan of the place of recovery is Ex.PW1/G was prepared by Investigating Officer in his presence. After returning to PS the case property was handed over to MHC. His statement was recorded. The chemical examiner report is Ex.PW1/H. Investigating Officer ASI Gurdeep Singh had died and he identify his signatures on all the Exhibits as having worked with him and having seen him signing the documents. Also deposed that he identify the accused person present in the Court to be the same person who fled from the spot. Also deposed that he has seen the case property as MO1 to MO3 in the Court. In his cross examination he stated that he does not remember exact time when they proceeded for the spot. He does not know the details of the secret informer. He does not remember the number of the private vehicle. Only one independent witness was joined in the investigation. He does not know whether the two independent witnesses are required to join in the investigation as per Cr.P.C. He does not know the accused personally. They were not having any exact scale of measurement of lahan.

9. PW2 SC Pargat Singh deposed that on dated 03.11.2020 he was posted at PS Tapa and on that day Kulwant Singh produced

accused Jaswant Singh @ Satwant to the Investigating Officer. After enquiry, accused was arrested and intimation was given vide memo Ex.P1/PW2 and he was personally searched vide memo Ex.P2/PW2. Memos were signed by him and accused Jaswant Singh and accused was released by the Investigating Officer on bail as per orders of Learned Court. His statement was recorded. Also deposed that he identify the accused present in the Court. In his cross examination he stated that it is wrong to suggest that I deposed falsely.

10. PW3 Retired Excise Inspector Rakesh Kumar deposed that on 23.10.2020 he was posted as Excise Inspector, Barnala and on that day he along with Inspector Rajesh Kumar reached at Bus Stand Tajoke where Investigating Officer ASI Gurdeep Singh along with police party and private witness Mana Singh Chowkidar met them and Investigating Officer disclosed the facts of the case and joined them in the investigation. Then they reached in the fields of Satwant Singh son of Jaggar Singh resident of Tajoke, where accused present in the Court was seen running out the motor room constructed in the fields. SC Deepak Singh was sent to chase him. Mana Singh Chowkidar identified the person who was running as Satwant @ Jaswant Singh son of Jaggar Singh resident of Tajoke. Then Investigating Officer inspected the motor room in the fields of the accused, from where two plastic Dhols containing two hundred litre lahan and 150 litres lahan respectively and one plastic Dholi containing 40 bottles of illicit liquor was recovered. He tested lahan in both dhols and prepared test report Ex.P1/PW3. Investigating Officer took 180 ml as sample from the recovered plastic Dholi containing illicit liquor and the remaining liquor was kept in the same plastic Dholi and was converted into parcel. Above mentioned recovered two plastic Dhols were also converted into parcel. Investigating Officer sealed all the parcels with his seal bearing impression GS. Sample seal Ex.PW1/D and form No.

M29 Ex.PW1/E were prepared and seal after use was handed over to HC Jaswinder Singh. The recovered case property was taken into possession vide memo Ex.PW1/F which was signed by him. In the meantime, SCT Deepak Singh came back and informed Investigating Officer that accused was successful in fleeing taking the advantage of dark and crops. Rough site plan of the place of recovery Ex.PW1/G was prepared by Investigating Officer in his presence. His statement was recorded. In his cross examination he stated that the accused fled away from the spot. They were called by the Investigating Officer at Bus Stand, Tajoke. He tested the above said lahan by smell, taste and colour.

11. PW4 Mana Singh Chowkidar deposed that he is chowkidar of village Tajoke. He never got recorded any statement to the police. He does not identify accused present in the Court. After this the witness was declared hostile at the request of Ld.APP and the witness was cross examined by Ld.APP for the State, but even then, the witness remained firm on his resolve and did not toe line of the prosecution. He was confronted from portion to portion of his statement but the case of the prosecution could not be improved upon. The opportunity to cross examine the witness was given to Ld.Defence Counsel but the same was treated as Nil.

12. PW5 Patwari Iqbal Singh deposed that in October 2020 he was posted as Patwari of circle Tajoke. Police officials presented a jamabandi of the year 2017-2018, 391/365, Khatauni No.553 of village Tajoke, regarding ownership. On checking the record, it was found that Jaswant Singh son of Jaggar Singh son of Bishan Singh resident of Mehta, is owner of share 715/2478 in which he constructed his house. He has seen the said jamabandi Ex.P1/PW5 in the judicial file. His statement was recorded. In his cross examination he stated that he does not have any personal knowledge of the case. He does not

know the accused personally.

13. PW6 SC Deepak Singh deposed that on dated 23.10.2020 he was member of police party headed by Investigating Officer ASI Gurdeep Singh and they were present at bus stand Tajo Ke and at about 09:15 PM Investigating Officer received secret information that Satwant Singh son of Jaggar Singh resident of Tajo Ke is habitual of distilling and selling illicit liquor at his motor room in his fields and if raid be conducted lahan and illicit liquor can be recovered. Information being reliable, Investigating Officer scribed ruqa Ex.PW1/A and sent through SC Jaswinder Singh for registration of FIR and thereafter Investigating Officer called Excise Inspector Rajesh Kumar. At that time Chowkidar Mana Singh resident of Tajo Ke met them and joined in the investigation. In the meantime, Excise Inspector Rajesh Kumar and Inspector Rakesh Kumar along with Excise party met them and joined in the investigation and thereafter they raided at the motor room of accused where a person on seeing the police party ran away and he was sent to apprehend him but he managed to escape due to dark and crops. His statement was recorded. On dated 27.10.2020 MHC Tejinder Singh handed over the above stated sample parcel of 180 ML duly sealed with seal bearing impression GS along with form No.M29 to him to be deposited for chemical examination at Kharar vide Rod No.183 and instructed him to get prepared docket from the office of SSP Barnala and get the same numbered and after that deposit the same at the office of Chemical Examination Kharar and to obtain the receipt pertaining to the same. As per his instruction, he got the docket prepared from the office of SSP and got the same numbered and deposited the same to Chemical Examination Kharar on 28.10.2020 and handed over the receipt to MHC. As long as case property remained with him, neither he nor anyone else was allowed to tamper with the same. In his cross

examination he stated that he has no personal knowledge pertaining to the said case. They were not having any proper scale regarding measurement of lahan.

14. PW7 HC Tejinder Singh deposed that on 23.10.2020 he was posted as MHC at PS Tapa and on that day Investigating Officer ASI Gurdeep Singh deposited one Iron dhol containing 150 litre lahan and other plastic dhol containing 200 litre lahan and a plastic dholly containng illicit liquor and a sample nip of 180 ML along with documents form No. M29 C, all the parcels bearing seal impression GS and same were deposited with him and he made entry regarding the same in register No.19. On dated 27.10.2020, he handed over the above stated sample parcel of 180 ML duly sealed with seal bearing impression GS along with form No.M29 to SC Deepak Singh to be deposited for chemical examination at Kharar vide Road No.183 and instructed him to get prepared docket from the office of SSP Barnala and get the same numbered and after that deposit the same at the office of Chemical Examination Kharar and to obtain the receipt pertaining to the same. As per his instruction, he got the docket prepared from the office of SSP and got the same numbered and deposited the same to Chemical Examination Kharar on 28.10.2020 and handed over the rceipt to him. As long as case property remained with him neither he nor anyone else was allowed to tamper with the same. In his cross examination he stated that he does not know about the details of the secret informer.

15. In the present case, the allegations upon the accused are that on 23.10.2020 after 09:15 PM in the area of Village Tajoke, accused was found in the possession of two dhols containing 200 litres lahan and 150 litres lahan and 40 bottles of illicit liquor, without any valid permit or authority. Now coming to the evidence and material on record, the story of the prosecution that the accused fled away from the spot but he was

identified by Mana Singh Chowkidar at that time to be the present accused. Also, prosecution witnesses i.e. PW1 and PW6 have deposed that Mana Singh Chowkidar came present and was joined in the investigation and said Mana Singh Chowkidar identified the accused when the accused was fleeing away from the spot. But in the present case, said Mana Singh Chowkidar as PW4 has turned hostile and did not support the version of prosecution and deposed that he never got recorded any statement to the police and he does not identify the accused present in the Court. So, the main witness of the prosecution from whom the prosecution alleges that accused was got identified, has turned hostile and did not identify the accused present in the Court and as such this is the major dent in the prosecution case and clinches away the entire case from the prosecution and also makes the story of the prosecution completely doubtful as the prosecution miserably failed to prove the identity of the accused. In addition to it, the Investigating Officer has not joined two independent witnesses in the investigation and this is a major dent in the prosecution case and makes the case of the prosecution doubtful, as, coming to the factum of recovery from the accused, there is no corroboration by way of evidence of independent or public person on record as there is nothing on record that the police joined two independent witness from the place of recovery. So, from this it is clear that provision of Section 100(4) Cr.P.C have not been complied with by the Investigating Officer and as such, the same is major loophole in the prosecution case and makes the case of the prosecution of doubtful nature. It is settled law that in absence of corroboration by way of independent witnesses and when Investigating Officer is the complainant, it is not safe to convict the person. So, the recovery from accused in the present case is surrounded by doubts and the benefit of doubt is to be given to the accused. So, this also creates dent in the prosecution case.

Although the investigating agency appears of having launched itself into the case in a serious manner but as brought out from the file, is that it has been investigated in a utmost casual manner. So, under these circumstances cracks appear in the prosecution case and makes the same doubtful. So, the prosecution has failed in proving its case against the accused beyond all reasonable doubts. It is established law that prosecution has to prove its case beyond all reasonable doubts and if there is any doubt then the benefit of the same must go to the accused over all. As such both the points of determination are decided against the prosecution.

POINT NO.3 :

16. In the light of aforesaid facts and circumstances, the prosecution has miserably failed to prove its case against accused, therefore, accused namely Jaswant Singh @ Satwant is hereby acquitted of the charge framed against him in this case. The bail bonds and surety bonds of accused also stand discharged. Case property, if any, be dealt/disposed of as per rules after the expiry of period of appeal/revision, if any. File be consigned to the record room.

Pronounced in the open Court.

Dated: 13.12.2023

Ankur Khurana

**Ajay Mittal
Judicial Magistrate Ist Class
Barnala.
UID NO. PB0257**