

PBGD030051682021



Presented on : 23-12-2021
Registered on : 23-12-2021
Decided on : 04-11-2023
Duration : 1 years, 10 months, 12 days

**IN THE COURT OF
Judicial Magistrate - Ist Class, AT Gurdaspur
(Presided Over by Ms. Parneet Kaur)**

CHA/881/2021

State

Versus

Prem Chand son of Late Kartar Chand, resident of Dhamrai, P.S. Dinanagar.

.....Accused.

**FIR No.206 Dated 27.09.2021.
Under Section: 61 of Punjab Excise Act.
Police Station: Dinanagar.**

Present: Shri Hardeep Kumar, Ld. APP for the State.
Accused on bail with counsel Sh. S.S. Randhawa, Advocate.

JUDGMENT:-

1. Above named accused has been challaned by the Officer Incharge, Police Station Dinanagar, in case FIR No.206 dated 27.09.2021 for offence under Section 61 of the Punjab Excise Act, 1914 and sent to face trial.
2. Briefly stated case of the prosecution is that on **27.09.2021**, **ASI Gurdev Singh** along with police party reached near Dhamrai where he received information that accused **Prem Chand son of Late Kartar Chand**,

resident of Dhamrai is habitual of selling illicit liquor and he has kept one can plastic duly covered near the bridge of river Dhamrai. On receiving this information, police conducted raid at the place and saw one person holding one plastic cane. On seeing police party, he tried to flee away from the spot but was apprehended. One plastic cane was recovered in which illicit liquor was present and on measuring the same, it came to be **20** bottles. The sample and plastic cane were sealed by IO with his seal bearing impression “**GS**” and were taken into possession. Sample seal was prepared separately and seal after use was handed over to **ASI Naresh Kumar**. Ruqa was sent and FIR was registered. Investigation was pressed into action. The case property was taken into police custody vide recovery memo. Investigating Officer prepared rough site plans of the place of recovery with correct marginal notes. Statements of the witnesses were recorded. Accused was arrested. On return to the police station, case property with intact seals was deposited with the MHC in the Malkhana. After completion of investigation, challan against the accused was presented in Court.

3. On presentation of the challan, the accused was supplied with the copies of the documents as required under Section 207 Cr.P.C., free of costs.
4. A prima facie case under Section 61(1) (a) of the Punjab Excise Act, 1914 was found made out against the accused and he was charge sheeted accordingly. The accused pleaded not guilty to the charge and claimed trial.
5. Prosecution was called upon to lead evidence, upon which learned APP examined **PW-1 Ct.Sukhjinder Singh** as recovery witness, **PW-2 ASI**

Gurdev Singh, Investigating Officer, **PW-3 HC Sunny Bains** Investigating Officer. Thereafter, evidence of prosecution was closed by order.

The list of documents tendered into evidence by the prosecution is recovery memo **Ex.P1**, Form M-29 **Ex.P2**, ruqa **Ex.P3**, FIR **Ex.P4**, endorsement **Ex.P5**, site plan **Ex.P6**, arrest memo **Ex.P7**, personal search **Ex.P8**, chemical examiner report **Ex.PX** and case property **Ex.MO1**.

6. Statements of accused under Section 313 Cr.P.C. was recorded to which the denied the prosecution evidence and allegations and pleaded innocence and false implication. He has not led any defence evidence.
7. I have heard the learned APP for the State and the learned defence counsel and perused the judicial file.
8. Ld. APP for the State argued that **PW-2 ASI Gurdev Singh**, Investigating Officer has fully proved the case of prosecution and his evidence is duly corroborated by recovery witness **PW-1 Ct.Sukhjinder Singh**. Link evidence is also present.
9. On the other hand, defence counsel argued that prosecution has failed to prove the case against the accused. He further argued that independent witness has not been joined. A prayer for acquittal of the accused is made
10. After considering the various arguments and evidence on record, this Court is of considered view that **PW-2 ASI Gurdev Singh** while stepping into witness box has deposed on oath and proved whole of the story of prosecution. The evidence of Investigating Officer is duly corroborated by **PW-1 and PW-3**. Some minor discrepancies have come in cross-examination of these

witnesses as pointed out by defence counsel. In my view, such discrepancies are bound to occur due to passage of long time. Certainly after passing of such long time, memory of human being used to fade. Moreover, minor contradictions show that witnesses are not tutored, rather they have deposed in a natural way. Otherwise also, the evidence of both material witnesses Investigating Officer as well as recovery witness is on the same tune on all material points regarding effecting of recovery from the accused.

Link evidence is also present in this case. **PW-3 MHC Sunny Bains** has stated that the case property was deposited with him and he kept it intact alongwith sample nips and handed over the same to Ct.Sukhjinder Singh for depositing the same to the Chemical Examiner. PW-1 Ct.Sukhjinder Singh has deposed that MHC P.S. Dinanagar had handed over the case property along with sample nips to him and he had deposited the same with the chemical examiner, Kharar. Simple suggestions have been given in cross-examination which he has denied.

11. Further, it is well settled that minor discrepancies of trivial matters not touching the core of the case should be avoided. In the present case, the discrepancies are regarding other matters and not touching the core of this case. In **1999 (2) Judicial Reports (Criminal) 715 (SC)**, the Hon'ble Supreme Court has laid down the law that non-examination of independent witness does not affect the evidence of official witnesses and it is not necessary for prosecution to multiply the witnesses. This Court is of considered view that when already evidence has come on record as deposed by official witnesses that cannot be thrown away merely on the fact that independent witness was

not joined or examined. Investigating Officer has made clear that he tried to join independent witnesses but no one was ready to join the police investigation. Moreover, Hon'ble Supreme Court in case ***Baldev Singh vs. Haryana (2015) 17 SCC 554***, has held that, “*there is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to the police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. The mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.*”

12. From the above discussion, this Court is of view the case of the prosecution has been proved beyond reasonable shadow of doubt and it stands proved on the file by the prosecution by way of leading cogent and convincing evidence that the accused was found in possession of **20** bottles of illicit liquor and the accused is found guilty for having committed an offence punishable under Section 61(i)(a) of Punjab Excise Act 1914. Accordingly, the accused is held guilty for the offence having been committed by him under Section 61(i)(a) of Punjab Excise Act 1914 and accordingly, he is convicted for the said offence. Let the convict be heard on the quantum of sentence.

Pronounced in open court on:
04th of November, 2023
Bhawana (Stenographer)*

(Parneet Kaur)
Judicial Magistrate, Ist Class
Gurdaspur/(UID No.PB-0646)

QUANTUM OF SENTENCE:

Present: Shri Hardeep Kumar, Ld. APP for the State.

Convict on bail with counsel Sh. S.S.Randhawa, Advocate.

1. Heard. Convict has stated that he is a first time offender and a poor person and sole bread winner of his family, so lenient view may be taken. Ld. A.P.P. for the State opposed this plea.
2. The Convict is not proved to be a previous offender. Considering the antecedents of the Convict and his age and the gravity of the offence, I am of the considered view that instead of sentencing the accused to undergo imprisonment, he should be given the benefit of probation to reform himself. Therefore, instead of sentencing the convict, he is ordered to be released on probation under section 4(1) of Probation of Offender's Act, subject to his furnishing probation bonds in the sum of Rs.20,000/- with an undertaking to keep peace and tranquility for a period of six months and in case of committing default to appear in this Court during the aforesaid period to receive the sentence. The accused is also burdened with Rs.200/- as cost of litigation to be paid in the office of DLSA. Case property is ordered to be dealt with as per rules after the expiry of the period of appeal or revision if any and if so filed then subject to the decision thereof. File be consigned to the Record Room.

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