

IN THE COURT OF Mrs. GURJIT KAUR DHILLON, PCS
SUB DIVISIONAL JUDICIAL MAGISTRATE, NABHA.

Police challan CHA No.89 dated 08.12.2017

CIS No.CHA/89/2017

CNR No.PBPTB1-002411-2017

Date of Decision : 03.07.2019

State Versus Amrik Singh., aged 45 _years, son of Norang
Singh, resident of village Chhajju Bhat,
Tehsil Nabha.

.....Accused.

FIR No.01 Dated 01.01.2017

U/sec: 61/1/14 of Excise Act.

P.S. Sadar, Nabha, District Patiala.

Present: Sh.Gaurav Dewan, APP for the State.

Accused on bail represented by counsel Sh.Avtar Singh,
Advocate.

JUDGMENT

1. The above named accused has been sent to face trial for the offence under Section 61/1/14 of Excise Act by the SHO of Police Station - Sadar, Nabha, District Patiala.
2. Briefly the facts of prosecution story are that on 1.1.2017 ASI Krishan Lal along with other police officials was present near Kot Kalan Guava Orchard. At about 4 p.m., a person was seen coming

from village Jolian side carrying a bulky plastic sack on his head. Upon seeing the police party, he got perplexed and tried to turn, but on the basis of suspicion, he was apprehended and his bag was checked. The bag contained 12 bottles of illicit liquor. Upon asking, he disclosed his name as Amrik Singh. and further failed to produce any licence or permit for carrying the bottles. Thereafter, all 12 bottles were poured in a plastic can and a sample of 180 ml. was taken. Thereafter the sample parcel and plastic can were sealed with seal bearing impression KL. The sample and the case property were taken into possession vide separate memo. Accused was arrested. Case was registered against the accused. Investigation was started. Upon completion of investigation, challan was presented in the Court.

3. Upon presentation of challan, copies of Challan and other documents was supplied to the accused free of cost as provided under Section 207 of Cr.P.C.

4. Finding a *prima-facie* case against the accused he was charge-sheeted under Section 61 Excise Act to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined PW.1 HC Harjit Singh, PW.2 ASI Krishan Lal, PW.3 HC Harpal Singh, , PW.4 ASI Chamkaur Singh. The Ld. APP for the State closed the prosecution evidence vide separate statement.

6. The statement of the accused under Section 313 Cr.P.C. was

recorded in which all the incriminating evidence appearing against the accused was put to him to which the accused pleaded that he is innocent. The accused did not lead defence evidence and closed the same vide separate statement

“Whether on 01.01.2017 in the area of Guava Orchard Kot Kalan Nabha above noted accused was found in conscious possession of 12 bottles of country made liquor make Mota Santra having any licence or permit ”?

7. Learned APP for the State argued that with the above testimonies of the prosecution witnesses, its case stands duly proved and accordingly prayed for conviction of the accused.

8. On the other hand, learned counsel for the accused argued that there is not an iota of evidence against the accused as various discrepancies have surfaced in the evidence led by the prosecution. He argued that no independent witness was involved despite the fact that the recovery was effected from a place which was a thoroughfare and accordingly prayed for acquittal of the accused.

9. I have heard learned APP for the State, learned counsel for the accused and have gone through the material placed on record. The accused in the present case has been charged under Section 61/1/14 of Excise Act on the allegations that *accused was found in possession of*

12 bottles of country made liquor make Mota Santra without any licence and permit. Having gone through the evidence on record, I find that the allegations against the accused are duly proved by the prosecution beyond reasonable doubt.

10. In the present case, PW.2 ASI Krishan Lal deposed being Investigating Officer of the present case. He specifically deposed that on 1.1.2017 at about 4 p.m. near Kot Kalan Guava Orchard, the accused was seen coming with a bulky plastic bag. On suspicion, he was apprehended and his bag was checked. The bag contained 12 bottles of illicit liquor. The accused failed to produce any licence or permit for carrying the same. Thereafter all 12 bottles were poured in a plastic can and the sample of 180 ml. was taken. Thereafter the sample parcel and plastic can were sealed with seal bearing impression KL. He also proved on record sample seal impression Ex.P1, recovery memo Ex.P2, ruqa Ex.P3, FIR Ex.P4, endorsement thereon Ex.P5, arrest memo Ex.P6, personal search memo Ex.P7, Report of Chemical Examiner Ex.P9 and Form 29 Ex.P10.

11. Similarly, PW.1 HC Harjit Singh also supported the prosecution version and proved on record recovery memo Ex.P2, ruqa Ex.P3, endorsement thereon Ex.P5, FIR Ex.P4, arrest memo Ex.P6 and personal search memo Ex.P7.

12. PW.3 HC Harpal Singh deposed with regard to deposit of the sample with the Chemical Examiner and PW.4 ASI Chamkaur Singh deposed with regard to deposit of the sample and case property with him. The link evidence is duly established with examination of these witnesses.

13. Despite cross-examination of the witnesses of the prosecution, the accused has failed to elicit any discrepancy in the material aspects of the present case. Mere the averments that accused has been falsely implicated without any corroborating evidence is not sufficient to disbelieve the case of the prosecution. No doubt in the case at hand, no independent witness has been examined, but when the case of the prosecution is duly supported and corroborated by the testimony of official witnesses, the same cannot be doubted merely on the ground of failure to join independent witness. More over, the present case is of chance recovery. Also, no explanation has been put forward by the accused as to why he would be falsely implicated. Accordingly, the prosecution case is duly proved. The recovery of illicit liquor is duly proved on record. As such the point of determination is decided in favour of prosecution and against the accused.

14. On the basis of above discussion, the Court is of the considered opinion the guilt of the accused is duly proved beyond reasonable doubt. As such the accused is convicted for offence under Section 61 of Punjab Excise Act. The operative part of the Judgment is read over and explained to the accused in simple vernacular language understood by him. Let he be heard on the question of quantum of sentence.

Pronounced in open Court

03.07.2019

(GURJIT KAUR DHILLON, PCS)

SUB DIVISIONAL JUDICIAL MAGISTRATE

NABHA.

(UID No.PB-0311)

Directly dictated by Self.

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Hearing on the quantum of Sentence

Present: Sh.Gaurav Dewan, APP for the State.
Accused on bail represented by counsel Sh.Avtar Singh,
Advocate.

15. I have heard the convict and the Ld. APP on the question of quantum of sentence. The convict prayed for taking lenient view and submitted that he is suffering from protracted trial since 2017. The same is opposed by the APP for the State on the ground that the accused has committed a serious offence and hence does not deserve a lenient view. Keeping in view the fact of this case, the recovery from the accused, the fact that the accused is not proved to be a previous convict, the Court is of the considered opinion that the accused is entitled to the benefit of probation. Moreover the modern trend of penology is to give a chance to the offender to reform himself. Accordingly, the accused is released on probation on good behaviour for 6 months subject to furnishing of personal probation bonds to the tune of Rs.10,000/-. Personal bonds furnished which have been accepted and attested. The operative part of the Judgment and quantum of sentence is read over and explained to the accused in simple vernacular language understood by him. Copy of the Judgment has been supplied to the accused free of costs.

16. The case property be disposed of after the expiry of the period of appeal or revision, if any. File be consigned to Judicial Record Room.

Pronounced in open Court

03.07.2019

**(GURJIT KAUR DHILLON, PCS)
SUB DIVISIONAL JUDICIAL MAGISTRATE**

NABHA.

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