

In the Court of Sh. Harpreet Singh, Judicial Magistrate Ist Class,
Amritsar (UID No.: PB-0345).

CIS No.: CHA/883/2017.

Date of Institution: 27.10.2017.

CNR No.: PBAS03-014280-2017.

Date of Decision: 15.05.2019.

State
VERSUS.

Shera Son of Satpal Singh, Resident of H. No.2239, Main Road, Gujjarpura,
Amritsar. **.....Accused.**

FIR No.160 dated 18.09.2016

U/S: 61-1-14 of Excise Act,

Police Station: 'C' Division, Amritsar.

Present:- Sh. Rupinder Singh, Ld. APP for the State.

Accused Shera on bail, present in the Court with his counsel Sh.
Sanjeev Bhagat, Advocate.

JUDGMENT

1. The above named accused has been forwarded by Officer In-charge of P.S.'C' Division, to stand trial in case F.I.R. No.160, dated 18.09.2016, under Section 61-1-14 of Excise Act.

2. Briefly the facts of the prosecution case are that on 18.09.2016 HC Sukhwinder Kumar along with his police party was on patrolling in the search of bad elements of society and present at Main Bazar Gujjarpura. They were moving towards the Nagar Nigam Colony. When police party reached near Dera Baba Ranjha, then an informer gave the secret information to HC Sukhwinder Kumar, that Shera S/o Satpal, Resident of H. No.2239, Main Road, Gujjarpura, Amritsar is habitual to sell the liquor. Now he is selling the liquor in the park of Nagar Nigam Colony by keeping it in the plastic Can. Finding the information credible, police party was perused about the information and prepared for the raid at the disclosed place. Raid was conducted, one Hindu young man was seen selling the liquor by putting it in plastic Can near the bushes of park of Nagar Nigam.

On seeing the police party young man had perplexed and fled away from the spot by taking the advantage of the darkness. It is sated that persons fled from the spot was accused Shera to whom HC Sukhwinder Kumar was already known. Before checking the plastic Can, independent witness was tried to join the investigation, but nobody come forward due to the threat of the enmity. In the presence of the police party IO open the plastic Can and found illicit liquor in it, one sample NIP measuring 180ml was separated. On measuring the remaining liquor it was found 29 bottles of 750ml each and one bottle 570ml. After measuring recovered liquor was put in the same Can and sealed alongwith sample with the seal impression "SK". Separate sample of the seal was prepared. Form M29 was completed. Recovered liquor was taken into the police possession after preparing the recovery memo. After use seal was handed over to HC Kabal Singh. Ruqa was sent to the police station for lodging the case through C. Manorathjit Singh. On the basis of which FIR was lodged. Accused was joined in investigation as per the order of the Hon'ble Additional Sessions Judge, Amritsar on dated 21.09.2016. Sample was sent to the office of Chemical Examiner Kharar for the purpose of test. Thereafter, on the completion of the investigation Challan was presented in the Court.

3. On appearance before the court the accused was supplied the copies of all the documents relied upon by the prosecution as per the mandate of section 207 Cr.P.C.

4. After perusal of statements of witnesses and documents on file, prima-facie case under Section 61/1/14 of Punjab Excise Act, was made out against accused. Accused was charged-sheeted for the said offence, to which accused did not plead guilty and claim trial.

5. To prove its case, prosecution first of all examined PW1 HC

Dalwinder Singh appeared with proof depositing of the sample NIP in the office of Chemical Examiner on dated 03.10.2016. He has also deposed that the sample was remained intact in his possession. Further, prosecution examined PW2 HC Kabal Singh recovery witness. In his examination in chief he has endorsed whole of the prosecution case by proving recovery memo Ex.PA. Arrest of the accused on dated 11.10.2016 as Ex.PB and his personal search as Ex.PC. PW3 MHC Jagdish Singh proved the depositing of the case property with him by the IO on dated 17.09.2016, along with sample NIP and form M29. He has further proved that on dated 03.10.2016 sample NIP along with the sample seal, form M29 was sent to the office of chemical examiner Kharar through HC Dalwinder Singh. In the last ASI Sukhwinder Kumar IO of the case, appeared to reiterated in the entire facts of the case of the prosecution in this examination in chief. He has also proved form M29 as Ex.P1 which he had prepared at the spot. Recovery memo as Ex.PA. Ruqa Ex.P2 was sent through Constable Manorathjit Singh and FIR Ex.P3 was lodged by Ravi Dutt whose signature he identified. He has also proved site plan of the place of recovery as Ex.P4. He deposed that on return back to the police station case property was deposited with the MHC. He has also proved the arrest of accused on dated 11.10.2016 vide memo Ex.PB and his personal search as Ex.PC. He has produced the case property in the Court as MO1. Ld. APP of the state tendered the report of the chemical examiner as Ex.Px in the prosecution evidence.

6. Learned APP for the State has closed prosecution evidence.

7. Statement of accused under Section 313 of Cr.P.C was recorded, in which all incriminating evidence appearing against accused was put to her, to which she denied all the allegations against her and pleaded her innocence and false implication. In defence accused did not lead any

evidence and closed her defence evidence vide separate statement.

8. The Ld. APP for the state has argued that all the prosecution witnesses have deposed fully in accordance with the prosecution story and proved the charge against the accused beyond shadow of reasonable doubt. The Ld. APP for the state has argued that accused could not produce any license or permit, as such accused is liable to be convicted and punished according to law.

9. On the other hand Ld. Defence Counsel has argued that no recovery was effected from the accused. Accused has been falsely implicated in this case. He further argued that no independent witness was joined at the time of alleged recovery as such, accused is entitled to acquittal.

10. I have heard Ld. APP for the State and Ld. Defence Counsel and gone through the file carefully.

11. I have considered the rival contentions raised by both the sides. Case of the prosecution against the accused is regarding the recovery of the liquor, so the prosecution has to prove recovery from the possession of accused. For this purpose there are two witnesses of the prosecution on the file that PW2 HC Kabal Singh, recovery witness and other is PW4 ASI Sukhwinder Kumar IO of the case. Both of them has deposed in their cross examination that nothing has been recovered from the accused and he was not arrested at the spot. Since nothing was recovered from the accused then for what the prosecution is there against the accused. IO has further admitted that he has not joined in the investigation any independent witness. Then there is lot of contradictions in the statement of the PW2 and PW4 both material witnesses of the case as PW2 stated that there was no secret information to the police party and IO stated that they have received the

secrete information. When the case property produced by the IO in the he has the slip was fixed on the Can was fresh. It means that the case property produced in the court is of some other case and it is prepared for the present case to show. It is admitted that rqua was sent after doing the all writing work and recovery memo and Form M-29 are having the FIR Number, it means that these were prepared later on when the FIR was lodged and which were prepared at the spot those are not there in the file. So, on the basis of the above discussion case of the prosecution is doubtful against the accused.

12. It is the principle of the criminal jurisprudence that benefit of doubts shall be gone to the accused. Hence in view of the above discussion, the accused namely Shera is entitled to be admitted to the concession of benefit of doubt and is, accordingly, acquitted. Bail bonds already furnished by the accused is treated under Section 437-A Cr.P.C. till expiry of period of appeal. Thereafter, the bail bonds shall automatically stand discharged on the completion of period of appeal or revision. Case property be disposed of as per rules. After due compliance, file be consigned to the record room.

Pronounced in open Court.
Dated: 13.05.2019.

(Harpreet Singh),
Judicial Magistrate Ist Class,
Amritsar.
(UID No.:PB-0345).

