

**IN THE COURT OF MS. JOSHICA SOOD, PCS, JUDICIAL
MAGISTRATE (FIRST CLASS), JALANDHAR (UID No.PB00530)**

Case Type	CHI
Registration No.	874/2020 Date of Institution 17.11.2020
CNR No.	PBJL03-017147-2020
Date of Decision	13.07.2022

S T A T E

Vs

Jaswinder Singh son of Surjit Singh, resident of house no. 93, Satnam Nagar PS Rama Mandi Jalandhar.

FIR No.134 DT. 02.08.2020
U/S 61/1/14 Excise Act
P.S.Navi Baradari, Jalandhar

Present: Ld. APP for the State
 Accused Jaswinder Singh on bail with counsel.

JUDGMENT:

1. The accused Jaswinder Singh is facing trial under Section 61/1/14 of Excise Act. of IPC.
2. It is the case of the prosecution that on 02.08.2020, when the police party was on patrolling duty and present at Ladowali road railway fatak, Jalandhar, secret information was received that one person namely Jaswinder Singh son of Surjit Singh, resident of 93, Satnam Nagar PS Rama Mandi Jalandhar, who indulges in the business of selling and purchasing of illicit liquor. It was also informed that on that day also, the said person is coming on his Activa bearing no. PB08DF8793 white in colour and holding a plastic bag in which illicit liquor is contained.

Ms.Joshica Sood, PCS, JMJC, Jalandhar, 13.07.2022

Finding the information reliable, the police officials reached at the disclosed place. One person was found standing with the activa bearing no. PB08DF8793. After seeing the police party, he tried to abscond. However, he was apprehended by the police party. On inquiry, he disclosed his name as Jaswinder Singh son of Surjit Singh, resident of 93, Satnam Nagar PS Rama Mandi Jalandhar. The plastic bag in the possession of the accused was opened and 15 bottles of illicit liquor marka Royal Challenge Whiskey vide recovery memo were recovered. Accused was arrested. Hence the FIR.

After recovery was effected, samples was taken out from the bottles and sent for Chemical Examination. Rough site plan was prepared and statements of witnesses was recorded. Thereafter, investigation was completed and challan was presented in the Court.

3. On appearance of accused, the copies of police report under Section 173 Cr.P.C along with documents annexed therewith were supplied to the accused free of costs as envisaged under Section 207 Cr.P.C.

4. During prosecution evidence, PW-1 ASI Hardial Singh has stated that on 02.08.2020 he was posted as ASI PS Navi Baradari Jalandhar. On that day he alongwith other police officials were present at Ladowali road railway fatak, Jalandhar. One informer came and give secret information that one person namely Jaswinder Singh son of Surjit Singh, resident of 93, Satnam Nagar PS Rama Mandi Jalandhar, who was

indulged in business of selling and purchasing of illicit liquor. Even today who was on his Activa bearing no. PB08DF8793 white in colour and holding a plastic bag in which illicit liquor contained. On reliable of information, he scribed ruqa Ex.PA and ruqa handed over to Constable Gurpreet Singh for registration of FIR Ex.PB. FIR was registered by SI Hardev Singh. Endorsement for registration of FIR Ex.PC. After that he alongwith other police officials went to the spot of occurrence stated by the informer. Where one person standing with the activa. When he see police party he got perplexed and tried to run away. He alongwith other police officials apprehended the accused and inquired his name and whereabouts on which he disclosed his name as Jaswinder Singh son of Surjit Singh, resident of 93, Satnam Nagar PS Rama Mandi Jalandhar. He tried to join independent witness but no one came forward for the same. Then he in presence of other police officials alongwith other police officials open the plastic bag recovered 15 bottles of illicit liquor marka Royal Challenge Whiskey vide recovery memo Ex.PD. He prepared site plan Ex.PE. He arrested accused vide arrest memo Ex.PF. He prepared personal search memo Ex.PG. He moved an application to RTA office Jalandhar Ex.PH. Seal impression memo Ex.PI. He recorded the statement of witnesses. He identified the accused.

5. The prosecution further got examined PW-2 MHC Ashok Kumar who stated that on dated 02.08.2020 he was posted at PS Navi Baradari Jalandhar as MHC. On that day IO Hardial Singh has handed

over to him one sample parcel i.e. 750 ML make Royal Challenge Whiskey duly sealed with seal of the IO i.e. HS alongwith the bulk parcel i.e. one plastic bag which containing the 14 bottles of liquor make Royal Challenge Whiskey and the said plastic bag was duly sealed with the seal of the IO i.e. HS and form M29, one Aactiva bearing no. PB08DF8793 and Indian currency notes amounting Rs. 120/- for depositing the same in the malakhana. He had deposited the above stated case property in the malakhana and made the entry regarding the same in register no. 19.

Thereafter, on dated 20.08.2020 he handed over the sample parcel i.e. 750 ML to Constable Gurlal Singh alongwith form M29 for the purpose of depositing the same in the office of chemical examiner. He had deposited the same in the office of Chemical examiner Kharar vide rode no. 241/21 dated 20.08.2020 on the same day and returning to the police station he handed over the receipt regarding the same to him. He attach the same with the official record. During the time case property remained with him he does not temper with the same and nor allow anyone to temper the same. My statement was recorded by the IO in the present case. Today he has brought the original register no. 19 in the Court.

6. further, the prosecution gt examined PW-3 Vikram Singh clerk DTO who proved on record application Ex.PW1/A to our office for proving the ownership of Passenger car Venture EX bearing no. PB08DG-1712 on the basis of which our office made report Ex.PW1/B. He stated that according to record the above mentioned vehicle is in the name of

Arvinder Pal Singh son of Jaspreetam Singh, r/o house no. 266B, Cheat Bihar Basti Sheikh Jalandhar. He also identified the signature of Sh.Arvinder Singh Jr.Assistant RTA Jalandhar at point A of Ex.PW1/B and screen report of the RC is Ex.PW1/C. He also tendered into evidence his certificate under Section 65-B of Indian Evidence Act which is Ex.PW1/D.

7. Thereafter, the prosecution gt examined PW-4 C Gurlal Singh who stated that on dated 20.08.2020 he was posted at PS Navi Baradari Jalandhar ont hat day MHC Ashok Kumar handed over to him one sample parcel duly sealed with seal impression HS and one bottle 750 ML to deposit the same to FSL vide rode no. 241/21 dated 20.08.2020. On the same day he deposited the sample parcel to FSL Kharar. After reaching the police station on the same day he handed over the receipt to MHC who placed the same in the record. During the time period when sample parcel in my possession neither he tampered with the sample.

8. Thereafter, prosecution evidence closed by order since all the material witnesses had been examined and relevant documents stood exhibited.

9. Statement of accused under Section 313 of Cr.P.C was recorded and the entire incriminating evidence was put to the accused which he denied and pleaded false implication.

10. The accused did not lead any evidence in defence.

11. I have heard Ld APP for the State and Ld defence counsel

and perused the file carefully with their able assistance.

12. Ld. APP for the State has argued that the prosecution has proved the entire case against the accused beyond all reasonable doubt and as such the accused is liable to be convicted under Sections 61/1/14 Excise Act. On the other hand learned counsel for the accused has argued that the chain in the present case pertaining to the prosecution witnesses is not complete and the benefit of doubt has to be given to the accused. It has been further argued that the IO failed to get joined any independence witnesses during recovery proceedings which raises huge doubt on the story of the prosecution. It is cardinal principle of criminal jurisprudence that since convict an accused and the prosecution has to establish the case against the accused beyond all reasonable doubt.

13. It is the case of the prosecution that on 02.08.2020, when the police party was on patrolling duty and present at Ladowali road railway fatak, Jalandhar, secret information was received that one person namely Jaswinder Singh son of Surjit Singh, resident of 93, Satnam Nagar PS Rama Mandi Jalandhar, who indulges in the business of selling and purchasing of illicit liquor. It was also informed that on that day also, the said person is coming on his Aactiva bearing no. PB08DF8793 white in colour and holding a plastic bag in which illicit liquor is contained. Finding the information reliable, the police officials reached at the disclosed place. One person was found standing with the activa bearing no. PB08DF8793. After seeing the police party, he tried to abscond.

However, he was apprehended by the police party. On inquiry, he disclosed his name as Jaswinder Singh son of Surjit Singh, resident of 93, Satnam Nagar PS Rama Mandi Jalandhar. The plastic bag in the possession of the accused was opened and 15 bottles of illicit liquor make Royal Challenge Whiskey vide recovery memo were recovered. The accused was apprehended at the spot. It is pertinent to mention that PW-1, IO and PW2, MHC have deposed in accordance with the story put forth by the prosecution. During the cross-examination, the IO admitted PW-2 that no independence witnesses was joined in the investigation in spite of efforts learned counsel for the accused has vehemently argued that in view of the admission and the settled law that independent witnesses are required to be during recovery proceedings, the version of the prosecution cannot be believed. However, it is a settled legal principle that merely case independent witnesses were not joined during recovery proceedings, the same cannot strike at the root of the version of the prosecution is especially when the entire case is otherwise proved. It is further pertinent to mention that no material contradiction could be brought out by the defence during cross-examination of any of the witnesses. It is on record with recovery was effected from the house of the accused. Further, PW1, PW2 and PW4 were got examined by the prosecution who also deposed in accordance with the story put forth by the prosecution. PW-1 and PW-2 both deposed that one sample parcel of one bottle containing 750ml of liquor make Royal Challenge was taken

out and sealed with seal impression HS. It is further pertinent to mention that no lacuna was found in the testimony of the said despite cross-examination. In view of the evidence on record, this Court finds that the chain in the present case is complete and the prosecution witnesses have supported the case of the prosecution. In the considered opinion of this Court, the prosecution has proved the case against the accused beyond all reasonable doubt. Accordingly, the accused is hereby convicted.

14. Accordingly, the accused is held guilty of committing an offence under Sec 61/1/14 of Excise Act. However, considering the age of the accused and the fact that the offence is not very severe, I deem it fit to extend the benefit of Probation of Offenders Act and release the convict on probation, subject to his furnishing bonds to the tune of Rs 10,000 for a period of 6 months for keeping good behavior. Bonds furnished which are accepted and attested. The accused is ordered to pay cost of litigation to the tune of rs 100/-. The case property is ordered to be destroyed after expiry of period of appeal/revision. File be consigned to the record room.

Pronounced
Dated:13.07.2022
Ritu Bala

(Joshica Sood), PCS
Judicial Magistrate Ist Class,
Jalandhar (UID No.PB00530)

Present: Ld. APP for the State
Accused on bail with counsel.

Vide my separate detailed order, the accused has been convicted and released on probation as detailed therein. Probation bonds furnished which are accepted and attested. Cost of litigation paid. File be consigned to the record room.

Pronounced
Dated:13.07.2022
Ritu Bala

(Joshica Sood), PCS
Judicial Magistrate Ist Class,
Jalandhar (UID No.PB00530)

