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Presented on : 04-04-2024
Registered on : 04-04-2024
Decided on : 21-08-2024
Duration : 0 years, 4 months, 17 days

**IN THE COURT OF
Judicial Magistrate - Ist Class
AT Batala, Gurdaspur
(Presided Over by Sh.Davinder Singh)**

CHA/88/2024

STATE OF PUNJAB

VERSUS

Gurmej Singh son of Raghbir Singh R/o village Kotli Dhadian, P.S.
Ghanie Ke Banger.

.... Accused

FIR No. : 31 dated 16.05.2023.

Under Section:- 61 of Punjab Excise Act

Police Station: Ghanie Ke Banger.

Present Sh. Ravinder Singh Gill, APP for the State.
Accused Gurmej Singh is in custody and represented by
Sh. R.S.Boparai, Advocate

JUDGMENT

As a sequel to the police report dated 04.11.2024 presented by SHO P.S. Ghanie Ke Banger, Gurmej Singh has been forwarded to this Court to face trial for allegedly committing offences punishable under Section 61 of Punjab Excise Act in case FIR No. 31/23 P.S. Ghanie Ke Banger

PROSECUTION STORY

2. Tersely put, the factual matrix of this case as proposed in

the police report are that on 16.05.2023 ASI Baldev Singh (here-in-after referred to as IO) along-with his police party were doing patrolling duty in search of bad elements on private vehicle. The police party was present at canal bridge of Jangala. Thh Excise Inspector Vijay Kumar along-with his team came to I.O. and disclosed that he has received secret information that Harbhej Singh son of Raghbir Singh, resident of village Kotli Dhadian is doing business of distilling illicit liquor at his house (Dera). If the police party will raid then and there, he can be apprehended red handed with illicit liquor or lahan. On trusting the information as correct, police proceedings were scribed by IO under Section 61 of Excise Act. He handed over the same to PHG Bhagwant Singh for registration of FIR. Thereafter, IO along-with the team of Excise department started initial investigation. The police party approached the place disclosed by the Excise Inspector. IO tried to join independent witnesses, but none was ready to join the investigation due to their personal reasons. When police party along-with Excise team reached at the spot i.e. in the house of Harbhej Singh, where one person was seen. On seeing the police party, he fled away from the spot. EI identified said person as Harbhej Singh. IO in presence of Excise Inspector conducted search of the house. Upon checking, one iron drum was recovered from the store room. On checking, it was containing 70kg lahan. The drum was sealed with seal bearing impression 'BS'. Form no. M-29 was filled at the spot. The seal after it's use was handed over to ASI Khuswant Singh. Rough site plan of the place of recovery was prepared. The lahan was taken into police possession. Thereafter, I.O produced case property before Excise Inspector for testing of the

liquid. He broke open the seal of I.O. on the drum and checked the material containing in it. Excise Inspector gave his report that the liquid is laran. Thereafter, he sealed the drum with his seal bearing impression "VK". He handed over the drum to I.O. for further proceedings. I.O. deposited the case property before MHC. During inquiry, the name of accused found incorrect. On 28.06.2023, IO visit the village of accused and confirmed name of accused as Gurmej Singh and made an entry in DDR regarding correction of name of accused vide GD no. 25 dated 28.06.2023. Accused was joined in investigation in view of orders of appellate Court. He was formally arrested. He was released on bail. Statements of witnesses under Section 161 of Cr.P.C. were recorded during the course of investigation. Substantial evidence has come on record against the accused. On completion of investigation, SI Lakhwinder Kumar, the then SHO P.S. Ghanie Ke Banger prepared challan and presented the same in the Court for Judicial Verdict. The challan has been forwarded in Court by Sh. Ravinder Singh Gill, Ld. APP for the state.

COMPLIANCE OF SECTION 207 Cr.P.C

3. On presentation of challan, copies of challan and other documents attached therewith were supplied to accused free of costs in compliance to Section 207 of Cr.P.C. Statement in this regard was recorded on 04.04.2024.

CHARGE SHEET

4. On conjoint reading of police report and the documents attached therewith, a prima facie case having been made out against the accused for offence punishable under Section 61 of Punjab Excise Act,

1914. Charge sheet was served upon accused vide order dated 04.04.2024 passed by the Court of predecessor of this court. The accused did not plead guilty and claimed trial.

PROSECUTION EVIDENCE

5. In order to prove its case, the prosecution has examined as many as six witnesses in this case. The sum and substance of their testimonies is introduced as under, however the reference to their cross-examination shall be made at the time of marshaling/appraisal of the evidence:

Initially, **PW-1 ASI Khushwant Singh** appeared in witness box. He was member of Excise Team headed by EI Vijay Kumar. He has deposed on the lines of investigation conducted as the spot and as per the police report. He has placed on record recovery memo as Ex. P-1. Repetition of the same is avoided here for the sake of brevity.

Up next, **PW-2 EI Vijay Kumar** appeared in witness box. On 16.05.2023, IO handed over to him one iron drum sealed with seal impression 'BS'. He broke the seal. On physical inspection, he came to know that it is Lahan. He prepared his test report as Ex. P-2. He sealed the case property with his seal bearing impression 'VK' and handed over the same to IO along-with the test report.

Thereafter, **PW-3 ASI Baldev Singh** appeared in witness box. He is investigating officer of the present case. In his examination in chief, he has deposed on the

lines of police report and investigation conducted by him. He has placed on record documents i.e. recovery memo as Ex. P-1, report of EI as Ex. P-2, ruqa as Ex. P-3, FIR as Ex. P-4, endorsement on ruqa qua the FIR as Ex. P-5, site plan as Ex. P-6, GD no. 25 dated 28.06.2023 as Ex. P-7 and case property as Ex. MO-1.

Subsequently, PW-4 ASI Jasbir Singh appeared in witness box. On 16.05.2023 he was posted as MHC of P.S. Ghanie Ke Banger. The case property was deposited with him by the Investigating Officer. I.O. handed over to him one iron drum duly sealed with seal bearing impression 'BS'. The case property was entered in register no. 19 at serial no. 488. On the same day, EI Vijay Kumar conducted checking of case property. He prepared his report. He has placed on record copy of register no. 19 as Ex. P-8.

Subsequently, PW-5 SI Balwinder Singh, stepped into witness box and deposed that as per interim order Ex. P-8, he made formal arrest of accused vide arrest memo Ex. P-9.

Lastly, PW-6 Gurjit Singh appeared in witness box and has deposed that on 16.05.2023, police party along with Excise team raided the house of his brother Gurmej Singh and recovery of drum containing lahan in it was effected.

6. No other witness has been examined by the prosecution.

Sh. Ravinder Singh Gill, Ld. APP for the State has closed prosecution evidence vide his separate statement dated 24.07.2024.

STATEMENT OF ACCUSED UNDER SECTION 313 CR.P.C

7. On conclusion of prosecution evidence, the entire incriminating evidence as has come on record was confronted to accused during his statement under Section 313 Cr.P.C on dated 13.08.2024. Accused has replied the questions in negative.

DEFENCE EVIDENCE

8. No defence evidence has been led by the accused. Accused closed his defence evidence vide separate statement dated 21.08.2024.

ARGUMENTS

9. During the course of arguments Sh. Ravinder Singh Gill, Ld. APP for the State has submitted that the prosecution has examined as many as six witnesses in this case. They have duly proved the recovery effected from accused. The prosecution has linked the chain of events. All the witnesses have corroborated evidence and prosecution case. The accused may be convicted in this case.

10. Per contra, Sh. R.S.Boparai, Advocate for accused has vehemently argued that accused has been nominated in this case by way of DDR recorded during the investigation. Initial information was received against one Harbhej Singh. No recovery has been effected from the accused at the spot. Case property has not been produced in Court. There are material contradictions between the version of witnesses of the prosecution. The prosecution has failed to link the accused with the offence. Benefit of doubt may be given to accused. Accordingly, the accused may be acquitted from the charges framed against him.

APPRECIATION AND ADJUDICATION

11. The rival contentions so raised on either sides are heard in the light of police report and the evidence as has come on record. In order to decide this case, this Court would frame following points of determination as under:-

POINTS OF DETERMINATION

Q. I. Whether on dated 16.05.2023 at about 04:30PM in the area of Village Kotli Dhadian, P.S. Ghanie KE Banger recovery of 70kg of lahan was effected from the house of accused?

Q. II Whether accused is liable to be punished under section 61 (1)(c) of Excise Act, 1961?

DISCUSSION ON POINTS NO. 1 & 2

12. The onus to prove both these points of determination was upon prosecution. Both these points are taken up together here being interlinked. The discussion of evidence and the findings on these issues will be interdependent, as such joint discussion of these points is inevitable for the purpose of brevity of judgment.

13. Instant FIR has been registered against the accused on receipt of information from Excise Inspector Vijay Kumar, circle Fatehgarh Churian that Harbhej Singh son of Raghbir Singh, resident of Village Kotli Dhadian use to manufacture liquor. If the police party raid then and there, he can be apprehended red handed. IO scribed police proceedings as Ex. P-3 and got registered an FIR bearing no. 31/2023 at P.S Ghanie Ke Banger. IO along-with police party and Excise Inspector raided the house of Harbhej Singh son of Raghbir Singh, resident of

Village Kotli Dhadian and recovered one iron drum containing 70kg lahan. The accused had fled away from the spot. He was joined in investigation on the basis of anticipatory bail orders.

14. To prove its case, the prosecution has examined as many as six witnesses in this case. Initially, PW-1 ASI Khushwant Singh stepped into witness box. He was posted in Excise Staff, Batala on 16.05.2023. He was present at the time of recovery. He has admitted that the name of accused is not mentioned on recovery memo Ex. P-1, nor on site plan. The Excise Inspector was present at the spot. IO did not join any independent witness from public, whereas the place of recovery was a crowded. No ownership document of the house from where recovery has been effected were obtained in police possession. The information was received in the name of Harbhej Singh son of Raghbir Singh, resident of Village Kotli Dhadian. The police party conducted raid at the house of Gurmej Singh. The lahan was measured with 5 Ltr. cane. No identification parade got conducted in this case.

15 Thereafter, PW-2 EI Vijay Kumar stepped into the witness box. He had provided secret information to Investigating Officer. He was member of police party. When the raid was conducted, he identified Harbhej Singh son of Raghbir Singh, resident of village Kotli Dhadian. He fled away from the spot. He identified the accused present in the court, who fled away from the spot. During his cross-examination, he has stated that he mentioned the name of Harbhej Singh in his report. He did not check lahan chemically. During his training, he used to check the lahan chemically. The lahan was destroyed at the spot.

16. Investigating officer ASI Baldev Singh stepped into witness

box as PW-3. During his examination-in-chief, he has deposed on the lines of police report and the investigation conducted by him. It is stated by him that he received information against Harbhej Singh son of Raghbir Singh, resident of Village Kotli Dhadian. Excise Inspector identified Harbhej Singh at the spot, who fled away from the spot on seeing the police party. He made an entry regarding correction of name of Gurmej Singh by way of DDR no. 25 dated 28.06.2023 as Ex. P-7. During his cross-examination, he has stated that a secret information was received against Harbhej Singh. The recovery was effected from accused. Again said the recovery was effected from the house of accused. The name of accused is mentioned in Ex. P-1 and Ex. P-6. There is no lahan in the iron drum. There is no malkhana number mentioned on the iron drum.

17. PW-4 ASI Jasbir Singh remained MHC, P.S Ghanie Ke Banger on 16.05.2023, when the case property was deposited with him. He made an entry in register no. 19 i.e. Ex. P-8 and kept the case property in police malkhana. During his cross-examination, he has stated that the name of accused is mentioned as Harbhej Singh son of Raghbir Singh. He does not know the colour of iron drum. The drum was filled with lahan. The second last witness of the prosecution is SI Balwinder Singh, he was Incharge P.P. Aliwal. He joined the accused in this case. Last witness of the prosecution is PW-6 Gurjit Singh. He has stated that the police party conducted raid on his brother on 16.05.2023. His brother Gurmej Singh was not present in his house. During his cross-examination, he has stated that police never raided the house of his brother. No recovery was effected in his presence.

18. While appreciating the evidence brought on record by the prosecution, it is apparent that the secret information was provided by Excise Inspector Vijay Kumar against one Harbhej Singh son of Raghbir Singh, resident of Village Kotli Dhadian. The house of Harbhej Singh was raided by the police party. Recovery was effected from the house. It is pertinent to mention here that the name of Gurmej Singh has been nominated by way of DDR no. 25 dated 28.06.2023. It is ironical that secret information was pertaining to Harbhej Singh and Gurmej Singh was nominated by way of DDR. Further, it is the case of prosecution, that the recovery was effected from the house of accused, but no document has come on file to show that the place of recovery is anywhere linked to accused in title documents. No evidence has come on file that accused Gurmej Singh or Harbhej Singh are owners, or tenants in the house from where alleged recovery has been effected.

19. As per version of Excise Inspector the recovered lagan was destroyed at the spot. The Excise Inspector conducted test of the lagan at the spot, but it was not checked chemically. The MHC ASI Jasbir Singh has stated that the drum deposited with him was full of lagan. There is material contradiction in the version of MHC and Excise Inspector. Investigating Officer has produced case property in Court. He has admitted that there is no lagan in the drum and there is no malkana number mentioned on the drum. Prosecution story is doubtful in this regard.

20. The secret information was received against Harbhej Singh, but the present accused has been nominated by way of separate DDR. The raid was conducted on the house of Harbhej Singh, but

present accused was nominated during the course of investigation. As per the version of Excise Inspector, the case property was destroyed at the spot, but MHC has stated that the drum full of lahan was deposited with him. The empty drum was produced during the course of trial for inspection of the Court, but it no malkhana number was mentioned on it. In such an eventuality, this court cannot rely upon the version of the prosecution.

21. The prosecution is duty bound to lead cogent and convincing evidence on the allegations leveled against the accused. In this case, the prosecution has miserably failed to lead convincing evidence against the accused. Therefore, this Court has reached to a considered opinion that the prosecution has failed to discharge the onus of proof against accused. Thus, the point of determinations are decided against the prosecution and in favour of accused.

FINAL ORDER.

22. To sum up, this court has no hesitation to conclude here that the prosecution has failed to link evidence against accused beyond shadow of doubt. There are material contradictions in the version of the prosecution. The accused has not been linked with the offence. Thus, the accused is hereby acquitted from the charges framed against him. Bail bonds and surety bonds stands discharged. Case property, if any be dealt as per rules. File be consigned to record room after its due compilation as per rules.

**Pronounced in Open Court
Dated 21.08.2024**

**(Davinder Singh)
Judicial Magistrate 1st Class,
Batala. UID No. PB-0569**

Iqbal Singh, JWW Gr. II

Present: Sh. Ravinder Singh Gill, APP for the State

Accused Gurmej Singh is on bail with counsel Sh.
R.S.Boparai.

No defence evidence has come present. Accused has closed his defence evidence vide separate statement of even date. He has further stated that he is poor person and unable to furnish fresh surety bonds under Section 437-A of Cr.P.C. as such previous surety bonds may be considered as bonds under Section 437-A of Cr.P.C.

Arguments heard. Vide my separate detailed judgment of even date, the accused is hereby acquitted from the charges framed against him. Bail bonds and surety bonds stands discharged after the expiry of appeal or revision. Case property, if any be dealt as per rules. Any application pending on file and not brought to the notice of the Court by the parties is disposed of in terms of judgment. Ahlmad is directed to return all the un-exhibited documents to concerned parties against proper receipt. File be consigned to record room after its due compilation as per rules.

Pronounced in Open Court
Dated 21.08.2024

(Davinder Singh)
Judicial Magistrate 1st Class,
Batala. UID No. PB-0569

Ikbal Singh, JW Gr. II