

**IN THE COURT OF MS. AMANDEEP KAUR, PCS,  
SUB- DIVISIONAL JUDICIAL MAGISTRATE, SUNAM.  
(Unique Identification Code No.PB0307)  
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CIS No.83-2016,  
Decided on: 01.03.2023.

State

**Versus**

Varinder Singh son of Major Singh, resident of Dhaula Patti,  
Ward No.10, Dirba, P.S.Dirba, District Sangrur.

...Accused.

**F.I.R. No.161 dated 24.11.2014,  
Under Section 61/1/14 of Punjab Excise Act,  
Police Station, Dirba.**

Present: APP for the State.

Accused on bail with counsel Shri H.M.S.Bedi Advocate.

**JUDGMENT:-**

The accused named above, has been sent up by the SHO of Police Station, Dirba, to face trial for the commission of an offence punishable Under Section 61/1/14 of Punjab Excise Act.

2- The prosecution story, in brief, is that on 24.11.2014, the police party headed by ASI Billu Singh, in connection with patrolling and checking of suspected persons, was present at Khanal- Kamalpur Chowk, Dirba. Then Investigating Officer received secret information to the effect that Varinder Singh accused is habitual of keeping and selling country made liquor and if raid be conducted at his house, he can be apprehended with huge quantity of country made liquor. The information being credible, ruqa was sent to the police station for

registration of FIR against the accused. Thereafter, police party conducted raid upon the house of accused after associating Kukku Singh son of Jagga Singh, resident of Dhaula Patti, Ward No.09, Dirba and Smt. Narinder Monga, Excise Inspector and one person was sitting inside the house alongwith two plastic canes, who disclosed his name as Varinder Singh. Upon checking of plastic canes, the same were found containing 84 bottles of country made liquor. The accused could not produce any license or permit for keeping the country made liquor in his possession. Thereafter, sample parcels were drawn. The sample seal was prepared separately. The samples and the bulk parcel were sealed with the seal of Investigating Officer. The recovered case property was taken into custody vide separate recovery memo. Rough site plan was prepared. Accused was arrested and his personal search was conducted. Statements of witnesses were recorded. After completion of investigation, the challan against the accused was presented in the court for trial against accused, in accordance with law.

3- On appearance, accused was supplied copies of challan, as required under Section 207 of Cr.P.C.

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

5- To prove its case, the prosecution examined PW-1 Smt. Narinder Kumari, Excise Inspector, PW-2 HC Harinder Singh, PW-3

Constable Malkit Singh, PW-4 MHC Karnail Singh, PW-5 ASI Billu Singh, Investigating Officer and thereafter remaining prosecution evidence was closed by order.

6- The statement of accused under Section 313 Cr.P.C was recorded, in which, he pleaded innocence and false implication. However, accused did not lead any evidence, in his defence.

7- I have heard the APP for the State, defence counsel and perused the file carefully. The point for determination in this case is:-

**Whether, on 24.11.2014 in the area of Dirba, 84 bottles of country made liquor were recovered from the possession of accused?**

8- In support of the charge, prosecution examined PW-1 Smt. Narinder Kumari, Excise Inspector, who proved on record recovery memo Ex.P1, arrest memo of accused Ex.P2 and his personal search memo Ex.P3.

PW-2 HC Harinder Singh, recovery witness, fully supported the prosecution's case stating that on 24.11.2014, after receipt of secret information against accused, 84 bottles of country made liquor were recovered from the possession of accused, in his presence, by the police party headed by ASI Billu Singh. He also proved the relevant documents.

PW-3 Constable Malkit Singh deposed through his affidavit Ex.PW3/A regarding deposit of sample in the FSL and with regard to

intact condition of the samples till the same remained in his custody

PW-4 HC Karnail Singh testified through his affidavit Ex.PW4/A regarding deposit of case property with him by the Investigating Officer ASI Billu Singh on 24.11.2014. He further deposed that till the case property remained in his possession, neither he nor anybody else tampered with the same.

PW-5 ASI Billu Singh, Investigating Officer has unfolded the layers of prosecution story, while proving on file documents Ex.PW5/A to Ex.PW5/E, Ex.P1 to Ex.P3 and case property Ex.MO-1 and Ex.MO-2. Thereafter, remaining prosecution evidence was closed by order.

9- On the contrary, accused while recording statement under Section 313 Cr. P.C. stated that he is innocent and has been falsely implicated in this case. In defence, no evidence was led by accused and the evidence was closed by order.

10- Learned APP for the state on the strength of evidence mustered by prosecution submitted that case against the accused is fully proved beyond shadow of doubt as the recovery has been fully proved by recovery witness and the Investigating Officer. And no link evidence is missing and as such accused is liable to held guilty and be punished as per law.

Ld. Defence counsel has argued that the prosecution has failed to prove its case beyond reasonable doubt as the police has not

examined private witness Kukku Singh, in its evidence. It is further argued that the case property was not produced in the court and there are material discrepancies in the testimonies of the witnesses examined by the prosecution and all these facts cumulatively entail to acquittal of accused.

11- The undersigned has given careful consideration to the rival contentions raised by learned APP for State, learned counsel for accused and have gone through the record and evidence on the file carefully.

At the very outset of my discussion, it would be appropriate to mention herein that present case was registered on the prior secret information given to Investigating Officer and accordingly, the police party conducted raid after associating Kukku Singh independent witness butt this witness has not been examined, by the prosecution in the court and has given up by the ld.APP, being won over by the accused. Merely by giving statement giving up a witness, is not enough to prove that an independent witness was actually associated in the investigating process and he had actually witnessed the recovery. Had he been examined in the Court and at all he turned hostile, the prosecution would have an opportunity to cross examine the said witness and the Court could have come to know whether he was really won over by the accused or not. The non examination of said witness hampers the prosecution version, as the testimony of the officials

witnesses remains un-corroborative from the independent source. Because the witness was given up, therefore, this court was not given a chance to view the independent nature of investigating process and to test his veracity and inference can be drawn against the prosecution.

12- It is a settled principle of law that if the witness is given up, without examining in the court, by saying that he has been won over by the accused, the court cannot come to the conclusion that whether the witness has really been won over or not, which is fatal to the story of the prosecution. In this regard, reference can be made to the law laid down in 1999(3) RCR(CrI), 373, in which, it is observed that:

*“Recovery of Poppy husk. Independent witness joined, but not examined being won over. No adverse inference could be drawn, but defence examined the said witness, who knocked down the prosecution story. Accused acquitted.”*

13- Apart from this, in the present case, the presence of independent witness is also doubtful, because from the version of ASI Billu Singh, who is the Investigating Officer of the present case and also report U/s 173 Cr.P.C. it is clear that the seal after use was handed over to HC Harinder Singh, whereas it is obligatory on the part of the Investigating Officer to hand over the seal to the independent witness, when it was present. There is no explanation on the part of investigating agency as to why the seal after use, was not handed over to independent witness Kukku Singh. So, the non handing over the seal to the independent witness, after use gives the presumption that

independent witness was not present. Reference, in this respect, can be made to the law laid down in 2003(3) RCR(CrI), 762, in which, it is held that:

**“Recovery of 84 kgs of poppy husk. Independent witness given up as won over. Seal after use was not given to independent witness. It suggests that independent witness was not joined. Conviction set aside, inter alia, on this ground.”**

14- The perusal of file reveals that prosecution has initially examined PW-1 Smt. Narinder Kumari, Excise Inspector, who in her cross-examination has deposed that she did not see the case property in the court. Further, she could not tell whether any private witness was joined in the police party at the time of recovery from the possession of accused, whereas PW-2 HC Harinder Singh, recovery witness, in his cross-examination has testified that private witness Kukku Singh was with Excise Inspector. Clearly, this fact raises suspicion upon version of prosecution qua joining of independent witness i.e. Kukku Singh. Furthermore, PW-2 HC Harinder Singh, recovery witness in his cross-examination has admitted that he did not see the case property in the court. Furthermore, prosecution has examined PW-3 Constable Malkit Singh and PW-4 MHC Karnail Singh whose testimonies are relating to deposit of sample as well as case property and nothing much fruitful came out of their cross-examinations. However, they deposed that they did not see the case property in the court, which means that when their

statements were recorded, the case property was not produced in the court and they both, remained to be confronted with the case property. The prosecution has lastly examined PW-5 ASI Billu Singh, Investigating Officer, who deposed in his cross-examination that both the plastic canes can open without breaking the seals. He further admitted that anything can be put or taken out of the case property without breaking the seals, which means that the prosecution has failed to maintain the case property properly. Though trial may not be vitiated, but it has to be seen ultimately if any prejudice was caused to accused or not. If prejudice was caused, benefit would go to accused. It is the Cardinal principle of criminal jurisprudence that it is for the prosecution to establish its case against the accused and that too beyond the shadows of reasonable doubts and in case of doubts, the benefit of the same is given to the accused.

15- In instant case as there are huge doubts in the version of the prosecution as such the benefit of the same is given to the accused. In ***Ramesh versus State of Haryana 2006 (3) RCR Criminal 1*** the Hon'ble Punjab and Haryana High Court has held that onus to prove criminal offences is on prosecution. Burden of proof never shifts on the accused. Similarly, in ***Paramjit @ Pamma v. State of Uttrakhand 2010 (5) Law Herald SC 4095***, the Hon'ble Supreme Court of India has held that the burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond the reasonable



doubts on the basis of acceptable evidence. The Hon'ble Supreme Court has further held that it is the settled principle of criminal jurisprudence that more seriousness of the offence the stricter the degree of proof is required and hence, a higher degree of assurance is required to convict the accused. The Hon'ble Supreme Court of India has also held that prosecution's case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence put by the accused. In the instant case as discussed above there are huge doubts in the story of the prosecution and the prosecution has failed to discharge the burden which laid on its shoulders. Accordingly, the point of determination is answered in negative.

16- In view of abovesaid discussion, it is clear that the prosecution failed to prove the offence against the accused and therefore, by giving benefit of doubt, the accused is acquitted of the charge framed against him. His bail bonds and surety bonds stand discharged. Case property be disposed of, as per rules, after the expiry of period of appeal/ revision, if any. File be consigned to the record room after due compilation within time prescribed as per rules.

**Pronounced in open Court.**

**Amandeep Kaur, PCS,  
Sub- Divisional Judicial Magistrate,  
Sunam, UID No.PB0307.**

**Dated 01.03.2023  
(Jaswinder Singh, Stenographer Gr.II)**

Present: APP for the State.  
Accused on bail with counsel Shri H.M.S.Bedi Advocate.

Arguments heard. Vide separate and detailed judgment of even date, the accused is acquitted of the charge framed against him, as stated therein. File be consigned to record room after due completion.

**Pronounced in open Court.**

**Amandeep Kaur, PCS,**  
**Sub- Divisional Judicial Magistrate,**  
**Sunam, UID No.PB0307.**  
**Dated 01.03.2023**  
(Jaswinder Singh, Stenographer Gr.II)