

**THE COURT OF Mrs AMANDEEP KAMBOJ, (UID No.PB-0351)
SUB DIVISIONAL JUDICIAL MAGISTRATE, GARHSHANKAR.**

CNR No.PBHOB1-0006312018

IPC Challan No.47 of 2018

CIS No. 84/2018

Date of institution : 29-09-2018

Date of decision : 22-07-2019

State Vs. Ashok Kumar @ Shoki s/o Prem Nath R/O
village Possi PS Mahilpur.

.....Accused.

FIR No.95 dated 10-05-2018
Under Section 61-1-14 Excise Act,
Police Station Garhshankar.

Present: Sh.Charanjit Singh, Learned APP for State,
Accused on bail with counsel Shri Harvinder Pal Advocate.

JUDGMENT

Accused Ashok Kumar @ Shoki was sent by SHO Police Station Garhshankar to face trial for offence under Section 61 of Punjab Excise Act.

2. The prosecution story is that on 10-05-2018, while ASI Gurnek Singh along with other police officials were conducting patrol from Garhshankar to village Rampur Billeron and the police party had reached near railway crossing in the area of village Parowal at about 7:15 PM they noticed a pedestrian carrying a heavy plastic sac over right shoulder across the back. On seeing the police party he got perplexed and tried to retract into the field on his left. On suspicion of some foul play, ASI Gurnek Singh apprehended him with the help of other police officials and asked his name and address. He disclosed his name as Ashok Kumar @ Shoki son of Prem Nath resident of village Possi PS Mahilpur. Before conducting the search of

plastic sac, effort was made to join public witness but everybody expressed their reservations. On search of plastic sac 12 bottles measuring 750 ml each of country made liquor “Crazy Romeo Whisky”(For sale in Arunachal Pradesh only) were recovered. After arranging requisite equipment the recovered bottles were opened and decanted into tub . Sample nip of 180 ml was drawn out of the bulk case property and the remaining was put into a plastic can, its mouth was closed with cloth and thereafter, sealed with impression 'GS'. Seal after use was handed over to HC Balwinder Singh. Accused could not produce any license or permit to possess, carry or sell such liquor. Ruqa was sent to police station for registration of FIR through PHG Amarjit Kumar . Police proceedings and form No.29-M were duly completed. The empty bottles were put into plastic sack which was also sealed. Rough site plan of the place of recovery was prepared. After completion of investigation challan was presented before the Court.

3. On appearance of the accused before the court, copy of report under Section 173 Cr.P.C was supplied to the accused free of costs as required under Section 207 Cr.P.C.

4. Finding a prima facie case, charge under Section 61 (1) of Punjab Excise Act was framed against the accused, the contents of charge were read over and explained to him. Accused pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined PW1 ASI Gurnek Singh Investigating officer; PW2 HC Harbhajan Singh and PW3 HC Balwinder Singh .Thereafter learned APP for the State closed the

prosecution evidence.

6. On closure of prosecution evidence, statement of accused was recorded under Section 313 Cr.P.C wherein evidence appearing against the accused was put across to him. Accused pleaded innocence and false implication. On being afforded opportunity to lead evidence in his defence accused did not examine any witness.

7. Learned APP for the State submitted that the testimony of the the four prosecution witnesses duly proved case of prosecution and guilt of accused beyond the shadow of reasonable doubt, so the accused deserves to be convicted and sentenced severely.

8. Per contra learned defence counsel argued that the accused is an innocent person and deserves to be acquitted.

9. I have heard the rival contentions and perused the record carefully. The point of determination in this case is :

Whether on 10-05-2018 at about 7.15 PM in the area of village Bhajlan near Parowal PS Garhshankar above named accused was found in conscious possession of 12 bottles of country made liquor “ Crazy Romeo Whisky”(For sale in Arunachal Pradesh only) without any license or permit ? If so its effect.

10. PW1 ASI Gurnek Singh investigating officer testified on the line of prosecution story and contended that on 10-05-2018, he along with other police officials in connection with patrolling was going from Garhshankar towards Rampur Bilron side and accused was apprehended with 12 bottles of country made Liquor marka “Crazy Romeo Whisky” (For sale in Arunachal Pradesh only) without permit or license. He

proved Form No.29 as Ex. PA; Recovery memo Ex.PB; Ruqa Ex.PC; FIR Ex.PD; Endorsement Ex.PE; Site plan Ex.PF; Cause of arrest memo Ex.PG; Personal search memo Ex.PH; Report of chemical examiner Ex.PJ. He also proved case property as MO1 to MO12. No material question was put to this witness in the cross-examination.

11. PW2 MHC Harbahajan Singh vide his affidavit Ex.PW2/A deposed that on 10-05-2018, ASI Gurnek Singh deposited with him a 11 bottles containing liquor “ Crazy Romeo Whisky”(For sale in Arunachal Pradesh only) 750.750 ml each and one bottle measuring 570 ml and sample 180 ml duly sealed with seal impression GS and Form No.29. He further deposed that on 14-05-2018, he got issued a docket from SSP Hoshiarpur and on 01-06-2018 he handed over sample parcel along with from No.29 to HC Balwinder Singh No 1047 vide road No.180 dated 01-06-2018 for depositing the same with the office of chemical examiner. He further deposed said official deposited the sample parcel with the office of chemical examiner and on return to police station handed over receipt to him. He further contended that so long as the case property and sample remained with him, he did not tamper with it nor he allowed to anybody else to tamper with the same.

12. PW3 HC Balwinder Singh recovery witness also supported and corroborated the testimony of PW1 ASI Gurnek Singh. vide his affidavit Ex.PW3/A deposed that 01-06-2018 MHC Harbahajan Singh had handed over one sample parcel of liquor “Crazy Romeo Whisky” duly sealed with seal impression ‘GS’ for depositing the same with the office of chemical examiner Punjab Kharar, vide road No. 180 dated 01-06-2018 and he after

depositing the sample on same day with said office, on return to police station had handed over receipt to MHC. He further contended that so long as the sample remained with him , he did not tamper with it nor he allowed to anybody else to tamper with the same.

13. I have considered the contentions put forth by the learned APP for the State as well as learned defence counsel. All the prosecution witnesses have deposed on oath and their testimonies are consistent and completely corroborate the prosecution version. Not a single question was put to these witnesses such as to dislodge their veracity. The documents prepared during the course of investigation have been duly proved on record. There are no discrepancies in the testimony of prosecution witnesses. In his statement recorded under Section 313 Cr.P.C, the accused took the plea that he has been falsely implicated in present case, but in absence of any evidence to corroborate his claim, this contention holds no force. No motive can be attributed to the Investigating Agency for false implication of accused and testimony of the witnesses from the police team can not be ignored. In view of the evidence led by the prosecution and above discussion, I am of the considered opinion that the prosecution has proved the guilt of the accused beyond the shadow of doubt and accused Ashok Kumar @ Shoki is accordingly convicted under section 61(1) of Punjab Excise Act. Let, the convict be taken into custody and heard on the quantum of sentence.

Pronounced:
Dated:22-07-2019

(Amandeep Kamboj),
Sub Divisional Judicial Magistrate,
Garhshankar.
UID No.PB0351

Amandeep Kamboj
SDJM,Garhshankar

HEARING ON THE QUANTUM OF SENTENCE:-

Present:- Sh.Charanjit Singh, Learned APP for the State.
Convict Ashok Kumar @ Shoki in custody with Sh.Harvinder Pal, Advocate

14. I have heard the convict, his counsel as well as learned APP for the State on quantum of sentence. The convict has prayed that he is the soul earning member in his family. His aged infirm father and homemaker wife are dependent on him. He added that he earns his livelihood by plying a horse-cart and his family would be rendered destitute if he is sent to prison. He prayed for leniency. Keeping in view the nature of offence, I am of the considered opinion that justice would be met if accused is released on probation. I ordered accordingly. The convict is ordered to be released on probation on furnishing personal probation bond in the sum of Rs.10,000/- for a period of six months and directed to keep peace during this period and to appear in the Court as and when called to receive the sentence. The convict is further ordered to pay Rs.1200/- as cost of litigation. Case property is ordered to be confiscated to the State to be destroyed under rules after expiry of period of appeal or revision or subject to result of appeal or revision if any. File complete in all respects be consigned to the record room after due completion.

Pronounced:
Dated:22-07-2019
(Balbir)

(Amandeep Kamboj),
Sub Divisional Judicial Magistrate,
Garhshankar.
UID NO.PB0351

State Vs. Ashok Kumar

Present: Sh.Charanjit Singh, Learned APP for State,
Accused on bail with counsel Shri Harvinder Pal Advocate.

Accused closed his defence evidence. Arguments heard and concluded. Vide my separate judgment of today, accused has been convicted and released on probation under Section 61 (1) of Punjab Excise Act, as stated therein. Cost of litigation deposited. File be consigned to judicial record room, under rules.

Pronounced:
Dated:22.07.2019
(Balbir)

(Amandeep Kamboj),
Sub Divisional Judicial Magistrate,
Garhshankar.
UID NO.PB0351