

IN THE COURT OF SANJEEV KUNDI
ADDITIONAL CHIEF JUDICIAL MAGISTRATE
MOGA
(UID No. PB0246)

CIS No. CHA-855-2020
CNR No. PBMO03-004157-2020
Date of decision: 01.02.2023

State

Versus

Harpal Singh alias Pala, aged 27 years, son of Raj Singh Son of Veer Singh resident of village Chotian Kalan, Tehsil & District Moga.

..... Accused

FIR No. 117 dated 10.09.2020
Under Section: 61/1/14 of Excise Act
PS Sadar Moga, District Moga

Present:

Mr. Amrit Mittal APP for the State

Accused on bail with counsel Mr. Harjit Singh, Advocate

JUDGMENT

Accused Harpal Singh @ Pala has been sent up to this Court by the officer in charge of PS Sadar Moga to face trial for the commission of offence punishable under Section 61 of the Punjab Excise Act.

2. In brief, the facts as emanate from the police report and the documents appended therewith are as under :-

that on 10.09.2020, police party headed by ASI Nirmal Singh was on routine patrolling and checking on a private vehicle, heading from police station to villages Chotian Kalan, Chotian Khurd and Daulatpura and when they reached near bridge at the outskirts of village Daulatpura, ASI Nirmal Singh received a secret information that Harpal Singh @ Pala son of Raj Singh son of Veer Singh resident of village Chotian Kalan was habitual of selling illicit liquor and if raid be conducted at his house, he

could be apprehended with heavy quantity of liquor. Finding the information to be trustworthy and reliable, ruqa was sent to the police station, on the basis of which present FIR was registered. Raid was conducted as per the information received. Light in the court yard of the house belonging to accused Harpal Singh @ Pala was on and the moment police party entered his house, a dark complexion, moderated heighted, Hindu young man was seen hiding behind the pigeon shed of the house and he was apprehended by police party. Upon interrogation, he disclosed his name as Harpal Singh @ Pala son of Raj Singh son of Veer Singh resident of Chotian Kalan and from beneath tarpaulin, a plastic container was recovered and upon checking, the same was found containing illicit liquor. Upon measurement, the plastic container was found carrying 16 bottles of illicit liquor measuring 750 ML each. Sample measuring 180 ML was drawn. Specimen seal i.e. form No. M-29 was prepared. Recovered liquor was taken into possession vide a separate memo of recovery. Accused Harpal Singh @ Pala son of Raj Singh son of Veer Singh was formally arrested and joined in the investigation of the case. Site plan was prepared at the spot. Statement of the witnesses were recorded. Upon receipt of report of Chemical Examiner and completion of investigation and other necessary formalities, challan against the accused Harpal Singh @ Pala son of Raj Singh son of Veer Singh was presented in the court.

3. On the presentation of challan, complete copies thereof were supplied to the accused Harpal Singh @ Pala son of Raj Singh son of Veer

Singh free of cost as required under Section 207 Cr.P.C.

4. Finding a prima facie case, charge sheet under section 61 of Punjab Excise Act was framed against the accused Harpal Singh @ Pala son of Raj Singh son of Veer Singh, to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined Investigating Officer ASI Nirmal Singh as PW4, recovery witness HC Jagwinder Singh as PW2, MHC Jeet Singh as PW1 and SCt Gurpreet Singh as PW3. Witnesses, namely HC Dilbagh Singh, ASI Gurdev Singh and SI Nirmaljit Singh were given up by APP for the State. Thereafter, he tendered into evidence report of the Chemical Examiner Ex.PX and closed the evidence on behalf of the prosecution.

6. Statement of the accused Harpal Singh @ Pala son of Raj Singh son of Veer Singh under section 313 of Cr.P.C. was recorded wherein he denied the allegations of the prosecution and pleaded false implication and his innocence. No evidence in defence was led by the accused Harpal Singh @ Pala Singh.

7. APP for the State argued that from the entire evidence produced on record, case of the prosecution stands proved. Thereby, he prayed for the conviction of the accused Harpal Singh @ Pala.

8. The following point fell for determination in the present case:

Whether on 10.09.2020 at about 10:30-11:00 PM in the area of village Chotian Kalan, PS Sadar Moga, accused Harpal Singh @ Pala was found in possession of a plastic container carrying 16

bottles of illicit liquor measuring 750 ML each,
without any permit or licence in his favour ?

9. On the other hand, counsel for the accused Harpal Singh @ Pala argued that witnesses of the prosecution are not trustworthy and reliable as there are material discrepancies and contradictions in their statements, eroding their credibility. He further argued that alleged recovery is based upon testimony of the official witnesses only which in itself is sufficient to disbelieve the version of the prosecution. Thereby, he prayed for acquittal of the accused Harpal Singh @ Pala.

10. I have considered the submissions from both the sides and have gone through the material on record.

11. In order to prove its case, the prosecution examined ASI Nirmal Singh as PW4 who deposed to the effect that on 10.09.2020, he was heading a police party on routine patrolling and when they reached near bridge over dirty drain at the outskirts of village Daulatpura, he received a secret information that Harpal Singh @ Pala son Raj Singh resident of village Chotia Kalan was habitual of selling illicit liquor from his house and finding the information to be trustworthy and reliable, he sent ruqa to the police station on the basis of which the present FIR was registered. He further proved ruqa as Ex.PW4/A and FIR as Ex.PW4/B. He further deposed that raid was conducted as per information received and accused Harpal Singh @ Pala son of Raj Singh was found concealing a plastic container in his house in the corner of pigeon shed and he was apprehended by the police party and upon checking the plastic container,

illicit liquor was recovered and sample measuring 180 ML was drawn and upon measurement, remaining illicit liquor was found 15¾ bottles of 750 ML each. He further proved specimen seal as Ex.PW2/A on record, memo of arrest of accused Harpal Singh @ Pala as Ex.PW2/D, memo of his personal search as Ex.PW2/E and memo of intimation of arrest as Ex.PW2/F. He further proved rough site plan as Ex.PW2/C and memo of recovery of the case property along with sample parcel as Ex.PW2/B. He further identified the accused Harpal Singh @ Pala in the court and produced plastic container of illicit liquor as MO1. APP for the State also tendered report of Chemical Examiner as Ex.PX.

12. The prosecution further examined HC Jagwinder Singh as PW2, who orally corroborated the version of IO ASI Nirmal Singh on all material facts of the case and proved all the relevant documents in the same manner as proved by him. For the sake of brevity, contents of his examination in chief are not being produced here.

13. The prosecution further examined MHC Jeet Singh as PW1, who deposed that on 10.09.2020, he was posted as MHC at PS Sadar Moga and on that day, ASI Nirmal Singh deposited with him one sample parcel along with plastic container containing remaining case property i.e. 15¾ bottles of illicit liquor measuring 750 ML each, sealed with impression NS, which he placed in the Malkhana of the Police Station and on 18.09.2020, he took out the sample bottle sealed with impression NS along with sample seal and handed over the same to Constable Gurpreet Singh with the direction to get the docket forwarded from the office of the

SSP, Moga and to deposit the same in the lab of Chemical Examiner, Kharar and as per his directions, Constable Gurpreet Singh got the docket forwarded and deposited the sample in the lab of Chemical Examiner, Kharar and upon return handed over the acknowledgement receipt to him.

14. The prosecution further examined SC Gurpreet Singh as PW3, who orally corroborated the version of MHC Jeet Singh on all the material particulars.

15. From the entire evidence produced on record, the prosecution has successfully proved that on 10.09.2020, at about 10:30-11:00 PM, in the area of village Chotian Kalan, PS Sadar Moga, accused Harpal Singh @ Pala was found in possession of a plastic container carrying 16 bottles of illicit liquor measuring 750 ML each, without any permit or licence in his favour.

16. On the other hand, counsel for the accused Harpal Singh @ Pala argued that there are material discrepancies and contradictions in the statement of witnesses of the prosecution, rendering them unworthy of any credit. He pointed out that in the ruqa, vehicle with the police party was mentioned as swift, but both the material witnesses i.e. IO ASI Nirmal Singh and recovery witness HC Jagwinder Singh speak of four wheeler Bolero with the police party at the time of raid. He further pointed out that ASI Harpal Singh reached back at the spot at about 02:15 pm whereas recovery witness HC Jagwinder Singh speaks of ruqa carrier reached back at the spot at about 02:30 PM. By pointing out these discrepancies, counsel for the accused Harpal Singh @ Pala argued that material

witnesses of the prosecution are not trustworthy and reliable and thereby, prayed for acquittal of the accused Harpal Singh @ Pala. But the argument raised on behalf of the accused Harpal Singh @ Pala is rejected. Law in this regard is well established that while appreciating evidence, the approach of the Court must be that whether the evidence of the witnesses read as a whole appears to have a ring of truth and once that impression is formed, nothing more is required. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit the rejection of evidence as a whole. Hon'ble the Supreme Court of India in State of UP versus MK Anthony cited as 1985(1) Recent Criminal Reports 88 (SC) has laid down, "even honest and truthful witnesses may differ in some details un-related to the main incident because power of observation, retention and re-production differ with individuals." The discrepancies or contradictions, pointed out above by counsel for accused Harpal Singh @ Pala are minor in nature and the same do not touch the root of the matter. Such type of minor discrepancies or contradictions crop up in the statement of truthful witnesses with the passage of time. It is noteworthy here that the recovery is of 10.09.2020 and cross examination of IO ASI Nirmal Singh was recorded on 11.01.2023 and of recovery witness Jagwinder Singh on 07.06.2022. After lapse of such a long period, certain discrepancies or contradictions were bound to occur in their evidence.

Hon'ble the High Court of Punjab and Haryana, Chandigarh in authoritative judicial pronouncement titled as Karam Singh versus State of Punjab, cited as 1996(3) Recent Criminal Reports 741 has laid down that parrot like story of the occurrence cannot be expected from truthful witnesses. Then, Hon'ble the Supreme Court of India in Rammi @ Rameshwar versus State of Madhya Pradesh, cited as 1999(4) RCR (Criminal) 246 has laid down, "no true witness can possibly escape from making some discrepant details. Perhaps an untrue witness, who is well tutored can successfully make his testimony totally non-discrepant." Then, Hon'ble the Supreme Court of India in State of MP Vs Man Singh and others, cited as (2003)10 SCC 414 has laid down, "discrepancies which do not go to the root of the matter and shake the basic version of the witness, cannot be given undue importance, more so when all important "probabilities-factor" echoes in favour of the version narrated by the witnesses. The minor discrepancies do not corrode the credibility of an otherwise acceptable evidence." In view thereof, the argument raised on behalf of accused Harpal Singh @ Pala is rejected.

17. Counsel for the accused Harpal Singh @ Pala further argued that accused has been falsely implicated in this case and in fact, no such recovery, as alleged, was ever affected from the possession of accused Harpal Singh @ Pala and case of the prosecution is based upon the testimony of official witnesses only, which is sufficient to falsify the version of the prosecution. But argument raised on behalf of the accused Harpal Singh @ Pala is rejected. The testimony of an official witness

cannot be disbelieved and discarded solely for the reason that he is an official witness and always remains interested in the success of the case. The official status of a witness *ipso facto* is not sufficient to discard his evidence. Thus, statement of IO ASI Nirmal Singh and HC Jagwinder Singh cannot be disbelieved and discarded solely for the reason that they are the official witnesses and interested in the success of the case. Then both of these witnesses have deposed in a straight-forward manner and they have stood well to their cross-examination. Besides this, neither any enmity of these witnesses with the accused has been alleged nor proved on record. Thereby, there remains no reason for false implication of the accused Harpal Singh @ Pala. Reliance in this regard is also placed on authoritative judicial pronouncement of Hon'ble the High Court of Punjab & Haryana, Chandigarh in case titled as Ramesh Versus State of Haryana in CRA-S-563 of 2004 and CRA-S-914-SB of 2004, Decided on 13.09.2017 Law Finder DOC ID # 1081152.

18. Thus, in view of entire discussion made above, prosecution has succeeded in proving its case against the accused Harpal Singh @ Pala beyond reasonable doubt. The point for determination is decided in favour of the prosecution. Accused Harpal Singh @ Pala is held guilty under Section 61(1)(a) of the Punjab Excise Act and he is convicted thereunder. Let the convict be heard on the quantum of sentence. Sd/-

Pronounced in open Court
Dated 01.02.2023
(Vipan Kumar, Stenographer Grade-I)

(Sanjeev Kundi)
Additional Chief Judicial Magistrate,
Moga. (UID No. PB0246)

Order of Sentence

Present:

Convict with counsel Mr. Harjit Singh, Advocate

Mr. Amrit Mittal APP for the State

19. I have heard the convict on the quantum of sentence. He has prayed for lenient view on the ground that he is poor person and this is his first offence and in future, he will not repeat this mistake.

20. APP for the state has not controverted the plea of the convict.

21. Keeping in view the nature and gravity of the offence that only 16 bottles measuring 750 ML each of liquor were recovered from the possession of the convict and no previous conviction has stood proved on record and then, convict is poor person, a lenient view can be taken, whereby, he is ordered to be released on probation on his furnishing probation bond in the sum of Rs. 10,000/- with an undertaking to keep peace and be of good behaviour for a period of one year and in the meanwhile, to come and receive sentence as and when required by the court. The convict is further burdened with cost of litigation to the tune of Rs. 200/-. Cost paid. Probation bond has been furnished which has been accepted and attested. Case property is ordered to be destroyed as per rules, but subject to the result of appeal or revision, if any. File be consigned to Record Room (Judicial), Moga. Sd/-

Pronounced in open Court

Dated 01.02.2023

(Vipin Kumar, Stenographer Grade-I)

(Sanjeev Kundi)

Additional Chief Judicial Magistrate,

Moga. (UID No. PB0246)