

IN THE COURT OF SUSHMA DEVI, PCS, ADDITIONAL  
CHIEF JUDICIAL MAGISTRATE, JALANDHAR.  
UID No.PB00245.

Case No.           CHA-486-2021  
CNR No.PBJL03-010006-2021  
Instituted on:       29.07.2021  
Decided on:         20.12.2021

State Versus       Varinder Kumar son of Kanta Prashad, resident of  
house no.128, Kamal Vihar, Jalandhar.

. . . . Accused

FIR No.213 dated 27.10.2020  
U/s 61 of Excise Act, 1914.  
P.S.Divn.no.3, Jalandhar.

Present :       Shri Bharat Bhushan, APP for the State.  
Accused on bail with Shri B.S.Saini, Advocate.

**JUDGMENT:**

The above named accused has been sent up by the Officer-in-  
Charge of Police Station Division no.3, Jalandhar in the above-said  
FIR to face trial for offences punishable under Section 61 of the  
Excise Act, 1914.

2. Briefly stated, the prosecution story is that on 27.10.2020  
Investigating Officer/SI Surinder Singh, no.1412 along with other  
police officials was present at Railway Road, Jalandhar in  
connection with patrolling & checking of bad elements, where, he  
received secret information that Varinder Kumar son of Kanta  
Prashad, resident of house no.128, Kamal Vihar, Jalandhar, was  
indulged in the business of selling whiskey and presently, he was  
going to sell the whiskey on his activa scooter bearing registration

no.PB08-BU-1083. If a naka was held at Madan Flour Mills, Jalandhar, he could be apprehended along with liquor. Believing the information to be reliable & commission of offence under Section 61 of Excise Act, 1914, ruqa was sent to the police station, on the basis of which FIR was registered. Investigating Officer along with police officials hold a naka at disclosed place, where, one person was seen coming on his activa scooter. He was apprehended by the police party and on asking, said person disclosed his name as Varinder Kumar son of Kanta Prashad, resident of house no.128, Kamal Vihar, Jalandhar. Before conducting the search of said person, attempt was made by Investigating Officer to join witness from public, but everyone expressed his helplessness. Thereafter, the search of dickey of activa scooter was conducted and 10 bottles of whiskey make 'Punjab First Choice' each weighing 750 mls were recovered without any permit or license. Being of same make, Investigating Officer poured all whiskey in to a plastic bucket and extracted one sample of 180 ML from it and remaining whiskey was kept in a plastic cane which was sealed by Investigating Officer, with his seal bearing impression "SS". Sample seal impression was prepared and form M-29 was filled in. Seal after use was handed over to C-Jora Singh, No.1774. The recovered whiskey, sample parcel of whiskey, sample seal and form M-29 were taken into possession vide separate memo.

3. During course of investigations, accused was arrested. Rough site-plan of the place of recovery was prepared. Statements of witnesses under Section 161 Cr.P.C. were recorded. After completion of investigation, challan against the accused was presented in the Court.
4. On presentation of challan, copies thereof and requisite documents were supplied to the accused free of costs, as envisaged under Section 207 Cr.P.C.
5. From perusal of the report under Section 173 Cr.P.C and other documents attached with it, a prima-facie case under Section 61 (1) (VI) of the Punjab Excise Act,1914 was made out against the accused and accordingly, charge-sheet was served upon him, to which, he pleaded not guilty and claimed trial. Thereafter, prosecution witnesses were ordered to be summoned.
6. In order to prove its case, the prosecution has examined only three out of total eight witnesses enlisted in the list of witnesses attached with the challan. They are **PW1 ASI Ranjit Singh, no.1419**, who was posted as MHC on 27.10.2020 in Police Station Division no.3, and with whom Investigating Officer/SI Surinder Singh had deposited the case property in the shape of one plastic cane containing 7320 Mls of whiskey along with one sample nip measuring 180 Mls duly sealed with seal impression “SS” and form M-29 with him and who had sent the sample nip duly sealed with

seal impression “SS” to the Office of Chemical Examiner, Kharrar on 12.11.2020 through L/C Manpreet Kaur for its chemical analysis. He also produced Register no.19 at the time of recording of his evidence and tendered photostate copy of relevant entry regarding the deposit of case property as well as sending of the sample nip as **Ex.PW1/A; PW2 L/C Manpreet Kaur, no.616**, who has taken the sample parcel for depositing the same in the office of Chemical Examiner, Kharar on 12.11.2020 as per instructions of MHC of P.S Division No.3, Jalandhar and **PW3 ASI Surinder Singh, no.1412-JAL**, the Investigating Officer, who deposed as per story narrated in the challan and who tendered ruqa as **Ex.P1**, copy of FIR as **Ex.P2**, his endorsement **Ex.P3** on ruqa, Form M-29 as **Ex.P4**, specimen seal impression form as **Ex.P5**, recovery memo as **Ex.P6**, site plan of place of recovery as **Ex.P7**, arrest-cum-intimation memo of accused as **Ex.P8**, his personal search memo as **Ex.P9**, chemical examiner report as **Ex.P10** and screen report of activa scooter as **Ex.P11**. Thereafter Id. A PPP for the state tendered the Chemical Analysis Report as **Ex.PX** and closed the prosecution evidence vide his statement made on 20.12.2021.

7. After the closure of the prosecution evidence, separate statement of accused under Section 313 Cr.P.C was recorded, wherein, all the incriminating evidence appearing against the accused was put to

him which, he denied and pleaded false implication. Accused did not opt to lead his defence evidence.

8. I have heard the arguments addressed by the learned APP for the State and the learned defence counsel and have carefully gone through the record. The learned APP for the State has argued that the case of the prosecution stands proved from the evidence led during the trial and accused should be awarded the maximum sentence for the offences levelled against them in the charge-sheet. **On the other hand**, ld. defence counsel has argued that no independent witness was joined by Investigating Officer despite the fact that the recovery was allegedly made from the accused in the public place. Therefore, accused cannot be convicted only on the basis of sole evidence of police officials who are interested witnesses without any independent corroboration and as such, accused deserves to be acquitted.
9. As per the allegations levelled against the accused in the F.I.R., he was found in possession of 10 bottles of whiskey each weighing 750 Mls make Punjab First Choice Whiskey without any permit or license on 27.10.2020 by police party headed by Investigating Officer/SI Surinder Singh at Madan Flour Mills Chowk, Jalandhar on the basis of suspicion. In order to substantiate these allegations, the prosecution has examined **Investigating Officer/SI Surinder Singh** as **PW3**, who proved the prosecution story on all its material

particulars during his examination-in-chief and stated that on 27.10.2020, when he along with other police officials was present at Railway Station, Jalandhar, he received secret information that accused was indulged in selling whiskey at Madan Flour Mills Chowk, Jalandhar and he was coming from Pratap Bagh side towards Madan Flour Mills Chowk on his activa scooter bearing registration no.PB08/BU-1083; that naka was hold at the disclosed place where accused was apprehended and a ruqa **Ex.P1** was sent to concerned Police Station on the basis of which, present FIR **Ex.P2** was registered & made his endorsement **Ex.P3** on ruqa; that the 10 bottles of whiskey make Punjab First Choice each weighing 750 Mls each were recovered from the dickey of activa scooter being driven by accused; that the entire 10 bottles were poured into a tub and sample nip of 180 Mls was separated as a sample; that the remaining recovered whiskey left in the tub was put in the plastic cane and was sealed along with sample nip with seal bearing impression "SS"; that form M-29 **Ex.P4** including specimen seal impression form **Ex.P5** were prepared at the spot; that entire case property along with form M-29 was taken into police possession vide recovery memo **Ex.P6**; that rough site plan of place of recovery **Ex.P7** was prepared; that accused was arrested vide arrest-cum-intimation memo **Ex.P8**; that his personal search was conducted vide memo **Ex.P9**; and report of Chemical Examiner as **Ex.P10**, screening report of activa scooter as **Ex.P11** and that he

deposited the case property in the Police Malkhana. He also tendered the plastic cane containing the remaining bulk case property i.e. 7320 Ml of whiskey make First Choice sealed with seal bearing impression "SS" . Link evidence is completed by **PW1 ASI Ranjit Singh, no.1419 & PW2 C-Manpreet Kaur, no.616.** **PW1 ASI Ranjit Singh, no.1419** has stated that on 27.10.2020 while he was posted as MHC in Police Station Divn no.3, I.O/SI Surinder Singh has deposited the case property of present case i.e. one cane plastic weighing 7320 Mls, one sample nip weighing 180 and form M-29 with him in the Police Malkhana and he made entry in register no.19 against serial no.384 dated 27.10.2020. Register no.19 was produced by him in the Court and he tendered the attested copy of said entry as **Ex.PW1/A.** He further stated that on 12.11.2020, he handed over sample nip in intact condition along with docket and form M-29 to C-Manpreet Kaur vide rode no.291/21 dated 12.11.2020 with direction to deposit the same in the office of Chemical Examiner, Kharrar. It is also his statement that C-Manpreet Kaur handed over receipt of deposit of sample with him in the evening of same day. He also deposed that neither he himself nor he allowed anyone to temper with sample nip so long it remained in his possession. His version is duly corroborated by **PW2 C-Manpreet Kaur no.625** who has stated that on 12.11.2020, MHC Ranjit Singh handed over one sample nip duly sealed with seal bearing impression "SS" pertaining to the present

case to her vide rode no.291/21 dated 12.11.2020 along with docket and form M-29 to deposit the same in the office of Chemical Examiner, Kharrar. She further stated that she deposited the sample nip with office of Chemical Examiner on same day and handed over the receipt to MHC in the evening of the same date. It is also her deposition that neither she herself nor she allowed anyone to temper with sample nip so long it remained in her possession. Though, these witnesses were cross-examined at length by ld.defence counsel but nothing worthwhile could come out of it which could shake their veracity.

10. Further, non-joining of independent witness at the time of alleged recovery by itself is not sufficient to give benefit of doubt to the accused when it is not his case that he has been falsely implicated in the present case due to any previous enmity with police official. It is well settled proposition of law that the corroboration is not a rule of law but is a mere rule of prudence which varies in its application depending upon facts of each case. Where the testimony of witnesses is credit worthy and inspire full confidence in the mind of the court then the same cannot be discarded only on the ground of lack of independent corroboration.

11. Thus, the prosecution has successfully proved its case beyond all reasonable doubts against the accused present in the Court. So, the accused **Varinder Kumar**, present in the Court, is held guilty for



commission of offence under Section 61 (1) VI of Excise Act and is accordingly convicted thereunder. Let convict be taken into custody and heard on the quantum of sentence.

Pronounced in open Court  
on 20.12.2021

(Sushma Devi), PCS  
Additional Chief Judicial Magistrate,  
Jalandhar.

**QUESTION OF SENTENCE:**

Present: Shri Bharat Bhushan, APP for the State.

Convict in custody.

12. The convict submits that he is a poor person and sole bread earner of his family and is the first offender. The convict prayed for taking lenient view while imposing the sentence and prayed that he be released on probation.

13. This Court has given a thoughtful consideration to the rival submissions and on careful perusal of the file, it is evident that previous conviction has not been alleged or proved by prosecution and recovery in this case is of **10 bottles** of whiskey. Ends of justice would be fully met, if convict be given opportunity to reform himself instead of sending him behind the bar. It is fit case where convict can be released on probation. Accordingly, convict is ordered to be released on probation on furnishing of personal probation bonds in the sum of ₹ 10,000/-, thereby undertaking to maintain peace and be of good behaviour for a period of one year and to appear and receive the sentence as and when called upon

by Court, during aforesaid period. Convict is also directed to pay ₹ **1000/- as cost of proceedings**. Bail/surety of the convict, if any, stands discharged. Case property, if any, be disposed of as per rules. File complete in all aspects be consigned to Record Room.

Pronounced in open Court  
on 20.12.2021.

(Sushma Devi),  
Addl. Chief Judicial Magistrate,  
Jalandhar (UID No.PB00245).

Neeraj Kumar