

IN THE COURT OF JUBLEE, PCS,
JUDICIAL MAGISTRATE,
KHARAR

CNR No.PBSAA10015252018.

CHA/95/2018.

Date of Decision: 27.02.2019.

State

Versus

Gurpal Singh Fauji aged 65 years son of Bhajan Singh resident of village Abhipur, Police Station Sadar Kharar, District SAS Nagar.

.....Accused

FIR No. 150 dated 08.09.2017.

U/s 61/1/14 of Excise Act

P.S. Sadar Kharar.

Present: Sh. Harshdeep, Learned APP for the State.

Sh. Kulvinder Singh Bhatti, Adv. Counsel for the accused.

Accused on bail.

JUDGMENT

1. The above named accused has been sent up to face trial for the offence punishable under Section 61 of Excise Act, by SHO Police Station Sadar Kharar.
2. Briefly stated, on 08.09.2017, HC Kewal Krishan along-with

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members of the police party headed by him was on routine patrolling duty for checking of the suspicious person on private vehicle. At about 08:15 PM, he received secret information that Gurpal Singh @ Fajui resident of village Abhipur who is in habit of selling liquor which he used to bring from Chandigarh at less price. The above-said person also used to sell illegal liquor from his house and if, raid is conducted then in heavy quantity illegal liquor can be recovered from his house. On considering this information reliable HC Kewal Krishan sent rqua through C. Gurwinder Singh for the registration of formal FIR. Thereafter, he proceeded along-with police party towards the village Abhipur and in presence of residence of said village conducted a raid at the house of Gurpal Singh and in said raid 102 bottles of liquor make XXX Rum Zolt for sale in Chandigarh only were recovered from the possession of the accused, which were taken into police possession vide separate memo. Rough site plan of the place of occurrence, memo of arrest, memo of personal search, memo of information regarding the arrest of the accused in this case were prepared. Statement of witnesses under Section 161 Code of Criminal Procedure recorded. On the receipt of the Chemical report from the office of Chemical Examiner, Kharar and after completion of investigation challan was presented against accused under Section 61 of the Excise Act.

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3. On presentation of challan, the copies of the documents relied upon by the prosecution were supplied to the accused free of cost as envisaged under Section 207 Code of Criminal Procedure.
4. After hearing both the parties and going through the record a prima-facie case is made out against the accused. Accordingly, charge was framed against the accused under Section 61 of the Excise Act to which the accused pleaded not guilty and claimed trial.
5. In order, to prove its case, prosecution examined PW-1 LC Puja Rani, PW-2 Manvinder Singh, PW-3 ASI Jaswant Singh, PW-4 HC Kewal Kishan, PW-5 Avtar Singh and PW-6 Shishupal Singh. Learned APP for the State vide separate statement recorded before this court on 25.02.2019 has closed evidence on behalf of the prosecution.
6. After the evidence of prosecution statement of the accused under Section 313 Code of Criminal Procedure was recorded, in which accused denied all the allegations of prosecution in toto and further stated that he has been falsely implicated in this case and pleaded his innocence and opted not to lead any evidence.
7. **This Court has heard the learned APP for State as well as learned defence counsel and perused the documents/evidence on the file.**
8. The points for determination in the present case are that as to whether on 08.09.2017, at about 09:00 PM, in the area of village

Abhipur at residence of the accused, accused were found in possession of 102 bottles of liquor measuring 750ML each make XXX Rum Zolt for Sale in Chandigarh only without any licensing or permit for the possession of the same.

9. In order to prove, the charge against the accused prosecution examined following witnesses:

- PW-1 LC Puja Rani,
- PW-2 HC Manvinder Singh,
- PW-3 ASI Jaswant Singh,
- PW-4 HC Kewal Kishan,
- PW-5 Avtar Singh,
- PW-6 Shishupal Singh,

10. The prosecution has also brought on record various documents which are as follows:-

- Affidavit of LC Puja Rani as Ex.P1,
- Recovery memo of seal as Ex.PW2/A,
- Arrest memo of accused as Ex.PW2/B,
- Personal search memo of accused as Ex.PW2/C,
- Case property i.e. two plastic cane as Ex.MO1 and Ex.MO2,
- Case property i.e. 102 empty bottles of XXX Jolt Rum as

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Ex.MO3 to Ex.MO104.

- Ruqa as PW3/A,
- FIR as Ex.PW4/A,
- Site plan as Ex.PW4/B,
- Copy of registry bearing vasika no.5657 dated 21.01.2010 as Ex.PW6/A,
- Seizure memos as Ex.PW3/B,

11. **Learned APP for the State argued that** prosecution has successfully proved its case against the accused. By leading oral as well as documentary evidence on record the prosecution has duly established on record that liquor was recovered from the possession of accused and accused failed to produce any license or permit. He further argued that the house from which the liquor was recovered belongs to the wife of the accused Gurpal Singh namely Sukhwinder Kaur and this fact is not disputed by the accused that she is not his wife. Therefore, the accused deserves to be convicted and be punished under law.

12. **The Learned defence counsel vehemently argued that** by examining PW-6 Shishupal who proved on record sale deed bearing vasika no.5657 dated 21.01.2010. He further argued that as per this document Ex.PW6/A Gurpal Singh is not owner of the said house. He

further argued that it is admitted by the prosecution witnesses that at the time of raid accused Gurpal Singh was not present in the said house. He further argued that prosecution has miserably failed to establish on record that house from where the liquor was recovered was owned or belongs to the accused Gurpal Singh. Even, recovery was not got effected in his presence. He argued that accused was falsely implicated in the present case. The prosecution has miserably failed to prove its case against the accused beyond shadow of reasonable doubt. Therefore, accused deserved to be acquitted.

13. **After extending careful thought and consideration to the arguments advanced before me in the light of evidence available on file, my observations are as follows:-**

14. According to the story of prosecution HC Kewal Krishan Investigating Officer received secret information on 08.09.2017, at about 08:15 PM, that Gurpal Singh @ Fauji resident of village Abhipur who is in habit of selling liquor which he used to brought from Chandigarh at less price and today also he is having illicit liquor in his house and if, raid is conducted then the said liquor can be recovered. After receiving the secret information PW-4 HC Krishan Kumar, Investigating Officer along-with other police officials visited the village Abhipur to conduct a raid. On search of the house of accused Gurpal Singh, 102 bottle of liquor Jolt XXX Rum for Sale in

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Chandigarh recovered from his house which were taken into police possession.

15. In order to prove, its case against the accused prosecution examined 06 witness in total. The star witness of the present case is **PW-4 HC Kewal Krishan, Investigating Officer**, who deposed on oath that on 08.09.2017, after receiving secret information he along-with the police officials visited the village Abhipur to conduct a raid. He further stated that the raid was conducted in the presence of private witnesses namely Harnek Singh Panch and Avtar Singh son of Prem Singh. On search of the house of accused Gurpal Singh three bag of liquor were recovered from the back side of his house and one bag was recovered from the Kitchen. The above-said four bags were taken into the police possession in the presence of above-said private witnesses. After opening the above-said four bags it was found that these bags containing 102 bottles of liquor make Jolt XXX Rum for Sale in Chandigarh. He further deposed that he arranged two plastic cane and one quarter and the above-said liquor was transferred in the above-said plastic cane and two sample of 180 ML/180ML each was taken from the above-said two canes. He further deposed that the above-said two plastic cane which were containing 15 bottles and one quarter each was sealed with seal impression 'KK'. The empty bottles of liquor were kept in 04 plastic bags and same were sealed with seal

impression 'KK'. The above-said two sample and above-said two plastic cane were also sealed with seal impression 'KK'. The form No.29 was also filled and sample seal was also prepared. He further deposed that after sealing the case property he handed over the seal to HC Jaswant Singh and recovery memo Ex.PW2/A was prepared by him. The rough site plan ExPW2/B was also prepared. He further deposed that case property already proved on record by PW-2 HC Manvinder Singh recovery witness. He also identified the accused present in the court. **PW-2 HC Manvinder Singh**, recovery witness corroborated the testimony of Investigating Officer in verbatim.

16. **PW-1 LC Pooja Rani** deposed through her affidavit Ex.P1 and deposed through this affidavit that on 21.11.2017, she was present at PS Sadar Kharar and in her presence and MHC Amrik Singh handed over him two sample of 180 ML along-with the form no.29 through rod no.312 dated 21.11.2017 with instruction to deposit the same with the Chemical Examiner Laboratory Kharar and to deposit the receipt after depositing the same. She further deposed that on same day, she went to the Chemical Examiner Laboratory Kharar but objection was raised that there is delay in deposit the sample. So, in this regard letter be brought from the office of SSP and then sample was deposited in the Chemical Laboratory. She stated that she came back and deposited the said Sample again with MHC Amrik Singh. On 03.11.2017

through rod no.318 from the office of SSP the sample was deposited with the Chemical Examiner Kharar and receipt was also handed over to MHC Amrik Singh in this regard which is on record. During cross-examination she categorically stated that at the time of taking sample Maalkhana Munshi obtained her signatures on register no.19. She also stated that objection was raised by the Chemical Laboratory. The sample was containing seal 'KK'. She stated that objected sample was deposited by her with Maalkhana munshi on 30.11.2017.

17. As per the story of the prosecution after receiving the secret information on 08.09.2017 raid was conducted at the house of Gurpal Singh and 109 bottles of XXX Jolt Rum was recovered from the said house. It is necessary to mention here that PW-2 HC Manvinder Singh, PW-4 HC Kewal Singh investigating officer categorically stated in cross examination that when raid was conducted and liquor was recovered from the said house accused was not present at that time. Therefore, in the present case, it is necessary to establish on record by the prosecution that the liquor was recovered from the conscious possession of accused Gurpal Singh. In order to establish the ownership of the said house from which liquor was recovered prosecution examined PW-6 Shishu Pal Singh Clerk of Sub Registrar Office, who proved on record sale deed bearing vasika no.5657 dated 21.01.2010 as Ex.PW6/A. As per this sale deed this house is owned

by Sukhwinder Kaur wife of Gurpal Singh. Nothing has come on record to show that the house in which liquor was recovered was exclusive possession of the accused Gurpal Singh.

18. As per recovery memo Ex.PW2/A three bags of liquor were recovered from the room in which cows dung was kept and this room was situated on the back side of the house. Thereafter, one bag was recovered from the kitchen which is situated in front portion of said house. Again, at the costs of repetition it is mentioned here that there is no cogent and convincing evidence on record that the above-said room and kitchen was in exclusive possession of the accused. Moreover, as per arrest memo Ex.PW2/B the accused was arrested on 09.02.2017. In present case, before conducting any raid procedure prescribed under the Criminal Procedure Code for conducting the search of house is not followed. Because no such search warrant was obtained by the Investigating Officer from the Court before conducting the raid. The raid was conducted by the investigating officer in the presence of two independent witnesses i.e. Harnek Singh and Avtar Singh. The Harnek Singh was given up by the prosecution as he was won by the other party. Avtar Singh examined by the prosecution as PW-5 who deposed on oath that he do not know anything about this case. He further stated that he was called in police station one day but he do not know the date. This witness was declared

hostile at the request of learned APP and allowed to be confronted with his previous statement. This witness was also put to lengthy cross-examination by learned APP, but nothing incriminating against the accused could be elicited. Perusal of Ex.PW3/B reveals that at point A this document bears the signatures of Avtar Singh son of Prem Singh but he stated that on one day he was called by the police at PS. Again, this witnesses stated that he do not know about the recovery of this case. The attention of this witness also drawn at point A towards his signatures but he stated that this is his signatures but same was obtained by the police official on blank papers. It shows that there is no independent witnesses/evidence on record to corroborate the testimony of the police officials.

19. It is cardinal principle of law that prosecution has to stand on own and has to prove the case beyond the reasonable doubts against the accused and prosecution can not take benefit of the lapse on the part of the accused. After carefully considering the oral as well as documentary evidence on record, this court is of the considered opinion that at the time of recovery of liquor from the house which is in the name of Sukhwinder Kaur accused was not present at home and prosecution has failed to establish on record that the room and kitchen from where the recovery was effected was in exclusive possession of the accused and he was in conscious possession of this liquor. This opinion of this court draws support law laid down by the Hon'ble Punjab and Haryana High

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Court in authority titled as *State vs Chander Mohan and another* 2001 CrIj 2105.

20. After carefully considering the oral as well as documentary evidence on record, this Court is of considered opinion that prosecution has miserably failed to prove its case against the accused. It may be noted that the standard of proof required in a criminal case is 'beyond any reasonable doubt'. In *State of Haryana Vs Shamshish Singh* 2006 (3) RCR (criminal) (P&H) (DB) 346, the Hon'ble Punjab and Haryana High Court held that in a criminal trial, prosecution is cast with very serious duty to bring on record quality evidence in order to substantiate its allegation against an accused person. It cannot seek conviction of any person without bringing substantial evidence on record as it becomes extremely difficult for the Court to pronounce a person guilty in the absence of fool-proof evidence proving guilt of the accused person.

21. It is established law that prosecution has to prove its case beyond the shadow of reasonable doubt and if there is any doubt then the benefit of the same must go to the accused. Over all prosecution evidence does not inspire the confidence of the court and giving benefit of doubt the accused is hereby **acquitted** of the charge framed against them. Bail bonds and surety bonds already furnished by the accused in compliance of the provisions of Section 437-A Indian

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Penal Code.

Ahlmad is directed to cosigned this file in record room,
after due compliance.

Announced in open Court
Dated :27.02.2019.

(JUBLEE)
Judicial Magistrate Ist Class.
KHARAR
UID NO. PB0415

Kulwinder Singh.
Stenographer Gr.II.

Note: This judgment consists of 13 pages each of which has been dictated directly on the computer and signed by me.

Dated: 27.02.2019.

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