

In the Court of Ms. Gurmeet Kaur, PCS, Judicial Magistrate First Class, Budhlada.

Case Type	CHA
Filing Number	1615/2022
Filing Date	19.10.2022
CNR No.	PBMNA10016232022
CIS No.	CHA-236-2022
Date of Decision	16.01.2026

State

Versus

Gurdass Singh son of Baaj Singh son of Kaur Singh @ Bhuto Son of Gurnam Singh resident of village Shekhpur Khudlan, Tehsil Budhlada, District Mansa.

.... Accused

**FIR No. 87 dated 16.07.2022
U/s 61 of Punjab Excise Act,
P.S. Boha**

Present: Sh. Guriqbal Singh, Ld. APP for the State.
Accused on bail and represented by counsel Sh. A.K.Goyal.

JUDGMENT: -

1. The above-named accused has been forwarded to face trial for the alleged commission of offence punishable under Section 61 of Excise Act by S.H.O. of Police Station, Boha.

2. The case set up by prosecution is that on dated 16.07.2022 at about 02:25 PM in the area of PS Boha, accused was found in possession of 200 liters of lahan. FIR for the commission of offence punishable under Section 61 of Excise Act was registered against the accused. Accused was arrested. Statement of witnesses were recorded. After completion of

necessary investigation, Challan was presented in the Court against the accused.

3. Copies of Challan and other documents were supplied to accused free of cost as envisaged under Section 207 of Cr.P.C. Thereafter, accused was charge-sheeted for the commission of offence punishable under Section 61 of Excise Act, to which he did not plead guilty and claimed trial. Thereafter, case was fixed for prosecution evidence.

4. In order to prove its case, prosecution examined witnesses HC Gurjinder Singh as PW-1, EI Deepinder Singh as PW-2, LC Sarabjit Kaur as PW-3, Gunsheel Singla as PW-4, ASI Pal Singh as PW5. Thereafter, Ld. APP for the State closed the prosecution evidence.

5. After closure of prosecution evidence, statement of accused under Section 313 of Cr.P.C. was recorded in which all the incriminating evidence appearing against the accused was put to accused, to which, he pleaded innocence and false implication. Accused opted to lead defence evidence but he did not get examined any witness in his defence. Thereafter, counsel for accused closed his defence evidence.

6. I have heard the learned APP for the State, learned defence counsel and have gone through the evidence on record. From the arguments put forth, the following point of determination arise in the present case: -

Question:- Whether on dated 16.07.2022 at about 02.25 PM in the area PS Boha, accused was found in possession of 200 liters of lahan, without any permit or license and thereby accused committed an offence punishable under Section 61 of Excise Act?

7. Learned APP for the State contended that the prosecution has been able to bring home the guilt of the accused beyond the shadow of reasonable doubt and accused should be punished for the crime committed by him.

8. On the other hand, learned defence counsel contended that the entire chain of events has also not been proved and the accused has been falsely implicated by the police in the present case. Hence, accused should be acquitted accordingly.

9. To prove its case, prosecution examined following witnesses:

10. **PW-1 HC Gurjinder Singh**

Nature of Testimony- He was the recovery witness of the present case.

He reiterated the version of IO. His testimony has not been reproduced here for the sake of brevity.

11. **PW2- EI Deepinder Singh**

Nature of testimony- He was the Excise Inspector, who checked the lahan and gave his report.

He deposed that on dated 18.07.2022, he was posted at Excise Circle Boha. He went to police station Boha. Malkhana Incharge Sarabjit Kaur was present there, she produced before him one plastic tanki sealed with seal impression PS before him. He compared the seal with the sample seal. Thereafter, he opened the plastic tanki and found it containing 200 ltr lahan. It was liquid blackish and brown in colour and was bitter and sweet in taste and smelled like alcohol. It was fit for distillation. Thereafter, he sealed

the said plastic tanki with seal bearing impression “DS”. He handed over the plastic tanki to the MHC. He is distillery trained Excise Inspector. He had also given his test report in number of cases.

12. **PW3 LC Sarabjit Kaur**

Nature of Testimony-She was Malkhana incharge in this case.

She tendered into evidence his duly sworn-affidavit Ex. PW3/A. She was posted as MHC. IO handed over the case property to her and she deposited the same in Malkhana. She handed over the container of lahan before EI Deepinder Singh, who checked and prepared his test report. She further deposed that she never tampered with the case property till it remain in her custody. She proved copy of entry No.1383 which is Ex.PW3/B.

13. **PW-4 Gunsheel Singla**

Nature of Testimony-He proved the ownership of the house of the accused.

He deposed that he is presently posted at SK Branch, DC office Masna. Earlier to that he was posted as Patwari of village Ram Nagar Bhathal. IO asked for the property of Gurdeep Singh son of Satpal Singh @ Kartar Singh. He apprised him about khewat no.190 khatauni No.458 share 624/3763 of Gurdeep Singh son of Satpal Singh. He produced the original jamabandi register, copy of which is also attached with the police file which

is Ex.PW4/1. Whereon at point A name of Gurdeep Singh is mentioned. His statement was recorded by the IO.

14. **PW-5 ASI Pal Singh**

Nature of Testimony- He was the Investigating Officer of this case.

He deposed that on dated 16.07.2022 he was posted at anti-narcotic cell Mansa. On that day, he along with police party headed by him was on patrolling on a private vehicle driven by him. They were in possession of electronic printing kit. The police party was moving in the area of Sadar Mansa, Boha etc. When police party reached near the school of Village Ramnagar Bhathal, one man passed signal to the police party on which they halted the vehicle. That person gave secret information that Gurdas Singh son of Baj Singh resident of Ramnagar Bhatal had concealed one white colored 300 liter capacity water tank under the cotton bushes in a vacant plot opposite to his house. Being information reliable, he sent ruqa which is Ex.PW5/A through LHC Sarabjit Kaur to PS Boha for the registration of the FIR which is Ex.PW5/B lodged by ASI Balkaran Singh. Endorsement on ruqa is made which is Ex. PW5/C. They proceeded from the spot and when police party turned from the outer circle of Village Ramnagar Bhatal to Village Manderna and were on the rough passage than numberdar Jeet Singh son of Maghar Singh, resident of Ramnagar Bhatal met them and he was joined by them in the police party after apprising him about the facts of the case. On the demarcation of Numberdar Jeet Singh raid was conducted at the house of Gurdas Singh. Accused Gurdas Singh was found

present at his house. On seeing the police party Gurdas Singh got perplexed and tried to evade them. He was apprehended with the help of police party. On asking he disclosed his name as Gurdas Singh son of Baj Singh, resident of Ramnagar Bhatal. Gurdas Singh suffered disclosure statement which is Ex.PA. The disclosure statement was thumb marked by Gurdas Singh and witnessed by HC Gurjinder Singh and Jeet Singh Numberdar that he had concealed one white colored 300 liter capacity water tank under the cotton bushes in a vacant plot opposite to his house and only he can get it recovered. On the basis of said disclosure statement Gurdas Singh while walking ahead of the police party and got recovered one white colored water storage tank concealed under the cotton bushes in the plot opposite of his house. The water tank was closed with cap and was covered with a plastic sack. The cap was removed and the storage tank was checked which was found containing about 200 liter lahan. The description 5 layer 300 L and water-stone were mentioned on the storage tank the mouth of the storage tank was again covered with the same and further covered with plastic sack which was tied up with rasi seba and sealed by him with his seal bearing impression 'PS'. Sample seal chit was separately prepared. Seal after used was handed over to HC Gurjinder Singh. The case property was taken in possession vide memo which is Ex.PB. He prepared rough site plan which is Ex.PW5/D at the spot. The personal search of the accused was conducted vide memo which is Ex.PD. Accused was arrested vide memo which is Ex.PC. The memos were witnessed by HC Gurjinder Singh and number Jeet Singh as attesting witness and accused put his thumb impression on these.

On return to the police station, case property was deposited into the Malkhana Incharge and accused was locked up. Statement of the witnesses was recorded at the various stages. He identified accused. He proved case property as MO1.

15. Briefly, the case as set up by the prosecution is that the raid was conducted at the house of accused on the basis of secret information. When police party reached at the spot accused Gurdas Singh was found present at his house. On seeing the police party Gurdas Singh got perplexed and tried to evade them. He was apprehended with the help of police party. On asking he disclosed his name as Gurdas Singh son of Baj Singh, resident of Ramnagar Bhatal. Gurdas Singh suffered disclosure statement which is Ex.PA. The disclosure statement was thumb marked by Gurdas Singh and witnessed by HC Gurjinder Singh and Jeet Singh Numberdar. He disclosed that he had concealed one white colored 300 liter capacity water tank under the cotton bushes in a vacant plot opposite to his house and only he can get it recovered. On the basis of said disclosure statement, the Gurdas Singh while walking ahead of the police party and got recovered one white colored water storage tank concealed under the cotton bushes in the plot opposite of his house. The water tank was closed with cap and was covered with a plastic sack. The cap was removed and the storage tank was checked which was found containing about 200 liter lahan.

16. Ld. Defence counsel argued that lahan was never measured by the police in the present case and no independent witness was joined in the present case at the time when recovery was effected. Therefore, Section 100

the Cr.P.C. has not been complied with. Further, argued that the prosecution have failed to prove the intactness of case property.

17. In this present case, there is no positive evidence that the lahan was ever measured. It was admitted by the PW5 who was IO and PW-1 who was the recovery witness that lahan was not measured by the police party. If the lahan was not measured, this court cannot convict a person unless it has been proved on record that what was the exact quantity. Mere guesswork of investigation officer or the investigation agency is of no help for conviction of the accused.

18. Further, as per the version of prosecution numberdar Jeet Singh was joined s an independent witness at the time when the raid was conducted at the house of accused. But the prosecution did not got examined numberdar Jeet Singh as a prosecution witness, Further, PW-5, IO admitted in his cross examination that numberdar Jeet Singh was joined as independent witness. He nowhere in his examination in chief as well as in cross examination deposed that the police party ever tried to involve the other independent witness. As per the provision of section 100 of Cr.P.C. before entering into the house of accused two respectable persons of the locality or if not available from the neighbouring locality have to be joined as witness. In the present case only one witness was alleged to be join. However, the prosecution failed to got examine him as a prosecution witness. Moreover, site plan Ex.PD does not bear signature of the numberdar. So, it raises doubt regarding the joining of independent witness at the time of investigation. If

this person is called at the spot and the witnessed whole proceedings at the spot, then ,why he has not been got examined as prosecution witness.

However, It is not necessary to join independent witness in all cases but once there is availability of independent witness, then prosecution must try to join the same, which will add truthfulness to the case of the prosecution as the testimony of the government officials will be corroborated by independent source. Non-joining of independent witness also becomes fatal.

Under Section 100(8) Cr.P.C, refusal to be a witness can render such non willing public witness liable for criminal prosecution. Despite the availability of such a provision, no sincere attempts were made by the police to join other independent witnesses except number Jeet Singh in the present case. Therefore, non-compliance of the mandatory provisions of law, even though public witnesses were easily available in the vicinity, makes the prosecution version highly doubtful. Relying upon **Joginder Singh Vs State 1984 Supreme (P&H) 109** in which it as held that It is true that the testimony of the official witnesses is as good as of other witnesses, but in the circumstances of the present case when the recovery is made from the place where the independent witness was easily available. Non joining any body from the locality, as per the procedure laid down in Sec. 100 sub-section (4) of the Code of Criminal Procedure, no implicit reliance can be placed on their testimony. It is provided in the above said Section that before the police enters the house of a citizen, it is incumbent upon them to associate with them atleast two inhabitants of the locality and if they are not available, from

the neighboring locality and if none of them is prepared to join them the police officer is to record that fact and even the person who refused to join in the search can be prosecuted under Section 187 of the IPC. It has also been held in the case law titled as "**Atma Singh Vs. The State of Punjab 1984(2) Recent Criminal Reports, 494**" that it is incumbent upon Police to join two respectable persons of locality and if any body refuses to join, Police could prosecute him under Section 187 IPC. If for the sake of arguments it is believed that Numberdar Jeet was joined as an independent witness, even then, the section 100 of crpc has not complied with as it requires joining of two independent witnesses. It is trite in criminal jurisprudence that prosecution is under obligation to prove its case against the accused beyond reasonable doubt. The standard of proof to be adopted in the criminal cases is not merely of preponderance of probabilities but proof beyond reasonable doubt on the basis of cogent, convincing and reliable evidence. It is also well settled that in the case of doubt, the benefit must necessarily be allowed to the accused.

19. It was also a admitted fact by the PW5- IO that the cap/lid of the container containing lahan could be opened alongwith seals and anything could be poured in it and taken out of it. This raises doubt regarding intactness of the case property and points out towards the possibility of tampering with the case property. The purpose of affixing the seals on the case property is simply to keep the case property intact, so that if at any time during the trial if the court wants to see the case property or the court wants to re-examine the contents of the case property, same can be done so, but, in

the present case the possibility of tampering with the case property cannot be ruled out. In these circumstances, this court holds that the case of the prosecution is highly doubtful.

20. Further, the place of recovery is owned or occupied by the accused has not been proved on record. It was duty of the prosecution to prove that how the place of recovery is related with the accused but in this present case, the investigation agency has failed to prove any fact whether the accused was owner of the place or he was in occupation of the place from where the recovery was effected. However, PW-4, Gunsheel Singh, AOK, DC office, he proved Ex. PW4/1 and he merely deposed that at Point-A name of Gurdeep Singh is mentioned. Perusal of Ex. PW4/1 i. e. Jmabandi for the year 2019-2020 shows that Gurdeep Singh son of Satpal Singh has 624/3763 share in the khewat no. 190 and khatoni no. 458. But, the prosecution failed to prove on record how this land is related to the accused and if the recovery is effected from this land then, why the person who was shown as owner in the Jamabandi was not examined as prosecution witness. So, the chain of evidence is not complete so far as the place of recovery is concerned. These facts are not sufficient to prove the link of house of accused with the recovery. The prosecution has to prove on record the fact that how the place of recovery related to the accused. In these circumstances, this court holds that the prosecution has failed to prove on record the relation between the recovered case property as well as the place of recovery with the accused.

21. As per the prosecution version the raid was conducted at the house of accused on the basis of secret information that accused Gurdass Singh has concealed one water tank containing 300 litres of lahan under the cotton bushes in a vacant plot opposite to his house. On the other hand as per the testimony of IO PW5 Pal Singh, accused Gurdass Singh suffered disclosure statement as Ex.PA wherein he disclosed that he had concealed water tank containing 300 litres of lahan in the cotton bushes in the plot opposite to his house. It is well settled law that disclosure statement is admissible only when there is no prior knowledge about the fact discovered. However, in the present case the police party already had knowledge about the 300 litres of lahan concealed under the cotton bushes. In the case titled **Allah Rakha Habib Memon etc. Vs State of Gurjrat, Criminal Appeal No.(S). 2828-2829 of 2023**, the hon'ble Supreme Court held that disclosure statement made by the accused under Section 27 of Indian Evidence Act is irrelevant if the fact was previously known to the police. Further, "In the above titled case, the Hon'ble Supreme Court observed that the circumstances regarding identification of place of incident at the instance of accused is also inadmissible because the crime scene was already known to the police and no new fact was discovered in pursuance of disclosure statement."

In light of the above discussion, this court is of the view that the disclosure statement suffered by the accused is inadmissible in the present case.

22. In this present case, the prosecution is alleging that police party was patrolling but they have not placed on record any DDR showing that the police officials were on patrolling. It is worth mentioning here that whenever the police party was on patrolling same fact has to be incorporated in the registered maintained by the police station but that thing is missing in this case. In absence of any DDR, the case of the prosecution becomes highly doubtful.

23. The aforementioned lacunae in the story of the prosecution render the version of the prosecution doubtful, leading to the irresistible conclusion that the burden of proving the guilt of the accused beyond reasonable doubt has not been discharged by the prosecution. Thus, this Court is of the opinion that the prosecution has failed to bring on record any cogent evidence in order to prove the commission of and guilt of the accused for offence u/s 61 of Punjab Excise Act beyond reasonable doubt. It is clear that there are several discrepancies in the case of the prosecution which raises reasonable doubt in their case. Benefit of doubt goes to accused and as such, accused Gurdas Singh son of Baj Singh stands acquitted of the offence under Section 61/1/14 of Punjab Excise Act. Accused moved an application praying for continuing bail bonds and surety bonds already furnished by him during trial in view of the provision under Section 437 A Cr.P.C. In view of the contents of the application the same stands allowed. The bail/ surety bonds already furnished in this case shall remain intact for a period of six months from the date of passing of this judgement as bail/surety bonds under Section 437A Cr.P.C. Intimation be sent to the respective surety of the

accused Gurdas Singh and they shall stand discharged automatically on expiry of six months from the date of judgement. Case property be disposed of according to rules after the expiry of appeal or revision, if any. File be consigned to judicial record room, Budhlada after due compliance.

Pronounced in Open Court on 16.01.2026

Bhim

(Direct Dictation)

**Gurmeet Kaur, PCS
Judicial Magistrate 1st Class
Budhlada UID No. PB0825**

CHA/236/2022

Present: Sh. Guriqbal Singh, Ld. APP for the State.
Accused Gurdas Singh on bail and represented by counsel
Sh. A.K.Goyal.

No DW is present. Thereafter, counsel for accused closed his
defence evidence.

Arguments heard.

Vide my separate detailed judgment of even date the accused
Gurdas Singh is acquitted for the offence under Section 61 of Excise Act.
Accused moved an application praying for continuing bail bonds and surety
bonds already furnished by him during trial in view of the provision under
Section 437A Cr.P.C. In view of the contents of the application the same
stands allowed. The bail/ surety bonds already furnished in this case shall
remain intact for a period of six months from the date of passing of this
judgement as bail/surety bonds under Section 437A Cr.P.C. Intimation be
sent to the respective surety of the accused Jagsir Singh @ Boota and they
shall stand discharged automatically on expiry of six months from the
date of judgement. Case property be disposed of according to rules after
the expiry of appeal or revision, if any. File be consigned to judicial
record room, Budhlada after due compliance.

Date of order: 16.01.2026
Bhim

Gurmeet Kaur, PCS
JMIC/Budhlada
UID No. PB0825

Gurmeet Kaur, PCS,
JMIC, Budhlada
UID No. PB0825