

State vs. Meet Singh

IN THE COURT OF MS TANVI GUPTA, PCS,
JUDICIAL MAGISTRATE IST CLASS, SUNAM.
(Unique Identification No. PB0613)

Challan Filing No.1563 of 12/10/2022
C.I.S No.CHA/164/2022
CNR No. PBSGA1-001563-2022
Decided on: 5/12/2023

State

Versus

Meet Singh son of Mukhtiar Singh, resident of Indra Basti, Sunam.

... Accused

F.I.R. No.172 dated 16/8/2022
U/s 61(1)(14) of the Punjab Excise Act,
P.S City Sunam

Present: Shri Chander Goyal, Ld. APP for the State.

Accused on bail with counsel Shri Harinder Pal, Advocate.

JUDGMENT:

1. The above named accused has been sent up to face trial under U/s 61(1)(a) of the Punjab Excise Act, 1914 by the officer-in-charge, P.S. City Sunam.

2. As per the prosecution story, the brief facts of the case are that on 16/8/2022, Investigating Officer HC Jagdeep Singh alongwith other police officials, was present near Baba Bhai Mool Chand Sahib Sunam.. IO received secret information that accused Meet Singh is habitual of selling liquor and he has kept the liquor of Haryana in the room of his house and if raid is conducted at his house, he can be apprehended red handed with heavy quantity of country made liquor. Information being reliable, IO sent ruqa to the police station, on the basis of which formal FIR was registered against the accused. Thereafter, IO alongwith police party raided at the

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house of accused. On seeing the police party, accused ran away from the spot. IO conducted search of room of his house and 40 bottles of country made liquor make Club Malta were recovered. . A sample of 180 ml was drawn and remaining liquor on measuring came to be 39 $\frac{3}{4}$ bottles of country made liquor make Club Malta of Haryana. Separate sample seal was prepared. The case property was taken into possession vide separate recovery memo. Accused was arrested. Rough site plan was prepared at the spot. Statement of witnesses were recorded and after completion of investigation, challan was presented against the accused.

3. On receipt of the challan, the requisite copies of the challan and other documents attached with it, were supplied to accused free of cost in compliance with the provisions of section 207 Cr.P.C.

4. After going through the case file and hearing the submission of both the sides, a prima facie case punishable under Section 61 of the Punjab Excise Act was made out against the accused and accordingly accused was charge sheeted under Section 61 of Excise Act. The contents of charge-sheet were read over and explained to the accused in vernacular to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined HC Jagdeep Singh as PW1 and thereafter learned APP for the State closed the prosecution evidence.

PW1 HC Jagdeep Singh, IO of present case while appearing in the witness box deposed as per the investigation conducted by him. He proved on record ruqa as Ex.P1, FIR as Ex.P2, endorsement regarding FIR

as Ex.P3, sample seal as Ex.P4, form no.29 as Ex.P5, recovery memo of case property as Ex.P6, rough site plan as Ex.P7, arrest memo of accused as Ex.P8, personal search memo of accused as Ex.P9, identification memo of accused as Ex.P10, report of chemical examiner as Ex.P11 and case property as Ex.MO1 and Ex.MO2.

6. The accused was examined under section 313 Cr.P.C wherein all the incriminating evidence appearing against him was put to him, to which he denied all the allegations leveled against him by prosecution and pleaded himself to be innocent and claimed that he has been falsely implicated in this case and no recovery was effected from him. However, he also stated that he shall not commit such crime again and lenient view may be taken against him. Accused was given opportunity to lead evidence in defence. Accused opted not to lead defence evidence.

7. I have heard the respective submissions raised by learned APP for the State and learned defence counsel. After hearing the learned APP for the State and learned defence counsel, I have made the following points of determination:-

(a) Whether on 16/8/2022 at about 4:20 PM in the area of Baba Bhai Mool Chand, Sunam, accused was found in conscious possession of 40 bottles of country made liquor make Club Malta of Haryana, without any permit or license and thereby committed an offence u/s 61 of Punjab Excise Act?

(b) Whether the evidence led by the prosecution is sufficient to hold the accused guilty of the above said offence?

Points (a) and (b)

8. During the course of arguments learned APP for the State submitted that the prosecution has fully proved its case against the accused by leading cogent and convincing evidence. Therefore, accused be convicted and sentenced as per law. On the other hand, learned defence counsel vehemently contended that prosecution has failed to prove this case beyond any shadow of reasonable doubt. Learned defence counsel submitted that during investigation and on the arrest of accused no independent witness was joined. Therefore, accused, must be given benefit of doubt and be acquitted in this case.

9. After hearing the submissions of the learned APP for the State and learned defence counsel, I am of the considered view that the arguments advanced by learned defence counsel have no weightage and substance. As regards the recovery of liquor from the possession of the accused is concerned, although the accused in his statement under Section 313 Cr.P.C and even during the course of arguments have tried to convince this Court that a false case of recovery has been foisted upon him and that no recovery has been effected from him. This contention of the accused appears to be an after thought. Perusal of the statement of PW-1 proved the entire prosecution case. This witness was not cross-examined by the learned defence counsel but opportunity was given to learned counsel for accused to cross examine the witness, rather witness deposed as per the case of the prosecution.

10. The next argument advanced by the learned defence counsel is that no independent witness has been joined by the police party despite the fact that there was ample availability of independent witnesses at the place of recovery. He further contended that as a mandatory provisions of section 100(4) of Cr. P.C has been violated, entire trial stands vitiated. However, this Court does not find any merit in the arguments advanced by the defence counsel for the reasons to be recorded hereinafter. No doubt, the Investigating Officer failed to join two inhabitants from the locality as required under the provisions of section 100(4) Cr.P.C. However, non-compliance of section 100(4) Cr.P.C. does not vitiate the trial. Moreover, illiterate and rustic villagers normally feel reluctant and shy and remain away from joining as independent witness and do not depose against fellow persons and for this reason the prosecution case cannot be declared false, simply due to the reason that no independent corroboration is available. There is no rule of law that the accused cannot be convicted on the statement of official witnesses without independent corroboration when the evidence of official witness is cogent, convincing and reliable.

11. Learned defence counsel further argued that the accused has been falsely implicated in the present case, but this Court does not find any force in the arguments advanced by the learned defence counsel, because accused has not led any evidence in his defence whereby he has been able to prove on judicial record of any ill-will, ulterior motive, mala-fide or enmity with the police officials, who could have led to his false implication in the present case. Mere allegation of false implication does not release the

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accused of the burden of proving the same especially in the light of duly corroborated and substantiated evidence put forth by the prosecution. In this manner, this Court finds that there is no merit in the arguments advanced by the learned defence counsel.

12. After the valuation of the arguments and the evidence in my considered opinion prosecution has been able to prove its case against the accused beyond any doubt and from the consistent statement of the PW-1, it stands duly proved on record that the accused was found to be in possession of 40 bottles of country made liquor without any permit or licence. This being so, there remains nothing for prosecution to prove much against the accused to bring home the guilt of the accused and the evidence available on the record is sufficient to conclude that the charge against the accused stands duly proved beyond even a shadow of doubt. As a result accused is held guilty of the offence punishable under section 61(i)(a) of Punjab Excise Act, 1914 and stand convicted thereunder. Let he be heard on quantum of sentence.

Pronounced in open court.

Dated: 5/12/2023

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Judicial Magistrate 1st Class,
Sunam.(UID No.PB0613)

Shavinder Kumar
Stenographer Grade-II

ORDER ON QUANTUM OF SENTENCE

Present: **Convict in custody represented by his counsel Sh.**
 Harinder Pal, Advocate.
 Shri Chander Goyal, Ld. APP for the State.

I have heard the convict with Learned defence counsel and APP for the state. Counsel for the convict submitted that convict is innocent

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and poor person and is first offender and prayed that lenient view be taken towards him. On the other hand, learned APP for the State had prayed for the strict punishment of the accused as per the gravity of the offence. She further argued that there is minimum sentence prescribed and requested that convict be not released on probation.

I have considered the plea of the convict/accused. In view of the nature of offence committed by the convict, convict is entitled to be released on probation. As far the argument of APP for the State is concerned, in this regard I have relied upon the judgment of our own High Court in ***“Kuldip Chand versus State of Punjab, 2013 (1) RCR (Criminal), 36”*** in which the Hon'ble High Court granted benefit of probation in case of excise case and held that “the prescription of minimum sentence in a particular offence ipso facto is not a ground, much less cogent, to debar the benefit of probation to the convict, if he is otherwise entitled to it.” Further, Hon'ble High Court in case titled ***“Baldev Singh and another versus State of Punjab passed in CRR No.1586 of 2017 decided on 30.5.2017”*** has held that “mere prescription of the minimum sentence under Section 61 (1)(c) of the Act was no bar to the applicability of Sections 360 and 361 Cr.P.C. It was further held that on the same reasoning, there was no bar to the applicability of Sections 4 and 6 of the Probation of Offenders Act”. Further, the prosecution has also failed to prove on record the previous conviction of the convict and, therefore, this Court is of the considered view that instead of sentencing the accused for imprisonment which may make adverse effect upon the psychology of the convict and he

will become more hardened criminal by interacting with heinous offenders. Therefore, this Court further is of the considered view that the convict should be extended the concession of probation under section 4(1) of the Probation of Offenders Act. Accordingly, the convict is ordered to be released on probation on his furnishing personal probation bonds in the sum of Rs. 30,000/-, valid for six months, with further direction that the convict shall be bound to maintain peace and harmony during the said probation period of six months and if he breaches the peace and harmony or violate the conditions of the personal probation bonds during the said period, then he shall be bound to appear or may be produced in the court for the purpose of receiving sentence the maximum which is provided under the law. The convict is also burdened with Rs.2,000/- as costs of litigation. Costs paid by the convict. The case property be destroyed after the expiry of appeal or revision as the case may be. File be consigned to record room after the necessary compliance.

Pronounced in open court.

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Present: Shri Chander Goyal, Ld. APP for the State.
Accused in person with counsel Shri Harinder Pal, Advocate.

Accused surrendered before the Court and moved an application for bail. In view of this Court, as the accused surrendered before the Court at his own, no useful purpose will be served by sending the accused in custody. In view of reason mentioned in the application and in view of nature of offence, the bail application of accused is allowed and he is ordered to be released on bail on furnishing personal bonds in the sum of Rs.20,000/-. Personal bonds which have been furnished are accepted and attested. Copies of challan have been supplied to the accused, free of costs as required under Section 207 Cr.PC.

Heard on charge. On finding a prima facie case under Section 61 of Excise Act, charge framed against the accused to which accused pleaded not guilty and claimed trial. File be put up after lunch for prosecution evidence.

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Present: Shri Chander Goyal, Ld. APP for the State.
Accused on bail represented by Shri Harinder Pal, Advocate.
File put up in after lunch session. PW1 HC Jagdeep Singh is present and examined. Learned APP for the State closed the prosecution evidence. Statement of accused under Section 313 Cr.PC recorded to which accused do not opt to lead any defence evidence.

Arguments heard. Vide my separate detailed judgment of even date, accused has been convicted and released on probation on his furnishing personal probation bonds, as per details made therein. Personal probation bonds furnished which have been attested and accepted. Case property be disposed of as per rules subject to the result of appeal or revision, if any. Cost of litigation has been paid by the convict. File be consigned to the Judicial Record Room, after due compliance.

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