

**IN THE COURT OF MS. ANKITA MITTAL, PCS,
JUDICIAL MAGISTRATE FIRST CLASS, NABHA.**

**CIS No. CHI/133/2021
CNR No. PBPTB10015652021
Decided on: 22.11.2021**

State	Versus	Rupinder Singh S/o Gurmail Singh Resident of village Tarkheri Khurd, Tehsil Nabha, District Patiala. Accused.
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**FIR No.43 of 02.05.2021
Under Section : 188 of IPC
Police Station Bhadson, Nabha.**

Present: Sh. Ashwani Kumar, Addl.PP for the State.
Accused on bail with counsel.

JUDGMENT

1. The accused Rupinder Singh has been sent to this court by SHO, Police Station Bhadson, Nabha to face trial u/s 188 IPC.
2. Briefly stated, the facts of the present case are that on 02.05.2021 ASI Balkar Singh alongwith police party was on petrolling. It was about 2:30 PM, curfew was imposed. When the police party reached in the area of Tarkheri to Tohra Road at village Tarkheri Khurd where the police party saw that Karyana shop was opened and owner of the shop waited the customer to whom ASI Balkar Singh asked his whereabouts who disclosed his name as Rupinder Singh son of Gurmail Singh of village Tarkheri Khurd, Tehsil Nabha, District Patiala. ASI Balkar Singh asked him why he opened his shop as curfew was imposed but the accused did not give any satisfactory reply and he violated the order of District Magistrate, Patiala no.1429-43/Misc. dated

20.04.2021. Ruqa was sent to the police station for registration of case. Accused was arrested. Site plan was prepared. Statement of witnesses recorded. On completion of investigation, challan against the accused was produced in the Court.

3. On presentation of challan and appearance of the accused the copies of the documents as per the requirement of section 207 Cr.P.C. were supplied to the accused free of cost.

4. On finding a prima facie case against the accused, the accused was served with a charge sheet regarding the commission of offence punishable u/s 188 IPC to which the accused pleaded not guilty and claimed trial.

5. In order to bring him the guilt of the accused the prosecution examined PW-1 ASI Balkar Singh, Investigating Officer who has deposed on the lines of the case of prosecution and proved on record documents i.e. ruqa Ex.P1, FIR Ex.P2, endorsement on ruqa Ex.P3, site plan Ex.P4, arrest memo Ex.P5, personal search memo Ex.P6, copy of order no. 1429-43/Misc dated 20.04.2021 issued by District Magistrate, Patiala Ex.PA, complaint u/s 195 Cr.P.C. Ex. PB, He identified the accused present in the Court.

6. C Harjot Singh while appearing as PW-2 has deposed on the lines the case of prosecution. He identified the accused present in the Court.

6. Thereafter, the prosecution closed its evidence.

7. On closure of evidence of the prosecution, statement of the accused u/s 313 was recorded where in all the incriminating evidence and circumstances were put to the accused. The accused categorically denied all the allegations and stated that he is falsely impleaded in the present case. Accused

opted he did not opt defence evidence.

8. I have heard learned APP and the learned defence counsel and have gone through the file. The main point that arise for determination in the present case is:

“Whether the accused was found in violation of order bearing no.1429-43/Misc dated 20.04.2021 issued by District Magistrate, Patiala by opening the Karyana shop at 02:30 PM?”

9. Ld. APP for the State has argued that from the testimony of witnesses, the prosecution was able to prove the case against the accused beyond any reasonable shadow of doubt. He further argued that the plea of the accused that he has been falsely implicated in this case has not been corroborated by any material evidence, because till date accused has not raised any hue and cry against the registration of case against him, moreover neither the accused has cross examined any witness nor he has led any defence evidence to corroborate his version. As such, the plea of accused that the prosecution has failed to prove his case beyond any shadow of reasonable doubt is not corroborated and thus accused is liable to be convicted for the offences committed by him.

10. On other hand, Ld. Counsel for the accused has vehemently opposed the above said contentions and has argued that from the testimony of witnesses, it would reveal that the witnesses are an interested witnesses. He further argued that the witnesses examined by the prosecution is an interested witnesses and accused has been falsely implicated in this case and therefore, accused is liable to be acquitted from the charges framed against him.

11. I have considered the arguments advanced by Ld. APP for the State as well as Ld. Defence counsel.

12. In nutshell the allegations against the accused are that the accused was found to have kept his Karyana shop open after 02:30 PM, which is specifically prohibited vide notification no. 1429-43/Misc dated 20.04.2021 issued by District Magistrate, Patiala and as such accused has committed offence punishable under Section 188 of Indian Penal Code.

13. From the perusal of evidence led on record by the prosecution, and from the arguments raised by Ld. APP for the State, this Court is of a considered opinion that prosecution has been able to prove its case against the accused beyond any reasonable doubt for commission of offence under Section 188 of Indian Penal Code.

14. Whereas, from the testimony of PW-1 ASI Balkar Singh Investigating Officer it stands duly proved on record that the accused was found for keeping his Karyana shop open at 02:30 PM on 02.05.2021.

15. Ld. Counsel for the accused further argued that no independent witness was joined and therefore, testimony of official witnesses are liable to be ignored as they are interested witnesses. Though it is so argued, but I find no substance in the said arguments. It is now well settled law that testimony of official witness cannot be discarded merely on the basis that he is an official witness. It is not expected from the police officials that they have deposed falsely in order to falsely implicate of the accused, when they have no enmity with the accused. Law in this regard is explicitly established that testimony of official witnesses of Excise and police departments should not be viewed with

distrust or suspicion merely because of their official status unless cogent grounds are there as laid down in case law titled as ***Aher Raja Khima Versus State of Saurashataara reported in AIR 1956 S.C page, 217.*** It is pertinent to mention that though the witness is an official witness, but nothing has been brought on record that the said witness had malafide towards the accused. No previous enmity has been shown with the above said witness. There is also no reason with the prosecution witness to implicate the accused without any previous enmity. So, contention of Ld. Counsel for the accused that accused has been falsely implicated and no independent witness was joined, is also found without any substance.

16. No other arguments has been raised by counsel for accused worth consideration.

17. So, in view of above said facts and circumstances of the case, this court is of considered opinion that prosecution has been able to prove the allegations against the accused that accused has kept his Karyana shop open after 02:30 PM on 02.05.2021. Therefore, accused Rupinder Singh is held guilty for offence under Section 188 of Indian Penal Code and convicted thereunder. Let convict be heard on the quantum of sentence.

Pronounced in open court
22.11.2021

Ankita Mittal
Judicial Magistrate Ist Class, Nabha
UID PB0542

QUANTUM OF SENTENCE

Present: Sh. Ashwani Kumar, Addl.PP for the State.
Convict on bail.

18. I have heard the convict on the quantum of sentence. Convict has

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UID No.PB0542

stated that he is first time offender and only bread winners of his family and prayed for lenient view. On the other hand, learned APP for the State prayed for severe punishment. After hearing their respective contentions and keeping in view of the facts and circumstances of the case, convict is ordered to pay fine of Rs.200/- for committing offence under Section 188 of Indian Penal Code and in default of payment of fine, convict shall undergo simple imprisonment for period of 15 days. The amount recovered from the convict stands forfeited in favour of State. File be consigned to the Record Room after due compliance.

Pronounced in open court
22.11.2021

Ankita Mittal
Judicial Magistrate Ist Class, Nabha
UID PB0542

Yashpal
Stenographer-II

Directly dictated

Ankita Mittal,
JMJC/Nabha
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Present: Sh. Ashwani Kumar, Addl.PP for the State
Accused on bail with counsel.

Two PWs examined. The learned APP closed the prosecution evidence. Statement of accused under section 313 of Cr.P.C. was recorded. The accused has stated that he does not want to led any defence evidence.

Arguments heard. Vide my separate judgment of even date the accused stands convicted. Fine paid. Accordingly, the file be consigned to the Record Room for due compliance.

Pronounced in open court
22.11.2021

Ankita Mittal
Judicial Magistrate Ist Class, Nabha
UID PB0542

Yashpal
Stenographer-II

Ankita Mittal,
JMIC/Nabha
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