

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order Reserved on: September 16, 2011
Order Pronounced on: October 21, 2011

+ **Crl.Rev.Petition No.566/2008**

PREM LAL

..... Petitioner

Through: Mr.Raman Sahay and Mr.Karn
Kumar, Advocates.

versus

THE STATE

..... Respondent

Through: Mr.Rajesh Mahajan, Additional
Standing Counsel (Crl.) for state

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. On 1.4.1989 at about 12.30 p.m., upon being found in illegal possession of 16 cartons of illicit liquor having 3200 pouches in all, petitioner and his vehicle containing the aforesaid contraband were apprehended at the Subhash Nagar traffic red light turning on the main Najafgarh Road, Delhi.

2. Petitioner was prosecuted for committing the offence under Section 61 of the Punjab Excise Act, 1914 and since the petitioner had chosen to contest the case of being in possession of illicit liquor set up against him, at trial the

deposition of six witnesses was recorded which comprised of the evidence of patrolling party, i.e., Ct. Ved Prakash (PW-2), Constable Baljit (PW-3) and of HC Rajbir Singh (PW-5). Formal evidence is of the Duty Officer (PW-4) and that of the MHCM (PW-1). The investigation of this case was conducted by HC Maman (PW-6). Regarding destruction of the case property under the order of the Court, there is deposition of the concerned official, i.e., Rajesh Tayal (CW-1).

3. The plea of the petitioner at trial was of innocence and denial of the prosecution case, which did not cut any ice, resulting in the conviction of the petitioner by the trial Court, who had imposed the minimum sentence of six months with fine, which was challenged in appeal by the petitioner but to no avail.

4. In this revision petition, it was urged by the petitioner's counsel that the alleged recovery has been planted upon the petitioner and the report regarding the recovery being incriminating is not correct as the sample drawn from the recovered contraband was not made representative and thus, the prosecution case is rendered doubtful warranting acquittal of the petitioner. On the quantum of sentence, it was urged that the petitioner had remained behind bars for about a month and being a first offender, he is entitled to benefit of probation.

5. Learned Additional Standing Counsel for the State points out that the offence committed by the petitioner comes within the ambit of Section 61 (1), (c) of Punjab

Excise Act, 1914 which entails minimum sentence of six months of imprisonment, with no proviso for awarding less than the minimum sentence prescribed.

6. On merits, it was urged by learned Additional Standing Counsel for the State that the twin contentions raised before this Court were never raised before the courts below and on the face of it there is no substance in the assertion of the petitioner that such a heavy recovery has been planted upon the petitioner and the contention that the sample drawn was not made representative is also without basis as there is no worthwhile challenge to the report certifying that the recovered contraband is illicit liquor. So, this petition deserves dismissal.

7. Submissions advanced for the first time before the Revisional Court on factual aspects are not required to be considered nor re-appreciation of evidence ought to be done by the Revisional Court. However, the plea of the petitioner of the heavy recovery of illicit liquor being planted upon him cannot be accepted on the face of it as the petitioner gives no reason why such a heavy recovery would be planted upon him by the police, especially when he fails to show as to why the police was inimical to him. Therefore, this plea is outrightly rejected being untenable.

8. So far as the second plea of the petitioner of sample drawn being not made representative is concerned, the same cannot be entertained for the reason that there is no challenge to the report certifying the recovered contraband to be of illicit liquor. In this view of the matter, the last plea

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of the petitioner of leniency on the quantum of sentence deserves to be noticed only for the purpose of being rejected as the offence committed by the petitioner entails the minimum sentence which has been awarded to him.

9. In Chand Gupta vs. State of Himachal Pradesh, (2009)15 SCC 94, while taking note of the fact that Section 61 of Punjab Excise Act, 1914 prescribes a minimum punishment, the benefit of Probation of Offenders Act, 1958 was declined.

10. Finding that the impugned Order suffers from no illegality or infirmity, this petition is dismissed. Bail bonds of the petitioner are forfeited. It is directed that petitioner be taken into custody to serve out the remainder of the sentence awarded to him. Trial Court be apprised of this order to ensure its compliance.

11. This petition is disposed of with aforesaid directions.


(SUNIL GAUR)
JUDGE

October 21, 2011

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