



2025:0004 -1 K03:29/250

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 2359 of 2025

Rajesh Kumar

.....Appellant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko.

.....Respondent(s)

Counsel for Appellant(s)	:	Swatantra Kumar Shukla, Kamal Kishor Tiwari
Counsel for Respondent(s)	:	G.A.

Court No. - 27

HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Heard learned counsel for the appellant, learned A.G.A. for the State and perused the record.

Instant Criminal Appeal has been preferred under section 374 (2) CrPC read with Section 415 of BNSS 2023 against the judgment and order dated 04.7.2025 passed by learned Additional Sessions Judge, Court No.1, Barabanki, in Sessions Trial No.679 of 2023 (State versus Rajesh Kumar), arising out of case crime no.468/2022, under sections -419, 420, 272 IPC and Section – Lonikatra, District Barabanki convicting and sentencing the appellant under section 60 (1) of U.P. Excise Act to a term of 2 years imprisonment and a fine to a tune of Rs.2,00/- and in default of deposition of fine further three months additional imprisonment.

According to the prosecution version on 26.12.2022 informant S.I. Rashmi Kushwaha of police station Loni Katra, District Barabanki accompanied with her colleagues was engaged in patrolling and official duty. Excise Inspector, area 3rd, Haidergarh Shri Akhileshwar Nath Singh met hear on Purvanchal Expressway Service Lane who was accompanied with his colleagues. They were discussing about prevention of sale and transportation of illicit liquor.

In the meanwhile, a secret information was received that a person is travelling by unnumbered motorcycle and coming towards Bhilwal. Illicit liquor may be recovered from his motorcycle on checking.

Placing reliance on his information they laid an ambush and apprehended the suspect who informed his named as Rajesh Kumar, son of Ram Chander, resident of police station Loni Katra, District Barabanki.

He stated that he works as a salesman in a foreign liquor shop at Dahila. At the time of closing of licence shop he picks up some bottles of liquor to derive income. He mixes fake liquor in the bottles of liquor and sells them.

On his personal search, a key of liquor shop was also recovered about which it is stated that it was key of Dahila Foreign liquor shop.

On checking of bag which was hanging in the steering of motorcycle, four

number of half 8 PM brand, 4 numbers of Imperial Rate Brand, two numbers of half Imperial Blue brand, two number of Mc Dowell brand were recovered.

The bottles were checked by the Excise Inspector and his team members through Excise Act.

On information given by the accused, a raid was laid at his house from where large number of bottles of liquor bearing foreign liquor brand were recovered about which it is stated that these were adulterated.

The police investigated the case and submitted charge sheet against the appellant under sections 419, 420, 272 IPC and Section 60 (1)/ & 72 Excise Act after investigation.

The learned ACJM committed the case to the Court of Sessions as charge under section 272 IPC is triable by the Court of Sessions.

Accused was produced under the custody and he was charged by the Sessions Court under such sections.

Prosecution examined PW - 1 S.I. Rashmi Kushwaha, PW-2 Excise Inspector Akhileshwar Nath Singh, PW – 3 Constable Indresh Pal, PW -4 Smt. Saroj Singh and PW-5 S.I. Mahesh Bajpai.

During the prosecution evidence recovery memo, 3 sample seals, FIR, extracts of GD of registration of case at police station, site plan of house of accused, site plan of arrest of accused and charge sheet were proved and exhibited as exhibit ka-1 to ka-9 respectively.

Statement of the accused was recorded under sections - 313 CrPC in which he has denied the allegations and stated that he has been implicated by the police to show good work. He refused to adduce defence evidence.

Learned trial court after hearing submissions of learned counsel for the parties and after appreciation of evidence on record came to the conclusion that the prosecution has failed to prove charges under Section 419, 420, 272 IPC against accused beyond reasonable doubt. However, the Court came to the conclusion that according to oral and material evidence adduced during trial charge under sections – 60 (1) U.P. Excise Act is proved against the accused beyond reasonable doubt.

Learned trial court recorded conviction of the appellant for charge under section 60 (1) U.P. Excise Act and sentenced him to two years' imprisonment and Rs.2,000/- fine and it is also directed in the impugned order that in default of payment of fine the appellant will undergo three months' default sentence.

It is also directed in the impugned order that period undergone by the appellant shall be set off towards the sentence of imprisonment.

Learned counsel for the appellant submitted that the impugned judgment and order is perverse and contrary to the facts on record.

There are material contradictions, omissions and discrepancies in the evidence led by the prosecution witnesses on vital aspects of the case.

The appellant has been acquitted for charge under sections 419, 420, 272 IPC

by the learned trial court.

Learned trial court has recorded its satisfaction that charge under section - 72 Excise Act only leads to Seizure of goods, vehicles involved in offence under U.P. Excise Act. It is not a penal section but such section has also been invoked in the charge sheet as well as charge framed by the trial court which is not proper.

He lastly submitted that the appellant has undergone more than two years imprisonment as per office report, thus, he has undergone more than two years five months imprisonment till date. Thus, he has already undergone sentence awarded in the impugned judgment and order. Thus, a release order should be issued for immediate release of the appellant from custody.

Per contra, learned A.G.A submitted that the allegations against the appellant are of serious nature. Learned trial court has already acquitted the appellant from major charges under sections under sections 419, 420, 272 IPC and recorded conviction and sentence only for minor charges under section 60 (1) U.P. Excise Act which is duly proved by the prosecution evidence and conviction and sentence recorded by the learned trial court against the appellant requires no interference in present appeal as same has been duly proved beyond reasonable doubt.

Considering the rival submissions of learned counsel for the parties in light of the impugned judgment as well as material available on record, I find no legal error in appreciation of evidence undertaken by the learned trial court whereby appellant has been convicted of charge under section 60 (1) U.P. Excise Act and sentenced to two years imprisonment and Rs.2,000/- fine.

Consequently, the conviction of the appellant as recorded by the learned trial court as well as sentence awarded by the learned trial court against the appellant are hereby affirmed.

Criminal Appeal stands ***dismissed***.

However, as the appellant has admittedly already undergone sentence of two years imprisonment, he will be released from custody in accordance with law, in case he is not wanted in any other cases and so far as fine is concerned, if the same is deposited the appellant will be released from custody without any further detention in respect of present case.

Let a copy of this judgment and order be forwarded to the Court concerned for necessary compliance.

December 16, 2025
mks

(Ram Manohar Narayan Mishra,J.)