

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-217-2005 (O&M)

Date of Decision: January 7, 2015

Dalbir Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Deepak Aggarwal, Advocate,
for the petitioner.

Mr. K.S. Pannu, DAG, Punjab,
for the respondent.

NARESH KUMAR SANGHI, J. (Oral)

1. The present Criminal Revision petition has been filed challenging the judgment, dated 20.12.2004, passed by learned Additional Sessions Judge, Amritsar, whereby the appeal filed by the petitioner, Dalbir Singh son of Chanchal Singh, resident of Nathupura Colony, Lodhi Gujjar, Tehsil Ajnala, District Amritsar, impugning his conviction and sentence dated 24.7.2003, recorded by the learned Sub-Divisional Judicial Magistrate, Ajnala, was dismissed.

2. At the very outset, learned counsel for the petitioner submits that in view of the concurrent findings of both the Courts below, he does not want to challenge the conviction of the petitioner. However, he submits that even if the minimum sentence is prescribed, the petitioner can be ordered to be released on probation. In support of above submission, he has placed reliance on a Full Bench judgment of this Court in the matter of **Joginder Singh v. State of Punjab**, 1980 CriLJ 1218 and a Single Bench judgment of this Court in the matter of **Nishan Singh v. State of Punjab** (CRR No. 2102 of 2012, decided on 20.9.2012).

3. Learned counsel for the State has not controverted the fact that in Joginder Singh's case (supra) and Nishan Singh's case (supra), the Full Bench and Single Bench of this Court had ruled that a person convicted under Section 61(1)(c) of the Punjab Excise Act, 1914 (for brevity, 'the Excise Act') can be released on probation. However, he submits that the petitioner was found operating a working still and 50 Kgs. of *Lahan* and 180 Mls. of illicit liquor were recovered from him, therefore, he should not be released on probation.

4. I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

5. Though the learned counsel for the petitioner has proposed not to challenge the conviction of the petitioner, but to satisfy the conscience of this Court, the Trial Court record has been thoroughly scanned. As per the prosecution version, a police party headed by HC Joginder Singh, received a secret information on 15.3.1999 that the petitioner was distilling illicit liquor by installing a working still in his own house. Relying upon the said secret information, police memo (Ex.PA) was sent to the police station for registration of the case. By arranging a private vehicle, the police party proceeded towards the house of the petitioner. It was found by the police party that the petitioner had installed a working still in a portion of his house and at the time of arrival of the police, the petitioner was feeding the fire. After dismantling and cooling down the material, the components and other material were taken into police possession. 50 Kgs. of *Lahan* and 180 Mls. of illicit liquor were also recovered. The recovered contraband was sealed and before that sample was drawn for chemical analysis. The formalities of the investigation were completed at the spot. The petitioner was arrested. The sample drawn was sent to the Chemical Examiner and in consequence thereof the Chemical Analysis Report (Ex.PY) was received. Thereafter, a charge-sheet (report under Section 173, Cr.P.C.) was presented. A

copy of the charge-sheet was supplied to the petitioner free of cost. The charge under Section 61(1)(c) of the Excise Act was framed by the learned Trial Court to which the petitioner pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined HC Joginder Singh as PW1; Constable Rajinder Singh as PW2; Baldev Singh, Excise Inspector as PW3; and HC Amrik Singh as PW4. Learned Additional Public Prosecutor tendered affidavit (Ex.PX) of Moharrir Head Constable Bikramjit Singh and the report (Ex.PY) of the Chemical Examiner to be read in evidence.

7. The statement of the petitioner under Section 313, Cr.P.C., was recorded in which he denied all the prosecution allegations and pleaded innocence and false implication in this case. Although the petitioner opted to lead evidence in defence, but he did not produce any evidence in defence.

8. After hearing learned counsel for the parties, the learned Trial Court held the petitioner guilty for the offence punishable under Section 61(1)(c) of the Excise Act and sentenced him to undergo rigorous imprisonment for one year besides payment of fine of Rs. 5,000/- and in default thereof to undergo further rigorous imprisonment for three months.

9. Dissatisfied with the judgment of conviction and the order of sentence, the petitioner preferred an appeal before the

Court of Session at Amritsar, which was dismissed by learned Additional Sessions Judge, Amritsar vide his judgment dated 20.12.2004, which is under challenge before this Court.

10. After perusing the material available on record, this Court is satisfied that both the Courts below have rightly held the petitioner guilty for the offence punishable under Section 61(1)(c) of the Excise Act, therefore, the learned counsel for the petitioner has correctly proposed not to challenge the conviction of the petitioner. However, this Court finds force in the submission of the learned counsel for the petitioner when he argued that in view of Full Bench judgment of this Court in the matter of **Joginder Singh (supra)** and a Single Bench judgment of this Court in the matter of **Nishan Singh (supra)**, the petitioner can be extended the benefit of probation in spite of the fact that minimum sentence prescribed is rigorous imprisonment for one year for the offence punishable under Section 61(1)(c) of the Excise Act. In para Nos. 6, 7 and 11 of **Joginder Singh's case (supra)**, Hon'ble Full Bench observed as under:-

“6. Apart from precedent, it deserves notice that section 361 of the Code prescribes that where in any case the court could have dealt with an accused person under Section 360 of the Code, but has not done so, it shall record in its judgment special reasons for not

having done so, which again would be pointer to the mandatory nature of the provisions. I would, therefore, hold the provisions of Section 360 of the Code are mandatory in nature.

7. Having held so, one may proceed to examine the matter with reference to the language of section 360 of the Code itself. The argument that the prescription of a minimum sentence of imprisonment would ipso facto exclude the applicability of this section, cannot easily hold water. It deserves highlighting that the provisions of section 360 of the Code in itself laid down the limitation within which it is to operate. It is attracted as regards persons above 21 years of age only when the conviction is for an offence punishable with fine only or with imprisonment for a term of seven years or less. As regards persons below 21 years of age or any woman, the provision is a little more liberal, and can be applied even for conviction of an offence not punishable with death or imprisonment for life, if no previous conviction is proved against the offender. It would, therefore, be evident that section 360 of the Code itself refers only to the maximum sentences provided for the offence for which an accused person may be convicted with regard to its applicability. Its provisions do not lay down anywhere that in the case of the prescription of minimum sentence, Section 360 of the Code would not be applicable. It may, therefore, be inapt to impose such a bar by a process of interpretation, when the

provisions of the section, whilst prescribing its applicability, have laid down no such limitation.

8. to 10. xxx xxx xxx

11. It would inevitably follow from the above that in view of the aforementioned precedent of the final court, the provisions of Sections 4 and 6 of the Probation of Offenders Act would in strictness be applicable to offences under Section 61(1)(c) of the Punjab Excise Act, 1914 as well. Once that is so, one fails to see as to how the position under Sections 360 and 361 of the Criminal Procedure Code 1973 can in any way be different and as to why these would not also be applicable within the limitations prescribed thereunder.”

11. From the perusal of the Full Bench judgment of this Court in the case of **Joginder Singh (supra)**, it is manifestly clear that a person convicted for the offence punishable under Section 61(1)(c) of the Excise Act, where the minimum sentence prescribed is rigorous imprisonment for one year, can be released on probation. The relevant consideration for releasing the petitioner on probation in the present case are:-

- (i) That the petitioner is a first offender;
- (ii) The alleged recovery was effected in the year 1999 and thereafter more than 15 years have

passed and the petitioner did not repeat the offence;

(iii) The petitioner remained on bail during the trial and appeal but he did not misuse the said concession;

(iv) The recovery effected from the petitioner was 50Kgs of “*Lahan*” and 180 Mls. of illicit liquor;

(v) He is a young man and wants to join the main stream of life;

(vi) As per learned counsel for the State, the petitioner has suffered incarceration for approximately four months; and

(vii) The law laid down by the Full Bench of this Court in **Joginder Singh’s case (supra)**, that a person convicted for the offence punishable under Section 61(1)(c) of the Excise Act, can be released on probation.

12. Keeping in view the totality of the circumstances of the case, the present revision petition is partly allowed. The petitioner is ordered to be released on probation for a period of two years from the date he furnishes the bonds in that regard to the satisfaction of the learned Trial Court. During the period of probation, the petitioner shall not commit any offence and be of

good behaviour. He shall give an undertaking to the learned Trial Court that he would undergo the remaining part of his sentence, if called for to do so by a Court of competent jurisdiction during the period of probation.

13. To be more clear, it is directed that the petitioner shall execute the requisite bonds within four weeks of passing of this order. The amount of fine imposed by the learned Trial Court and maintained by the first Appellate Court shall be converted into litigation expenses.

January 7, 2015
Pkapoor

(NARESH KUMAR SANGHI)
JUDGE