

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 621 of 2005
Date of decision : March 19, 2015

Ranjit Singh

.....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

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

Present: Mr. Aseem Aggarwal, Advocate
for the petitioner

Mr. Deep Singh, AAG Punjab

ANITA CHAUDHRY, J.

This revision is directed against the judgment dated 11.09.2003 passed by Chief Judicial Magistrate, Ferozepur vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for one year and to pay fine of ₹ 5,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month under Section 61 of the Punjab Excise Act, 1914. The appeal preferred by the accused was dismissed by the Additional Sessions Judge, Fast Track Court, Ferozepur.

The factual matrix is required are to be exposted. ASI Sukhminder Singh was on patrol duty at the Bus Stand of village Ferozepur alongwith his team. He received secret information that Ranjit Singh of that village was distilling liquor by means of working

still in his cattle shed and could be caught red handed. The police party proceeded to the spot taking the information to be genuine. ASI Sukhminder Singh sent a ruqa to the police station. The accused was found distilling liquor by means of a working still. The accused was found working on the still at the time of the raid. The working still was dismantled, cooled and components of the still were taken into possession vide recovery memo. A sample nip of 180 mls of illicit liquor was separated and the remaining contents in the container were measured which were found to be little over 9 bottles. The drum boiler containing 80 Kgs lahan, nip sample and all the samples were sealed bearing the initials 'SS'. A sample seal was prepared and it was handed over to Constable Kewal Singh. The usual formalities were completed and the accused was arrested. Lahan was got tested. On receipt of lahan test report and the report of the chemical examiner, the final report under Section 207 Cr.P.C. was presented in the Court.

The accused was charged under Section 61(1)(c) of the Punjab Excise Act. The accused pleaded not guilty and had opted to contest. The prosecution examined five witnesses and tendered in evidence the chemical examiner's report.

When confronted with the evidence, the accused in his statement under Section 313 Cr.P.C. abjured the trial. The trial ended in conviction. His appeal had also failed.

Records have been received.

I have heard learned counsel for the revisionist and the State counsel.

Two fold submissions have been made by counsel for the revisionist and reference was made to Section 46 of the Punjab Excised Act, 1914. The first submission was that the State Government can invest the power of investigation under the Excise Act only to an officer not below the rank of Inspector whereas in this case, the ASI had conducted the raid and it was a serious lacuna. The second submission was that the police did not join independent witness though the information had been received in the afternoon and it was day time and this Court in ***Shishpal and another vs. State of Haryana, 2011(1) RCR(Criminal) 267*** had set aside the conviction where the Investigating Officer did not record the statement of the witnesses who had refused and did not proceed against them.

The submission on the other hand was that the ASI was on patrol duty and secret information was received and believing it to be true, the police officer had proceeded to the spot and ruqa was sent. It was urged that the police could not have waited for the Inspector and purpose would have been defeated and the accused would have escaped and the anxiety on the part of the police should be appreciated. It was urged that police officials are good witnesses and there was no evidence that their evidence was tainted or they had any interest or enmity against the petitioner.

Section 46 of the Punjab Excise Act 1914 reads as under:-

46. Power of Excise Officers to investigate offences punishable under this Act. - (1) The State Government

may by notification invest any excise officer, not below the rank of Inspector with power to investigate any offence punishable under this Act, committed within the limits of the area in which the officer exercises jurisdiction.

(2) Every officer so empowered may within those limits exercise the same powers in respect of such investigation as an officer incharge of a police station may exercise in a cognizable case under the provisions of Chapter XII of the Code of Criminal Procedure, 1973.

The police party was in the village when information was received. Ruqa was sent at 3.05 p.m. and the police party proceeded the spot and had caught the accused red handed while working on the still. There was no occasion for the police official to summon the superior officer. Even otherwise the words used in Section 46 above are 'may'. The petitioner has failed to show any notification issued by the State Government.

I have gone through the ***Shishpal's case (supra)*** referred above. The cumulative facts were taken into account while acquitting the accused. The Court had noted that the case property had not been produced, proper representative sample was not sent to the public analyst, the samples had not been drawn from some of the boxes, the link evidence was missing. It had also noted that no right of cross examination was accorded to the accused for cross examining Constable Khurshid Ahmed.

In the case in hand the police had no time to call the independent witness. It has not been shown that the place from

where the petitioner was arrested was a busy place or a fully inhabited area. No complaint was made to the higher authorities by the accused regarding false implication. The testimony of the police official can not be discarded only on account of their official status. Both the Courts below had evaluated and assessed the evidence. The accused could not show that the police party was inimical or had any bias towards the accused. It can not be said to be a case which requires re-appreciation of evidence. There is no merit in the revision and is dismissed.

The petitioner is on bail. He shall surrender before the CJM, Ferozepur within a fortnight, failing which warrants of arrest shall be issued by CJM to procure the presence of the accused and he would be sent to jail to undergo the remaining part of the sentence.

Registry is directed to sent copy of the order to CJM, Ferozepur.

19.03.2015

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(ANITA CHAUDHRY)
JUDGE