

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Crl. Revision No.2175 of 2002(O&M)

Date of Decision: March 30 , 2015.

Bhupinder Singh @ Billu

..... PETITIONER (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sandeep Sihag, Advocate
for the petitioner.

Mr. Varun Sharma, AAG, Punjab.

1. Whether reporters of 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?

LISA GILL, J.

Petitioner – Bhupinder Singh @ Billu has filed this revision petition challenging his conviction and sentence under Section 61(1)(a) of the Punjab Excise Act, 1914 (hereinafter referred to as the 'Act') by the learned Judicial Magistrate First Class, Amritsar. He was sentenced to undergo rigorous imprisonment for a period for one year, besides, pay a fine of ₹5,000/- and in default thereof, to undergo further rigorous imprisonment for one month.

His appeal against the said judgment of conviction and order of sentence was

dismissed by the learned Additional Sessions Judge, Amritsar vide judgment dated 11.10.2002. Aggrieved therefrom, the present revision petition has been filed by the petitioner.

Brief facts of the case are that on receipt of secret information on 21.06.1997, ASI Surjit Singh alongwith other police officials, who were present near village Chachwali raided the petitioner's house. Petitioner was found distilling illicit liquor by means of working still in his kitchen. On seeing the police party, petitioner scaled the wall and fled from the spot. He was working as a helper in the Railways and was earlier known to ASI Surjit Singh. Working still was allowed to cool down and dismantled. Following pieces of the working still were taken in possession:-

- “(1) Two pieces of wood and some ash
- (2) One drum boiler containing 15 Kg. Lahaan
- (3) One Chikala placed on drum having one big hole in the center and one side hole
- (4) One earthen lid having one small side hole in which one end of plastic pipe was fitted and the other end while passing through the Chikala was fitted in the plastic can.
- (5) One plastic pipe
- (6) One plastic pipe in which liquor was being received
- (7) One iron tub having luke warm water fitted on the Chikala
- (8) One tin box which was being used for changing the water out of the plastic in one sample nip of 180 ML illicit liquor was separated and the remaining on measuring were found 5 bottles of 750ML each.”

The mouth of the drum was tied with the help of jute sack. Drum as well as plastic can were sealed by ASI Surjit Singh bearing seal impression

'SS'. Case property was taken in possession. Seal after use was handed over to HC Rashpal Singh. Petitioner himself surrendered on 22.07.1997 and was released on bail.

On receipt of the report of Chemical Examiner and completion of investigation, Challan/report under Section 173 Cr.P.C. was presented. Charges were framed against the petitioner-accused to which he pleaded innocence and claimed trial.

Prosecution examined as many as five witnesses to prove its case. Report of the Chemical Examiner, Ex.P6, was tendered in evidence.

Petitioner while recording his statement under Section 313 Cr.P.C. pleaded false implication.

As noted above, learned trial court on appreciation of evidence found the petitioner guilty of the offence alleged. He was convicted and sentenced accordingly as aforementioned. His appeal has also been dismissed by the learned appellate court on 11.10.2002. Aggrieved therefrom, instant revision petition has been preferred.

Learned counsel for the petitioner vehemently argues that false implication of the petitioner is apparent on the face of it. He submits that the most glaring aspect is non-joining of any independent witness at the time of raiding the petitioner's house. Once there was secret information, there is no explanation for not joining an independent witness. There was no occasion for ASI Surjit Singh to have identified the petitioner at the spot. Identity of the petitioner is not determined. Therefore, his conviction is patently illegal.

He further submits that the case property alleged to be sealed with

the seal impression 'SS' whereas in the Challan, it is mentioned as 'AS'. Link evidence is not complete in this case.

It is also urged that there is nothing to show that Lahaan was, in fact, recovered. Lahaan allegedly recovered has not been produced before the court, therefore, raising a doubt on the prosecution version.

Per contra, learned counsel for the State while refuting the abovesaid arguments submits that there is overwhelming evidence on record which points to the guilt of the petitioner-accused. Trial court as well as the appellate court have found the petitioner guilty of the offences as alleged. He prays for upholding the judgment of conviction and order of sentence.

I have heard learned counsel for the parties and gone through the record.

In respect to the averments of non-joining of an independent witness, even though recovery was effected from a busy place, it is to be noted that ruqa (Ex.PD) reflects that an effort was indeed made to join an independent witness. As per the said ruqa PHC Charan Singh No.2620 was sent to the village to bring some independent person to join the proceedings. He informed on his return that due to party-faction in the village, no one was ready to join the police party. This fact is duly mentioned in the documents on record. ASI Surjjit Singh also made an effort to join an independent witness but no one had come forward. Reluctance on the part of co-villagers to be associated with the proceedings is a well known fact. No mala fide has been alleged against the police officials who have no axe to grind against the petitioner. Evidence of the official witnesses cannot be rejected outrightly on account of non-joining of an

independent witness.

Furthermore, it is a fallacious argument that identity of the petitioner has not been determined. Apart from the statement of ASI Surjit Singh that he knew the petitioner prior to the incident, the recovery has been effected from the petitioner's kitchen at his residence. An effort has been made to say that the petitioner was not residing at the said place at the time of alleged recovery. He is averred to have been residing with his family at Amritsar. There is however, no evidence on record to prove the same.

Averments that Lahaan in question was not produced before the court or that the seals were not as per the statement of the Excise Inspector, have been succinctly and properly dealt with by both the learned courts below. As per the report of the Assistant Chemical Examiner (Ex.PG) sample nip consists of alcohol. As per the report of the Excise Inspector EQ Hira Lal, he tested the Lahaan by way of taste, smell and colour. He found the illicit liquor fit for distillation.

It is relevant to note that the scope of interference in revisional jurisdiction is limited. Learned counsel is unable to point out any perversity, illegality or infirmity in the impugned judgments which would persuade this Court to interfere in exercise of revisional powers. Both the courts below have rendered well reasoned judgments based on cogent and clear evidence on record. No ground for interference is made out.

At this stage, learned counsel for the petitioner submits that the petitioner is a petty helper employed with the Railways. Since 1997, petitioner has not been involved in any other case. Petitioner is 50 years old and has a

family to support. No useful purpose would be served by sending the petitioner behind bars at this stage. The benefit of probation or the reduction in sentence imposed upon the petitioner be afforded to the petitioner.

Learned counsel for the State opposes the same on the ground that minimum sentence of one year at that time has been prescribed for the offence in question. The petitioner is not entitled for reduction of sentence imposed upon him either as it is the minimum sentence i.e., one year which has been imposed upon the petitioner.

A Full Bench of this Court in **Joginder Singh v. State of Punjab**, **1980 PLR 585**, has held that prescription of a minimum punishment cannot deprive the court of its power to release the person on probation though this power is to be exercised only in exceptional circumstances and specific reasons to be recorded.

Learned counsel for the State while referring to affidavit dated 04.02.2015 of Ravinder Kumar Sharma PPS, Superintendent Central Jail, Amritsar is unable to deny that there is no other case pending against the petitioner. He is indeed a first offender. Since the occurrence in the year 1997 there is no other case in which he is involved. He is the sole bread-winner of the family. It is apparent that he has not indulged in the misdeeds again and has been leading a straight and honest life since. He has indeed faced the agony of the proceedings since 1997. The Damocles sword has been hanging since then. In the peculiar facts and circumstances of the case, it is considered just and expedient to extend the benefit of probation to the petitioner.

Petitioner shall be released on probation subject to his furnishing

requisite probation bonds and sureties to the satisfaction of the Probation Officer. He shall also be bound by all the conditions as may be laid down by the Probation Officer. In case petitioner is found involved in any other case subsequently, the sentence imposed up him by the trial court shall be revived. Amount of fine shall remain the same.

With the abovesaid modification in the order of sentence, this revision petition is dismissed thereby, upholding the conviction of the petitioner.

March 30 , 2015.
'om'

(LISA GILL)
JUDGE