

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.1236 of 2006 (O&M)

Date of decision : 02.09.2015

Gurcharn Singh @ Charna

...Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Arun Luthra, AAG, Haryana,
amicus curiae for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

JITENDRA CHAUHAN, J. (ORAL)

The present revision is directed against the judgement/order of conviction dated 09.02.2006, passed by the learned Judicial Magistrate 1st Class, Bathinda, (for short, 'the trial Court'), and judgment/order dated 13.05.2006, passed by the learned Additional Sessions Judge (Ad hoc), Fast Track Court, Bathinda, (for short, 'the Appellate Court') dismissing the appeal filed by the accused against his conviction.

Brief facts of the present case, as noticed in the trial Court judgment as reproduced as under:-

“The brief facts of the case of the prosecution version are that on 23.08.2003, SI Rajinder Kumar along with other police officials was present at the railway crossing of Burj Kahan Singh Wala at Nakabandi for the checking of doubtful persons. Binder Singh s/o Diwan Chand met the police party. At about 10 am one maruti car bearing Rc no DBD 5955 being driven by hindu gentleman was seen coming from Burj Kahan Singh Wala side. On Sikh person was sitting along with the driver. SI Rajinder Singh gave signal to stop the car. The driver stopped the car both the persons came down from the car and tried to run away towards village side. The driver of the car was apprehended by the police party. He gave his name as Gurcharn Singh @ Charna s/o Bachittar Singh r/o Bucho Mandi. The other person succeeded in running away from the spot. His name was Surinder Singh s/o Harbhajan Singh r/o Bhucho Mandi. The car was searched on suspicion. On back side of the seat 10 cardboard boxes of country made liquor tohfa santra were recovered. Every box was containing 12 bottles each of country made liquor mark Sangtra Tohfa. Total 120 bottles of country made liquor were recovered. Gurcharn Singh could not produce any permit or licence for carrying the same. A sample of 180 ML was taken out from each bottle. The bottles with remaining liquor and the samples were sealed with the seal bearing impression RK. Sample seal was prepared separately. The seal was handed over

to Binder Kumar. The case property was taken into possession vide recovery memo along with the card board boxes. On the search of car photostat papers of the sapurdari of the car DBD 5955 from the court of JMIC Bathinda in case FIR No.44 dt 1.4.2003 u/s 61 Excise Act PS Nathanawere recovered. These papers were containing the name of Gurcharn Singh. The car was also taken into custody along with photo papers of sapurdari through separate recovery memo. The personal search of accused Gurcharn Singh was conducted. Currency notes of Rs 150 were recovered from him, which were taken into custody through separate recovery memo. Personal search memo was prepared. Ruqa was sent to the police Station for registration of the case u/s 61 of the Excise act. Accused was arrested. Accused Suring Singh was arrested on 25.8.2003. Investigation was started. After completion of the investigation, report u/s 173 CrPC was prepared and subsequently, the accused were chargesheeted under Section 61(1)(a) of the Punjab Excise Act.

In order to prove its case, the prosecution examined Rajinder Kumar as PW1; Constable Jagsir Singh as PW2; HC Jagjit Singh as PW3; HC Tarjinder Singh as PW4.

In their statements recorded under Section 313 Cr.P.C., the accused denied all the allegations and pleaded innocence. However, no evidence was led in defence.

After hearing learned counsel for the parties and perused the evidence on record, the learned trial Court, convicted the accused under Section 61(1)(a) of the Punjab Excise Act. Feeling aggrieved, the accused preferred appeal before the learned Appellate Court, which was allowed qua accused-Surinder Singh and he was acquitted of the charge framed against him, whereas, the appeal qua present petitioner, Gurcharn Singh, was dismissed. Hence, the present revision petition, which was admitted by this Court on 09.06.2006.

It is contended by the learned amicus curiae that as per the recovery memo, Ex.PA, 12 boxes each containing 12 bottles were recovered from the car but as per the statement of PW Tejinder Singh, only 10 boxes each containing 12 bottles were recovered from the car. It is further contended that only 10 boxes were produced in the Court, out of which one bottle was found to be empty. Therefore, the prosecution case failed to prove its case against the petitioner.

On the other hand, the learned State counsel submits that the prosecution has successfully proved its case against the accused-petitioner beyond a shadow of reasonable doubt. The contradiction in the number of boxes recovered being typographical/clerical mistake and deserves to be ignored.

I have heard learned counsel for the parties and perused the record.

In the present case, the accused-petitioner was apprehended from the spot. The recovery of ten cartons of twelve bottles each containing illicit liquor had been effected from the car being driven by the petitioner. Xerox copies of papers of sapurdari of the car in question having been involved in FIR No.136 dated 23.08.2003, under Section 61 of the Excise Act, were also recovered, wherein, the name of the present petitioner had been recorded as the Sapurdar. It is a case of heavy recovery. The only discrepancy pointed out in the prosecution case is that '12 boxes' is written on the recovery memo, Ex.PA. However, it is only a clerical mistake and deserves to be ignored. Therefore, there is no ground to interfere in the concurrent findings recorded by the learned Courts below as far as the present petitioner is concerned. The jail certificate produced by the learned State counsel reflects that the petitioner has undergone 10 months and 21 days and he was released on 20.06.2006, after completion of his actual sentence and had paid the fine at jail gate. In this view of the matter, the present revision petition is hereby dismissed.

02.09.2015*atulsethi***(JITENDRA CHAUHAN)
JUDGE**