

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

(346)

**Crl. Revision No.1803 of 2007
Decided on: September 23, 2015.**

Niranjan Kumar and others

.... Petitioners

Versus

State of Haryana

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: None for the petitioners.

Mr. C.S. Bakshi, Addl. A.G., Haryana.

M.M.S. BEDI, J (ORAL)

The petitioners have been convicted by the Judicial Magistrate Ist Class, Sirsa to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- each and in default of payment of fine to further undergo imprisonment for 15 days. The said judgment was upheld by the Sessions Judge, Sirsa vide judgment dated 14.09.2007, dismissing the appeal of the petitioners.

Briefly stated the case of the prosecution against the petitioners is that on 04.01.1997 police party led by ASI Harbhajan Singh on excise checking in village Darbi found petitioners coming from side of village Barwali on a scooter. Petitioner Niranjan Kumar was driving the scooter and Amarjit Singh was a pillion rider. They tried to escape but on suspicion they were apprehended by the police party. A plastic bag was being carried by the petitioners which on search was found to contain 42 bottles of English liquor made Aristocrat. Seal of one bottle was broken and one nip was

separated as sample and the sample and the remaining bottles were sealed separately in the same bag with the seal of 'HS'. Recovery memo was prepared. Ruqa Ex.PB was sent to the police station on the basis of which formal FIR Ex.PB/1 was recorded. After charging the petitioners under Section 61 (1) (a) of Punjab Excise (Haryana Second Amendment) Act, 1996, prosecution witnesses were examined. Believing the statements of official witnesses and the report of chemical examiner, the petitioners were convicted as mentioned hereinabove.

On the basis of chemical examiner report regarding the sample Ex.PD, the Courts below arrived at a conclusion that the petitioners were carrying ethyl alcohol with 74.2 per cent alcohol. Admittedly, it is the case of the prosecution that sample was taken from one bottle, which was sent for testing. It is not the case of the prosecution that the contents of that bottle were representative of the entire material recovered from the petitioners. The contents of the liquor recovered from the petitioners were not tested to enable the Courts below to arrive at a conclusion that the sample was the representative sample of all the 42 bottles recovered.

In view of said circumstances, the benefit of doubt deserves to be granted to the petitioners. The conviction of the petitioners, is, therefore, set aside granting them benefit of doubt. The petitioners are entitled to acquittal for another reason that neither any independent witness has been joined nor any attempt was made by the investigating officer to join the independent witnesses.

No doubt, it is not mandatory that in every case of recovery of liquor or any other contraband, the presence of independent witness is

necessary but when the recovery is debatable, the presence of independent witness would attach additional credibility to the story of the prosecution.

In view of above said circumstances, giving benefit of doubt to the petitioners, the petition is allowed. Conviction and sentence orders passed by the Courts below are hereby set aside. They are acquitted of the charge.

(M.M.S. BEDI)
JUDGE

September 23, 2015
harsha