

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

**Criminal Revision No.2895 of 2015
Date of Decision:-Sept. 23, 2015**

Gurmail Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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

Present:- Ms. Ravinder Kaur Manaise, Advocate
for the petitioner.

Mr. Gurinderjit Singh, Deputy A.G., Punjab.

HARI PAL VERMA J.

Petitioner has filed the present revision petition under Section 401 Cr.P.C. against the order dated 14.7.2015 passed by learned Sessions Judge, Ferozepur, whereby his appeal against the judgment of conviction and order of sentence dated 21.2.2015 passed by learned Sub Divisional Judicial Magistrate, Guru Harsahai convicting him for the offence under Section 61 of the Punjab Excise Act, 1914 (for short 'the Act') and sentencing him to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1000/-, was dismissed.

This Court vide order dated 11.8.2015 has issued the notice regarding quantum of sentence for 19.9.2015. Pursuant thereto the

learned State counsel has put in appearance.

Briefly stated that FIR No.86 dated 25.9.2012 under Section 61(1)(a) of the Punjab Excise Act, 1914, Police Station Lakho Ke Behram was registered against the petitioner. As per the FIR, when the police party was on patrolling and reached near Village Nawan Quilla, a secret informer came to the Investigating Officer and disclosed that Gurmail Singh son of Dalip Singh, resident of Village Khuddar Gatti was supplying illicit liquor after distilling the same and the accused used to bring liquor in a rubber tube on his motor-cycle and on that day said Gurmail Singh was coming to Village Karma to supply the illicit liquor to someone. The informer disclosed that if Nakabandi is conducted near the canal miner of village Karma, accused Gurmail Singh can be apprehended having illicit liquor in his possession. Since the information inspired the Investigating Officer, ruqa under Section 61(1) of the Punjab Excise Act, 1914 was drawn and was sent to the police station for registration of a formal FIR, through PHG Gursewak Singh. When the police party reached at the disclosed place, a person was seen coming towards them on a motor-cycle and on seeing the police party, he got scared and tried to retreat. However, he was apprehended by the Investigating Officer with the help of the police party. On inquiry, he disclosed his name as Gurmail Singh. There was a rubber tube tagged on the rear side of the motor-cycle and when the contents of the tube were checked, the same was found to be containing illicit liquor. The Investigating Officer separated a sample nip of 180 mls. On measurement, remaining liquor was found to be 99 bottles of 750 mls each and one bottle of 570 mls. The liquor was poured into same rubber tube. Sample nip and the rubber tube after sealing by the

Investigating Officer, were taken into police possession vide separate memo. The sample nip was sent to the Chemical Laboratory, Kharar for analysis and after receipt of the report of the Chemical Examiner, the challan was prepared and presented in the Court.

In compliance of the provision of Section 207 Cr.P.C., copies of challan along with other relevant documents attached thereto was supplied to the accused Gurmail Singh.

The trial Court on the basis of evidence so adduced convicted the petitioner vide judgment dated 21.2.2015 and vide separate order the petitioner was ordered to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/-.

Against the orders of conviction and sentence dated 21.2.2015, passed by learned Magistrate, petitioner preferred an appeal. The appeal was dismissed by learned Sessions Judge vide judgment dated 14.7.2015 and petitioner was ordered to be taken into custody. It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

Pursuant to the notice on the quantum of sentence, learned State counsel has put in appearance and submits that as against the awarded sentence of one year, the petitioner is in custody since 14.7.2015 and in this manner, he is in custody for more than two months.

Since notice was issued as regard to quantum of sentence, learned counsel for the petitioner has argued that the petitioner is suffering the protracted trial since the year 2012 when the FIR was registered on 25.9.2012 and he has already undergone the sentence of more than two months against the total awarded sentence of one year.

The petitioner is not involved in any other case. Learned counsel for the petitioner, therefore, prays that the sentence awarded to the petitioner be reduced to the sentence already undergone. Learned counsel for the petitioner relies upon **Sukha Singh @ More vs. State of Punjab, 2010 (4) Law Herald 3218** to contend that in the similar circumstances on the alleged recovery of 60 kgs Lahan, 5-¼ bottle as illicit liquor, petitioner was convicted and thereafter released on probation on completion of one month substantive sentence as against the awarded sentence of one year, by the learned trial Court. He further relies upon **Amrik Singh vs. State of Punjab, 2011 (2) Law Herald 1648** to state when the trial Court has convicted the accused to undergo rigorous imprisonment for one year and the accused is a first time offender, held that sending a first time offender to jail in the company of hardcore criminals would be unjustified. He further submits that the first time offender must be given a chance to reform. In the said case this Court while releasing the accused on probation, had enhanced the fine from Rs.5000/- to Rs.15,000/-. Learned counsel for the petitioner has further relied upon **Harpal Singh @ Kala vs. State of Punjab, 2010(1) RCR (Criminal) 866** to contend that where the accused was found in his possession 15 cartons of country made liquor, he was convicted and sentenced to one year imprisonment. The accused had undergone about two months, this Court had released the accused on probation.

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

The contention that the petitioner is a first time offender has not been refuted by learned State counsel. The FIR in question was

lodged on 25.9.2012 and since then the petitioner is suffering protracted trial. He is in custody for the last about more than two months as against the awarded sentence of one year. This Court in **Criminal Revision No.4133 of 2014** titled 'Shindi vs. State of Punjab', while considering the case of **Mangal Singh vs. State of Punjab 2006(2) RCR (Criminal) 651** where the accused was sentenced to undergo one year rigorous imprisonment and fine of Rs.5000/-. The sentenced was reduced to already undergone. In the case of Mangal Singh's case (supra) the accused had undergone only 34 days.

Considering the fact that the petitioner is suffering the protracted trial from the year 2012, it must have caused him sufficient harassment and mental agony. The petitioner has also undergone more than two months as against the awarded sentence of one year. He is a labourer by profession. Therefore, this Court by taking a lenient view in the matter held that the interest of justice would be met if the petitioner is sentenced to the extent the period already undergone. Ordered accordingly. The petitioner shall undergo the sentence of imprisonment in default of fine, if the fine is not already paid or deposited.

The criminal revision stands disposed of.

Sept. 23, 2015
Vijay Asija

(**HARI PAL VERMA**)
JUDGE