

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

CRR-3197-2014 (O&M)

Date of Decision: January 21, 2015

Nachhattar Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.G.S.Sandhu, Advocate
for the petitioner.

Mr.Shilesh Gupta, Additional Advocate General,
Punjab.

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Naresh Kumar Sanghi, J.(Oral)

The present criminal revision petition has been filed challenging the judgment, dated 07.08.2014, passed by the learned Sessions Judge, Sri Muktsar Sahib, whereby the appeal filed by the petitioner-Nachhattar Singh son of Mithu Singh, resident of village Surewala, District Sri Muktsar Sahib, impugning his conviction and sentence, dated 16.12.2011, recorded by learned Additional Chief Judicial Magistrate, Sri Muktsar Sahib, was dismissed.

When the case came up for preliminary hearing on 09.10.2014, at that time the learned counsel for the petitioner submitted that he did not want to challenge the conviction of the petitioner since both the Courts below had gone against the petitioner. However, on the strength of judgments rendered in the matters of **Joginder Singh vs. State of Punjab**, 1980 PLR 585 (Full Bench); **Kuldip Chand vs. State of Punjab**, (CRR-1770-2005 decided on 10.09.2012); and **Nishan Singh vs. State of Punjab**, (CRR-2102-2012 decided on 20.09.2012) he submitted that in spite of the fact that minimum sentence was prescribed, the petitioner could be released on probation and, as such, notice of motion was issued with regard to quantum of sentence only.

Learned counsel for the State very fairly concedes that a Full Bench judgment of this Court in the matter of **Joginder Singh** (supra) and the judgments rendered in the matters of **Kuldip Chand** and **Nishan Singh** (supra), it was held that a person convicted under Section 61(1) (c) of the Punjab Excise Act, 1914 (for brevity, 'the Excise Act') can be released on probation. However, he submits that the petitioner was found operating a working still and 30 kgs of *Lahan* and six bottles of

illicit liquor each containing 750 ml were recovered from the petitioner, therefore, the sentence passed by the Courts below should not be disturbed.

I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

Though the learned counsel for the petitioner has proposed not to challenge the conviction of the petitioner but to satisfy the conscience of this Court, the material available on record has been thoroughly perused.

As per the version to be verified by the prosecution, on 05.06.2009, HC Baldev Singh along with other police officials was going from village Harike Kalan to village Surewala in connection with patrolling and in the meantime received a secret information that the petitioner, who was in the habit of distilling and selling the illicit liquor, could be apprehended red handed if the raid was conducted at his house. Believing the information to be correct, memo was prepared and sent to the Police Station, Bariwala, on the basis of which formal FIR was registered. Kaur Singh, the Chowkidar of village Surewala was joined in the police

party and thereafter a raid was conducted at the house of the petitioner. As soon as the police party reached there, the petitioner after hearing the voice, ran away from the spot. The police party found that the petitioner was operating a still, which was cooled down and dismantled. The material available on record was taken into police possession. Rough site plan of the place of recovery was prepared. Statement of witnesses were recorded. Sample of *Lahan* from the spot was got tested from the Excise Inspector. The petitioner was arrested on 30.12.2009 and after receiving the report from the Chemical Examiner, the charge-sheet was prepared and presented for prosecution of the petitioner. After completing the formalities of supplying the copies of the charge-sheet etc. to the petitioner, the charge for the offence punishable under Section 61(1) (c) of the Excise Act was framed, to which the petitioner pleaded not guilty and claimed trial.

In support of its allegations, the prosecution examined PW1 HC Bashir Singh; PW2 HC Baldev Singh, Investigating Officer; PW3 HC Harvinder Singh; PW4 EI Madan Lal Manchanda; PW5 HC Dalbir Singh and thereafter learned Assistant Public

Prosecutor for the State closed the evidence of the prosecution.

After closing of the prosecution evidence, the statement of accused/petitioner under Section 313, Cr.P.C., was recorded. He denied the correctness of incriminating evidence appearing against him and has pleaded his innocence as well as false implication. The accused opted not to lead any evidence in his defence.

Both the Courts below held the petitioner guilty and awarded him rigorous imprisonment of one year besides payment of fine of ₹5,000/- and in default thereof to undergo further rigorous imprisonment for one month.

As a sequel to the above, it is apparent that both the Courts below have rightly held the petitioner guilty for the commission of offence punishable under Section 61(1) (c) of the Excise Act and, as such, the learned counsel for the petitioner has correctly proposed not to challenge the conviction of the petitioner.

However, this Court finds force in the submissions of the learned counsel for the petitioner when he argued that in view of the Full Bench judgment of this Court in the matter of

Joginder Singh (supra) and single Bench judgments in the matters of **Kuldip Chand** and **Nishan Singh** (supra), the petitioner can be extended the benefit of probation in spite of the fact that the minimum sentence prescribed is rigorous imprisonment for one year for the offence punishable under Section 61(1) (c) of the Excise Act. In para Nos. 6, 7 and 11 of Joginder Singh's case (supra), Hon'ble Full Bench observed as under:-

“6. Apart from precedent, it deserves notice that section 361 of the Code prescribes that where in any case the court could have dealt with an accused person under Section 360 of the Code, but has not done so, it shall record in its judgment special reasons for not having done so, which again would be pointer to the mandatory nature of the provisions. I would, therefore, hold the provisions of Section 360 of the Code are mandatory in nature.

7. Having held so, one may proceed to examine the matter with reference to the language of section 360 of the Code itself. The argument that the prescription of a minimum sentence of imprisonment would ipso facto exclude the applicability of this section, cannot easily hold

water. It deserves highlighting that the provisions of section 360 of the Code in itself laid down the limitation within which it is to operate. It is attracted as regards persons above 21 years of age only when the conviction is for an offence punishable with fine only or with imprisonment for a term of seven years or less. As regards persons below 21 years of age or any woman, the provision is a little more liberal, and can be applied even for conviction of an offence not punishable with death or imprisonment for life, if no previous conviction is proved against the offender. It would, therefore, be evident that section 360 of the Code itself refers only to the maximum sentences provided for the offence for which an accused person may be convicted with regard to its applicability. Its provisions do not lay down anywhere that in the case of the prescription of minimum sentence, Section 360 of the Code would not be applicable. It may, therefore, be inapt to impose such a bar by a process of interpretation, when the provisions of the section, whilst prescribing its applicability, have laid down no such limitation.

8. to 10. xxx xxx xxx

11. It would inevitably follow from the above that in view of the aforementioned precedent of the

final court, the provisions of Sections 4 and 6 of the Probation of Offenders Act would in strictness be applicable to offences under Section 61(1)(c) of the Punjab Excise Act, 1914 as well. Once that is so, one fails to see as to how the position under Sections 360 and 361 of the Criminal Procedure Code 1973 can in any way be different and as to why these would not also be applicable within the limitations prescribed thereunder.”

From the perusal of the Full Bench judgment of this Court in the case of Joginder Singh (supra), it is manifestly clear that a person convicted for the offence punishable under Section 61(1)(c) of the Excise Act, where the minimum sentence prescribed is rigorous imprisonment for one year, can be released on probation. The relevant consideration for releasing the petitioner on probation in the present case are:-

- (i) That the petitioner is a first offender;
- (ii) The alleged recovery was effected in the year 2009 and thereafter about 6 years have passed and the petitioner did not repeat the offence;
- (iii) The petitioner remained on bail during the trial and appeal but he did not misuse the said concession;
- (iv) The recovery effected from the petitioner was

30Kgs of "*Lahan*" and six bottles of illicit liquor each containing 750 ml ;

(v) He is a young man and wants to join the main stream of life;

(vi) As per the affidavit of the Superintendent, Sub Jail, Sri Muktsar Sahib, produced by the learned counsel for the State, the petitioner has suffered incarceration for 5 months and 18 days. He has also been extended the remission for one month and, as such, he has undergone 6 months and 18 days. The grant of remission would reveal that the petitioner is maintaining good behaviour in jail and is in the process of improving himself.

(vii) The law laid down by the Full Bench of this Court in Joginder Singh's case (*supra*), that a person convicted for the offence punishable under Section 61(1)(c) of the Excise Act, can be released on probation.

Keeping in view the totality of the circumstances of the case, the present revision petition is partly allowed. The petitioner is ordered to be released on probation for a period of two years from the date he furnishes the bonds in that regard to the satisfaction of the learned Trial Court. During the period of probation, the petitioner shall not commit any offence and be of good behaviour. He shall give an undertaking to the

learned Trial Court that he would undergo the remaining part of his sentence, if called for to do so by a Court of competent jurisdiction during the period of probation.

To be more clear, it is directed that the petitioner shall execute the requisite bonds within four weeks of passing of this order. The amount of fine imposed by the learned Trial Court and maintained by the first Appellate Court shall be converted into litigation expenses.

January 21, 2015
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(NARESH KUMAR SANGHI)
JUDGE