

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.4463 of 2015 (O&M)

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Date of decision:30.11.2015

Lakhwinder Kumar alias Vicky

...Petitioner

v.

State of Punjab

Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Baljinder Singh, Advocate for the petitioner.

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Inderjit Singh, J.

The petitioner has filed this criminal revision petition under Section 401 Cr.P.C. challenging the impugned judgment dated 23.9.2015 passed by the learned Additional Sessions Judge, Gurdaspur, dismissing the appeal filed against the impugned judgment and order dated 4.4.2012 passed by learned Judicial Magistrate Ist Class, Batala, whereby the petitioner/accused has been convicted for the offence under Section 61(1)(c) of the Punjab Excise Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹5,000/- and in default of payment of fine to further undergo rigorous imprisonment for fifteen days.

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

As per the prosecution version challan against accused/petitioner Lakhwinder Singh alias Vicky was presented for the offence under Section 61(1)(c) of the Punjab Excise Act by Police of Police Station Qila Lal Singh. As per prosecution version on 24.5.2007, police party headed by Ajit Singh was on patrol duty on a private vehicle and was present at Canal Bridge of Village Taragarh, where Ajit Singh, Head Constable received a secret information that Lakhwinder Kumar alias Vicky was distilling illicit liquor by means of working still and on raid recovery could be effected. Finding the information to be reliable, 'Ruqa' was sent to the Police Station, on the basis of which, formal FIR was registered. Thereafter, the police party raided the house of the accused/petitioner, where he was found feeding fire in the hearth and was distilling illicit liquor and was apprehended. The working still was dismantled and cooled down. The components of working still comprising, one drum containing 100 Kgs. of Lahan, receiver cane plastic, having illicit liquor, out of which 180 ml. was taken as sample and remaining on measurement came to quarter of 10 bottles, which was again put in the same cane, along with other articles i.e. one iron bucket, one chapni, one bundle of wire, one pipe plastic, one daba plastic, one pipa plastic, two half burnt pieces of wood were recovered. Drum containing 100 kgs. of Lahan, the sample nip and plastic cane having illicit liquor were sealed with seal impression 'AS' of Ajit Singh, Head Constable and all the aforesaid components were taken into possession vide recovery memo. Rough site plan was prepared. Statements of PWs were recorded. On return to Police Station, the case property was deposited with

MHC. After completion of investigation, the challan was filed against the accused in the Court.

At the time of arguments, learned counsel for the revision petitioner argued that when the case property was produced, it was having no seal on the Drum and there was no Lahan. Learned counsel further argued that independent witness has not been joined by the Police party which creates doubt.

First of all in the revision petition, this Court is not to re-appreciate the evidence like the Court of appeal. The Court is to see whether the order passed by the learned Court below is illegal, perverse or some material evidence has not been discussed or the evidence has not been discussed in the right perspective. Learned counsel for the petitioner has not pointed out anything which material evidence has not been considered and discussed in the right perspective or which material evidence has been misread by the Courts below. Rather, the Courts below have appreciated the evidence in right perspective. It is settled law that case property is a corroborative piece of evidence. As argued the recovery was effected on 24.5.2007 and the case property was produced on 11.6.2009 after more than two years. Therefore, it was not possible that the Lahan must be in the Drum. Otherwise also even non-production of case property is not fatal to the prosecution case. As already discussed, it is only a corroborative piece of evidence. The PWs have consistently deposed regarding the prosecution version. Nothing has been pointed out at the time of arguments which material evidence or statements are unreliable.

As regards the second argument, as the Police party was on patrol duty when they received the secret information, there was no person available to be joined as independent witness before the raid. Otherwise also, it is now settled law that testimony of Police officials is as good as of any other witness unless some enmity or motive is alleged and proved against them. There is nothing on record to show any motive or enmity of the Police officials to falsely implicate the petitioner in this case.

Therefore, from the above discussion, I find that no illegality has been shown in the findings of the Courts below. There is nothing to show that these judgments are perverse or illegal. From the record, I find that both the judgments passed by the Courts below are correct and as per the law and have been given with sound reasoning, which do not require any interference from this Court and the same are upheld.

Finding no merit in the present criminal revision petition, the same is dismissed.

November 30, 2015.

(Inderjit Singh)
Judge

hsp