

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

**Crl. Revision No.544 of 2015 (O&M)
Date of decision: 05.05.2015**

Gurbhajan Singh @ Gurbhajan Kumar

.....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. J.B.S. Gill, Advocate
for the petitioner.

Mr. V.P.S. Sidhu, Asst. AG, Punjab.

ANITA CHAUDHRY, J(ORAL)

The revisionist was convicted by the Sub-Divisional Judicial Magistrate, Mukerian to 6 months' rigorous imprisonment under Section 61 of the Punjab Excise Act along with a fine of Rs.5,000/-, vide order dated 16.10.2014. His appeal also did not find favour and was dismissed on 21.01.2015. Dis-satisfied with both the verdicts, present revision has been filed.

The petitioner was taken into custody and had undergone over two months of custody. A prayer for suspension of sentence was made which was opposed. The trial Court record was summoned and arguments on merits were heard.

Narrating the factual matrix; On 17.11.2010, a patrol party headed by ASI Deep Singh was present at Bus Stand, Hajipur, Mukerian. A person was seen coming on a motorcycle carrying plastic containers hanging on both sides of the motorcycle. He was signaled to stop but instead of stopping, he tried to speed up and was apprehended by the police party. On checking, the plastic containers were found to contain illicit liquor. A sample measuring 180 ML was drawn for measurement. It was found to be 99 bottles measuring 750 ML each besides the sample. The liquor was put back in the plastic containers and sealed bearing impression DS. The samples were sent to the Chemical Examiner, Kharar and on receipt of report, the challan was presented.

Charge was framed under Section 61(1)(14) of the Punjab Excise Act. The accused pleaded not guilty. The prosecution had examined four witnesses and their evidence was subsequently closed by Court order.

When confronted with incriminating evidence, the plea taken by the accused was that of denial. He failed to examine any witness in defence.

The main argument pressed on behalf of the defence was that of false implication, link evidence being missing and material discrepancies in the statements of the witnesses.

The trial Court rejected the submissions and convicted the accused to the sentence as mentioned above. The arguments did not find favour even with the appellate Court.

The main submission is that the link evidence which was crucial piece of evidence was missing and when the link in the chain of

evidence breaks, it cannot be said with certainty that the sample which reached the office of Chemical Examiner was the same which was recovered from the accused.

The next contention was that when the police party was at a busy area, it was incumbent upon the Investigating Officer to join independent witnesses and on their refusal, he should have initiated proceedings against them to show that efforts were made in that direction.

There are two fundamental principles in criminal jurisprudence. Firstly, in cases involving the police officials, the law requires the prosecution to prove their case by cogent and convincing evidence and remove all suspicions and where the sentence is stringent the stricter should be the proof.

ASI Deep Singh was heading the police party and had some more officials along with him at Bus Stand, Hajipur at Mukerian on 17.11.2010. The accused was stopped on the basis of suspicion. The Investigating Officer had deposed that efforts were made to include the witnesses from the public but everyone expressed their helplessness. Beyond that he did not say that he had initiated any proceedings against them. The Investigating Officer should have initiated proceedings in case there was refusal. He could have recorded the names of those persons and that would have lend credence to his statement.

The prosecution had examined ASI Deep Singh and Prabhjit Singh, PRHC. Their statements were recorded in November, 2011 and June, 2012 and I find that there are numerous discrepancies in the two statements.

The Chemical Examiner's report Ex.PJ no doubt states that the sample was of illicit liquor and that it was received on 23.11.2010 and that the seals on the exhibits were intact and that the seal tallied with the sample seal sent and it remained in their custody till 06.12.2010.

The accused was apprehended on 17.11.2010. The FIR was received by the Magistrate on 22.11.2010. The sample also reached the office of the chemical examiner on 23.11.2010. It was dispatched on 22.11.2010. The sample remained in custody of MHC Balbir Singh for some time but the prosecution failed to examine Balbir Singh MHC. The sample should have been deposited on 17.11.2010. I find that the statement of ASI Deep Singh is silent with respect to such deposit. In the absence of any statement on behalf of the Investigating Officer or that of Balbir Singh, the question would arise whether the prosecution has been able to lead evidence that the articles seized was kept in proper custody and in proper form and what reached the office of Chemical Examiner was the same article which was seized from the accused. The record shows that affidavit of MHC Balbir Singh is lying on the Court record and it also bears exhibit Ex.PW4/A but it was not formally introduced in evidence. The interim orders passed in the Court file show that MHC Balbir Singh could not be served and bailable warrants were issued against him in the month of May, July & September, 2014. The evidence of the prosecution was closed after the prosecution had availed 15 opportunities. The prosecution had failed to examine Balbir Singh.

The statement under Section 313 Cr.P.C. refers to the affidavit furnished by Balbir Singh. The affidavit Ex.PW4/A was never introduced in evidence nor Balbir Singh MHC was examined. I am constrained to say that both the Courts failed to notice this important aspect. Both the Courts below have not examined this aspect in proper perspective.

Therefore, for the above reasons, it is held that the evidence which was adduced was wholly insufficient to conclude that what was seized from the accused and what was sent to Chemical Examiner was the same article. In the result, the judgment of the trial Court as well as the appellate Court is set aside. The order of conviction and sentence passed against the revisionist is set aside. The revisionist is in jail. He shall be set at liberty forthwith if not required in any other case.

The petition is allowed.

(ANITA CHAUDHRY)
JUDGE

05.05.2015

sunil