

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

**CRR No. 686 of 2015 (O & M)
Date of decision : 26.2.2015**

Hitesh Arora

.....Petitioner

v.

The State of Punjab

.....Respondent

CORAM : HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present : Mr. Gurinder Singh Bhandari, Advocate, for the petitioner

Raj Rahul Garg, J.

Revisionist Hitesh Arora assailed the judgment dated 16.2.2015 rendered by Ms. Saru Mehta Kaushik, Additional Sessions Judge, SAS Nagar, whereby, the appeal filed by the revisionist was dismissed, holding that the prosecution has been able to establish that the accused was found in possession of 36 bottles and 240 nips of 'Officers Choice' whisky, meant for sale in Chandigarh only, which he was carrying to sell it in Lalru and Ambala and further, that the learned trial Court aptly convicted the accused under Section 61 (1) of the Excise Act, 1914 (in short 'the Act). Even the order of sentence was maintained by learned Additional Sessions Judge, SAS Nagar, keeping in mind the fact that this is a case of heavy recovery of liquor from the accused without any licence.

Sh. J.S. Mehndiratta, Judicial Magistrate Ist Class, Dera Bassi, vide order on sentence dated 16.7.2014, sentenced the accused to undergo simple imprisonment for 6 months and to pay a fine of ₹ 1000/- with default clause.

Fine was deposited by the revisionist.

Briefly, facts of the case are like this, that on 7.12.2008, ASI Kuldeep Chand, Investigating Officer of the case, along with police officials was present at ITI Chowk, Lalru, for routine checking. He received secret information at about 4.15 P.M. that accused Hitesh Arora, who is used to smuggle liquor from Chandigarh and selling it at higher price in Lalru and Ambala, could be caught red handed with liquor in heavy quantity in Esteem Car bearing Registration No. HR 26 K 0098. He was bringing liquor from Chandigarh for selling it in Ambala via Punsar side. Ruka was sent, on the basis of which FIR was registered. Naka was led at Johlan Chowk. On seeing an Esteem Car bearing No. HR 26 K 0098, the Investigating Officer gave a signal to the car to stop. On enquiry, the driver of the car disclosed his name as Hitesh Arora. On checking of the car, 3 bags of bottles of 'Officers Choice' whisky and 5 boxes of nips of the same brand, were recovered, which were meant for sale in Chandigarh only. Accused failed to produce any licence for its possession. Thereafter, the Investigating Officer arranged 2 plastic cans and poured the contents of 36 bottles and 240 nips separately into both the cans. One sample from each of the cans was taken. Thereafter, the plastic cans and samples were sealed with impression "KC" on them. Sample seal was also prepared and handed over to HC Kaka Ram. The case property and samples were taken into police possession vide separate recovery memo. Accused was arrested. Rough site plan of the spot was prepared. Statements of witnesses were recorded. Case property was deposited in the malkhana. On completion of necessary investigation, the challan was put in the Court against the accused.

After finding a prima facie case against accused for committing offence punishable under Section 61(1) of the Act, he was charge sheeted

accordingly.

After taking prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded, wherein, each incriminating circumstance appearing in evidence against him, was put to the accused to which, he denied each allegation and pleaded his innocence and false implication.

After hearing both the sides and appraisal of evidence and other material on record, the learned Judicial Magistrate Ist Class, Dera Bassi recorded the judgment of conviction dated 16.7.2014 holding the revisionist guilty for committing offence punishable under Section 61 of 'the Act' and by passing order of the even date on sentence, sentenced him as mentioned above.

This judgment of conviction rendered by Judicial Magistrate Ist Class, Dera Bassi was assailed by the accused in appeal before the Court of Additional Sessions Judge, SAS Nagar, who after hearing both the parties and appraising the entire material coming on record, did not interfere with the judgment of conviction and order of sentence rendered by the JMIC and held that the prosecution has been able to establish that the accused was found in possession of 36 bottles and 240 nips of 'Officers Choice' whisky, meant for sale in Chandigarh only, which he was carrying to sell it in Lalru and Ambala.

Assailing the aforesaid judgment dated 16.2.2015, rendered by the learned Additional Sessions Judge, SAS Nagar, accused Hitesh Arora has come up in revision before this Court.

I have heard learned counsel for the revisionist and have also appraise the entire material coming on record.

During the course of arguments, learned counsel for the revisionist has assailed the impugned judgment only on two counts; one, for non joining of independent witnesses and; second, that the case number was wrongly

mentioned on the samples, sent to Chemical Examiner for test. As such, it cannot be said that the samples sent to FSL for test, were the same, which were drawn from the liquor, allegedly recovered from the possession of the revisionist.

From the above two contentions of learned counsel for the revisionist, it is evident that there is no material on the record to discredit the statements of prosecution witnesses, examined in this case, on the point of recovery of 36 bottles and 240 nips of 'Officers Choice' whisky, meant for sale in Chandigarh only, from the possession of the revisionist, which he was carrying by Esteem Car No. HR 26 K 0098 and was apprehended at Johlan Chowk naka. Learned counsel for the revisionist has tried to contend that, in fact, the aforesaid liquor was being carried by the revisionist as there was marriage in the family but this contention of learned counsel holds no ground in the absence of any evidence and proof to that effect. Learned counsel was countered on this point as to if he has produced any proof on the file in that regard, to which very fairly, he conceded that there is no such proof on the file.

It was next contended by learned counsel for the revisionist that in this case the public witnesses were available at the spot but no one joined as witness of recovery. The place was a thorough fare. Many shops were there in the area but police did not join any independent witness while effecting the recovery and this raises doubt regarding genuineness of the prosecution case.

The above contention of learned counsel for the revisionist is not sustainable as there is no material on the file to show that the police was in any manner inimical to the revisionist. Even otherwise, it is the settled preposition of law that the statements of police witnesses are at par with the statements of non-official witnesses and conviction can well be based on the statements of

police witnesses if the same are consistent and inspire confidence in the mind of the Court regarding guilt of the accused. In **“Gian Chand and others v. State of Haryana, AIR 2013 SC 3395”** it has been held by Hon'ble Apex Court that mere non-joining of independent witnesses, where evidence of prosecution witnesses may be found to be cogent, convincing, credit worthy and reliable, cannot cast doubt on prosecution version if there seems to be no reason on record to falsely implicate the accused.

Next point of argument raised by learned counsel for the revisionist was this, that in this case link evidence is missing. HC Nasib Singh (PW4), who took the samples from malkhana to the office of Chemical Examiner, stated in his cross examination that the samples were pertaining to Case No. 26. As such, prosecution has failed to connect the said samples with this case. With the statement of PW 4, a serious doubt arises in the prosecution case, benefit of which has to be given to the accused.

The above contention of learned counsel for the revisionist is again not sustainable as the learned trial Court has made a mention in the impugned judgment that HC Nasib Singh (PW4), in his examination in chief has stated that the samples bore the seal “KC” and belongs to case No. 138 and further that he took the samples on 18.12.2008. Even report of Chemical Examiner Ex.PK reveals that the samples were of FIR No. 138 dated 7.12.2008 and the same were deposited with FSL on 18.12.2008. Thus, with this evidence on the file, it is established that the samples sent to FSL, pertains to FIR No. 138 and the same were tested in the FSL regarding which report Ex.PK was submitted. The finding of the learned trial Court that the statement of PW 4 is to be read as a whole and further that with the statements of prosecution witnesses, prosecution has been able to establish that the accused was found in possession

of 36 bottles and 240 nips of 'Officers Choice' whisky, meant for sale in Chandigarh only, which he was carrying to sell it in Lalru and Ambala, do not suffer from any illegality, warranting no interference by this Court on the revisional side.

As such, for the above recorded reasons, finding no merit in this revision petition, it is ordered to be dismissed. If the appellant is on bail, his bail bonds, shall stand cancelled and he be taken in custody for serving the remaining period of sentence. The concerned Chief Judicial Magistrate, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The District & Sessions Judge concerned shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance reports, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

(RAJ RAHUL GARG)
JUDGE

26.2.2015
Ashwani