

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

CRR No.2999 of 2010

Date of Decision: June 07, 2016

Krishan Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CRR No.3043 of 2010

Mahabir Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.A. Sheoran, Advocate
for the petitioner (in CRR No.2999 of 2010).

Mr. Parmod Parmar, Advocate
for the petitioner (in CRR No.3043 of 2010).

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

A prosecution was lodged against Mahabir Singh, Naresh @ Minkal, Krishan Kumar son of Juthar, Rajesh, Ram Kumar and Krishan Kumar son of Kanwar Singh on the basis of FIR No.437 dated 3.11.1997 under Sections 420/467/468/471 and 120-B IPC and Section 61 of Punjab Excise Act pertaining to Police Station, Sadar, Charkhi Dadri.

The allegations of the prosecution against the accused are that on 3.11.1997 the Police party while on a routine duty accosted truck bearing No.HR-16GA-0289 and on suspicion the same was checked and from the truck 1332 pouches of country made liquor packed in 12 plastic bags and 11 bottles of foreign liquor were recovered for which the driver could not show any authorisation. The person later identified as Tinkle Mahajan, who was sitting on the seat next to the driver managed to escape. On the statement of truck driver Mahabir Singh it was revealed that he along with one Balwan were working as driver on the said truck and the petitioner Krishan Kumar son of Juthar along with co-accused Krishan Kumar son of Kanwar Singh, Satish Tunda and Rajesh were also co-owners and were carrying on unlawful activities of illegally trading liquor. From the possession of the driver of the truck petitioner Mahabir Singh a challan chit was recovered and challan copy was recovered at the behest of the petitioner Krishan Kumar.

Upon completion of investigations, challan against the accused-petitioners were presented, who pleaded not guilty and claimed trial. The prosecution examined PW1 ASI Ajit Singh, witness to this recovery followed by testimony of PW2 HC Tejvir, PW3 EHC Dharampal, PW4 Ram Chander, PW5 ASI Attar Singh, PW6 SI, Suraj Mal. The prosecution proved requisite documents and, thereafter, closed its evidence. Accused have denied the allegations in their statements under Section 313 Cr.P.C but did not lead any evidence in defence. The learned Judicial Magistrate 1st Class, Charkhi Dadri through judgment dated 22.08.2008 held the petitioners Mahabir Singh and Krishan Kumar son of Juthar guilty of

commission of offences under Sections 467/468 and 120-B IPC and sentenced them to undergo rigorous imprisonment for 03 years and to pay a fine of Rs.500/- each and in default thereof to further undergo imprisonment for a period of one month each and under Section 61 of Punjab Excise Act sentenced them to undergo rigorous imprisonment for six months and to pay a fine of Rs.1000/- each, whereas, remaining accused were acquitted. The convicts challenged the sentence in the Court of learned Additional Sessions Judge, Bhiwani who through consolidated judgment dated 27.10.2010 upheld the findings of the trial Court and dismissed their appeal.

Since both the present revision petitions by the different convicts challenge the same very impugned judgment, order of sentence and, thus, on account of consanguinity of facts and law points are being disposed off together.

The conviction in the light of contentions raised by the learned counsel for the petitioners is under Sections 467, 468 with the aid of Section 120-B IPC. Section 467 of the Indian Penal Code deals with forgery of a valuable security, will etc. and Section 468 IPC deals with forgery for the purpose of cheating. To the very query of the Court, learned State counsel with all fairness has conceded to at the bar that there is not even an iota of evidence to show and establish by any means that the alleged challans recovered from the petitioners Mahabir Singh or Krishan Kumar were either fake, forged or fabricated. The two Courts below have lost sight of the fact that Section 467 IPC deals with *forgery of valuable security, will, etc whoever forges a document which purports to be a valuable*

security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security. But none in evidence is forthcoming in this case by any means and if Section 467 IPC remains unproved then question of applicability of Section 468 IPC stands nullified as it deals with forgery for the purpose of cheating. Nothing has come in the evidence of the Pw's or by any documentary means that the accused in any manner have ever used for the purpose of cheating the said challans so sought to be recovered from them. The accused have never used these documents so claimed to be forged either before the Police or before any other authority to make undue gains out of the same and, therefore, even the very element of cheating as defined in Section 415 IPC is totally missing in this case. If it is assumed for the sake of arguments that the accused were found in possession of such forged documents merely lying in a truck or in the possession of one of the accused does not bring such an act of mere possession within the ambit of these provisions of IPC. No doubt, offence of criminal conspiracy as defined in Section 120-B IPC is independent offence but definition assigned to criminal conspiracy under Section 120B IPC denotes when two or more persons agree to do or cause either an illegal act which is not illegal by illegal means. In the present case even from the evidence, as to transmission of thoughts for showing unlawful design of carrying liquor is not at all

established by any means and merely because there was liquor in the truck which was a manufactured one without a valid authorisation at the most covers the case of the accused under the Excise Act. Thus, the conviction of the petitioners under Sections 467/468 and 120B IPC by the two Courts below certainly is highly uncalled for and, thus, stands set aside.

Section 61 of the Punjab Excise Act 1914 which extends to the State of Haryana as well deals with penalty of offence for contravention of any of the Sections of Excise Act, any rule, notification so issued under the provisions of that very Act and the case of the petitioners at the most stands covered under Section 61(1) (aaa) and by virtue of the same provides entitling payment of penalty of not less than fifty rupees and not more than five hundred rupees per bottle of 750 ml. or part thereof of liquor in respect of which offence is committed which may be imposed by the Collector in the manner prescribed except when the case is referred to by the Collector to the Court for trial and under which the Court might compound the offence by payment of penalty within the discretion of the Court which shall not be less than five hundred rupees and not more than one thousand rupees per bottle of 750 ml. and at the most invites imprisonment of sixty days which may extend to three years or with fine of not less than five thousand rupees. In the present case the petitioners Mahabir Singh and Krishan Kumar son of Juthar who have been found in unauthorised possession of 1332 pouches of liquor each of 200 ml. and 11 bottles of English wine have admittedly as per the stand of the State undergone incarceration for a period of more than 04 months, 20 days and 03 months, 04 days respectively. Thus, a substantial incarceration and have already suffered enormously and since the date of their apprehension have

been under the travails of prosecution and trial of almost 18 years and not only the petitioners but their family members must too have suffered brunt of such illegal conduct and, thus, have already suffered enormously. Commensurate with the nature of offence, this Court is of the opinion that it will meet the ends of justice, if the sentence of the petitioners is reduced to the period already undergone by each of them. However, they are acquitted of the offences under Sections 467, 468 and 120-B IPC. In the light of the same the both the petitions stand partly allowed, sentences modified and disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

June 07, 2016
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