

CRR-1050-2016 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRR-1050-2016 (O/M)  
Date of Decision : 10.5.2016

Gurmeet Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Pritam Singh Saini, Advocate, for the petitioner.

Mr. P.S. Paul, Deputy A.G. Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes.
2. To be referred to the Reporter or not. Yes.
3. Whether the judgment should be reported in the digest ? Yes.

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KULDIP SINGH, J.

The present revision is filed against the judgment dated 9.2.2016, passed by the learned Additional Sessions Judge, SAS Nagar, Mohali, affirming the judgment of conviction and order of sentence dated 27.11.2013, passed by the learned Judicial

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Magistrate 1<sup>st</sup> Class, Dera Bassi, vide which the petitioner was convicted under Section 61 (1)(aa) of the Punjab Excise Act, 1914 and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 5,000/-, in default thereof, to further undergo simple imprisonment for two months.

The brief facts of the case are that on 17.5.2006, a police party headed by SI Subhash Chand received a secret information that Pawan Singla of Godown No. 195, Industrial Area, Ram Darbar, Chandigarh, and Bobby, resident of Dadri, Haryana, indulge in the illegal sale of liquor. Pawan Singla loads liquor in the truck from Chandigarh and sends the same to Bobby in Haryana. In this way, they are indulging in the smuggling of the liquor. Further information was received that even today, Pawan Singla has loaded liquor in LP truck bearing No. PB-12-C-1125 and sending the same to Bobby in Haryana. The said truck is being driven by Gurmeet Singh son of Avtar Singh, resident of village Sabdalpur, P.S. Sadar, Rajpura, District Patiala, and is going from Chandigarh to Dadri. If a picketing is done on the main highway of Chandigarh-Ambala, liquor can be recovered. Accordingly, a picketing was done. The truck bearing registration No. PB-12-C-1125, being driven by accused Gurmeet Singh was stopped. From the search of the said truck, 345

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boxes of liquor mark 'Aristocrat' whisky were recovered. Each box was containing 12 bottles. The bottles were bearing the print 'For Sale in Chandigarh only'. The police accordingly took out the samples and took the case property into their possession. After completion of formalities of the investigation, the challan was presented.

The trial Court chargesheeted the accused under Section 61 (1)(aa) of the Punjab Excise Act, 1914. The accused pleaded not guilty to the charge and claimed trial.

In support of its case, the prosecution examined HC Dharam Chand (PW1), HC Surinder Singh (PW2), C. Jarnail Singh (PW3), Harleen Puri, Assistant Officer, DTO Ropar (PW4), DSP Subhash Chand, the then SI Investigating Officer mentioned wrongly as PW4 (PW5) and closed the prosecution evidence.

When examined under Section 313 Cr.P.C., accused claimed that he is innocent. He is simply a driver of the said vehicle and was not aware about the goods being carried in it. He is not a beneficiary. He has been falsely implicated in the present case. The accused did not lead any evidence in defence.

After hearing learned Additional Public Prosecutor for the State, learned counsel for the accused and going through the

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evidence, learned Judicial Magistrate 1<sup>st</sup> Class, Dera Bassi, convicted and sentenced the accused/petitioner as aforesaid. The appeal filed by the accused against the judgment of conviction and order of sentence before the learned Additional Sessions Judge, SAS Nagar, Mohali, was dismissed.

In this case, the recovery was of 345 boxes of Aristocrat whisky, meant for sale in Chandigarh only and the total quantity comes to 4140 bottles. Before this Court the matter has been contested on the law point.

Learned counsel for the petitioner has vehemently argued that Section 61-A of the Punjab Excise Act, 1914, was in operation at the time of alleged recovery i.e. on 17.5.2006. The then existing Section 61-A of the Punjab Excise Act, 1914, is reproduced as under :-

“Section 61-A – Penalty for offences not triable by a Court – (1) Whosoever, in contravention of any provision of this Act, the rules framed thereunder, any notification issued or any order made or any license, permit or pass granted under this Act, imports, exports, transports or possesses any intoxicants other than those, specified in clause (aa) of sub-section (1) of section 61 (hereinafter referred to as 'such intoxicants') shall, alongwith such intoxicants and means of transport,

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except the passenger buses, owned by the Central Government or the State Government or any of their undertaking, be detained by an Excise Officer, who shall make a report to the Assistant Excise and Taxation Commissioner in-charge of the district, within a period of twenty-four hours of such detention. The Excise Officer shall forward such intoxicants and the means of transport alongwith the necessary documents to the Assistant Excise and Taxation Commissioner in-charge of the district.”

Therefore, it has been argued that the Court has no jurisdiction to decide the present case and it can be decided only by the Assistant Excise and Taxation Commissioner.

The reliance has also been placed on the authority of this Court in Jarnail Singh and others Versus State of Punjab, 2008 (3) RCR (Criminal) 749, which pertains to recovery of 8 bottles of country made Desi Lal Kila licit liquor in the area of Machhiwara in Tehsil Samrala, District Ludhiana.

In the present case, the petitioner was chargesheeted under Section 61 (1)(aa) of the Punjab Excise Act, 1914, as existing at the time of commission of crime, i.e. prior to its deletion w.e.f. 1.4.2013 and read as under :-

“Section 61 (1)-Whoever, in contravention of any section

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of the Act, or of any rule, notification issued or given thereunder or order made, or of any license, permit or pass granted under the Act. -

[(a) xxxxxxxxxx xxxxxxxxxx

(aa) imports, exports, transports or possesses intoxicants, namely, lahan or all liquid consisting of or containing alcohol manufactured otherwise than in a licensed distillery, brewery or bottling plant in the State of Punjab ; or ]”

The said offence carry imprisonment, which may extend to three years or with fine which may extend to ten lac rupees.

In the present case, the facts are different than the facts of Jarnail Singh's case (supra). Section 61-A of the Punjab Excise Act, 1914, specifically makes an exception regarding the cases specified in clause (aa) of Section 61 (1) of the Punjab Excise Act, 1914. Therefore, the said authority of this Court in Jarnail Singh's case (supra) is not applicable to the facts of the present case.

The perusal of Section 61(1)(aa) of the Punjab Excise Act, 1914, which is applicable to the facts of the present case, shows that it relates to imports, exports, transports or possesses intoxicants, namely, lahan or all liquid consisting of or containing alcohol manufactured otherwise than in a licensed distillery, brewery or bottling plant in the State of Punjab. Here, it is not a case of the

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accused that the said liquor was distilled, brewed or bottled in the State of Punjab. The liquor was meant for sale in Chandigarh only. Therefore, the provisions of Section 61 (1)(aa) of the Punjab Excise Act, 1914, were violated. Therefore, the contention of the learned counsel for the petitioner that Section 61-A of the Punjab Excise Act, 1914, as existing at the time of commission of crime is applicable to the facts of the present case and, therefore, the criminal Court had got no jurisdiction, is found to be without any force. There are concurrent findings of two Courts below. Even in statement under Section 313 Cr.P.C., accused had not denied the possession of the liquor and stated that he was merely a driver and was not aware about the goods lying in the truck.

I am not convinced with the said plea of the accused/petitioner as when the liquor boxes are loaded in the trucks, the drivers are generally present near the truck and from the boxes itself, which bear the mark of whisky, one can easily make out that the liquor is being loaded. In these circumstances, the plea of the accused cannot be accepted that he was not aware about the goods loaded in the truck.

Faced with this situation, the learned counsel for the petitioner has prayed for leniency in the sentence.

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In this case, against maximum sentence of rigorous imprisonment for three years, the sentence of rigorous imprisonment for one year has been awarded by the trial Court. Keeping in view the heavy quantity, no further leniency is possible.

Consequently, the present revision is dismissed.

(KULDIP SINGH)  
JUDGE

10.5.2016  
sjks