

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

**CRR No. 1640 of 2007 (O&M)**

Date of decision: 4.8.2017

Sher Singh

.... Petitioner

VS

State of Punjab

.... Respondent

**Coram: Hon'ble Mr. Justice Rajesh Bindal**

Present: Mr. Dhirinder Chopra, Advocate, for the petitioner.

Ms. Anju Arora, Additional Advocate General, Punjab.

**Rajesh Bindal, J.**

Custody certificate of Sher Singh petitioner by way of affidavit of Gurcharan Singh Dhaliwal, Deputy Superintendent, Central Jail, Patiala, dated 20.7.2017, filed in Court, is taken on record.

The petitioner, having been convicted for offence under Section 61(1)(a) of the Punjab Excise Act, has filed the present petition challenging his conviction. The trial Court on conviction sentenced him to undergo imprisonment for six months and to pay fine of ₹ 1,000/-. Judgment of the trial Court was upheld in appeal.

Learned counsel for the petitioner submitted that the petitioner has been falsely implicated. He was working merely as a rickshaw puller. Quantum of liquor shown to have been recovered from the petitioner was also not large as it was 190 pouches of Hero Whisky of 180 ml each.

Though the recovery was shown to be at a public place, but no independent witness was joined. He was first offender. The incident pertains to the year 2001. He further submitted that the petitioner having undergone actual imprisonment for a period of two months and fourteen days, out of six months awarded by the Courts below, the sentence may be reduced to the period already undergone. He has his family to maintain.

On the other hand, learned counsel for the State submitted that non-joining of independent witness is not fatal to the case of the prosecution. The recovery was made from the custody of the petitioner. The same has duly been proved in the Court. The punishment awarded is merely six months, however, she did not dispute the fact that the petitioner was a first offender and had not been involved in any other case subsequent to the case in hand.

Heard learned counsel for the parties and perused the paper book.

Considering the facts of the case in hand where the petitioner has been convicted by the trial Court and on re-appreciation of entire evidence, the same was confirmed by the First Appellate Court, I do not find that there is any error in the findings recorded by the Courts below. However, I find merit in the contentions raised by learned counsel for the petitioner for reduction of the sentence. The incident pertains to the year 2001. About 16 years have gone by. The petitioner was a first offender and there is no record of his further involvement in any case. Out of six months imprisonment awarded, he has already undergone two months and 14 days of actual imprisonment and after adding the remission, the period comes to two months and twenty two days.

Considering the above factors, in my opinion, the sentence awarded to the petitioner deserves to be reduced to the period already undergone, by upholding the conviction. Ordered accordingly.

4.8.2017  
vs

(Rajesh Bindal)  
Judge

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No