

In the High Court of Punjab and Haryana at Chandigarh

CRR No.621 of 2010 (O&M)

Date of Decision:-September 8, 2017

Teja Singh**.....Petitioner**

Versus

State of Punjab**.....Respondent**

CORAM: Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. G.S.Toor, Advocate, for the petitioner.

Ms. Ruchika Sabbharwal, Additional Advocate General, Punjab.

Gurvinder Singh Gill, J.

1. Teja Singh has filed this revision petition challenging judgment dated 09.02.2010 passed by learned Sessions Judge, Mansa whereby his appeal against judgment dated 09.07.2009 passed by learned Judicial Magistrate Ist Class, Mansa convicting him for the offence under Section 61 (i) (a) of the Punjab Excise Act (for short, 'the Act') and sentencing him to undergo R.I. for 6 months, in addition to payment of ₹1,000/- as fine, has been dismissed.
2. The facts in nutshell are that on 26.01.2003 when the police party headed by HC Jagdev Singh, was present near village Narinderpura then a person was seen coming on foot carrying a plastic can in his right hand and who on noticing the police party turned to his left side towards fields. He was apprehended on the basis of suspicion. On inquiry he disclosed his name as Teja Singh. The plastic can carried by him was found to contain illicit liquor.

After drawing a sample nip weighing 180 Mls, the remaining illicit liquor upon measurement came to be 30 bottles. The nip and the plastic can were duly sealed and taken into possession vide recovery memo Ex.PA. The seal bearing impression 'JS', after use, was handed over to HC Labh Singh. A ruqa (Ex.PB) wherein the aforesaid proceedings were recorded was sent to the police station on the basis of which formal FIR (Ex.PC) was registered. The sample nip was sent to FSL for chemical examination and on receipt of the report (Ex.PG) of the Chemical Examiner and upon conclusion of investigation, challan was presented in the Court of learned Judicial Magistrate Ist Class, Mansa on 04.11.2003. The learned Judicial Magistrate upon finding sufficient grounds to presume that the accused had committed an offence punishable under Section 61 (i) (a) of the Act framed charges against the accused on 20.12.2003 to which the accused pleaded not guilty and claimed trial.

3. The prosecution in order to establish the charges framed against the accused examined PW-1 HC Yadwinder Singh MHC, PW-2 HC Jagdev Singh, Investigating Officer, PW-3 HC Labh Singh who was comprised in the police party headed by HC Jagdev Singh and PW-4 Constable Lakhwinder Singh.
4. The learned trial Court upon appreciating the evidence on record held that the evidence led by prosecution fully establishes the charge framed against the accused and accordingly convicted the accused vide judgment dated 9.7.2009. The appeal challenging the said judgment was also dismissed by the learned Sessions Judge, Mansa on 9.2.2010. Feeling aggrieved with the same, accused has filed the present revision petition.

5. Today when the matter was taken up for arguments, the learned counsel for the petitioner, at the very outset submitted that in view of the concurrent findings of the trial Court and the Appellate Court, he does not challenge his conviction and restricts his submission only to the quantum of sentence. The learned counsel submitted that since the petitioner was a young man at the time of commission of offence and a first offender, therefore, the benefit of probation may be extended to him.
6. On the other hand, the learned State counsel has opposed the prayer made by the petitioner for his release on probation on the ground that since the minimum sentence is prescribed for offence under Section 61 (i) (a) of the Act, therefore, the benefit of probation cannot be extended to him.
7. I have considered the rival submissions addressed before this Court and have also perused the record of the case.
8. Though, the learned counsel for the petitioner has confined his submissions only to the quantum of sentence, but this Court deems proper to briefly examine the propriety of the findings of conviction as recorded by the trial Court and affirmed by the lower Appellate Court.
9. PW-1 HC Yadwinder Singh tendered his affidavit Ex.PX in evidence wherein he has deposed that on 26.01.2003 he was posted as MHC at Police Station, Sadar Mansa and on the said day, HC Jagdev Singh deposited the case property with him and that as long as the case property remained in his possession the same was not tampered with. PW-2 HC Jagdev Singh who is the Investigating Officer in the present case stated in detail in respect of the entire proceedings conducted in the case right from apprehension of the

accused upto the filing of challan. PW-3 HC Labh Singh who was comprised in the police party headed by HC Jagdev Singh has also stated about the proceedings conducted in the case including apprehension of the accused and has lent corroboration to the statement of HC Jagdev Singh. PW-4 Constable Lakhwinder Singh tendered his affidavit Ex.PY in evidence wherein he deposed that on 29.01.2003, MHC Head Constable Yadwinder Singh entrusted the sample nip to him for depositing the same in the office of Chemical Examiner, Patiala and that he, accordingly, after making the requisite entry in the office of SSP deposited the same in the office of Chemical Examiner, Patiala on 30.01.2003. He further deposed that as long as the case property remained in his possession the same was not tampered with.

10. The report of the FSL (Ex.PG) reveals that the sample upon analysis was found to be illicit liquor. It is further recorded therein that the seals were intact and tallied with the sample seals. The testimony of the Investigating Officer PW-2 Jagdev Singh find ample corroboration from the testimony of PW-3 HC Labh Singh who was also comprised in the police party when the accused was apprehended. The link evidence is complete in the shape of testimony of PW-3 HC Labh Singh and PW-4 Constable Lakhwinder Singh. The trial Court and the lower Appellate Court have appreciated the evidence in the correct perspective and there is nothing to show that there is any misreading of evidence on record. In these circumstances, this Court does not find any ground to interfere with the findings of conviction of the accused and the same are hereby affirmed.

11. As far as the prayer of the petitioner for his release on probation is concerned, a perusal of Section 61 (i) (a) of the Act does show that a minimum sentence

of 6 months is prescribed therein. However, the said matter has been considered by a Full Bench of this Court which has subsequently been followed by other Benches of this court.

12. In a case reported as 2015(3) RCR 278, Dalbir Singh v. State of Punjab (P&H), where the accused was caught while operating a working still and 50 Kgs of Lahan and 180 Mls. of illicit liquor were recovered from him, the petitioner was ordered to be released on probation while holding therein that a person convicted for offence punishable under Section 61(1)(c) of the Excise Act, where the minimum sentence prescribed is rigorous imprisonment for one year, can be released on probation despite the minimum sentence. It was so held while following a Full Bench judgment in Joginder Singh vs. State of Punjab, 1980 Cr.L.J. 1218, wherein while specifically considering the question of extending benefit of probation in case of conviction for offence punishable under Section 61(1)(c) of the Excise Act inspite of the fact that minimum sentence prescribed is rigorous imprisonment for one year, it was held as under :

“11. It would inevitably follow from the above that in view of the aforementioned precedent of the final court, the provisions of Sections 4 and 6 of the Probation of Offenders Act would in strictness be applicable to offences under Section 61(1)(c) of the Punjab Excise Act, 1914 as well. Once that is so, one fails to see as to how the position under Sections 360 and 361 of the Criminal Procedure Code 1973 can in any way be different and as to why these would not also be applicable within the limitations prescribed thereunder.”

13. Examining the case in hand in light of ratio of above referred judgements, I find that the petitioner who was found in possession of 30 bottles of illicit liquor and was convicted and sentenced under Section 61(1)(a) of Punjab Excise Act can be released on probation in view of the following reasons:

- (i) That the petitioner was aged 25 years and a first offender at the time when recovery of 30 bottles of illicit liquor was effected;
- (ii) The recovery was effected in the year 2003 and thereafter more than 14 years have passed and the petitioner did not repeat the offence;
- (iii) The petitioner remained on bail during the trial and appeal but there is nothing to show that ever misused the said concession;
- (iv) The petitioner has suffered incarceration of trial for approximately 14 years; and
- v) The petitioner has already undergone 2 months and 22 days of imprisonment out of the sentence of 6 months imposed on him;

14. Keeping in view the totality of the circumstances of the case, the present revision petition is partly allowed. The petitioner is ordered to be released on probation for a period of two years from the date he furnishes the bonds in that regard to the satisfaction of the learned Trial Court. During the period of probation, the petitioner shall not commit any offence and maintain good behaviour. He shall give an undertaking to the learned Trial Court that he would undergo the remaining part of his sentence, if called for to do so by a

Court of competent jurisdiction during the period of probation.

15. It is directed that the petitioner shall execute the requisite bonds within four weeks of passing of this order. The amount of fine imposed by the learned Trial Court and maintained by the first Appellate Court shall be converted into litigation expenses.

(Gurvinder Singh Gill)
Judge

September 8, 2017

mohan

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No