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

**CRR No.3118 of 2011 (O&M)
Date of Decision: 21 November, 2017**

Bakta Ram and others ..Petitioners

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Arjun Lakhanpal, Advocate
for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

This criminal revision petition by petitioners Bakta Ram, Balwinder Singh and Madho Singh is against the initial judgment dated 23.07.2011 of learned Sub-Divisional Judicial Magistrate, Hathin passed in FIR No.57 dated 25.2.2011 registered at Police Station, Hathin, whereby, all the petitioners were found guilty for commission of offence under Section 61 of the Punjab Excise Act, 1914 (in short, 'the Act') and sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of Rs.5000/- each and in default thereof to undergo rigorous imprisonment for two months and which findings have merged with judgment dated 12.11.2011 of the Court of learned Additional Sessions Judge, Palwal upholding the conviction and, thereby, dismissing the appeal of the revisionists. That is how the petitioners are before this Court.

Heard learned counsel for the parties and perused the records of the case.

The factual events that are canvassed before this Court by the two sides are that on 25.2.2011, Sub Inspector, Dharambir along with other Police officials while going in connection with investigations in another case accosted two trucks and on seeing the Police party, drivers of the trucks tried to run away but since their way was transgressed by buffaloes going on the road the accused Bakta Ram, Balwinder Singh and Madho Singh were apprehended. On checking of truck No.HR-56G-4563, whose driver was Bakta Ram and conductor was Madho Singh, 124 boxes of English made foreign liquor make Royal Stag; 122 boxes of Derby special English liquor, 99 boxes of Derby black liquor, 80 boxes of God Father beer, 45 boxes of 8 PM English Wine, 98 boxes of English Wine Mugal Monarch, 99 boxes of English wine ACP, 141 boxes of English wine Silver Peg Drizes and 49 boxes of English wine officers choice were recovered and from the second truck bearing No. GJIAT-2997 whose driver was Balwinder Singh, 95 boxes of English wine, Derby special, 50 boxes of quarters of English wine officers choice, 88 boxes of English wine DSP Black, 51 boxes of wine, God Father, 50 boxes of English wine, 8 PM, 140 boxes of English wine Royal Stage, 100 boxes of English wine Mugal Monarch, 120 boxes of English wine Aristocrat and 100 boxes of English wine, ACP were recovered for which the accused could not show any licence, authorisation or bill. After undergoing necessary formalities of drawing samples and Police proceedings, the present case was got registered and upon completion of investigations challan was presented against all the three accused/present petitioners.

The prosecution at the trial examined PW1 Sunil Kadyan, Inspector, who submitted report under Section 173 Cr.P.C, PW2 Dharmbir, Sub-Inspector, who testified as Investigating Officer and thereafter, PW3 HC Dalbir Singh (also referred as Balbir Singh), PW4 Kaushal Yadav, Assistant Chemical Examiner; PW5 Jitender, Constable, PW6 Karambir, HC to lay corroboration to each of the stages in the investigations and in the process, the prosecution proved documents Ex.PW2/A, Ex.PW2/B, ExPW2/C, Ex.PW2/D, PW2/E, Ex.PW2/F, Ex.PW2/G, Ex.PW2/H, Ex.PW2/J, Ex.PW2/K, Ex.PW2/L, Ex.PW2/M, Ex.PW2/N, Ex.PW4/A, Ex.PW5/A, Ex.PW7/A, and Ex.PW7/D and closed the evidence. The accused when put to incriminating evidence oral as well as documentary denied the same taking the plea of innocence but did not lead any evidence in defence and that is how the judgment of conviction has been passed culminating into this revision petition.

Appreciating the submissions, the unchallenged situation in this case that emancipates is that accused have been found innocent and acquitted of the charges levelled under Sections 420,467,468,471 and 120-B IPC and have only been held guilty under Section 61 of the Punjab Excise Act 1914, (as applicable to State of Haryana). Section 46 of the Haryana Act empowers the State Government which may by notification invest any Excise Officer not below the rank of Sub Inspector with power to investigate any offence punishable under this Act. The relevant provisions are reproduced as below:-

> "Power of excise officer to investigate offences punishable under this Act:-(1) This State Government may by notification invest any

> Excise Officer not below the rank of Sub Inspector with power to investigate any offence punishable under this Act, committed within the limits of the area in which the officer exercises jurisdiction."

Furthermore, as per provisions of Section 47 of the Haryana Act, it is the sole prerogative of the State Government as it may prescribe, authorise any officer of excise, Police, salt or land revenue department not below such rank as the State Government may prescribe empowering any person to arrest, without warrant if any person found committing an offence punishable under Section 61 or Section 63 of the Act. Section 75 of this Act mandates with the amendment and substitution by Act of 1964 that no Judicial Magistrate shall take cognizance of offence punishable under Section 61 or Section 66 of his own knowledge or suspicion or on the complaint or report of an excise officer or under Section 62, Section 63, Section 63-A, Section 64, Section 65, Section 68 or Section 70 except on the complaint or report of the Collector or an excise officer authorised by him in that behalf and as a proviso to this provisions no Police Officer or constable discharging the functions of an excise officer shall file a complaint or make the report as per clause (a) in regard to the offences of collection, possession and sale of liquor, committed on the premises of a licensed vend, unless authorised to do so by the Financial Commissioner and except with the special sanction of the State Government no Judicial Magistrate shall take cognizance of any offence punishable under this Act unless the prosecution is instituted within a year after the date on which the offence is alleged to have been committed.

The provisions of Section 75 of the Act are reproduced as follows to lay emphasis:-

> "75 **Cognizance of offence**:-(1)No judicial Magistrate shall take cognizance of an offence punishable:-
> (a) under Section 61 or Section 63 except on his own knowledge or suspicion or on the complaint or report of an excise officer; or
> (b) under Section 62, Section 63 and Section 63-A, Section 64, Section b65 , Section 68 or Section 70 except on the complaint or report of the Collector or an excise officer authorised by him in that behalf:
> (Provided that no police officer or constable discharging the functions of an excise officer shall file a complaint or make the report as per clause (a) in regard to the offences of collection, possession and sale of liquor, committed on the premises of a licensed vend, unless authorised to do so by the Financial Commissioner.)
> (2) Except with the special sanction of the State Government no Judicial Magistrate shall take cognizance of any offence punishable under this Act unless the prosecution is instituted within a year after the date on which the offence is alleged to have been committed".

From the perusal of these provisions, it clearly emancipates that Investigating Officer, SI Dharmbir was Police Officer and learned State counsel could not bring forth anything to convince the Court that this officer was empowered under the Act to arrest and investigate the present matter by any means. Since the accused have been convicted under Section 61 of the Excise Act for unlawful transport of manufactured Indian made foreign liquor which was manufactured in a licensed distillery and it is not the case of the State that there has been violation of any other provisions of the Excise Act/Rules, Customs Act or Indian Tariff Act and, thus, the very competence of the learned Judicial Magistrate to take cognizance of the offence and consequent trial and conviction are certainly illegal and perverse going to the roots of the case of the prosecution. To the mind of this Court there is clear cut violation of the mandate of Section 75 of the Haryana Act for which reliance is being placed on ***1984 (2) RCR (Criminal) 514 Basti Ram vs. State of Haryana*** in which the similar proposition of law was raised where His Lordship has held that a Magistrate was not competent to take cognizance of the offence under Section 61 of the Act on the basis of a report submitted by the Police under Section 173 Cr.P.C and, therefore, manifests to this Court that the entire proceedings are rendered as mistrial necessitating setting aside of the impugned judgment of conviction passed by the trial Court as well as learned First Appellate Court. Thereby, in exercise of powers under Section 401 Cr.P.C holding the same to be a nullity and all consequences arising out of it are hereby set aside, thus allowing the present revision petition.

(FATEH DEEP SINGH)
JUDGE

November 21, 2017
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Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No