

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

CRR No.2062 of 2017 (O&M)
Decided on:-July 21, 2017.

Narpat Singh and another

.....Petitioners.

Versus

The State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Shiv Kumar Sharma, Advocate
for the petitioners.

Mr. Bhupender Beniwal, AAG, Punjab.

HARI PAL VERMA, J.

Petitioners, namely, Narpat Singh and Deepak Kumar have filed the present revision petition challenging the judgment dated 20.05.2017 passed by learned Additional Sessions Judge, Patiala, whereby their appeal filed against the judgment of conviction and order of sentence dated 24.02.2015 passed by learned Judicial Magistrate 1st Class, Rajpura, was dismissed.

Learned Magistrate vide judgment and order dated 24.02.2015 convicted both the petitioners for offence punishable under Section 61(i)(a) of the Punjab Excise Act, 1914 (for short, the Excise Act) and sentenced them to undergo rigorous imprisonment for a period of eight months and to pay a fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of 15 days.

Briefly stated, case of the prosecution is that on 23.07.2008, ASI Rakesh Kumar along with other police officials was present in the area of Pachranga Chowk, Rajpura. In the meanwhile, an Innova car bearing registration No.PB-65G-0349 containing three persons came from the side of under bridge. The vehicle was signalled to stop. But on seeing the police party, one of the said persons absconded from the spot and remaining two persons were apprehended by the police.

On inquiry, the driver of the vehicle disclosed his name as Narpat Singh, whereas the other person disclosed his name as Deepak Kumar. The vehicle was searched and 19 boxes of Macdowel, 18 boxes of Bagpiper and 3 boxes of Royal Stag liquor were recovered by the police. After arranging 4 plastic cans of 100/100 liters and one plastic can of 40 liters, the liquor of bottles was poured into those plastic cans. Sample nip of 180 Ml. each from each of the plastic cans were separated. Sample parcels and the bulk parcels were sealed by the investigating officer with his seal bearing impressions 'RK'. The case property was taken into possession vide separate recovery memo and the seal after use was handed over to HC Gurnam Singh.

The investigating officer sent Ruqa to the Police Station, on the basis of which the FIR No.166 dated 23.07.2008 under Section 61 of the Excise Act was registered against the accused at Police Station City Rajpura. Both the accused were arrested. Rough site plan of the place of recovery was prepared and statements of witnesses were recorded.

After completion of investigation, Challan was presented in the

Court. Copies of challan were supplied to the petitioners-accused free of costs as envisaged under Section 207 Cr.PC. Thereafter, the accused were charge-sheeted by the trial Court for the commission of offence under Section 61(i)(a) of the Excise Act to which they did not plead guilty and claimed trial.

The prosecution, in support of its case, had examined as many as 7 witnesses including investigating officer ASI Rakesh Kumar as PW7. Thereafter, the statements of accused under Section 313 Cr.PC were recorded wherein they denied the allegations levelled against them and pleaded false implication and innocence. However, no evidence in defence was led by both the accused.

Considering the evidence so adduced, the trial Court vide its judgment and order dated 24.02.2015 had convicted and sentenced the petitioners in the manner as mentioned above.

Feeling aggrieved, the petitioners preferred an appeal against the said judgment of conviction and order of sentence before the Court of Session, but the same was also dismissed by learned appellate Court vide judgment dated 20.05.2017.

It is in these circumstances that the petitioners have filed the present revision petition.

At the outset, learned counsel for the petitioners has not challenged the conviction of petitioners and confined his arguments qua the quantum of sentence only. He has submitted that the petitioners are facing the agony of criminal proceedings since 23.07.2008 i.e. the date when the

FIR in question was registered. They are poor persons and are first time offenders. As against the awarded sentence of eight months, they have already undergone imprisonment for a period of more than two months. He has further submitted that the amount of fine has already been paid by the petitioners.

Learned counsel for the petitioners has further submitted that the petitioners are not involved in any other case and, therefore, the sentence awarded to them be reduced to the period already undergone. He has referred to the decision rendered by this Court in ***Criminal Revision No.2895 of 2015*** decided on 23.09.2015, titled as ***Gurmail Singh v. State of Punjab*** to contend that in the similar circumstances this Court has reduced the sentence of the petitioner in that case to the period already undergone.

On the other hand, learned State counsel, though has not disputed the custody of the petitioner, but has argued that learned trial Court has already taken a lenient view regarding the sentence of petitioners. Thus, no interference is warranted in the quantum of sentence.

I have heard learned counsel for the parties.

On perusal of the judgments of both the Courts below, this Court is of the considered view that the trial Court has rightly appreciated the evidence on record while holding the petitioners guilty for commission of offence under Section 61(i)(a) of the Excise Act. The appellate Court has also rightly dismissed the appeal. There is no illegality or perversity in the findings given by both the Courts below which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, learned

counsel for the petitioner has not assailed the judgments of conviction and restricted his arguments qua the quantum of sentence only. The conviction of the petitioners is, therefore, affirmed.

So far as the quantum of sentence is concerned, while dealing with the case of **Gurmail Singh (supra)**, this Court has relied upon **Sukha Singh @ More v. State of Punjab 2010 (4) Law Herald 3218** wherein in the similar circumstances, on the alleged recovery of 60 Kgs Lahan, 5¼ bottles as illicit liquor, the petitioner was convicted and thereafter, released on probation on completion of one month substantive sentence as against the awarded sentence of one year.

Further, in the case of **Amrik Singh v. State of Punjab 2011 (2) Law Herald 1648** where the trial Court has convicted the accused to undergo rigorous imprisonment for one year and the accused was a first time offender, this Court has held that sending a first time offender to jail in the company of hardcore criminals would be unjustified. Accordingly, sentence of the accused in that case was ordered to be undergone despite he being in custody for about two months as against the awarded sentence of one year.

The contention of learned counsel for the petitioners that the petitioners are first time offenders, has not been refuted by learned State counsel. The FIR in question was registered in the year 2008 and since then, the petitioners are suffering the protracted trial. They have already undergone imprisonment for more than two months as against the awarded sentence of eight months.

Therefore, while relying upon aforesaid judgments and taking a

lenient view in the matter, this Court feels that ends of justice will be met if the substantive sentence of the petitioners is reduced to the period already undergone by them.

Ordered accordingly.

Both the petitioners be released forthwith, if not required in any other case subject to payment of fine, if already not deposited.

With the aforesaid modification in the substantive sentence of the petitioners, the present revision petition stands dismissed.

July 21, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No