IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S No.1555-SB of 2004
Date of Decision.22.10.2018

Amarjit Singh ......Appellant

Vs

State of Punjab ...Respondent

2. **CRA-S No.1556-SB of 2004**

Amarjit Singh ......Appellant

Vs

State of Punjab ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikram Kumar, Advocate
for the appellant.

Mr. H.S. Sitta, AAG, Punjab.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two appeals bearing Nos.1555-SB of 2004 and 1556-SB of 2004 preferred by appellant-Amarjit Singh son of Surmukh Singh having been convicted vide judgments passed by the trial Court in case FIRs No.83 & 85 dated 8.5.2002 registered under Section 61(1)(a) of the Punjab Excise Act and 489-C IPC respectively at Police Station Hoshiarpur whereby he has been sentenced to undergo rigorous imprisonment for a period of 1 ½ years with fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for 15 days, and to undergo rigorous imprisonment of three years with fine of ₹500/- and in default of payment, to further undergo rigorous imprisonment for a period of 15 days in case of FIR No.85 dated 08.05.2002.

The case of prosecution as emanated from the judgment and the record is that police officials while on patrolling in the area of Bhangi intercepted scooter bearing No.PB-7-C-5918 allegedly driven by Balwant Kumar @ Suresh Kumar son of Jiwan Lal along with appellant as pillion rider. On search, 24 bottles of English liquor Mark 'Royal' were found from jute bag without permit. As a result, FIR No.83 dated 8.5.2002 was registered. He was found in possession of alleged counterfeit currency of ₹500/-, accordingly FIR No.85 dated 8.5.2002 was registered at Police Station, Hoshiarpur.

As per the disclosure statement made by the appellant, 18 card board cases of three different forms of whisky were recovered from his residence, having a stamp for “sale in Chandigarh only”. During search as indicated above, five counterfeit currency notes of ₹500/- were also recovered, therefore, FIR was also registered. Both the accused including the appellant and other accused were charge-sheeted under the provisions of the aforementioned Sections.

Prosecution examined four witnesses, all police officials and tendered into various evidence. The appellant in the statement made under Section 313 Cr.P.C denied the involvement, however, Amarjit Singh in defence examined one Sukhwinder Kaur as DW1, and tendered into evidence sale deed dated 15.7.1974.

On the basis of evidence brought on record, both the accused have been convicted for the commission of offfences as indicated above.

As per the case of the appellant, it is in these circumstances, judgment of the trial Court has been assailed on the premise that no independent witness was summoned, as the recovery was made in the *abadi deh* area, in essence, no effort was made by the police to join independent witness in the investigation. It was joint house and possession of the appellant cannot be said to be exclusive. After amendment of the charge, statement under Section 313 Cr.P.C was not put to the appellant. The reasoning assigned by the trial Court on not joining of independent witness is conjectural. There was no recovery of the liquor cartons. The prosecution failed to prove that the house from which liquor was allegedly recovered was exclusively owned and possessed by appellant-Amarjit Singh. As per the sale deed brought on record, the house belonged to the mother and this fact has been stated by Sukhwinder Kaur, DW1. The police has implanted/foisted liquor bottles upon appellant in order to avoid their liability, as such quantity of liquor bottles cannot be carried on a scooter.

The alleged counterfeit currency had not been used, therefore, there was no *mens rea* and could not be connected with the recovery of liquor. The forged currency notes were not produced in the Court nor were kept in sealed parcel. This fact has surfaced during the cross-examination of PW3 Didar Singh. The bank official was not having a specialization as he was not in Cash Section Department, therefore, any report of the expert was immaterial nor ascertained that the currency alleged to be recovered was counterfeit.

Learned counsel for the State submitted that prosecution proved guilt of the accused persons to the hilt as the alleged possession of liquor was without permit or licence and non-joining of independent witness cannot be said to be fatal to the case, for, the accused failed to introduce any story of motive as there was no enmity.

As regard counterfeit currency, it was submitted that the bank officials are expert in determining the counterfeit currency notes. Recovery had been made from the possession of the appellant. The accused had the knowledge that currency notes were counterfeit and therefore, they had a *mens rea*, thus, urged this Court for upholding judgment of the trial Court.

I have heard learned counsel for the parties, appraised the paper book, records of the Court below and is of the view that it is a fit case of acquittal.

As per records of the case, sentence of the accused was suspended vide order dated 12.08.2004 when the appeal was admitted as the trial Court while convicting the accused had suspended the sentence for a period of 30 days.

As per version of the prosecution except the examination of the police officials, no independent witness has been joined. It is a matter of fact that the Investigating Officer, who investigated the case was put a specific question with regard to joining of the witness. Finding of the Court below to the effect that owing to busy schedule, no person from the vicinity came forward as witness is wholly imaginary and far-fetched, thus, there is fallacy.

Registration of FIR could have been by joining an independent witness as the prosecution was not novice to the court proceedings. It is settled law that burden heavily lies upon the prosecution, which in the present case is conspicuously wanting, in essence, prosecution failed to discharge the same. Filing of challan without any concrete material, in my view, was a farcical exercise. It is inconceivable that 24 bottles of liquor were recovered from the jute bag that too on the legs of the pillion rider. There is no space on a scooter where heavy bag of 24 bottles can be rested. Had the recovery been from a four wheeler, probably there would have been some substance. The disclosure statement resulting into recovery could not be said to be an actual recovery from the possession of appellant-Amarjit Singh. Prosecution failed to bring on record proof of ownership of the house. Even if there was no enmity or motive attracted, the might of the police cannot be ruled out. Be that as it may, I need not delve upon such circumstance as the accused may be was afraid of not being involved in some other criminal case. Equally so, mens rea on his part of having in possession of counterfeit currency notes of ₹500/- has not been proved. Incident is of the period when fake notes of ₹500/- were in wide circulation. Even an ordinary prudent person would not come to know about genuineness of such fake currency. Prosecution has not examined any witness from printing press except a cashier from bank i.e. PW3 Didar Singh.

All these cumulative factors, if had been examined in the manner as indicated above, it was a case of acquittal, thus, in my view, the trial Court has abdicated in not noticing the aforementioned material illegalities. Prosecution miserably failed to discharge the burden lied upon it.

Resultantly, judgment of the trial Court is set aside and both the appeals are allowed. The appellant is acquitted.

(AMIT RAWAL)
JUDGE

October 22, 2018
Pankaj*

Whether Speaking/Reasoned	Yes
Whether Reportable	No