

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

**Criminal Revision No.1558 of 2018 (O&M)
Date of Decision: September 13, 2018**

Manjodh Singh @ Monu and another

.....PETITIONER(s).

VERSUS

State of Punjab

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Mohd. Yousaf, Advocate
for the petitioner (s).

Mr. Sandeep Kumar, D.A.G. Punjab.

SURINDER GUPTA, J.

Petitioners Manjodh Singh@ Monu and Charanjit Singh @
Bunty were convicted for the offence punishable under Section 61 (1)(a) of
Punjab Excise Act, 1914 and sentenced to undergo rigorous imprisonment
for 2 years and to pay a fine of ₹2000/- each, in default of payment of fine,
to further undergo simple imprisonment for one month, by Judicial
Magistrate 1st Class, Patiala. Both the petitioners filed appeal, which was
dismissed by Additional Sessions Judge, Patiala. The petitioners have
preferred this revision petition challenging the judgment of conviction and
order of sentence passed by the Courts below.

As per case of the prosecution, On 09.08.2013, Head Constable
Lakhwinder Singh of Police Station Kotwali Patiala, was present with his
police party in the area of Shitla Mata Mandir, Sanour Adda (Bus Stop),

Patiala, when a secret information was received that petitioners used to smuggle heavy quantity of cheap English and countrymade liquor from outside and sell the same in Patiala City. On that day also, they were bringing liquor in their Accent Car bearing registration No.CH-03P-3502 and could be apprehended by holding a *Naka* at Bigger Canal Bridge, Sanauri Road. A *Nakabandi* was held and the Accent Car as per secret information was apprehended in which both the petitioners were transporting 40 bottles of Mcdowel Whisky, which were lying on the rear seat and 16 cartons (192 bottles) of countrymade liquor of brand '*Mota Santra*', which were lying in the dicky of the car. Necessary formalities of taking samples and sealing the same and case property were completed and the petitioners were arrested. On completion of investigation, challan against the petitioners was presented in Court.

On finding a prima facie case, both the petitioners were charge-sheeted for the offence punishable under section 61 (1) of Punjab Excise Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined Head Constable Rajiv Sharma as PW1, Head Constable Lakhwinder Singh as PW2, ASI Kuldeep Singh as PW3, Head Constable Suba Singh as PW4, Head Constable Charan Singh as PW5, Head Constable Sukhdev Singh as PW6, Jasbir Singh Jr. Assistant DTO Office, Patiala as PW7.

In their statements recorded under Section 313 Code of Criminal Procedure, both the petitioners denied the allegations levelled against them and pleaded their false implication. Both alleged that they have no concern with the car from which the recovery was effected and

denied that any liquor was recovered from their possession. The petitioners examined MHC Avtar Singh as DW1, who had brought register No.19 and DDR register and placed on file copy of the entry in the register No.19 as Ex.DA and copy of entry number 39 as Ex.DB.

While assailing the judgment of the Courts below, learned counsel for the petitioners has argued that the Courts below have ignored the provisions of Section 75 of Excise Act, 1914 as per which no Judicial Magistrate can take cognizance of an offence punishable under Section 61 or 66 of Excise Act, except on his own knowledge or suspicion or on the complaint or report of an excise officer. In this case, cognizance has been taken on the report submitted by the police. The recovery effected from the petitioners is not of illicit liquor but they were found in possession of more quantity than they were entitled to keep without licence. The Courts below have not taken note of this fact while awarding sentence of rigorous imprisonment for 2 years and to pay a fine of ₹2000/- each to both the petitioners. The investigation in this case was conducted by the officer, who had allegedly effected the recovery, which is in violation of the law settled by Hon'ble Supreme Court in case of ***Megha Singh Vs. State of Haryana 1996(11) SCC 709 and Mohan Lal Vs. State of Punjab (Criminal Appeal No.1880 of 2011 decided on 16.08.2018)***. The owner of the car in which the liquor was allegedly transported, was never arrayed as accused in FIR nor examined any prosecution witness, as such, conscious possession of the liquor was not duly proved. The Investigating Officer instead of taking all the bottles of liquor for testing, have poured the same into the cans and taken the samples, which is also an illegality on their part.

The Investigating Officer has also not joined any independent witness despite having secret information about the petitioners. The seal with which samples and case property were sealed, was also not deposited with the MHC and this fact has also been ignored by the Courts below, while convicting the petitioners.

Learned State counsel has argued that all the police officers of the rank of Head Constable and above, have been notified as Excise Officer, as such, challan was rightly presented by the competent officer. It was proved on record that petitioners were transporting liquor without any valid licence. Their modus was to purchase cheaper liquor and sell it in an illegal manner, in a particular area so as to cause loss to the licensed vendor and the State Exchequer. There was no reason to array the owner of the car as accused or to examine him as prosecution witness as the petitioners were caught transporting the liquor in that vehicle and nothing incriminating was found by the police against the owner of the vehicle. The representative sample was rightly taken at the spot and non joining or non-examination of independent witness does not cause any harm to the prosecution case as it is a settled law that testimony of official witnesses is reliable until or unless something incriminating is proved against them. This contention of learned counsel for the petitioners that the police officer, who has recovered the liquor, was not competent to conduct the investigation has no relevance in view of the observations of Hon'ble Apex Court in case of ***State of Punjab Vs. Baldev Singh (1999) 6 SCC 172***. HC Lakhwinder Singh was competent to impound the liquor, which was illegally being carried by the petitioners and then conduct the investigation.

Firstly, I take the submission of learned counsel for the petitioners that as per provisions of Section 75 Excise Act, a Magistrate can take cognizance of offence punishable under Section 61 or 66 of the Excise Act only on the report of Excise Officer, on his own knowledge or suspicion. The cognizance in this case was taken on the complaint filed by the police. Police Officers in State of Punjab of the rank of Head Constable and above have been conferred with status of First Class Excise Officer. This matter was considered by a Division Bench of this Court in case of ***Darshan Singh Vs. State of Punjab 1971 PLR 492*** and it was observed as follows:-

“6. The competency of the State Government to invest under section 11 of the Excise Act any person including a police officer with the powers of an excise officer not being in dispute, so to determine the extent and ambit of the powers conferred upon such police officers in this behalf, we shall have to take resort to the consideration of the provisions of the relevant notification which, in the present case, is notification No. 990-E&T-56/724, dated 19th March, 1956, because once we come to the conclusion that the power to submit a complaint, as required by section 75 of the Excise Act, is not conferred on the police office in question, then there is no escape from the conclusion that for the purposes of this section he is not an excise officer.

7. The aforesaid notification is known as the Punjab Excise Powers and Appeal Orders, 1956. Order 5 therein mentions three classes of excise officers and designates them as first class, second class and third class. This order further states that the persons mentioned in Groups A, B and C shall be the excise officers of the first class, second class and third class respectively. Then further therein the personnel of the Excise Department falling in

the said three Groups i.e. A, B and C are enumerated and in this enumeration, *inter alia*, the excise sub-inspectors are also placed in Group A, which fact places them in the category of the excise officers of the first class. The personnel of the departments other than the Excise Department mentioned under Group A of Order 6 are expressly invested with the powers of an excise officer of the first class under section 11 of the Excise Act and such personnel, *inter alia*, include all police officers of the rank of Head Constable and any rank superior thereto. Clause C of Order 8 therein enumerates the powers of the excise officer of the first class which, *inter alia*, include the power to investigate under section 46 of the Excise Act.

8. A perusal of the above clearly shows that every police officer of the rank of Head Constable or above has been conferred upon the status of a first class excise officer and has thus been empowered with the powers of investigation under section 46 of the Excise Act.”

From the above, it is evident that a police officers of the rank of Head Constable or above has been conferred the status of First Class Excise Officer, as such, cognizance taken by the Court on the police report is valid. Similar view was also taken by another Division Bench of this Court in case ***The State Vs. Amar Singh 1962 PLR 904.***

While referring to the judgment in case of ***Mohan Lal Vs. State of Punjab (supra)***, learned counsel for the petitioners has argued that the investigation could not be conducted in this case by Head Constable Lakhwinder Singh. This argument of learned counsel for the petitioners has no merit. As already discussed, Head Constable Lakhwinder Singh was competent to effect the recovery from the petitioner. The possession of

whisky and countrymade liquor beyond a particular quantity without licence is an offence and the Investigating officer had not to do any further investigation except preparing documents regarding recovery of whisky/countrymade liquor from the petitioner.

The observations in case of ***Mohan Lal Vs. State of Punjab (supra)***, were made keeping in view the specific provisions of Narcotic Drugs and Psychotropic Substances Act as the punishment provided for possession of narcotic is quite severe.

Hon'ble Constitution Bench of the Apex Court in case of ***State of Punjab Vs. Baldev Singh and ors AIR 1999 SC 2378 (Manu/SC/0981/1999)***, has observed reads as follows:-

“The provisions of Section 100 and 165 Cr.P.C. are not inconsistent with the provisions of the NDPS Act and are applicable for affecting search, seizure or arrest under the NDPS Act also. However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure, comes across a person being in possession of the narcotic drugs or the psychotropic substance, then he must follow from that stage onwards the provisions of the NDPS Act and continue the investigation as provided thereunder. If the investigating officer is not an empowered officer then it is expected of him that he must inform the empowered officer under the NDPS Act, who should thereafter proceed from that stage in accordance with the provisions of the NDPS Act. ”

In view of above observation and keeping in view nature of offence, the observation in case of ***Mohan Lal Vs. State of Punjab (supra)***

have no bearing and are distinguishable.

I find no merit in the submission of learned counsel for the petitioners that the entire case of the prosecution stand vitiated if the investigation has been conducted by the police officer, who effected the recovery.

The next submission of learned counsel for the petitioners is that owner of the car, from which the recovery was effected, was not arrayed as accused or was examined as witness. As already discussed, possession of the liquor without licence is an offence. Owner of the car had no role to play either to prove the possession of liquor without licence by the petitioners or carrying the same in his car by them, as such, the argument of non-examination of owner has also no merits.

Learned counsel for the petitioners has submitted that Investigating Officer should have sent all the bottles of liquor recovered from the petitioners as samples instead of pouring liquor from bottles recovered in this case in cans and taking representative samples. This submission of learned counsel for the petitioners also has no merits as in order to prove possession of English liquor/countrymade liquor or illicit liquor, a representative sample of the liquor recovered from the accused is required to be sent to the Laboratory and not the entire lot. The contention of learned counsel for the petitioners, if accepted, will create an anomalous situation where thousands of bottles are recovered from a person.

Non-joining of independent witness is not a fact to discard the statements of official witnesses. It is a fact of common knowledge that independent witness avoid joining the police party for obvious reasons.

They prefer not to become witness of the State against their co-villager and save themselves and their families from wrath of accused by deposing against him. It is well settled that testimony of official witnesses is as reliable as independent witness.

Hon'ble Division Bench of this Court in the case of **Ramesh Kumar Versus State of Punjab, 2013(4) RCR (Criminal) 320**, has observed that the testimony of official witnesses cannot be discarded until it is proved that they have any animus or hostility against the accused for his false implication. While discussing the question of non-joining of the independent witnesses, it was observed that they are averse to join the police and depose in favour of prosecution as they are afraid of the fact that joining the police and deposing in favour of the prosecution may expose them to serious consequences.

This argument of learned counsel for the petitioners that sample seal was not deposited with MHC also has no merits. After use, the sample seal should not remain in possession of person, who has custody of the case property. On reaching the police station, the case property was deposited with MHC by HC Lakhwinder Singh. Once the case property had been deposited with MHC, the seal with which it has been sealed, could not be deposited with him as it may provide an opportunity to tamper with the case property. Head Constable Kuldip Singh while appearing as PW3 (as ASI) has stated that after use the seal was handed over to him. In view of the facts discussed above, the argument of non-deposit of seal with MHC is discarded.

As per recovery memo Ex.PW2/B, 48 bottles of whisky and

192 bottles of countrymade liquor for "sale in Punjab" were recovered from the possession of petitioner. It is not a case where the petitioners had brought liquor from other State for sale in State of Punjab, however, he was not having licence to possess such quantity of liquor recovered from him.

Perusal of the custody certificates of both the petitioners show that they are not previous convicts. Learned State counsel has also not disputed this fact on perusal of custody certificates, which show that no other case has been registered against the petitioners. Keeping in view the above fact, I am of the opinion that awarding of sentence of rigorous imprisonment for 2 years for the offence punishable under Section 61 (1)(a) of Punjab Excise Act is on higher side and sentence of rigorous imprisonment for 6 months to the petitioners will serve the ends of justice.

As a sequel of my above discussion, this petition is partly accepted. Conviction of the petitioners for the offence punishable under Section 61(1)(a) of Punjab Excise Act as awarded by the Court below is upheld. However, sentence awarded to the petitioners is reduced from rigorous imprisonment for 2 years to rigorous imprisonment for 6 months. The sentence of fine awarded to the petitioners is, however, maintained. Intimation about reduction of sentence of the petitioners be sent to Superintendent, Central Jail, Patiala.

September 13, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***