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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6640 of 2019 (O&M)

Date of decision: March 19, 2019

Rajesh Kumar @ Billa

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Krishan Singh Dadwal, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

The instant petition has been filed under Section 482 of the Code of Criminal Procedure with the prayer to quash the FIR No.181 dated 8.8.1998 registered under Section 61(1)(a) of the Punjab Excise Act, 1914 registered at Police Station Sadar, Hoshiarpur (Annexure P-1) as well as report under Section 173 Cr.P.C. dated 15.4.2000 vide which the petitioner was declared a proclaimed offender in view of the judgment of acquittal dated 3.9.2001 passed by the Additional Chief Judicial Magistrate, Hoshiarpur vide which the other co-accused, who faced trial at length, were acquitted.

Brief facts of the case are that the impugned FIR was registered on 8.8.1998 with the allegation that the complainant/Investigating Officer SI Surinder Kumar, alongwith his co-police officials were busy in checking of the bad elements when a secret information was received that three persons, namely, Rajesh @ Billa, Ashok Kumar @ Babla and Sunil Kumar were

running the business of selling English liquor in a hotel, namely, Chougal Resort, Fast Food, Kurvi Turn, and if a raid is conducted, recovery can be effected. Upon this, the police party conducted a raid and arrested two persons, i.e. petitioner-Rajesh Kumar @ Billa and Ashok Kumar @ Babla and recovered 120 bottles of liquor. Thereafter, 180-180 ml. of liquor was drawn from each bottle as sample and they were sealed bearing impression 'SK' and the FIR was registered.

The police conducted the enquiry and, thereafter, submitted the report under Section 173 Cr.P.C. on 15.4.2000 and it was noticed that accused-Sunil Kumar had surrendered before the Court and he is also on bail.

As per the FSL report, the contents of the sample were found to be 'Whiskey'. Thereafter, the petitioner absented himself from Court proceedings and vide order dated 11.12.2000, the petitioner was declared a proclaimed offender.

Counsel for the petitioner has submitted that in the meantime the co-accused, namely, Ashok Kumar @ Babla and Sunil Kumar faced the full length trial and the Additional Chief Judicial Magistrate, Hoshiarpur vide its judgment dated 3.9.2001 acquitted them observing that the police has failed to prove its case. The operative part of the judgment reads as under :-

“In the present case, it has not been proved that the accused are owners of Fast Food Hotel, Chohal and the liquor recovered from their possession was in their exclusive possession. In order to prove a case under Section 61(1)(a) of Punjab Excise Act, the prosecution is

required to prove exclusive possession of a person on the liquor. The exclusive possession of the accused over the liquor has not been proved beyond doubt because 120 bottles were recovered from a room of Fast Food Hotel, which is not proved to be owned by the accused persons. The place of recovery is an open place which is accessible to all. It has come on the file that adjoining rooms were not searched by the police party. The prosecution was required to prove the ownership of the place from where the alleged recovery was effected, but this fact has not been established on the file.

In the present case, there are material discrepancies in the statements of PW3 ASI Shivraj Singh and Pw4 SI Surinder Kumar, Investigating Officer, with regard to the time of receiving secret information, time of preparation of documents, the time of recording statements of the witnesses, availability of independent witnesses, efforts made by the police party to join independent person and other material facts leading to the place of recovery. These discrepancies cannot be termed as minor discrepancies as per the law laid down by the Hon'ble High Court. Learned defence counsel has placed reliance on an authorities titled as Baljeet Singh Vs. State of Haryana, 2000(3) RCR (Criminal) 350, Punjab and Haryana High Court and Jarnail Singh Vs. State of Haryana, 2000(1) CRC (Criminal) 441. In these authorities the few discrepancies were pointed out and discussed in detail by the Hon'ble High Court. In these authorities, it was held that "such like discrepancies are sufficient to make the prosecution case doubtful." These authorities are fully applicable to the facts of the present case.

In the present case, the case property has also not been connected with the present case. In the bottles which

were produced in the Court were having two different colours although the bottles were of the same brand mark 'silver yet'. The prosecution could not give any explanation with regard to the two different colours of the liquor contained in the bottles from which it is fully clear that the case property was not kept in intact condition by the prosecution which was obligatory on the part of the prosecution to reserve the case property and keeping the seals intact till the production of the case property in the Court. In the present case, it has come in the evidence that no sample of the seal was kept by the Investigating Officer and this fact has been admitted by PW4- Investigating Officer of this case. When the sample of the seal was not retained, then how the Chemical Examiner could come to the conclusion that the seal put on the sample had tallied with the sample of the seal, rather it becomes doubtful as to whether any sample of the seal was sent to the Chemical Examiner or not.

In view of the above stated reasons, this Court is of the considered view that in the present case the prosecution did not join independent witness despite having prior secret information although independent witnesses were very much available at the place of recovery. The prosecution arranged 120 nips for taking samples but even then no independent witness was joined. There is clear cut violation of Section 100(4) Cr.P.C. because two respectables of the locality were not joined by the police before conducting raid. In addition to it, the ownership of place of recovery has also not been proved, case property does not stand properly connected with the present case and there are material discrepancies in the statements of PWs and these facts have made the prosecution case doubtful benefit of which goes to the accused.

The prosecution is to prove its case beyond a reasonable shadow of doubt by leading cogent, reliable and trust-worthy oral as well as documentary evidence. The benefit of doubt always goes to the accused. The mere suspicion, however, strong it may be, cannot take place of proof. The prosecution evidence should be of such a nature which should lead to no other hypothesis except guilt of the accused. The prosecution case has to be proved beyond a reasonable shadow of doubt by leading cogent, reliable and trust-worthy oral as well as documentary evidence but the prosecution has failed to prove its case beyond a reasonable shadow of doubt. Accordingly, the accused stands acquitted by giving him benefit of doubt. Case property be disposed of as per rules after the expiry of prescribed period for filing appeal or revision, if filed, after its conclusion and shall be subject to its result.

File be completed and consigned to the record room.

	Sd/-
	M.S. Randhawa, PCS
Announced in open Court	Additional Chief Judicial Magistrate
Dated : 3.9.2001	Hoshiarpur.”

Counsel for the petitioner has submitted that the aforesaid judgment has attained finality as no appeal was filed by the State.

Counsel for the petitioner has submitted that the petitioner had travelled abroad in search of better job avenues, therefore, he could not obtain the permission of the Court and was declared a proclaimed offender. Counsel for the petitioner has placed reliance upon the passport (Annexure P-4) to show that the petitioner had travelled to Luska and, therefore, he was wrongly declared a proclaimed offender.

Counsel for the petitioner has further submitted that the petitioner has now acquired the status of permanent resident of the said country and even a new passport has been issued in the name of the petitioner by the said country.

Vide order dated 14.2.2019, the petitioner was directed to appear before the trial Court and the trial Court to release the petitioner on interim bail on payment of costs of Rs.25,000/- to be deposited in the government treasury. Counsel for the petitioner has submitted that the petitioner has appeared before the trial Court and he has been released on bail vide order dated 1.3.2019.

Counsel for the petitioner has argued that a perusal of the judgment of acquittal qua the two other co-accused would show that a finding has been recorded by the trial Court that the prosecution has failed to establish that the case property was the same property which was allegedly recovered as the same was never produced before the Court. It is also held that the material discrepancy in the statement of the prosecution witnesses and even it is not proved that the place of recovery was under the ownership of any of the accused.

Counsel for the petitioner has, thus, argued that even if the petitioner is directed to face the trial, no purpose will be served as the judgment of acquittal dated 3.9.2001 has virtually concluded that the prosecution has miserably failed to prove its case against the accused persons which may include the petitioner as no fresh evidence can be led by the prosecution regarding the case property which is held to be not connected with the case, the ownership of the fast food qua which the police has not collected any evidence or produce before the Court and also that even the investigation

is shaking as it has come in the statement of the Investigating Officer that he has not retained any seal and, therefore, even the report of the Chemical Examiner is doubtful.

Counsel for the petitioner has relied upon 2011(2) RCR (Criminal) 453, **Sudo Mandal @ Diwarak Mandal Vs. State of Punjab**, where this Court has held that even in case where an accused has absconded and was declared a proclaimed offender and has not faced the trial but co-accused have been acquitted, the prosecution of the co-accused can be quashed under the inheritance power of the High Court under Section 482 Cr.P.C.

Similar view has been taken by this Court in 2015 (6) RCR (Criminal) 353, **Deepak Vs. State of Punjab**.

No reply has been filed on behalf of the State. However, learned State counsel, on instructions from Investigating Officer, has submitted that the petitioner who was on bail left the country without prior permission of the Court and therefore, he was declared a proclaimed offender. However, it was not disputed that the judgment of acquittal dated 3.9.2001 has attained finality.

After hearing learned counsel for the parties, I find merit in the present petition.

A perusal of the judgment dated 3.9.2001 show that the trial Court has recorded a finding while acquitting co-accused Sunil Kumar and Ashok Kumar @ Babla that the prosecution was miserably failed to prove on all counts as noted above, and, therefore, the accused were acquitted.

A perusal of the judgment would also show that if the petitioner is directed to face the trial after he has appeared before the trial Court and is

released on bail, the prosecution cannot produce any fresh evidence as there are many flaws in the prosecution case:

- (i) The police has failed to collect the evidence regarding the ownership of the place of recovery;
- (ii) The police has failed to connect that the case property which was recovered from the petitioner as the same was never produced before the Court;
- (iii) In the absence of any sample seal which was never prepared by the Investigating Officer, the Chemical Examiner report could not be proved; and
- (iv) Therefore, directing the petitioner to face trial Court, at this stage, is nothing but the misuse of the process of law.

Accordingly, the petition is allowed, the impugned FIR No.181 dated 8.8.1998 under Section 61(1)(a) of the Punjab Excise Act, 1914 registered at Police Station Sadar, Hoshiarpur (Annexure P-1) is quashed and the report under Section 173 Cr.P.C. dated 15.4.2000 vide which the petitioner was declared a proclaimed offender in view of the judgment of acquittal passed by the Additional Chief Judicial Magistrate, Hoshiarpur dated 3.9.2001 vide which the other co-accused who faced trial at length were acquitted, is set aside, subject to payment of costs of Rs.25,000/- to be deposited with the concerned District Legal Services Authority within a period of eight weeks from today.

March 19, 2019
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No