

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision No. 2786 of 2016 (O&M)
Date of Decision: 21.5.2019**

Mohinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Avtar Singh, Advocate for
Mr. H.S.Gill, Advocate
for the petitioner.

Mr. S.S.Cheema, AAG, Punjab.

HARNARESH SINGH GILL, J

The present petition has arisen out of the judgment dated 26.7.2016 passed by the Additional Sessions Judge, Patiala, vide which the appeal filed by the petitioner, challenging the judgment of conviction and order of sentence dated 21.12.2013, passed by the Judicial Magistrate Ist Class, Samana in case FIR No. 100 dated 8.9.2010 under Sections 61 (1) (c) of Punjab Excise Act ('Act' for short), registered at Police Station Ghagga, was dismissed.

Brief facts of the present case are that on 8.9.2010, Head Constable Nishan Singh along with the other members of the police party were on patrolling duty near village Dhuhar. They received a secret information against petitioner Mohinder Singh regarding distilling illicit liquor. Accordingly, the police party raided the place where the petitioner

was distilling illicit liquor in the room situated in the fields, where a tubewell motor was installed. During raids the utensils pertaining to distilling illicit liquor along with bottles and half burnt wooden pieces and other components were recovered by the police party and were taken into possession. Accordingly, the present FIR was registered against the accused-petitioner.

After completion of investigation and necessary formalities, challan was presented against the petitioner.

Charge was framed against the petitioner under Sections 61(1) (c) of the Act to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as five witnesses, including ASI Nishan Singh Investigating Officer as PW-3, who reiterated the fact that the material and the utensils for distilling illicit liquor were recovered from the spot and the petitioner was caught red handed.

In the statement recorded under Section 313 Cr.P.C., the petitioner-accused denied the charges and pleaded false implication.

After taking into consideration the evidence on record, the Judicial Magistrate Ist Class, Patiala vide judgement and order dated 21.12.2013 convicted the petitioner under Sections 61 (1) of the Act and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 5000/-. In default of payment of fine, he was to further undergo simple imprisonment for a period of one month.

Aggrieved of the said judgment and order, the petitioner preferred an appeal which came up for hearing before the Additional Sessions Judge, Patiala and the same was dismissed by the Appellate Court

vide judgment dated 26.7.2016.

Still aggrieved, the petitioner has preferred the present revision petition before this Court.

I have heard learned counsel for the parties and have also gone through the record of the Courts below, with their able assistance.

At the very outset, learned counsel for the petitioner contends that he does not want to challenge the finding of conviction and confines his prayer to the quantum of sentence only. It has been submitted by the counsel for the petitioner that the petitioner is a first offender and has been facing the protracted trial for the last nine years as the incident is of September, 2010. Besides the petitioner had remained in custody for over two months.

In the present case, the total sentence awarded to the petitioner is of one year out of which he has already undergone two months and three days.

As a sequel to the above, it is apparent that both the Courts below have rightly held the petitioner guilty for the commission of offence punishable under Section 61 (1) of the Act and as such, the counsel for the petitioner has very fairly proposed not to challenge the conviction of the petitioner.

In the present case, the petitioner has been facing the agony of trial for the last nine years and he is a first offender. The recovery was effected in the year 2010. The petitioner remained on bail during trial and appeal but he did not misuse the said concession. Even the grant of remission would reveal that the petitioner has been maintaining good behaviour in jail and is in the process of reforming himself. However, on the strength of the judgments rendered in the matters of ***Joginder Singh***

versus State of Punjab 1980 PLR 585 (Full Bench), Kuldip Chand versus State of Punjab, 2013 (1) R.C.R. (Criminal) 636, Nishan Singh versus State of Punjab CRR No. 2102 of 2012 decided on 20.9.2012 and Nachattar Singh versus State of Punjab 2005(3) R.C.R. (Criminal) 281, it is manifestly clear that a person convicted for the offence punishable under Section 61 (1) of the Act, where the minimum sentence prescribed is rigorous imprisonment for one year, can be released on probation. Relevant consideration as discussed above would place the petitioner in the said bracket.

Keeping in view the totality of the facts and circumstances of the case, the present revision petition is partly allowed. The petitioner is ordered to be released on probation for a period of two years from the date of his furnishing bonds to the satisfaction of the learned trial Court. During the said period of probation, the petitioner shall not commit any offence and be of good behaviour. He shall give an undertaking to the learned trial Court that he would undergo the remaining part of his sentence, if and when called upon to do so by a Court of competent jurisdiction during the period of probation.

The amount of fine imposed by the trial Court and maintained by the Appellate Court shall be converted into litigation expenses.

(HARNARESH SINGH GILL)
JUDGE

May 21, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No