

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-1687-2017 (O&M)

Date of decision: 07.03.2019

Satish Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Aseem Kataria, Advocate for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

Through this revision, petitioner has laid challenge to judgment dated 21.03.2017 of the Ist Appellate Court, whereby his appeal against the judgment of conviction and order of sentence dated 02.05.2014, of the trial Court, was dismissed, upholding his conviction under Section 61(1)(a) of the Punjab Excise Act, 1914 (for short-'the Act') and sentencing to undergo RI for one year and to pay fine of Rs.1000/-. In default thereof, to further undergo simple imprisonment for 10 days.

Briefly, the petitioner was booked, tried and held guilty in the manner as narrated above, in case FIR No. 92 dated 14.08.2007 registered under Section 61 of the Act, Police Station Dera Bassi, on the

allegations that on 14.08.2007, he was caught red handed carrying 484 boxes of liquor of different brands in a truck bearing registration no. PB-05-L-6417.

Being aggrieved, the petitioner preferred appeal, but remained un-successful as his appeal too was dismissed vide judgment impugned herein.

Learned counsel for the petitioner, *inter alia* contends that impugned judgment of the Ist Appellate Court, is based of surmises and conjectures. The alleged recovery was effected from the petitioner on 14.08.2007, but the same was never produced before the Magistrate, prior to 25.10.2013 i.e. after six years for the reasons best known to the prosecution. Therefore, possibility of tampering with the case property cannot be ruled out. Even on some boxes, out of total 484, there was no identification mark showing FIR number etc. Both the Courts below have failed to appreciate the delay of 13 days in sending the samples to the FSL laboratory, was fatal to the prosecution case. Petitioner was only a driver of the vehicle. Owner of the offending truck was never made accused or tried which is also fatal to the prosecution.

On the other hand, learned State counsel pleading the validity and legality of judgments of both the Courts below contends that huge quantity of liquor i.e. 484 boxes was effected from the offending truck driven by the petitioner. At the time of production of case property during trial, its seals were found intact. Therefore, there was no tampering with the case property. Since, there was no tampering in the

sample of the liquor recovered from the petitioner, therefore, its sending to the FSL Laboratory, after 13 days was not fatal.

Having given thoughtful consideration to the rival submissions, this Court finds the instant revision completely devoid of any merit for the reasons to follow:

No question of law much less substantial has been raised in this revision.

In revision, this Court has very limited power, which can only be exercised, (i) when the Courts below have acted beyond the jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

After going through the judgments of both the Courts below, this Court does not find any such infirmity, inasmuch as, the same are well-reasoned and based on appreciation of evidence. Therefore, the same are not required to be interfered with.

In the instant case, the petitioner was caught red handed with around 5000 bottles of liquor contained in 484 boxes. Such a extraordinary quantity of liquor cannot be falsely planted upon a person by the police, by spending huge money from its own pocket. At the time of production of case property during trial, its seals were found intact. Both the courts below have already dealt with the arguments raised by learned counsel for the petitioner before this Court. Therefore, their further dealing would amount to repetition and wasting precious time of the Court.

The instant revision, being meritless, is dismissed.

A copy of this order be sent to the Chief Judicial Magistrate, SAS Nagar, Mohali who shall issue warrants of arrest against the petitioner to undergo remaining part of the sentence.

March 07, 2019

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No