

In the High Court of Punjab and Haryana at Chandigarh

CRR No.2186 of 2018 (O&M)

Date of Decision:-17.01.2019

Baljeet Singh @ Kala

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. Gurinder Singh Brar, Advocate, for the petitioner.

Ms. Simranjeet Kaur, AAG, Punjab.

GURVINDER SINGH GILL, J.

1. Baljeet Singh @ Kala has filed this revision petition challenging judgment dated 5.5.2018 passed by learned Additional Sessions Judge, Bathinda whereby his appeal against judgment dated 1.2.2016 passed by Judicial Magistrate Ist Class, Phul convicting him for offence under Section 61 (1) (c) of the Punjab Excise Act (for short, 'the Act') and sentencing him to undergo rigorous imprisonment for 1 year, in addition to payment of ₹ 500/- as fine, has been dismissed.
2. The facts in nutshell are that on 3.6.2013 when the police party headed by ASI Parbat Singh, was patrolling in the area of village Chauke Balloh and Badiala, then upon receipt of secret information, a raid was conducted at the fields of Baljeet Singh @ Kala where he was found distilling illicit liquor on working still. Liquor containing 150 kg. along with the working still, a plastic canny containing 19 $\frac{3}{4}$ bottles of illicit liquor, 9 drums of plastic containing 200 litres containing Lahan and a small drum containing 100 litres of Lahan were taken into possession which were duly sealed and taken into possession vide

recovery memo Ex.PS. Two sample nips of illicit liquor were sent to FSL for chemical examination and on receipt of the report of the chemical examiner and upon conclusion of investigation, challan was presented in the Court of learned Judicial Magistrate Ist Class, Phul. Charges were framed against accused for offence punishable under Section 61(1)(c) of the Act on 9.11.2013 to which the accused pleaded not guilty and claimed trial.

3. The learned trial Court upon appreciating the evidence on record held that the evidence led by prosecution fully establishes the charge framed against the accused and accordingly convicted the accused vide judgment dated 1.2.2016. The appeal challenging the said judgment was also dismissed by the learned Additional Sessions Judge, Bathinda on 5.5.2018. Feeling aggrieved with the same, accused has filed the present revision petition.
4. Today when the matter was taken up for arguments, the learned counsel for the petitioner, at the very outset submitted that in view of the concurrent findings of the trial Court and the lower Appellate Court he does not challenge his conviction and restricts his submission only to the quantum of sentence. The learned counsel submitted that since the petitioner was a young man at the time of commission of offence and a first offender, therefore, the benefit of probation may be extended to him.
5. On the other hand, the learned State counsel has opposed the prayer made by the petitioner for his release on probation on the ground that since the minimum sentence of two years is prescribed for offence under Section 61(1)(c) of the Act, therefore, the benefit of probation cannot be extended to him.
6. I have considered the rival submissions addressed before this Court and have

also perused the record of the case.

7. The trial Court and the lower Appellate Court have appreciated the evidence in the correct perspective and there is nothing to show that there is any misreading of evidence on record. In these circumstances, this Court does not find any ground to interfere with the findings of conviction of the accused and the same are hereby affirmed. As far as the prayer of the petitioner for his release on probation is concerned a perusal of Section 61(1)(c) of the Act does show that a minimum sentence of 2 years is prescribed therein. However, the said matter has been examined by a Full Bench of this Court which has subsequently been followed by other Benches of this court.
8. In a case reported as 2015(3) RCR (Criminal) 278, Dalbir Singh v. State of Punjab (P&H), where the accused was caught while operating a working still and 50 Kgs of Lahan and 180 Mls. of illicit liquor were recovered from him, the petitioner was ordered to be released on probation while holding therein that a person convicted for the offence punishable under Section 61(1)(c) of the Excise Act, where the minimum sentence prescribed is rigorous imprisonment for one year, can be released on probation despite the minimum sentence. It was so held while following a Full Bench judgment in Joginder Singh vs. State of Punjab, 1980 Cr.L.J. 1218, wherein while specifically considering the question of extending benefit of probation in case of conviction for offence punishable under Section 61(1)(c) of the Excise Act inspite of the fact that minimum sentence prescribed is rigorous imprisonment for one year, it was held as under :

“11. It would inevitably follow from the above that
in view of the aforementioned precedent of the final

court, the provisions of Sections 4 and 6 of the Probation of Offenders Act would in strictness be applicable to offences under Section 61(1)(c) of the Punjab Excise Act, 1914 as well. Once that is so, one fails to see as to how the position under Sections 360 and 361 of the Criminal Procedure Code 1973 can in any way be different and as to why these would not also be applicable within the limitations prescribed thereunder."

9. Examining the case in hand in light of ratio of above referred judgements, I find that the petitioner who was found in possession of illicit liquor along with the working still and a drum containing Lahan and was convicted and sentenced under Section 61(1)(c) of Punjab Excise Act can be released on probation in view of the following reasons:

- (i) That the petitioner was aged 34 years and a first offender at the time when recovery of illicit liquor along with the working still and Lahan was effected;
- (ii) The recovery was effected in the year 2013 and thereafter more than 5 years have passed and the petitioner did not repeat the offence;
- (iii) The petitioner remained on bail during the trial and appeal but there is nothing to show that ever misused the said concession;
- (iv) The petitioner has suffered incarceration of trial for approximately 5 years; and
- (v) The petitioner has already undergone 10 months and 6 days of imprisonment out of the sentence of 1 year imposed on him.

10. Keeping in view the totality of the 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 he furnishes the bonds in that regard to the satisfaction of the learned Trial Court. During the period of probation, the petitioner shall not commit any offence and maintain good behaviour. He shall give an undertaking to the learned Trial Court that he would undergo the remaining part of his sentence, if called for to do so by a Court of competent jurisdiction during the period of probation.
11. It is directed that the petitioner shall execute the requisite bonds within four weeks of passing of this order. The amount of fine imposed by the learned Trial Court and maintained by the first Appellate Court shall be converted into litigation expenses.

(GURVINDER SINGH GILL)
JUDGE

17.1.2019

kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No