

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 01.04.2019

1. CRA-S-10585-2018 (O&M)

Pankaj Bansal @ Sonu

... Appellant

Vs.

State of Punjab

... Respondent

2. CRA-S-18-2019 (O&M)

Gurmit Singh @ Sonu @ Dhamuri

... Appellant

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. B.S. Bhalla, Advocate
for the appellant (in CRA-S-10585-2018).

Mr. A.P.S. Sandhu, Advocate
for the appellant (in CRA-S-18-2019).

Mr. M.S. Nagra, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in both these appeals is for setting aside the judgment of
conviction dated 13.12.2018, vide which the appellants were held guilty for the

offence punishable under Section 61(1)(iii) of Punjab Excise Act (for short 'the Act') and the order of sentence of even date, vide which they were sentenced to undergo R.I. for a period of two years with a fine of Rs.2.00 lacs each, and in default of payment of fine, to further undergo R.I. for two months.

Brief facts of the case are that on 20.04.2015, ASI Parminder Singh along with other police officials, on private vehicles, were conducting checking of the vehicles near the graveyards of Mai Jeewan, Gujjarpura, Amritsar in connection with patrolling and search of bad elements. A car bearing registration No.PB-02-CL-7666 of silver colour was seen coming from the side of Tarn Taran, which was signalled to stop. On being so asked, the driver of the said car disclosed his name as Pankaj Bansal @ Sonu, while the other person, sitting besides him, disclosed his name as Gurmit Singh @ Sonu @ Dhamuri. Efforts were made to join independent witnesses in investigation but no one agreed. When ASI opened the door of the car and tried to search the same, then accused Gurmit Singh took out a polythene bag from the right pocket of his pant and tried to throw the same. In that process, he was caught by ASI from his right wrist. On checking the said polythene bag, it was found containing intoxicant powder. Out of the recovered intoxicant powder, a sample of 05 grams was taken out and it was put in a separate plastic container. The remaining bulk powder was weighed, which came out to be 265 grams. Bulk powder was also put in a separate plastic container. Both the bulk parcel and sample parcel were sealed with the seal impression 'PS' and sample seal was prepared separately by the Investigating Officer and the same were also affixed on the same. On search of the car, 120 bottles of Whisky 'Cash' were recovered.

The liquor contained in the bottles was poured into a tub, out of which a nip of 180 ml was taken out as sample and the remaining liquor, on measuring came out to be 119 bottles of 750 ml each and one bottle of 570 ml. The recovered liquor was re-poured into a plastic cane. The plastic canes containing the bulk liquor and the sample nip were sealed by the Investigating Officer with his seal impression PS. Form M-29 was also prepared at the spot. The seal, after use, was handed over to HC Balkar Singh. Recovered intoxicant powder, liquor and the car were taken into possession vide separate memo of recovery, which was witnessed by HC Balkar Singh and HC Anil Kumar. As the accused could not produce any permit or license for possessing intoxicant powder and liquor, ruqa was sent to the police station for registration of the FIR on the basis of which, formal FIR was registered. Site plan of the place of recovery was prepared. The accused were formally arrested and statements of witnesses were recorded.

After completion of the investigation, challan was presented before the trial Court and the charges were framed under Section 22 of NDPS Act read with Section 61(1) of the Act. The prosecution, in its evidence, recorded the statements of PW1 Lady Constable Narinder Kaur carrier, PW2 Sarabjit Singh Bajwa, ACP (North), PW3 ASI Parminder Singh, who conducted the investigation, PW4 ASI Satnam Singh and PW5 HC Balkar Singh. Thereafter, statements of the accused under Section 313 Cr.P.C. was recorded and all the incriminating evidence was put to them, but they denied the allegations levelled against them and pleaded innocence. In defence, the accused examined ASI Vinod Kumar as DW1, who brought the relevant record and DW2 Constable Sandeep Kumar and he proved on record copies of register No.19 as Ex.DW2/A

and Ex.DW2/B and also proved the entry made in register No.21 as Ex.DW1/C. Thereafter, vide impugned judgment of conviction and order of sentence, the trial Court convicted and sentenced the appellants to undergo R.I. for a period of two years.

Learned counsel for the appellants have argued that once on the same set of allegations, charge under Section 22 of NDPS Act was not proved, conviction of the appellants under Section 61 of the Act is not sustainable. It is further argued that as per the report of FSL Ex.PY/1, there is no proper reference of the seal impression PS, therefore, identity of the sample and bulk parcel is not proved and there are contradictions in the statements of the prosecution witnesses.

Learned counsel for the appellants have lastly argued that out of two years R.I. awarded by the trial Court, appellant Gurmit Singh @ Sonu @ Dhamuri has undergone 01 year, 04 months and 28 days of total sentence including remission and appellant Pankaj Bansal @ Sonu has undergone 01 year, 11 months and 18 days and their sentence may be reduced to the period already undergone by them, considering the fact that they are facing the trial since 2015; they are first offenders; they have their own families to look after; they are young persons and there is a possibility of improvement in future.

Learned State counsel, in reply, has argued that recovery of 120 bottles of Whisky, from the possession of both the appellants, is proved and there are no material contradictions in the statements of the prosecution witnesses, which are otherwise minor in nature and are bound to occur with the passage of time.

After hearing learned counsel for the parties, I find no merit in the present appeals qua conviction of the appellants under Section 61 of the Act, as the arguments raised by learned counsel for the appellants that identity of the case property is not proved, as there was no seal impression PS on the FSL report Ex.PY/1, is liable to be rejected, because the prosecution witnesses were not confronted with the report by PW1 MHC Narinderjit Kaur, PW2 Sarabjit Singh Bajwa and PW3 ASI Parminder Singh, Investigating Officer, during their cross-examination and therefore, I uphold the findings recorded by the trial Court that reference of seal impression PS is duly given in Register No.19 as well as relevant entry Ex.DW2/A.

However, considering the fact that appellant Pankaj Bansal @ Sonu has undergone the almost sentence and is only short of only 12 days to complete his two years sentence and another accused Gurmit Singh @ Sonu @ Dhamuri has also undergone 01 year, 04 months and 28 days of total sentence, as per the custody certificate dated 01.04.2019 filed in the Court today and also in view of the fact that appellant Pankaj Bansal @ Sonu is not involved in any other case, I deem it appropriate to reduce the sentence awarded by the trial Court to both the appellants, to the sentence already undergone by them.

It is worth noticing here that the trial Court has imposed a fine of Rs.2.00 lacs each on the appellants under Section 61(1)(iii) of the Act, which is highly excessive. As per provisions of Section 61 (i) of the Act, where it is provided that the imprisonment shall not be less than 06 months and fine shall not be less than Rs.1000/-. Therefore, imposing of fine of Rs.2.00 lacs each on the appellants is not sustainable and the same is reduced to Rs.2,000/- each.

It is directed that the appellants will pay the said amount of fine within a period of 04 months from today, failing which they will have to undergo R.I. for a period of 15 days.

Since sentence of the appellants was suspended, their bail/surety bonds shall stand discharged.

With the aforesaid modifications, both the aforesaid appeals are disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

01.04.2019
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No