

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-2064 of 2008(O&M)
Date of decision:-27.2.2020

Makhan Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Tarundeep Kumar, Advocate for
Mr.D.S. Pheruman, Advocate
for the petitioners.

Rana Harjasdeep Singh, DAG, Punjab.

H.S. MADAAN, J.

Makhan Singh son of Dalip singh, resident of Kotla Sahian,
Police Station Sadar, Batala, District Gurdaspur and Tarsem Singh son of
Mohinder Singh, resident of Kamo Nangal, Police Station Sadar, Batala,
District Gurdaspur, both of them being accused in FIR No.32 dated
28.2.2004 for the offence under Sections 61(1)(14) of Punjab Excise Act

(hereinafter referred to as the Act) registered with Police Station Beas had faced trial by Sub Divisional Judicial Magistrate, Baba Bakala.

As per the prosecution story on receipt of reliable secret information, ruqa had been sent to the police station on the basis of which formal FIR was recorded, a picket was laid and an Indica car bearing registration No.PB-18H-0646 was spotted coming from Jalandhar. It was intercepted. Both the occupants tried to run away but they were apprehended and on being inquired, they disclosed their names as Tarsem Singh and Makhan Singh. Personal searches of those two was conducted and 11 bottles of McDowell, 12 bottles of Royal Stag and 115 bottles of 8 PM, total 138 bottles of English wine were recovered. The accused could not produce any permit or licence for possession of such quantity of liquor. Sample nips were taken out of those bottles. The sample nips and the bottles containing remaining liquor were sealed. Those were taken into police possession. The car was also seized. Site plan of the place of recovery was prepared. Statements of witnesses were recorded. Accused were formally arrested. During the course of investigation sample nips were sent to the office of Chemical Examiner, Chandigarh and as per report received the contents were found to be that of whisky.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court of Sub Divisional Judicial Magistrate, Baba Bakala, copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Sub Divisional Judicial Magistrate, Baba Bakala finding that charge for offence under Section 61(1)(a) of the Act was disclosed against the accused, charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined in as many as four witnesses i.e. PW1 SI Swaran Singh, PW2 HC Baldev Singh, PW3 Constable Avtar Singh and PW4 Satbir Singh.

With that the prosecution evidence stood concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

Accused did not lead any evidence in defence.

The trial Court formulated following points for determination:

1. Whether from the recovery of Whisky was effected from the possession of the accused?
2. Whether the independent witness was joined at the time of effecting the recovery of liquor from the accused?
3. Whether the case property was produced in the Court in intact form?
4. Whether the link evidence is established?

After hearing learned counsel for the parties, the trial Court decided all the points in favour of the prosecution and against the accused

and vide judgment dated 8.2.2008 convicted both the accused for the offence under Section 61(1)(a) of the Act and sentenced them to undergo rigorous imprisonment for one year each and to pay a fine of Rs.1,300/- each and in default of making of payment of fine, they shall further undergo rigorous imprisonment for 30 days.

Feeling dissatisfied by such judgment of conviction and order of sentence, accused preferred an appeal before the Court of Sessions, Amritsar, which was assigned to learned Additional Sessions Judge, Amritsar, who vide judgment dated 26.8.2008 dismissed the said appeal.

Still feeling aggrieved, the accused/convicts had preferred the instant revision petition before this Court praying that the same be accepted and the judgments passed by the Courts below against them be set aside and they be acquitted of the charge framed against them.

Notice of the revision petition was issued to the respondent – State, which put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

As far as conviction of the accused under Section 61(1)(a) of the Act, that was rightly done by the trial Court and upheld by the learned Additional Sessions Judge, Amritsar since the prosecution had led sufficient oral as well as documentary evidence in that regard.

PW1 SI Swaran Singh and PW2 HC Baldev Singh had supported the prosecution story on material aspects with regard to the recovery of bottles of liquor from the possession of the accused. Although both these PWs were cross-examined at length on behalf of the accused

but they stuck to their guns and could not be shattered on any material point. A few minor contradictions and variations in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses who depose in a parrot like manner. I find presence at the spot of both the witnesses to be likely and probable and account given by both of them to be worthy of reliance. PW3 C Avtar Singh and PW4 Satbir Singh had also corroborated the prosecution version. Further on being analyzed the sample nips were found to be that of whisky. Therefore, all the ingredients of Section 61(1)(a) of the Act were fulfilled and there is no reason to interfere with the judgments with regard to the conviction part.

As far as sentence part is concerned, the accused had been sentenced to undergo rigorous imprisonment for one year each and fine of Rs.1,300/- each and in default of making of payment of fine, they shall further undergo rigorous imprisonment for 30 days.

As per the custody certificates filed by the State counsel both the accused have undergone 2 months and 29 days of total sentence including remission. They are not shown to be involved in any other

criminal case. Therefore, the request of learned counsel for the revisionist for giving them benefit of probation can be considered.

The trend of modern penology is towards reform, rather than retribution. A criminal is treated like a patient, whose rehabilitation in the society is called for and efforts are made to wean away a criminal from path of crime and make him a responsible member of the society. Probation is meant to put a criminal under observation to see that he is absorbed in the society again and is not discarded as an outcast. If during the period of observation, he takes to path of crime again, then he can be hauled up and put behind bars to undergo the sentence.

Both the petitioners are stated to be aged around 50 years and first offenders. No previous conviction against them is alleged or proved and further there is nothing on record to show that after suspension of their sentence and their releasing on bail they have indulged in any crime. The incident is of the year 2004 and about 16 years had elapsed therefrom.

Under the circumstances, benefit of probation can be extended to them with a rider that in case they indulge in any criminal act, the benefit of probation granted to them shall be liable to be withdrawn. Therefore, the revision petition is disposed of with modification in sentence part. The impugned judgments are modified to the extent that the revisionists are ordered to be released on probation of good conduct for a period of one year, subject to their furnishing personal bonds in the sum of Rs.50,000/- each with one surety in the like amount. They are directed to appear before the trial Court to receive sentence as and when called upon by the Court to do so within a period of next one year and in the

meanwhile to keep peace and be of good behaviour. They are also burdened with Rs.25,000/- each as cost. The bonds be furnished and cost be deposited in the trial Court within a period of three weeks from today, otherwise the revision petition would be taken to have been dismissed in toto and learned Chief Judicial Magistrate, Amritsar would issue re-arrest warrants against the revisionists so as to get their arrest effected and then they be sent to jail to undergo the remaining sentence.

Necessary intimation be sent to the quarter concerned.

27.2.2020

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No