

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

CRR-267-2022 (O&M)

Judgment reserved on: 16.03.2022

Judgment pronounced on: 28.03.2022

SATVIR KUMAR @ SURINDER KUMAR

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by: Mr. Dharmender Kumar Sihag, Advocate
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J.

1. The instant revision petition has been filed against the judgment of conviction and order of sentence dated 14.02.2020 passed by the Judicial Magistrate First Class, Fazilka, vide which the petitioner had been convicted for the offence under Section 61 (1) of the Punjab Excise Act, 1914 and sentenced as under:

Offence	Sentence	Fine	In default of payment of fine
61(1) (i) of the Punjab Excise Act	R.I for a period of two years	Rs.200000/-	Further, undergo R.I for a period of two months
61 (1) (ii) of the Punjab Excise Act	R.I for a period of one year	Rs.100000/-	Further, undergo R.I for a period of two months
61(1) (iii) of the Punjab Excise Act	R.I for a period of six months	Rs.5000/-	Further, undergo R.I for a period of fifteen days.

2. A further challenge was raised to the judgment dated 27.01.2022 passed by the Additional Sessions Judge, Fazilka whereby

appeal preferred by the petitioner and judgment and order passed by the Additional Sessions Judge, Fazilka had been dismissed.

3. Learned counsel for the petitioner had made a statement on 11.02.2022 to the effect that he did not intend to raise a challenge to the case on merits and that he would restrict his prayer to the sentence only and his entitlement to claim probation in terms of Section 360 Cr.P.C. Considering the fact that sentence awarded to the petitioner is less than 03 years and the petitioner is a first time offender. Notice in the petition was issued to the said limited extent only.

4. Facts in briefs are however enumerated for facility of reference. The present FIR was registered under Section 61 (1) of the Punjab Excise Act, 1914 for the reason that the petitioner was found to be in possession of 06 bottles and a quarter of illicit liquor (750 ML each) and 15 liters lahan. It is alleged that the petitioner was distilling illicit liquor without any permit or licence. Accordingly, investigation was initiated and the recovered lahan, illicit liquor and the utensils deployed for distilling illicit liquor were taken into police possession. Upon conclusion of the investigation, a final report was filed and charge was framed against the petitioner under Section 61(1) (a) (b) (c) of the Punjab Excise Act, 1914. The prosecution examined as many as 05 witnesses to prove its case as regards recovery of the illicit liquor, lahan and other property facilitating distillation of illicit liquor.

5. After conclusion of the prosecution evidence, the incriminating evidence was put to the petitioner who pleaded not guilty. Despite grant of various opportunities to lead evidence in defence, no such evidence was led.

Upon consideration of the rival submissions advanced by the Court, a

finding of conviction was recorded by the Judicial Magistrate First Class, Fazilka and the petitioner was sentenced to undergo rigorous imprisonment as noticed above.

6. Aggrieved of the said judgment and order, the petitioner preferred an appeal before the Court of Sessions Judge, Fazilka. However, the said appeal was also dismissed by the learned Additional and Sessions Judge, Fazilka vide his judgment dated 27.01.2022.

7. Learned counsel for the petitioner restricted his arguments to the quantum of sentence and did not challenge the judgment on merits. He claimed to be granted the benefit of probation as the sentence awarded to the petitioner was less than 03 years and the petitioner was a first offender. Learned counsel has argued that the case of the petitioner is covered within guidelines prescribed under Section 360 Cr.P.C. Besides, the petitioner has also undergone an actual custody of 10 months including the custody as an under-trial and a total sentence of 01 year including remissions out of the awarded sentence of 02 years. He has also placed reliance on the Full Bench of this Court in **Criminal Revision No. 573 of 1979 decided on 23.05.1980** and reported as **1980 PLR 585 titled as “Joginder Singh versus State of Punjab”** wherein it was held that a mere prescription of minimum sentence under Section 61 (1) (c) of the Punjab Excise Act, 1914 is not a bar to the applicability of Section 360 and 361 Cr.P.C. and the same itself is not a reason sufficient for denying the benefit of probation to a person convicted there under. It was also held that its equally no bar to the applicability of the Section 4 and 6 of the Probation of Offenders Act. The relevant extract of the said judgment of the Full Court is reproduced herein below:

“21. To conclude on the legal aspect, therefore, it must be held that the mere prescription of the minimum sentence under section 61(1) (c) of the Punjab Excise Act, 1914 is no bar to the applicability of sections 360 and 361 of the Criminal Procedure Code, 1973 and the same is not a special reason for denying the benefit of probation to a person convicted thereunder. In the alternative, it is equally no bar to the applicability of Sections 4 and 6 of the Probation of Offenders Act. The answer to the question posed at the outset is rendered in the negative.”

24. It will be plain from the aforesaid catena of authorities that it is only in exceptional circumstances and for specific weighty reasons recorded that the broad policy of declining the benefit of probation to an accused person in these cases can be possibly deviated from.”

8. A further reference was made to the judgment in the matter of **“Dalbir Singh versus State of Punjab”** reported as **2015 (3) R.C.R. (Criminal) 278** where on the sentence of 01 year and in a case of recovery of 50 Kgs. of “Lahan” and 180 Mls. of illicit liquor, the benefit of probation was extended.

9. I have considered the submissions advanced by the respective parties and have gone through the precedents. Upon consideration of the same, the following mitigating circumstances emerge:

- i) The incident in question is stated to have occurred in the year 2018 and there is nothing to suggest that the petitioner is involved in any other case thereafter.
- ii) The custody certificate filed by the State of Punjab does not reflect any prior involvement of the petitioner in any case.

- iii) Even though, the petitioner was on bail during the trial, however, there is nothing on record to suggest that he has misused such concession and has indulged in commission of any other offence.
- (iv) The petitioner is a first offender and has been sentenced for a period of 02 years.
- (v) The petitioner has already undergone an actual custody of 10 months and 09 days and a total sentence of a one year and 14 days, out of the total awarded sentence of 02 years.
- (vi) The petitioner has also availed parole of 545 days and had not involved himself in any other untoward incident or illegal activity.
- (vii) The petitioner is approximately 45 years of age and would have his family to support and to look after.

10. In view of the above cumulative mitigating circumstances, noticed above, the present revision petition is partly allowed. The petitioner is ordered to be released on probation for a period of 02 years on the date he furnishes his bonds with regard maintaining good behaviour to the satisfaction of the trial Court. During the period of probation, the petitioner shall not commit any offence and maintain good behaviour. He shall given an undertaking to the learned trial Court that he would undergo remaining part of a sentence, if called upon to do so by a Court of competent jurisdiction during the period of probation.

11. The requisite bonds in this regard shall be executed by the petitioner within period of 04 weeks from the passing of this order. The amount of fine imposed by the trial Court and maintained by the First Appellate Court shall be converted into costs in terms of Section 5 of the Probation of the Offender Act. In the event of failure on the part of the petitioner to deposit the said fine/cost imposed by the trial Court, he shall undergo the default imprisonment.

The Criminal Revision Petition is partly allowed in terms as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 28, 2022
Vishal sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No