

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

CRR-1433-2008

Date of decision : 14.09.2022

Desa and another

..... Petitioners

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Manpinder Kaur, Advocate for
Mr. P.P.S. Duggall, Advocate
for the petitioners.

Ms. Kanica Sachdeva, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

This revision has been filed against the judgment dated 07.07.2008 passed by Additional Sessions Judge, Ferozepur whereby the judgment and order dated 02.09.2006 passed by the Judicial Magistrate 1st Class, Ferozepur and conviction of the petitioners for offences punishable under Sections 61(1)(c) of the Punjab Excise Act have been affirmed. They have been sentenced as under:-

Section	Rigorous Imprisonment	Fine (in Rs.)	In default of payment of fine (rigorous imprisonment)
61(1)(c) of the Punjab Excise Act	1 year each	Rs.5,000/- each	3 months

2. As per prosecution version, police party received a secret information that accused-petitioner No.2 Gehli @ Gehla was habitual of distilling illicit liquor and in case the raid is conducted, a heavy quantity of lahan and illicit liquor can be recovered from his possession. On this,

the police party conducted a raid where both the accused-petitioners namely Gehli @ Gehla and Desa were found distilling illicit liquor.

3. Trial Court after appreciating the evidence on record, came to the conclusion that the prosecution has proved its case beyond doubt. Taking into consideration the seriousness of the offence for which the accused have been held guilty, the trial Court convicted them for offence punishable under Section 61(1)(c) of the Punjab Excise Act.

4. The petitioners preferred an appeal before the lower Appellate Court. The learned appellate Court found that the the trial Court has rightly appreciated the evidence on record and rightly convicted the accused/petitioners under Section 61(1)(c) of the Punjab Excise Act and consequently, dismissed the appeal.

5. Counsel for the petitioners contends that it is not a case of any injury having been caused to any person, the sentence awarded to the petitioners be modified to already undergone. Petitioners are the first time offenders and sole bread earner of their family. He submits that apart from this case, there is no other case pending against the petitioners. Thus he prays that a lenient view be taken against the petitioners especially in the light of the fact that they are facing protracted trial for the last 21 years.

6. In support of his prayer, counsel for the petitioners relies upon ***Jagdish Chander vs. State of Delhi*** reported as ***1973 AIR (SC) 2127*** wherein the Apex Court taking in view the mitigating circumstances, reduced the sentence of imprisonment from six months to a period of three weeks of imprisonment already undergone by the accused. He further relies upon ***Nand Ballabh Pant vs. State (Union Territory of Delhi)*** reported as ***1977 AIR (SC) 892*** wherein the accused,

convicted under Section 304-A of IPC, was sentenced to two months RI and the same was reduced by Supreme Court to one month and the fine was enhanced from Rs 500 to Rs 1,000.

7. Further reliance has been placed upon the orders passed by Coordinate Bench in ***Criminal Revision No.843 of 1995 titled as Nirmal Singh @ Pappu Vs. State of Haryana*** decided on 04.03.2008, wherein the sentence of convict under Section 304-A was reduced to already undergone. He further relies upon **CRR-1931-2010** decided on 23.07.2019 titled as '**Chander Bhan vs. State of Haryana**' wherein considering the factum of law laid down by Apex Court in **State of Punjab vs. Saurabh Bakshi** reported as **2015(2) RCR Criminal 495** this Court reduced the sentence to the period actually undergone.

8. Learned State counsel submits that both the Courts below have rightly found petitioners guilty of offences punishable under Section 61(1)(c) of the Punjab Excise Act. He further submits that the petitioner No.1 has undergone actual custody of 02 months and 18 days and petitioner No.2 has undergone actual custody of 02 months and 07 days out of total sentence of 1 year R.I. awarded for offences punishable under Section 61(1)(c) of the Punjab Excise Act.

9. I have heard learned counsel for the parties and have carefully gone through the record of the case. No fault can be found with the findings recorded by the Courts below. Hence, conviction of the petitioners are upheld.

10. However, it can not be lost sight of the fact that the petitioners have already undergone actual sentence of more than 02 months. They are the first time offenders. There are no case pending

against them. They are stated to have never misused concession of bail suspension of sentence and have faced protracted trial for last 21 years. Considering all these facts cumulatively, sentence awarded by the Courts below is modified to already undergone.

11. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

14.09.2022
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No