

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

118

CRR-1325-2022 (O&M)

Date of Decision: 14.09.2022

Kuldeep Singh @ Gogi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Kaushal Chand, Advocate, for
Mr. L.S.Sekhon, Advocate, for the petitioner.

Mr. Luvinder Sofat, DAG, Punjab.

GURVINDER SINGH GILL, J.

1. Kuldeep Singh @ Gogi has preferred the instant revision petition challenging judgment dated 01.06.2022 passed by learned Additional Sessions Judge, Sangrur, whereby an appeal filed by the petitioner challenging his conviction for an offence under Section 61(1)(a) of the Punjab Excise Act (for short 'the Act'), as recorded by learned Judicial Magistrate Ist Class, Sangrur vide judgment dated 24.01.2018 and order of sentence of even date, as recorded by learned Additional Chief Judicial Magistrate, Sangrur, pursuant to a reference under Section 325 Cr.P.C., has been dismissed.
2. The case of the prosecution, in nutshell, is that on 27.04.2015, when a police party headed by ASI Harchetan Singh was present on Mander road, Longowal in connection with checking of suspected persons and patrolling, a secret information was received to the effect that Kuldeep Singh @ Gogi (petitioner) indulges in illegal sale of liquor and that on the given day, he was coming

from village Bhikhi in his Swift car bearing registration No.HR-70C-3606 carrying huge quantity of country made liquor.

3. Pursuant to receipt of said information, barricading was held and the police was able to intercept the aforesaid car, which was found to be driven by petitioner Kuldeep Singh. Upon search of the vehicle, two plastic cans were recovered from the rear seat while another two were recovered from the boot of the vehicle, which were found to contain country made liquor. While 5 bottles of liquor from each can were poured into a tub and from which sample was drawn, the remaining recovered liquor was found to be 50 bottles in each can.
4. The matter was investigated by the police and challan was filed. Upon framing of charges against the accused, the prosecution examined PW-1 Rohit Kumar, DTO, Sangrur; PW-2 ASI Harchetan Singh; PW-3 ASI Ranjit Singh; PW-4 HC Kuldeep Singh and PW-5 Constable Gurpreet Singh.
5. Statement of accused in terms of Section 313 Cr.P.C. was recorded, wherein the accused denied the entire case of prosecution. In his defence, the accused examined DW-1 Jagpal Singh, DW-2 Bahadur Singh and DW-3 PHG Madan Singh.
6. The trial Court, upon hearing the learned APP as well as the defence counsel, found that the allegations were duly established and held the petitioner guilty of having committed an offence under Section 61(1)(a) of the Act and sentenced him to undergo rigorous imprisonment for 6 months and also imposed a fine of Rs.1 lac vide judgment dated 24.01.2018.
7. The petitioner challenged the aforesaid judgment dated 24.01.2018 by way of filing an appeal before the Court of Additional Sessions Judge, Sangrur, but the said appeal came to be dismissed vide judgment dated 01.06.2022.

8. Learned counsel for the petitioner has submitted that he does not challenge the findings of conviction and that he restricts his submissions to the quantum of sentence only. Learned counsel for the petitioner has 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.
9. On the other hand, the learned State counsel has submitted that having regard to nature of offence, which has wide ramifications, there is no room for any reduction in sentence.
10. This Court has considered the rival submissions.
11. Since learned counsel for the petitioner does not want to challenge the findings of conviction, the same are hereby affirmed particularly since the Courts below have marshalled the evidence thoroughly so as to reach at a conclusion that the accused has committed offence under Section 61(1)(a) of the Act.
12. As far as the prayer of the petitioner for his release on probation is concerned, a perusal of Section 61(1)(a)(vi) of the Act does show that a minimum sentence of 6 months 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.
13. 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 was 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

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 in spite 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.”

14. Examining the case in hand in light of ratio of above referred judgments, I find that the petitioner, who was found in possession of country made liquor and was convicted and sentenced under Section 61(1)(a) of Punjab Excise Act, can be released on probation in view of the following reasons:

- (i) That the petitioner was aged about 28 years and is a first offender and has not been convicted in any other case;
- (ii) The recovery was effected in the year 2015 and thereafter more than 7 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 already suffered incarceration of trial for approximately 7 years; and
- (v) The petitioner has already undergone about 4 months of imprisonment out of the sentence of 6 months imposed on him.

15. 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.

16. 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.

14.09.2022

Vimal

(GURVINDER SINGH GILL)
JUDGE

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