

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

316

CRR-139-2008

Date of decision: 24.05.2023

Amarbeer Singh and another

....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sandeep S. Majithia, Advocate
for the petitioners

Mr. Jashanpreet Singh, DAG, Punjab

AMAN CHAUDHARY. J.

1. The present revision petition has been filed by the petitioner, challenging the judgment dated 14.01.2008, passed by the learned Additional Sessions Judge, Nawanshahr, dismissing the appeal filed against the judgment /order dated 31.01.2006, rendered by the learned Sub Divisional Judicial Magistrate, Balachaur, vide which the petitioners had been convicted and sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs.1000/- each and in default of payment of fine, defaulter to further undergo RI for one month, for the offence punishable under Section 61(1) (a) of Punjab Excise Act, 1914.

2. Briefly put, the facts of the case are that on 12.06.2003, ASI Rajiv

Kumar and HC Darbara Singh along with other police officials were holding a special nakabandi for checking of suspected persons and vehicles. During the checking, an Indica Car bearing No. PB-02-AF-3202 coming from the Ropar side was stopped. The driver disclosed his name as Amarbeer Singh, while the other person disclosed his name as Sonu Singh. The search of the car was got conducted as per the law, wherein from the dicky, 28 corrugated boxes containing 6 bottles each of Bagpiper whisky were recovered, which were meant for sale only in Chandigarh. The convit-petitioners could not produce any license or permit to keep it in transit or for sale. The recovered liquor alongwith the car were taken into possession vide a recovery memo. The samples were collected as per procedure and sealed. They were arrested and a ruqa was sent, on the basis of which, a formal FIR was registered. After completion of investigation, a final report under Section 173 CrPC was presented, upon which charges were framed under Section 61 (1) (a) of the Punjab Excise Act, 1914 against the accused, to which they pleaded not guilty and claimed trial.

3. To prove its case, prosecution examined SI Ram Lubhaya as PW-1, HC Darbara Singh as PW-2, ASI Rajiv Kumar as PW-3 and ASI Paramjit Singh as PW-4 and thereafter, closed the evidence. On closure, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material was put to them, which they denied and pleaded innocent and false implication. In defence, no witness was examined by them.

4. On evaluating the evidence on record and hearing the counsel for the parties, the learned trial Court convicted and sentenced both the petitioners as

noticed above. Feeling aggrieved, they filed an appeal, which was dismissed by the Additional Sessions Judge, Nawanshahr vide impugned judgment dated 14.01.2008. Hence, the present revision petition.

5. The learned counsel for the petitioners, on instructions, states that he does not propose to challenge the impugned judgment of conviction on its merits but he prays for modification of the order of sentence for the period of one month, one day already undergone by the petitioners on the ground that they are poor persons, sole bread earner of their respective families and during bail, no offence was committed by them and have faced the agony of trial for last 20 years. He relies on **Wazir Singh and others vs. State of Haryana** 2006(1) RCR (Crl.) 709, **Chand Singh @ Tidi vs. State of Punjab** 2005(14) RCR (Crl.) 244 and **Surjit Singh vs. State of Punjab** (P&H) 2001(1) CLJ (Criminal) 344.

6. On the other hand, learned State submits that the Courts below after appreciating every aspect of the matter have rightly convicted and sentenced the petitioners, therefore, the present petition may be dismissed.

7. Heard the learned counsel for the parties and perused the record.

8. Even though the challenge to conviction has been given up, however, this Court after perusal of the evidence on record and the judgment passed by the Courts below, finds the revision to be bereft of merits. The evidence was minutely examined by the trial Court and it was rightly observed that the prosecution has been able to prove its case beyond any reasonable doubt. As per the statement of PW3 ASI Rajiv Kumar, the Investigating Officer, the recovery was effected from the car, which was being driven by convicts-Amarbeer Singh and Sonu Singh was

his co-passenger, sitting in the front seat. Proper procedure was followed while conducting the search of the car from which the recovery was affected. The above received due corroboration from the deposition of PW2 HC Darbara Singh, a member of the investigating team. No evidence was led by the convict-petitioner regarding their false implication by the police. The appellate Court having thoroughly examined affirmed the same, leaves no scope for interference in the judgment of conviction.

9. In so far as, the prayer of the learned counsel that the sentence of the petitioners be reduced to the period already undergone, it is worthwhile to make a reference to the judgment of this Court in **Wazir Singh, Chand Singh @ Tidi and Surjit Singh (supra)**, wherein the accused were convicted under the Excise Act, but noticing the mitigating circumstances, their sentence was reduced to the period already undergone.

10. Apropos the submission made by the learned counsel for the petitioners and considering their predicament of belonging to the poor strata of the society, sole breadwinners of their respective families, have faced the protracted trial for the last 20 years, neither committed any offence nor misused the concession of bail, this Court finds that the ends of justice would be adequately met if the sentences of the petitioners are ordered to be reduced to the extent of the period they have already undergone.

11. Resultantly, the conviction of the petitioners is upheld whereas the sentence is ordered to be reduced to the period already undergone by them. However, the fine shall remain intact.

12. With the above modification in the order of sentence dated 31.01.2006 passed by trial Court, as noted above, the present revision petition is partly allowed.

(AMAN CHAUDHARY)
JUDGE

24.05.2023

Mehak

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No