

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

CRR-347-2008

Date of Decision: 24.02.2023.

RAJ SINGH

... PETITIONER

VS.

STATE OF PUNJAB

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. B.S.Jaswal, Advocate and
Mr. Ankit Bhardwaj, Advocate
for the petitioner.

Mr. Hittan Nehra, Additional Advocate General, Punjab.

VIVEK PURI, J.(ORAL)

The petitioner has assailed the judgments of the Courts below vide which he has been convicted under Section 61 (1) (a) of the Punjab Excise Act and sentenced to undergo rigorous imprisonment for a period of 09 months and to pay a fine to the tune of Rs.1,000/- and in default whereof, to further undergo rigorous imprisonment for a period of 02 months.

Custody certificate has been placed on record.

Briefly, as per the allegations of the prosecution, on 20.04.1998, the petitioner was apprehended by the police party headed by ASI Jaswant Singh. The petitioner was carrying a gunny bag on the carrier of his bicycle. From the search of the gunny bag, a rubber tube containing 80 bottles (750 ml.each) of illicit liquor were recovered. A nip was drawn as sample and the incriminating articles were taken into possession vide separate recovery memo.

On completion of the investigation, the petitioner has been sent

up to face trial. A prima facie case under Section 61 (1) (a) of the Punjab Excise Act was made out against the petitioner. The charge was accordingly framed and the contents were read over and explained to the petitioner to which he pleaded not guilty and claimed trial.

In support of its allegations, the prosecution has examined PW1-HC Surinder Singh, PW2-MHC Gamdoor Singh, PW3-ASI Jaswant Singh and PW4-C.Parjoban Singh besides producing documentary evidence. The statement of the petitioner under Section 313 Cr.P.C. has been recorded but he has not led the defence evidence. In terms of the judgment dated 15.02.2007 passed by the Court of learned Judicial Magistrate, Zira, the petitioner was convicted under Section Section 61 (1) (a) of the Punjab Excise Act and sentenced to undergo rigorous imprisonment for a period of 09 months and to pay a fine of Rs.1,000/-.

The petitioner had preferred an appeal against the aforesaid judgment of conviction and order of sentence and the same has been dismissed by the learned Appellate Court in terms of the judgment dated 29.11.2007.

The petitioner has assailed the aforesaid judgments by way of present revision petition.

During the course of hearing, the learned counsel for the petitioner has contended that he does not dispute the findings of the conviction recorded by the learned Courts below and restricts the prayer only to the extent that leniency in the matter of sentence may be extended. It has been further submitted that the petitioner was young man at the time occurrence. Subsequently, he has solemnized marriage, having children and has a family to support. The custody certificate indicates that the petitioner

has undergone total custody to the extent of 05 months and 01 day and is not involved in any other criminal case.

Learned State counsel has also submitted that in view the restricted prayer made by the learned counsel for the petitioner, the appeal may be disposed of.

I have also gone through the records of the Courts below.

In the instant case, the recovery has been effected by PW3-ASI Jaswant Singh in the presence of PW1-HC Surinder Singh. Both the witnesses to the recovery have testified with regard to the sequence of events leading to the recovery of incriminating articles from the possession of the petitioner in a fairly satisfactory manner. The deposition of both the witnesses is consistent and fairly reliable. As per the report of Chemical Examiner, the contents of the sample were that of illicit liquor. The statements of PW2-MHC Gamdoor Singh and PW4-C.Parjoban Singh indicate that the case property and samples were not tampered with during that period the same remained in malkhana and also during the course of transit of sample from the malkhana to the office of Chemical Examiner. In these set of circumstance, the guilt of the petitioner has been proved by the prosecution beyond the shadow of reasonable doubt. Consequently, no interference is called for in the judgment of the conviction as recorded by the Courts below.

With regard to the quantum of sentence, it may be mentioned here that the petitioner is a married man and having a family to support. The custody certificate does not indicate that the petitioner is involved in any other case and it also indicates that the petitioner has undergone imprisonment for a period of 05 months and 01 day. The recovery was

effected as back as on 20.04.1998 and a period of 25 years has since elapsed. In these set of circumstance, it shall not be appropriate to send the petitioner to jail to undergo the remainder of the sentence imposed upon him. Even, there is nothing to suggest that subsequent to the present recovery, the petitioner is not involved in any other case. In these set of circumstances, the petitioner is directed to undergo the sentence of imprisonment that has already been undergone by him without any alteration in the amount of fine imposed upon him. The amount of fine is stated to have been deposited in the trial Court.

In the aforesaid terms, the present petition is disposed of.

24.02.2023
smriti

(VIVEK PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No