

CRR-905-2008

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2023:PHHC:066695

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

CRR-905-2008

Date of Decision: 09.05.2023

SUBASH CHANDER

... PETITIONER

V/S

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Ms. Sushma Chopra, Advocate for the petitioner.

Mr. Hittan Nehra, Addl. A.G. Punjab.

* * *

VIVEK PURI, J.

1. The present revision has been preferred against the judgment passed by the Courts below vide which the petitioner has been convicted for having committed the offence under Section 61(1)(a) of the Punjab Excise Act and sentenced thereunder in the case bearing FIR No. 46 dated 26.06.2000, registered at Police Station Sultanpur Lodhi.

2. The facts as putforth by the prosecution are to the effect that on 31.03.2000, ASI Charanjit Singh along with fellow police officials had raised *nakabandi* at Chowk Tashpur. Meanwhile a Tata 407 vehicle came from the side of Malsian and it was signalled to stop. The driver of the vehicle got perplexed and tried to divert the vehicle towards Village Tashpur. The vehicle was stopped and the driver thereof revealed his identity as Subhash Chander-petitioner. An effort was made to join the public witness but to no effect. The search of the vehicle led to recovery of

20 boxes of liquor mark 'Land Lord'. Rakesh Kumar, co-accused was sitting on the boxes. Each box contained 12 bottles of liquor. A nip was drawn as sample from each of the 240 bottles. The sample nips and the bottles containing remaining liquor were sealed with the seal bearing impression 'CJ'. The incriminating articles along with the vehicle bearing PCF-9768 were taken into possession vide separate recovery memo.

3. On completion of the investigation, the challan was presented in the Court. The copies of the documents as envisaged under Section 207 IPC were supplied to both the accused. A prima facie case under Section 61(1)(a) of the Punjab Excise Act was made out against both the accused. The charge was accordingly framed and the contents thereof were read over to the accused but they pleaded not guilty.

4. In support of its allegations, the prosecution has examined ASI Charanjit Singh, PW1 who had effected the recovery. The recovery has been effected in the presence of HC Jarnail Singh, PW2, HC Sakattar Singh, PW3 had retained the case property in the *malkhana* and Constable Dharampal PW4 took the sample nip to be deposited in the office of chemical examiner. As per the report of the chemical examiner, the contents of the nips were that of country liquor (rum). In the statement recorded under Section 313 Cr.PC, the accused have denied the correctness of the incriminating evidence appearing against them.

5. The accused have examined Ramesh Kumar, *Malkhana* Nazir DW1 and Balwinder Singh, DW2 during the course of defence evidence.

6. Vide judgment dated January 10, 2002 passed by the Court of learned Sub-Divisional Judicial Magistrate, Sultanpur Lodhi, the petitioner along with the co-accused was convicted under Section 61(1)(a) of the Punjab

Excise Act and sentenced to undergo rigorous imprisonment for a period of 1 year and to pay a fine of Rs. 1000/-, in default whereof to further undergo rigorous imprisonment for a period of 2 months.

7. The petitioner along with the co-accused had preferred an appeal against the aforesaid judgment of conviction and order of sentence. During the course of pendency of the appeal, Rakesh Kumar, co-accused absented from the proceedings and was declared proclaimed offender. In terms of the judgment dated 23.04.2008, the appeal was dismissed by the Court of learned Addl. Sessions Judge but the sentence imposed upon the petitioner was reduced from rigorous imprisonment for a period of 1 year to 6 months and the amount of fine was altered to the tune of Rs. 2000/- , in default whereof to undergo imprisonment for a period of 1 month.

8. Aggrieved by the aforesaid judgments, the petitioner has approached this Court by way of present revision.

9. I have heard learned counsel for the parties and perused the record.

10. Learned counsel for the petitioner has contended that the entire case of the prosecution is based upon the deposition of official witnesses only. No independent witness has been joined at the time of alleged recovery which tends to falsify the version of the prosecution. Furthermore, the petitioner has examined Balwinder Singh, DW2 who has testified with regard to the false implication of the petitioner but the defence version has been ignored by the Court below.

11. On the contrary, learned State counsel while supporting the judgments has argued that the deposition of the official witnesses cannot be discarded merely because of their official status. It is a case of chance recovery. Both the witnesses to the recovery have deposed in a fairly satisfactory manner on all the material aspects of the case. Moreover, the defence witness examined by the petitioner is a made up witness and has been examined to create a false defence version as a result of afterthought.

12. The entire case of the prosecution hinges on the deposition of the official witnesses. The deposition of official witnesses cannot be viewed with distrust or suspicion merely because of their official status until and unless there are cogent grounds therefor. There is no provision of law which requires the presence of independent witnesses at the time of search of a suspect or the vehicle in which the contraband is being carried. It is only a rule of caution devised to seek assurance and dispel any lingering doubt. The case of the prosecution cannot be discarded merely on the score that no independent witness has been joined at the time of recovery. The submission of the learned counsel for the petitioner that non-joining of independent witness tends to falsify the version of the prosecution cannot be accepted. The Court has to appreciate the relevant evidence to determine as to whether the evidence of the police officials was believable after taking due care and caution in evaluating the evidence. The testimony of police personnel has to be treated in the same manner as testimony of any other witness and there is no principle of law that without corroboration by independent witnesses their testimony can not be relied upon.

13. It is significant to note that it is a case of chance recovery. The police officials had no prior information to the effect that the petitioner

along with the co-accused are carrying liquor in the vehicle. Moreover, on seeing the police party, the petitioner who was driving the vehicle got perplexed and tried to divert the vehicle towards village Tashpur. Such a conduct is indicative that the petitioner was conscious of the fact that liquor was being carried in the vehicle. Had much time been wasted in joining the public witness, it would have frustrated the attempt of the police officials to nab the petitioner and the co-accused and provided an opportunity to them to slip away from the spot. Moreover, after the vehicle was stopped, an attempt was made to join the public witness but to no effect. It is a matter of common observation that there is general reluctance on the part of the general public to join the investigation and depose against the accused in order to avoid any enmity.

14. In the instant case, the recovery has been effected by ASI Charanjit Singh, PW1, in the presence of HC Jarnail Singh, PW2. 240 bottles of liquor have been recovered. A nip has been drawn as sample from each bottle. The nips and the bottles containing remaining liquor have been sealed with the seal bearing impression 'CJ'. The incriminating articles along with the vehicle were taken into possession vide recovery memo, Ex.PA. Ruqa Ex. PB was recorded and dispatched to the police station. On the basis thereof, FIR Ex.PB/1 has been registered. Ex.PC is the site plan depicting the place of recovery.

15. The case property was retained in the *Malkhana* by PW3. The sample nips were sent to the chemical examiner through Constable Dharampal PW4. As per the opinion of the chemical examiner, Ex.PD the contents of the nips were that of country liquor (rum). The deposition of HC Sakattar Singh, PW3 and Constable Dharampal PW4 indicate that the case

property and the sample parcels were not tampered with during the period the same remained in the *Malkhana* and also during the course of transit of sample parcels from the *Malkhana* to the office of the chemical examiner. The chemical examiner has also certified that the seals of the sample parcels were intact and agreed with the specimen seal.

16. The petitioner has examined Balwinder Singh, DW2 during the course of defence evidence. It is emerging in his statement that the police officials were asking the petitioner to part with their vehicle and he was not agreeing for the same. An altercation had ensued between the police officials on side side and petitioner and co-accused on the other side. Balwinder Singh, DW2 along with others had intervened in the matter and his signatures were procured on some documents. He has specifically stated that the petitioner and co-accused were not arrested at the spot.

17. It is significant to note that the signatures of Balwinder Singh, DW2 are appearing on the memo with regard to personal search, arrest, and intimation with regard to the arrest of the petitioner and the co-accused. The defence version as sought to be put forth in the statement of Balwinder Singh, DW2 appears to be a result of afterthought. No such defence version has been sought to be putforth by the petitioner in his statement recorded under Section 313 Cr.P.C. or during the course of cross-examination of the prosecution witnesses. Consequently, the version as emerging in the statement of Balwinder Singh, DW2 appears to be unreliable and cannot be acted upon being a result of afterthought. Moreover, had the petitioner been falsely implicated, Balwinder Singh, DW2 would have moved the higher police authorities in this regard. It is also emerging in his cross-examination that he had not reported with regard to the attributions sought to be made

against the police officials to any higher officials or at any other Forum.

The studied silence and inaction tends to belie the defence version as sought to be put forth by him. In such circumstances, the version as emerging in the statement of Balwinder Singh, DW2 is liable to be discarded and can not be acted upon as the same appears to be a result of afterthought.

18. In the case in hand, the recovery has been effected by ASI Charanjit Singh, PW1, in the presence of HC Jarnail Singh, PW2. Both the witnesses to the recovery have deposed in a fairly satisfactory manner on all the material aspects of the case. They have given a satisfactory count with regard to the sequence of events leading to recovery of incriminating articles from the possession of the petitioner and the co-accused. No ill-will animosity or bias is made out against the petitioner by the police officials and no reason is made out for his false implication. The deposition of the witnesses sufficiently proves and establishes the material fact of recovery of incriminating articles from the possession of the petitioner. Once the material fact of recovery of incriminating articles from the possession of the petitioner is proved and established by satisfactory and reliable evidence, the inconsequential infirmities and unimportant flaws in the case of prosecution tend to pale into insignificance. The prosecution has successfully proved and established the guilt of the petitioner beyond the reasonable doubt.

19. Faced with this situation, learned counsel for the petitioner has contended that the case pertains to the year 2000 and leniency in the matter of sentence may be extended.

20. On the contrary, learned State counsel has submitted that the

learned trial Court had imposed the sentence to the extent of one year upon the petitioner and the same has been reduced to six months by the lower Appellate Court.

21. The learned lower Appellate Court has already taken a fairly lenient view in the matter of sentence. Initially, the sentence to the extent of rigorous imprisonment for 1 year was imposed upon the petitioner and the same has been reduced to rigorous imprisonment for a period of 6 months in appeal. The judgement of conviction has been correctly recorded by both the Courts and adequate sentence commensurate with the guilt of the petitioner has been imposed by the learned Appellate Court which does not warrant any interference by this Court.

22. For the aforesaid reasons, the revision being devoid of merit is dismissed.

09.05.2023

Janki

(VIVEK PURI)
JUDGE

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