

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

312

CRR-479-2008

Date of decision: 04.09.2023

Balwinder Singh alias Binda

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ishan Singh Conner, Advocate as Amicus Curiae
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is assailing the judgment and order dated 26.02.2008 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Jalandhar whereby the appeal preferred to impugned his conviction, under Section 61(1)(c) of the Punjab Excise Act in case FIR No.46 dated 05.04.2004 under Section 61(1)(c) of the Punjab Excise Act registered at Police Station Kartarpur by learned Judicial Magistrate 1st Class, Jalandhar, was dismissed.

2. The case as set up by the prosecution may be noticed as thus. On 05.06.2004, police party headed by ASI Balkar Singh received a secret information that the petitioner had been distilling illicit liquor and if a raid is conducted he could be caught red handed. Pursuant to the information received, a ruqa was sent to the police station and a formal FIR recorded. An independent witness, namely, Sharaj, was joined by the raiding party. When the raid was conducted at the disclosed place, the petitioner was found at the spot distilling illicit

liquor. The petitioner was apprehended and recovery of various articles being used by him to distill illicit liquor was effected from the spot. A sample of 180 mls from the recovered illicit liquor, was drawn in a nip. Remaining illicit liquor on being measured was found to be 560 mls. Besides this 12 kgs of lahan was also recovered from the spot. All the recovered articles which also included a working still, were sealed bearing impression “BS” and taken into police possession vide recovery memo Ex.PB. After carrying out other formalities, the case property was deposited with the MHC. On receipt of report of the chemical examiner and after completion of investigation final report under Section 173(2) of the Cr.P.C. (challan) was presented against the petitioner. The petitioner was, thereafter, charged under Section 61(1)(c) of the Punjab Excise Act to which he pleaded not guilty and claimed trial. In support of their case, the prosecution examined as many as 05 witnesses including the investigating officer ASI Balkar Singh, who stepped into the witness box as PW3. Though, independent witness Sharaj was cited as a prosecution witness, however, he was given up as having been won over. All the incriminating evidence was put to the petitioner under Section 313 of the Cr.P.C. to which he pleaded innocence. No evidence was produced by the petitioner in his defence. On the basis of the evidence and other material on record, the Trial Court convicted the petitioner and sentenced him as follows:-

Offence(s) u/s	Period of sentence(s)	Fine imposed	Period of sentence in default of payment of fine
61(1)(c) of the Punjab Excise Act	RI for 01 year	₹5,000/-	RI for 03 months

3. Learned counsel for the petitioner has submitted that the false implication of the petitioner in the case in hand was evident from the fact that the independent witness Sharaj, who was in fact most crucial witness, did not step into the witness box and was intentionally given up by the prosecution as having been won over. Learned counsel has still further argued that the version brought forth by the prosecution was highly improbable as on the one hand the case set up was that the petitioner was living in joint family set up in his house, from where the alleged recovery of illicit liquor was effected, however, during his deposition PW3 ASI Balkar Singh, feigned complete ignorance as to who all were residing in the house of the petitioner which was raided by him and from where the alleged recovery was effected. It was lastly contended that the lahan allegedly effected from the house of the petitioner was not even produced in the Court which created a big question mark about the authenticity of the story brought forth by the prosecution. Learned counsel while concluding his arguments, has made an alternative prayer that in case this Court was not inclined to accept the instant revision, a compassionate view be taken and the petitioner be extended the benefit of probation as he had undergone the agony of a protracted trial for more than 19 years.

4. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, has submitted that a secret information was received by the police that the petitioner was involved in distilling illicit liquor. After carrying out all the requisite formalities and even joining an independent witness, house of the petitioner was raided wherein not only illicit liquor was recovered but

all other articles like working still, gas stove, a still belt containing a plastic tube which was fitted with a bottle for collecting the illicit liquor was also recovered. A sample nip of the recovered illicit liquor was drawn vide various recovery memos, which were duly sealed, as per procedure provided. The report received from the chemical examiner (Ex.PD) showed that the samples contained illicit liquor. Learned State counsel has submitted that independent witness Sharaj was joined by the raiding party but since he had been won over, he was rightly given up. Moreover, no enmity was alleged against the police officials to have planted a false case upon the petitioner. Hence, the evidence of the official witnesses could be safely relied upon who had supported the case of the prosecution in its entirety.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. This Court after perusing the impugned judgment and the evidence led, does not find any force in the submissions made by the learned counsel for the petitioner. This Court has no hesitation in observing that the impugned judgement does not suffer from any infirmity much less illegality and the learned Appellate Court rightly upheld it.

7. As per the case of the prosecution, a secret information was received qua the involvement of the petitioner in distilling illicit liquor. Subsequently when the raid was carried in the house of the accused, he was found distilling illicit liquor on a working still. 12 kgs of lahan along with 740 mls of illicit liquor was recovered from the spot. All the recovered articles which were being used to distill illicit liquor were

duly sealed as per law, vide recovery memo (Ex.PB). The recovered illicit liquor was then dispatched to the office of the chemical examiner and was received in an intact condition as per the report of the chemical examiner (Ex.PD). Still further, the report of the chemical examiner (Ex.PD) was found positive qua the samples sent, which in turn lent further corroboration to the case of the prosecution. All the prosecution witnesses including PW3 ASI Balkar Singh while stepping into the witness box corroborated the case of the prosecution in toto.

8. The contention of the learned counsel for the petitioner qua non-examination of independent witness Sharaj is wholly bereft of any merit. Rather, all requisite formalities were carried out pursuant to receipt of secret information by the police party as not only Ruqa (Ex.PE) was sent to the police station leading to the registration of the FIR in question (Ex.PF) but even independent witness Sharaj was joined by the raiding party. It was only during trial that the independent witness was given up as having been won over. It is a matter of record that the presence of independent witness Sharaj stands reflected in all the documents, which were prepared at the time when the raid was carried out and recoveries effected. Furthermore, merely because, independent witness Sharaj, did not step into the witness box cannot be a ground to discard prosecution version. A close scrutiny of the evidence on record does not reveal any discrepancy, much less material, in the case of the prosecution. It needs to be reiterated that the evidence tendered by police officials can be kept at the same pedestal as that of any other private witness, if the same comes across as reliable.

9. No evidence was led by the petitioner in his defence, as to why the police would have wanted to falsely implicate in the instant case and shown a recovery of 740 mls of illicit liquor and 12 kgs of lahan from his house.

10. Coming to the alternate prayer made by the counsel for the petitioner that a compassionate view be taken and the petitioner be released on probation. cannot be accepted. A perusal of the custody certificate which has been placed on record by the learned State counsel reveals that after the sentence of the petitioner was suspended by the learned Court below on 10.07.2007, he had yet again been involved in another case i.e. FIR No.165 dated 04.09.2017 under Sections 22/61/85 of the NDPS Act registered at Police Station Kartarpur. In the circumstances and keeping in view the antecedents and subsequent conduct of the petitioner, after his conviction in the case in hand, he does not deserve the benefit of being extended the concession of probation.

11. As a sequel to the above, the instant petition being devoid of any merit is dismissed.

12. The petitioner shall surrender back to the jail authorities within two weeks from the date of passing of this order.

04.09.2023

Vinay

(MANJARI NEHRU KAUL)

JUDGE

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