

2024:PHHC:154719



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

249 CRR 605 of 2017
Date of Decision: 25.11.2024

Ashok Kumar and another ...Petitioner
Versus
State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Ms. Gursharan Kaur Mann, Sr. Advocate with
Mr. Anmol Singh, Advocate, for the petitioners.

Mr. Malkiat Singh, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present revision petition against the impugned judgment dated 03.02.2017 passed by the Court of Additional Sessions Judge, Ludhiana and the impugned judgment and order dated 13.12.2013 passed by the Court of Judicial Magistrate 1st Class, Ludhiana, whereby, the petitioners have been convicted for the offence punishable under Sections 61/1/14 of the Excise Act and sentenced as under:-

Name of Convict	Offence under Section	Sentence	Fine	In default
Ashok Kumar	61 of Excise Act	Simple imprisonment for 6 months	500/-	Simple imprisonment for 15 days.
Bunty	61 of Excise Act	Simple imprisonment for	500/-	Simple imprisonment

		06 months		for 15 days
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It was also ordered that the period of detention already undergone by the convicts shall be set off against the term of imprisonment on the convicts.

2. As per the case of the prosecution, on 01.07.2010, the police party received a secret information that two persons used to bring Whisky at cheaper prices and sell the same at Ludhiana at higher prices and they were traveling in a Maruti car bearing registration No. PB-10-P-6688 and if a picket was set up, they could be caught red handed and huge quantity of liquor could be recovered from them. On finding the information believable, the formal FIR was registered in the present case. A *Naka* was set up and a car bearing registration No. PB-10-P-6688 driven by a Hindu gentleman came and one person was driving the car and the other was sitting on the front seat. Both of them were apprehended at the spot on suspicion. On inquiry, they disclosed their names as Ashok Kumar and Bunty, both the petitioner and during search of the car, 90 bottles of English liquor make Hawaldar, 72 bottles of Everyday Gold and 48 bottles of English liquor Silver Peg 750 ml each were recovered. A nip of 180 ml was drawn from each of the bottles as sample and the remaining bottles were sealed by the I.O. and the case property was taken into possession by the police. After usual legal formalities, the

investigation was completed and the challan was presented against the petitioners in the Court.

3. After the presentation of the challan, both the petitioners were charge sheeted for the offence punishable under Section 61 of the Excise Act and the charges were explained to them. However, both the accused pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution has examined the recovery witness HC Amrik Singh as PW1, HC Gurjit Singh as PW2, ASI Sheesh Pal as PW3 and the Investigating Officer of the case ASI Gian Singh as PW4 and, thereafter, the evidence of the prosecution was closed.

6. Statements of the accused under Section 313 Cr.P.C. were recorded, in which, the incriminating prosecution evidence was put to the accused, to which, they made a denial of all the allegations and pleaded innocence and false implication but preferred not to lead any defence evidence.

7. After hearing learned counsel for the parties, both the Courts had convicted the petitioners. Feeling aggrieved by both the impugned judgments, the petitioners have filed the present revision petition before this Court.

8. Learned senior counsel appearing on behalf of the petitioners contended that the prosecution had wrongly alleged the recovery of 210 bottles whereas when the case property was produced

in the Court, only 116 bottles were produced, seals of 30/40 bottles were broken and more than half of the bottles were less than 250 ml. Thus, it stood established that the case property was tampered. Even, the police had admitted that the case property was not intact, the seals were broken and the bottles were missing. Thus, the recovery was apparently doubtful and planted and prosecution has not been able to establish the offence beyond the shadow of reasonable doubt. Learned senior counsel further submitted that the alleged recovery was effected from the car and the prosecution had failed to connect the petitioners with the alleged recovered Maruti car bearing registration No. PB-10-P-6688. They had not even recovered the driving licence of the petitioner nor the registration certificate of the car was taken into possession. Still further, the recovery was made at the fly over and several other persons were available at the spot. However, the police had failed to join any independent witness at the time of the alleged recovery. Even, the police had admitted that there was no one present at the spot and the prosecution evidence is liable to be discarded in the absence of the independent evidence.

9. Learned senior counsel further argued that after preparing and sealing the parcels, PW4 IO Gian Singh had handed over the seal to PW1 HC Amrik Singh on the next day. Thus, it was ample clear that the seal was not handed over to the independent witnesses and the possibility with the tampering with the seals/samples could not be ruled out and the petitioners were liable to

be acquitted. Still further, the Court had not considered the testimonies of the Investigating Officer PW4 ASI Gian Singh in the correct prospective and the police had falsely involved the petitioner only on the basis of the suspicion.

10. On the other hand, learned State counsel vehemently opposed the submissions made by the petitioners on the ground that all the bottles were duly produced before the trial Court and during the process of the bottles in the Malkhana, seals of some of the bottles were broken. Thus, when the recovery had been duly proved by PW1 HC Amrik Singh, no benefit could be derived by the petitioners in the present case. Still further, in the present case, the petitioners were tried and convicted for possessing the illicit liquor and the recovery stood amply proved. Thus, even if the driving licence of the petitioners or the RC of the car could not be recovered, still, it would not cause any dent in the case of the prosecution. Still further, the police officials had tried to join the independent witnesses, but no independent witness joined at the place of the recovery as the petitioners were smugglers and, nowadays, it is a matter of common experience that no person wishes to depose against the hardened criminals. Learned State counsel further submitted that even the police officials had no reasons to falsely involve the petitioners and even, there was no reason to discard the testimonies of the official witnesses in the present case.

11. I have heard the submissions made by learned counsel for the parties and perused the record carefully.

12. The main contention raised by the learned counsel for the petitioners is that the prosecution had alleged recovery of 210 bottles, whereas, the prosecution could produce only 116 bottles and less than 30/40 bottles were broken and more than half of the bottles were less than 250/- ml. However, I find no merit in the submissions raised by the learned counsel for the petitioners. In the present case, the prosecution had alleged that 210 bottles were recovered from the petitioners and the case property was duly proved as Ex.MO-1 to MO-210 and the recovery was also proved by HC Amrik Singh PW1, who was part of the raiding team and had witnessed the recovery. Still further, when the ASI Gian Singh PW4 was examined, no suggestion was put to him that the recovery of 210 bottles had not been made by the police. Still further, the defence had also admitted the recovery of 116 bottles of illicit liquor. Further, the samples were drawn from 210 bottles and the report produced by the chemical examiner was also regarding 210 samples. Thus, there is no material on record to hold that the recovery was not effected from the petitioners.

13. Even, the petitioners had failed to give any explanation with regard to the possession of the liquor and no permit/licence could be produced by them.

14. Still further, learned senior counsel for the petitioners had vehemently argued that the prosecution had failed to connect the Maruti car with the petitioners as neither the driving licence of the petitioner who was driving the car was taken into possession nor the registration certificate was recovered by the police. However, I find no merit in the submissions raised on behalf of the petitioners. In the present case, the recovery of illicit liquor stood proved beyond the shadow of doubt. Even if the registration certificate of the car could not be taken into possession by the police, no benefit can be extended to the accused in the present case. The prosecution had examined four witnesses and the recovery of the bottles of liquor stood proved and the absence of the registration certificate from the record will not help the case of the accused in any manner. Even if, there was some lapse on the part of the Investigating Officer, the accused cannot derive any benefit from the same.

15. In the present case, no doubt, the whole case is based on the testimonies of four witnesses, but it cannot serve as a ground to reject the case of the prosecution. In fact, the official witnesses had no reason to falsely involve the petitioners nor any such suggestion has been given to the witnesses. Even otherwise, there was sufficient evidence to show that the witnesses of the prosecution tried to join the independent witnesses, but no one was willing to join. It is a matter of common experience, nowadays, no public witness is ready to depose

against the smugglers. Apart from that, in the present case, the seal was handed over by PW4 ASI IO Gian Singh to PW1 HC Amrik Singh and not to the independent witnesses. However, again it can be held that the official witnesses had consistently deposed against the petitioners and both PW4 ASI Gian Singh and HC PW1 Amrik Singh had no enmity with the petitioners. Thus, the impugned judgments are based on correct appreciation of evidence and law.

16. Still further, averting to the order of sentence, this Court had noticed that the FIR in the present case was registered on 01.07.2010 and the petitioners are facing the agony of trial and appeal for the last more than 14 years. Even, the petitioners were aged about 29 years and 18 years approximately at the time of recovery of the contraband from them. Even otherwise, the petitioners have already undergone 19 days out of total sentence of 06 months and no purpose will be served by sending both the petitioners behind the bars, at this stage.

17. Consequently, the sentence is reduced to the period already undergone by them. However, the sentence of fine will remain the same.

18. With the above modifications, the revision is partly allowed and the impugned judgment of convictions are upheld, whereas the order of sentence is modified to the extent that the sentence imposed on the present petitioners is reduced to the period

already undergone by them. However, the sentence of fine will remain the same.

19. All pending applications, if any, are disposed off, accordingly.

20. The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

25.11.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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