

CRA-S-3736-2023 (O&M)
Date of Decision: 02.02.2024

...Appellant

STATE OF PUNJAB

...Respondent

Present: Mr. J.K. Singla, Advocate
for the petitioner.

Mr. P.S. Grewal, DAG, Punjab.

ALOK JAIN J. (Oral)

1. The present appeal arises out of the impugned judgment dated 23.11.2023 and conviction order dated 29.11.2023 whereby the appellant Ram son of Mohinder Kumar @ Juli has been convicted for rigorous imprisonment for a period of 06 months and has been imposed with a fine of Rs.5,000/- under Section 61 of the Punjab Excise Act, 1914.

2. The factual matrix of the case as detailed by the prosecution is as follows:

An FIR No.59 dated 20.05.2018, under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 and Section 61 of Punjab Excise Act, Police Station City Budhlada, District Mansa was registered on the basis of ruqa sent by ASI Balwinder Singh to the SHO of Police Station City Budhlada to the effect that on 20.05.2018, ASI Balwinder Singh No.376 alongwith police party consisting of ASI Mela Singh No.443, HC Bhola Singh No.671, HC Daljit Singh No.356. HC Jarnail Singh No.338, C-Sukhwinder Singh No.884 and L/HC Sarabjit

Kaur No.595 was present at Gole Market, Budhlada in connection with patrolling then a secret information was received to the effect that Manga Singh son of Wazir Singh, resident of Ward No.17, Budhlada, Ram son of Somi, resident of Ward No. 17, Budhlada, District Mansa and Ram son of Mohinder Kumar alias Juli, resident of near old Gas Agency, Budhlada were habitual in procuring country made liquor and Ganja from Haryana and used to sell the same. Finding the information reliable, ruqa for registration of FIR under Section 20 NDPS Act and 61 of the Punjab Excise Act sent through C-Sukhwinder Singh No.884.

Thereafter, the police party raided the house of Manga Singh. Accused Manga Singh fled away from the spot after leaving a plastic sack. The Ganja was put into the plastic sack and upon weighing it weighed 2 kg 500 grams. The parcel was prepared and Ram son of Mohinder Kumar alias Juli was apprehended with the help of police party. 12 bottles of country made liquor Charlie of Haryana was recovered from his possession. The other accused namely Ram son of Somi, who fled away from the spot had also thrown a plastic sack from which 12 bottles of country made liquor Charlie of Haryana was recovered. On search of house of accused Manga Singh, four plastic sacks containing 24 bottles country made liquor Malta Haryana each (Total 96 bottles) were recovered. On search of house of accused Manga Singh, four plastic sacks containing 24 bottles country made liquor Malta Haryana each (Total 96 bottles) were recovered.

3. Learned counsel for the appellant has submitted that the prosecution had failed to prove for the delay in sending the sample to Forensic Science Laboratory (FSL) and there was no independent witness who corroborated the prosecution version.

Learned counsel for the appellant further submits that the appellant has absolutely clean antecedents and is not involved in any other case.

4. Per contra, learned State counsel has submitted that the prosecution has proved the guilt of the appellant beyond reasonable doubt for which he has been rightly convicted. Although he could not deny the fact that there is no appeal for enhancement of sentence in the present case which has been filed by the State.

5. In response, the learned counsel for the appellant submits that the appellant has already undergone more than 03 months incarceration and taking a lenient view the present appeal be partly allowed by reducing the sentence of the appellant to already undergone.

6. Heard learned counsel for the parties.

7. Considering the ratio of law laid down by the Hon'ble Supreme Court in the cases of *Nachhtar Singh Vs. State of Punjab*, *Jai Vs. State of Punjab* and *Vijay Kumar Vs. State of Punjab* and the prayer made by the learned counsel for the appellant the present appeal is partly allowed and the sentence imposed upon the appellant deserves to be modified to already undergone in light of the following facts:

- (i) That the appellant is a first time offender.
- (ii) The alleged recovery was affected in the 2018 and thereafter about 06 years have passed and the appellant did not repeat the offence.
- (iii) The recovery effected from the appellant was only 12 bottles of country made liquor.
- (iv) The appellant has already undergone more than 03 months in custody.

Hence, the interests of justice would be met if the appellant is released from custody on the basis of the grounds mentioned above.

8. Keeping in view the totality of the circumstances of the case, the present appeal is partly allowed and sentence of the appellant is reduced to already undergone, but with the fine that is enhanced from Rs. 5,000/- to Rs.10,000/- which is to be deposited before the trial Court within a period of 03 months from today.

9. Pending application(s), if any, stand(s) disposed of accordingly.

02.02.2024
pry

(ALOK JAIN)
JUDGE

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