2024:DHC:9810

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 03.12.2024
Pronounced on : 18.12.2024

\+ **CRL.REV.P. 1278/2024 & CRL. M. (BAIL) 1856/2024**

DOLLY .....Petitioner

Through: Mr. Basant Kr. Singh and Mr. Bhupendra Singh, Advocates.

versus

STATE NCT OF DELHI .....Respondent

Through: Mr. Laksh Khanna, APP for State along with SI Nitin Panwar P.S. Timarpur.

\+ **CRL.REV.P. 1305/2024 & CRL. M. A. 1938/2024**

PAWAN .....Petitioner

Through: Mr. Basant Kr. Singh and Mr. Bhupendra Singh, Advocates.

versus

THE STATE GOVERNMENT OF NCT OF DELHI.....Respondent

Through: Mr. Laksh Khanna, APP for State along with SI Nitin Panwar P.S. Timarpur.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present revision petitions, the revisionists seek to assail the common Judgement dated 26.10.2024 passed in Crl. A. Nos. 127/2024 and 128/2024 by the Principal District and Session Judge, District Central, Tis

Hazari Courts, Delhi in proceedings arising out of FIR No. 309/2016 registered under Sections 33/52 of the Delhi Excise Act and Sections 3/181/146/196/5/180 of the M.V. Act.

2. The Trial Court vide judgement dated 17.11.2023 convicted the revisionist/*Dolly* under Sections 52/33 Delhi Excise Act and Section 5/180 MV Act and revisionist/*Pawan* under Section 33 of Delhi Excise Act and under Sections 3/181/146/195 MV Act. Vide order on sentence dated 28.02.2024, the revisionist/*Dolly* was sentenced to undergo RI for nine months for the offence under section 52/33 of Delhi Excise Act with fine of Rs.50,000/- and in default to undergo two months SI and sentenced to 15 days SI for offence under section 5/180 MV Act. On the other hand, the revisionist/*Pawan* was sentenced to undergo RI for nine months for offence under section 33 of Delhi Excise Act with fine of Rs.50,000/- and in default to undergo two months SI and sentenced for 15 days SI for offence under section 3/181 and 146/196 of MV Act. Benefit of Section 428 Cr.P.C. was given to both of them.

3. The revisionists herein, namely *Dolly* and *Pawan*, preferred Criminal Appeals No. 127/2024 and 128/2024 respectively against the abovementioned judgement and order on sentence. Vide the impugned judgement, the appellate court upheld the convictions of both the revisionists but modified the sentence of the revisionist/Dolly to the extent that she was awarded the minimum sentence, i.e. RI for 6 months for the offence under section 52/33 of Delhi Excise Act while the rest of her sentence was not interfered with.

4. In a nutshell, the case of the prosecution is that on 08.07.2016, the complainant HC Johnson and Ct. Krishan Pal, while on patrolling duty, were

checking vehicles at Gopalpur red-light. One Accent car bearing no. DL2CW6556 was stopped for checking at about 8.30 pm and from its boot, 22 boxes containing illicit liquor was recovered. The car was being driven by the revisionist/*Pawan* who did not have any license, insurance or permit. The car was found to be registered in the name of revisionist/Dolly.

5. Learned counsel for the revisionists contends that the revisionists are innocent and have been falsely implicated in the present case on the basis of a doubtful recovery and that there are glaring discrepancies in the statement of the police witnesses and the case property with respect to the description of the alcohol bottles which would show that the prosecution has miserably failed to prove the recovery beyond reasonable doubt. In support of this contention, learned counsel submits that though in the *Rukka* and FIR, it is mentioned that paper labels were pasted on all quarter bottles, however when the case property was produced in trial, some of the quarter bottles were bereft of any labels, which clearly illustrates that the case property is not the same as shown in the seizure memo. It is further submitted that the PW10 also stated in his examination that each quarter bottle had paper label saying "YesGoa Premium Whiskey for Sale in Arunachal Pradesh only" (hereafter, "the paper label") but when the case property was opened in the presence of the Presiding Officer, the said label was not present on some bottles. It is also contended that while as per the recovery shown to have been effected, the labels of "YesGoa" were also present on the boxes, however the witnesses have denied that the labels were present on the boxes as well.

6. Learned APP for the State, on the other hand, has vehemently opposed the present petition and submits that the Appellate Court did not

fall in any error while upholding the conviction of the revisionists. He submits that PW2, PW3, PW4, PW5, PW6 and PW10 all in their statements have consistently mentioned that each quarter bottle had ‘the paper label’. Moreover, it is submitted that the very fact that the paper label was present on some of the bottles would show that the label was present on the bottles originally and it is possible that the label came off of some of the bottles with the passage of time. Learned APP further submits that the seizure was made of the quarter bottles and not the boxes in which they were present and therefore any discrepancy in the *Rukka* and the statements of witnesses with regard to the presence of a label on the boxes would be of no consequence.

7. I have heard learned counsel for the parties and gone through the records.

8. Both the revisionists in the present case have been convicted under Section 33 of the Delhi Excise Act. The same is reproduced below for convenience:-

> *33. Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.*
> *(1) Whoever, in contravention of provision of this Act or of any rule or order made or notification issued or of any licence, permit or pass, granted under this Act— •*
> *(a) manufactures, imports, exports, transports or removes any intoxicant;*
> *(b) constructs or works any manufactory or warehouse;*
> *(c) bottles any liquor for purposes of sale;*
> *(d) uses, keeps or has in his possession any material, still, utensil, implement or apparatus, whatsoever, for the purpose of manufacturing any intoxicant other than toddy or tari;*
> *(e) possesses any material or film either with or without the Government logo or logo of any State or wrapper or any other thing in which liquor can be packed or any apparatus or implement or machine for the purpose of packing any liquor;*
> *(f) sells any intoxicant, collects, possesses or buys any intoxicant beyond the prescribed quantity, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but*

which may extend to one lakh rupees.

9. For sustaining a conviction under Section 33 of the Delhi Excise Act, the prosecution has to prove that firstly, the accused was found in possession of the illicit liquor and secondly, he possessed the same without any licence, permit or pass.

10. Section 52 of the Excise Act is also relevant for the purpose of the present case and the same reads as follows:-

> *52. Presumption as to commission of offence in certain cases*
> *(1) In prosecution under section 33, it shall be presumed, until the contrary is proved, that the accused person has committed the offence punishable under that section in respect of any intoxicant, still, utensil, implement or apparatus, for the possession of which he is unable to account satisfactorily…*

11. A careful reading of the said section would show that though there is a provision for presumption against the accused, the same only comes into operation once the prosecution successfully establishes the factum of recovery of the alleged articles from the accused. Section 52 of the Act does not do away with the responsibility of the prosecution to prove beyond reasonable doubt the recovery of illicit liquor from the accused.

12. In the present case, the seizure memo is dated 08.07.2016 which was exhibited as Ex PW4/A. The memo records that every box had 'YESGOA PREMIUM' written on it and each box had 48 quarter bottles each of which had a label with 'for sale in Arunachal Pradesh' written on it. The memo has been signed by PW4/*Ct. Rajdeep* and PW10/*HC Jauhari Singh.* PW4 in his testimony stated that each quarter had 'the paper label'. He also admits to his signatures on the Seizure memo. PW10 also stated in his testimony that each quarter bottle seized had 'the paper label'. He also admitted to his

signature on the seizure memo Ex. PW4/A.

However, when the case property Ex.P1 was examined in the presence of the Presiding Officer, out of 22 boxes, in one of the boxes, some of the bottles were even found to be without 'the paper label'. PW4 identified it to be the property which was recovered from possession of the revisionist/Pawan. In the cross examination of PW4, he stated that he had checked all the bottles in the 22 boxes at the time of seizure.

13. It is also pertinent to note that the case property was produced in trial court. The case of the prosecution is that every quarter bottle had 'the paper label'. This stand is consistent across the seizure memo as well as the statements of PW4 and PW10. However, when the case property was desealed, it was observed that some of the bottles had the paper label missing. If the label had come off due to the passage of time, atleast some of the separated paper labels would have been found in the boxes. However, nothing on record has been shown to prove that any loose paper label was found. The prosecution has failed to explain the above contradiction and the same casts a long shadow on the genuineness of the alleged recovery.

14. Since the defence has been able to cast a shadow of doubt on the alleged recovery due to absence of the paper labels, in the opinion of this Court, the ingredients of offence are not conclusively proved against the revisionist/*Pawan* and its benefit must flow to him. Accordingly, the conviction of revisionist/*Pawan* under Section 33 of the Delhi Excise Act is set aside and he is acquitted of the same. Since the revisionist/*Dolly* has been convicted in her capacity as the owner of the vehicle from which the alleged liquor was seized, on failure to conclusively prove the recovery against the revisionist/*Pawan*, her conviction under Section 33/52 of the

Excise act is also set aside and she is acquitted of the said charge.

15. So far as the conviction of the revisionists under MV Act is concerned, the same has not been put to any serious challenge and is upheld. However, a perusal of the Nominal Roll of the revisionists would show that both of them have already undergone the 15 days SI awarded under the MV Act.

16. The revisionists are set free unless required in any other case.

17. Let a copy of this judgment be communicated to the concerned Trial court as well as to the concerned Jail Superintendent for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 18, 2024
NA