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(203)

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-2123-2009

Date of Decision:-28.01.2025

VED PARKASH & ANOTHER**.....Petitioners****VERSUS****STATE OF PUNJAB****.....Respondent****CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. P.S. Dhaliwal, Advocate
for the petitioners.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The present revision petition has been filed impugning the judgment dated 07.08.2009 passed by the Addl. Sessions Judge, Barnala whereby the appeal filed against the judgment of conviction and order of sentence dated 22.01.2008 passed by the Judicial Magistrate, 1st Class, Barnala has been dismissed.

2. The FIR in the present case came to be registered on 03.06.2004. The judgment of conviction was passed on 22.01.2008 by the Judicial Magistrate, 1st Class, Barnala. The appeal filed against the order of conviction was dismissed on 07.08.2009 by the Sessions Judge, Barnala. The instant revision petition was filed on 13.08.2009 and has come up for final hearing now i.e. after a period of 20 ½ years from the date of registration of the FIR.

3. Briefly, the story put forth by the prosecution was that on 30.03.2003, ASI Jaswant Singh, ASI Gurcharan Singh along with other

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police officials, while in private canter, in connection with patrolling duty and checking of bad elements, were present at the old Bus Stand Bhaini Jassa, where ASI Jaswant Singh had received secret information at about 01.30 PM about Ved Parkash @ Kaka son of Bihari Lal, Paramjit Singh son of Maghar Singh and Nahar Singh son of Bogha Singh, all residents of Bhaini Jassa to be in the habit of selling illicit liquor, without any permit or license and on that day, the said persons were coming on a tractor trolley, which was loaded with illicit liquor and they could be apprehended. Finding the said information to be reliable, a ruqa was dispatched to the Police Station and the case was registered. Thereafter, the police party proceeded to the disclosed spot. On the way, Babu Singh Panch was associated in the police party as independent witness. When the police party was present on the road connecting Bhaini Jassa with Kahneke, there they came across an Eicher Tractor Trolley, upon which, three persons were sitting. One person was driving the tractor and other two persons were sitting in the trolley. On enquiry, said persons disclosed their names Nahar Singh, Paramjit Singh and Ved Parkash and also disclosed their other particulars. ASI Jaswant Singh conducted the search of the tractor trolley and the same led to the recovery of 11 cartons containing country made liquor made Patiala Santra. Each carton contained 12 sealed bottles. The cartons were assigned Sr. Nos.1 to 11. Then ASI Jaswant Singh had broken the seals of all the 12 bottles of each carton and poured the same into the bucket. Then, one bottle was separated as sample and the residue liquor was poured in the same bottles. Likewise, one bottle was taken as sample from each carton and the residue was put in the same bottles. The samples and the residue licit liquor in the

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bottles were sealed with the seal bearing impressions "JS" Sample seal was separately prepared. All the samples and the cartons containing residue liquor in the bottles were taken into possession along with the Eicher tractor trolley, vide separate recovery memo. Various other proceedings were conducted at the spot. Samples were sent to the office of Chemical Examiner and the latter, vide its report, opined the same to be country made liquor. On completion of investigation, the accused were sent up to face trial for the commission of offence under Section 61(11)(a) of Punjab Excise Act.

4. On presentation of the challan, copies of the documents as envisaged under Section 207 Cr.P.C. were supplied to the accused. On the basis of the report under Section 173 Cr.P.C. and the documents annexed thereto, a prima facie case was made out against all the accused under Section 61(1)(a) of the Punjab Excise Act, 1914. Accordingly, charge was framed against all the accused under the aforesaid Section, which was read over and explained to the accused in Punjabi. The accused pleaded not guilty and claimed trial.

5. In order to establish its case, the prosecution examined as many as 04 witnesses besides adducing documentary evidence.

6. On closure of the prosecution evidence, all the incriminating circumstances appearing against the accused were put to them in their statements under Section 313 Cr.P.C. However, the accused denied those allegations and pleaded false implication. In their defence, the accused examined Babu Singh as DW1 and Bharpur Singh DW2 and closed the defence evidence.



7. Based on the evidence led, the accused/petitioners along with their co-convict Nahar Singh came to be convicted and sentenced by the Court of Judicial Magistrate, 1st Class, Barnala vide judgment and order of sentence dated 22.01.2008 as under:-

Name of convicts	Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
Ved Parkash @ Kaka	61 of Punjab Excise Act, 1914	RI for 01 year	Rs.500/-	RI for 01 month
Paramjit Singh	61 of Punjab Excise Act, 1914	RI for 01 year	Rs.500/-	RI for 01 month
Nahar Singh	61 of Punjab Excise Act, 1914	RI for 01 year	Rs.500/-	RI for 01 month

8. The aforementioned judgments are under challenge in the present appeal.

9. During the pendency of the instant appeal, the sentence of the accused/petitioners was suspended vide order dated 07.09.2009.

10. The counsel for the accused/petitioners contends that the judgment of conviction and order of sentence was passed on the basis of conjectures and surmises. The prosecution witnesses were discrepant in material particulars. No independent witness had been examined despite the availability of the same. Therefore, the judgment was liable to be set aside and the accused/petitioners acquitted of the charges framed against them. He further contends that if this Court was to come to a finding that the prosecution had established its case beyond reasonable doubt, then keeping in view the fact that the occurrence was of the year 2004 and the case had come up for final hearing now after a gap of 20 ½ years, the sentence of the

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accused/petitioners may be reduced to the period already undergone by them.

11. The learned counsel for the State on the other hand has filed a custody certificates of the accused/petitioners dated 27.01.2025 and the same is taken on record. He contends that the prosecution witnesses have deposed consistently. Non-examination of independent witnesses were not fatal to the prosecution case. All the grounds raised by the accused/petitioners had been considered by the Trial Court and the Lower Appellate Court. He, therefore contends that the present petition was liable to be dismissed.

12. I have heard the learned counsel for the parties.

13. As per the version of the prosecution, on 30.03.2003, during the course of patrolling duty and checking of bad elements, secret information was specifically received against Ved Parkash, Paramjit Singh and Nahar Singh about their indulgence in the sale of illicit liquor and on that day, they could be apprehended, while carrying illicit liquor in the tractor trolley. To so establish its claim, ASI Jaswant Singh, who is the Investigating Officer, stepped into witness box as PW3. He deposed about the mode and manner of the recovery of the country made liquor from the possession of the accused. He deposed about the secret information having been received against the accused specifically about their indulgence in the sale of illicit liquor. Ruqa Ex.PA was dispatched to the Police Station, on the basis were of, formal FIR Ex.PA/1 was registered. He further deposed about the recovery of 11 cartons from the trolley and from each carton, 12 bottles were recovered. Samples were drawn and parcels of the samples and the residue bottles in the cartons were prepared and were sealed with the seal bearing impressions "JS".

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Sample seal was separately prepared. All the samples and the residue liquor contained in the bottles in the cartons along with the sample seal and the tractor trolley were taken into possession vide recovery memo Ex.PB. He also proved the personal search memos relating to the accused which are Ex.PC, Ex.PD and Ex.PE, memo of arrest relating to the accused Ex.PF, intimation memo Ex.PG. Site plan of the spot of recovery prepared by him is Ex.P1. Further, ASI Gurchran Singh who was also accompanying ASI Jaswant Singh deposed about the mode and manner of interception of the accused and the recovery of liquor from their possession. He has also deposed about having attested various documents, as a witness. The prosecution also examined PW-2 C. Balwinder Kumar and PW4, MHC Randhir Singh, who tendered into evidence their affidavits Ex.PH and Ex.PL, with regard to the safe custody of the case property in the Malkhana and safe conveyance of the samples to the office of Chemical Examiner.

14. As regards the non-examination of Babu Singh, admittedly, at the time of interception of the accused, Babu Singh, an independent witness was associated by the prosecution. Undisputedly, he has not been examined by the prosecution. However, he was examined as DW-2 and while in the witness box, he did not support the prosecution version. However, this fact alone is not sufficient to dislodge the prosecution case. There is a general tendency to not support the prosecution so as not to earn the wrath of an accused. The other evidence is quite sufficient to establish the prosecution case.

15. In the light of the aforesaid discussion, again it is pertinent to mention that prosecution witnesses i.e. I.O. ASI Jaswant Singh PW2 and



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ASI Gurcharan Singh PW1 have deposed in clear and specific manner about the recovery of country made liquor from the possession of the accused. The documents vis-à-vis recovery, prepared at the spot of recovery have been duly proved by the said witnesses. In view of the same, the factum of recovery of 132 bottles of country made liquor without any license or permit from the petitioners stands established beyond doubt.

16. In view of the above discussion, I find no infirmity in the judgments of the Trial Court as well as of the Lower Appellate Court. Therefore, the present revision stands dismissed.

17. As regards imposition of sentence on the accused/petitioners, admittedly, the occurrence pertains to the year 2004 and as many as 20 ½ years have passed ever since then. A perusal of their custody certificates would show that they do not have any criminal antecedents and are first time offenders. Therefore, subject to the payment of fine of Rs.25000/- within a period of 04 weeks from the date of receipt of a certified copy of this order, the sentence of the accused/petitioners is reduced to the period already undergone by them i.e. 01 month and 04 days.

18. The present revision petition stands disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

January 28, 2025
Jitesh

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