(206)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-1761-2010 (O&M)
Date of Decision:-20.03.2025

SURINDER KUMAR

......Petitioner

VERSUS

STATE OF PUNJAB

......Respondent

CRR-1924-2010 (O&M)

ASHOK KUMAR

......Petitioner

VERSUS

STATE OF PUNJAB

......Respondent

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Abhaysher Singh, Amicus Curiae
for the petitioner(s).

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

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JASJIT SINGH BEDI, J.

This order shall dispose of two petitions bearing CRR-1761-2010 titled as Surinder Kumar Vs. State of Punjab and CRR-1924-2010 titled as Ashok Kumar Vs. State of Punjab as the same are arising out of the same FIR. However, for the sake of convenience the facts have been taken from CRR-1761-2010.

2. The present revision petitions have been filed impugning the judgment dated 12.05.2010 passed by the Addl. Sessions Judge, SAS Nagar, Mohali whereby the appeal filed against the judgment of conviction and

order of sentence dated 27.08.2008 passed by the Sub Divisional Judicial Magistrate, Kharar has been dismissed.

3. The FIR in the present case came to be registered on 04.06.2002. The judgment of conviction was passed on 27.08.2008 by the Sub Divisional Judicial Magistrate, Kharar. The appeal filed against the order of conviction was dismissed on 12.05.2010 by the Addl. Sessions Judge, SAS Nagar, Mohali. The instant revision petition was filed on 23.06.2010 and has come up for final hearing now i.e. after a period of more than 22 ½ years from the date of registration of the FIR.

4. Mr. Abhaysher Singh, Advocate is hereby appointed as Amicus Curiae on behalf of the petitioner to assist this Court. The Registry is directed to pay an amount as per the rules to the Amicus Curiae.

5. Succinctly stated, the prosecution allegations are that on 03.06.2002 A.S.I. Baljinder Singh alongwith some other police officials and Excise & Taxation Officer Mahavir Singh, Excise Inspector Hardev Singh and other officials of the Excise Department was present on the Sales Tax Barrier of Balongi in connection with a special nakabandi. At about 8-15 P.M. a TATA Sumo (white colour) bearing registration No.HR-26-G-4086 came from the side of Chandigarh. The said vehicle was intercepted by the aforesaid team. The same was being driven by the accused/petitioner-Ashok Kumar and accused/petitioner-Surinder Kumar was sitting adjacent to the seat of the driver. On the search of the said vehicle 20 cases of liquor i.e. 8 cases of Whytehall whiskey, 3 cases of Royal Stag whiskey, 6 cases of McDowell whiskey, 2 cases of DSP whiskey and 1 case of Bagpiper

whiskey were recovered. One bottle was taken out of each of the said cases as a sample. The remaining 11 bottles alongwith one empty card board box were sealed by the Investigating Officer with the seal bearing impression 'BS'. The bottles taken as samples were separately sealed by him with his seal bearing impression 'BS'. The case property was taken into possession by the investigating Officer, vide a separate memo which was got attested from the witnesses. The vehicle was taken into possession vide another memo which was got attested from the witnesses. A ruqa was sent to the Police Station on the basis of which F.I.R. No. 102 Dated 4.6.2002 was registered against the accused at Police Station Kharar. The accused were arrested. During further investigation the samples were sent to the office of the Chemical Examiner and as per report of the said office the contents of the samples bottles were found to be 'Whiskey'. On the completion of the investigation the challan against the accused was presented before the Court of the Ilaqa Magistrate.

6. On finding a prima facie case charge under Section 61(1) (a) of the Punjab Excise Act (hereinafter to be referred "as the Act") was framed against the accused on 21.09.2002. However, the accused pleaded not guilty to the charge and claimed trial.

7. In order to bring home the guilt of the accused, the prosecution examined PW1 A.S.I. Baljinder Singh, PW2 Hardev Singh, Excise Inspector, PW3 MHC Ramesh Kumar, PW4 Constable Dilbagh Singh and thereafter the evidence of the prosecution was closed.

8. When the accused were examined under Section 313 Cr.P.C.,

they denied the incriminating circumstances appearing in the evidence produced by the prosecution and raised the plea of false implication. In defence the accused examined DW1-Satwinder Singh, PW2-Nilhal Singh and accused Ashok Kumar made his own statement as DW3.

9. Based on the evidence led, the accused/petitioners came to be convicted and sentenced by the Court of Sub Divisional Judicial Magistrate, Kharar vide judgment and order of sentence dated 27.08.2008 as under:-

Name of convicts	**Offence under Section**	**Sentence RI/SI**	**Fine**	**RI/SI in default of payment of fine**
Ashok Kumar	61(1) (a) of Excise Act	RI for 1 ½ years	Rs.2000/-	SI two months
Surinder Kumar	61(1) (a) of Excise Act	RI for 1 ½ years	Rs.2000/-	SI two months

10. The accused/petitioners preferred an appeal which came to be dismissed by the Court of Additional Sessions Judge, SAS Nagar, Mohali vide judgment dated 12.05.2010.

11. The aforementioned judgments are under challenge in the present revision petitions.

12. During the pendency of the instant revision petitions, the sentences of the accused/petitioners were suspended vide order dated 24.06.2010 and 22.09.2010.

13. The learned Amicus Curiae for the petitioners has vehemently argued that the prosecution could not produce any clear and cogent evidence to establish the guilt of the accused. He has argued that the police officials were holding a naka but they did not join any independent witness. The case

of the prosecution rests on the testimony of the Investigating Officer and Excise Inspector Hardev Singh both of whom are the interested witnesses. In fact accused Ashok Kumar did not know how to drive a vehicle. He did not possess any driving licence. Both the accused were picked up by the police when they were standing near the Sales Tax Barrier of Balongi and were waiting for the bus bound for Moga. The police and the excise officials implicated the accused in a false case. The accused Ashok Kumar was not holding any driving licence as he did not know how to drive a TATA Sumo but the police officials wrongly challaned him under Section 181 of the Motor Vehicles Act. He has further argued that the said TATA Sumo was owned by one Nazar Singh who produced the certificate of registration and other documents regarding the said vehicle, but the prosecution did not examine the said Nazar Singh. The non-examination of Nazar Singh is fatal to the prosecution in view of the fact that there is no independent witness to corroborate the version of the police and excise officials.

The Amicus Curiae contends that the Investigating Officer allegedly separated one bottle out of each case as sample and the contents of the bottles were found to be whiskey. Therefore, it can be said that at the most 20 bottles of whiskey were recovered from the accused. The contents of the remaining bottles were not got examined from the Chemical Examiner.

He further contends that the alleged recovery was effected by A.S.I. Baljinder Singh and F.I.R. was registered on the basis of the complaint/ruqa sent by him. Under these circumstances, the matter should have been investigated by some other police officer. However, in the instant case, the investigation has been conducted by A.S.I. Baljinder Singh, who is the complainant. The rights of the accused have been prejudiced due to this lapse.

He thus, prays that the accused be 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 2002 and the case had come up for final hearing now after a gap of 22 ½ years, the sentence of the accused/petitioners may be reduced to the period already undergone by them.

14. The learned counsel for the State on the other hand has filed a custody certificates of the accused/petitioners dated 19.03.2025 and the same are taken on record. He contends that the impugned judgment of conviction is based on proper appreciation of the evidence. The Trial Court has rightly held that the petitioners/accused were guilty of committing the offence punishable under Section 61 of the Act and the sentence awarded to them is commensurate with the gravity of the offence committed by them. He therefore contends that the present petitions were liable to be dismissed.

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

16. The recovery was effected by PW1 A.S.I. Baljinder Singh, the Investigating Officer, in the presence of PW2 Hardev Singh, Excise Inspector. PW1 A.S.I. Baljinder Singh has narrated the prosecution version

in detail. He has stated that after taking one bottle as a sample out of each of the cases of liquor recovered from the TATA Sumo driven by accused Ashok Kumar, the remaining 11 bottles of the liquor and one empty card board box, out of which the sample bottle had been taken out, were sealed in those very cases. He has proved the recovery memo Ex. PA, memo regarding recovery of TATA Sumo Ex. PB, ruqa Ex. PC and rough site plan of place of recovery Ex. PD. His statement regarding the said recovery has been fully corroborated by PW2-Hardev Singh, Excise Inspector. No-doubt, there is no independent witness to corroborate their version, however, mere non-joining of the independent witness is not fatal to the case of the prosecution. Where the case of the prosecution rests on the testimony of the official witnesses, the Court is required to scrutinize the evidence with care and caution. The statements made by the official witnesses cannot be discarded merely on account of their official status. When the statements of the witnesses i.e. PW1 A.S.I.Baljinder Singh and PW2 Hardev Singh, Excise Inspector are examined there is no reason to disbelieve their version. Both the witnesses were cross-examined at length but there is no material discrepancy in their statements. Moreover, PW2 Hardev Singh, Excise Inspector is an official of the Excise Department. It is difficult to accept that A.S.I. Baljinder Singh had involved the officers of the Excise Department to implicate the accused in a false case. The accused have not attributed any oblique motive to the prosecution witnesses for implicating them in a false case. Though, the accused Ashok Kumar did not possess any driving licence, however, it does not mean that he did not know how to drive a vehicle.

When the statements made by PW1 A.S.I. Baljinder Singh and PW2 Hardev Singh, Excise Inspector regarding the apprehension of both the accused in the manner stated by them, inspire confidences, the prosecution version cannot be disbelieved simply because no driving licence was recovered from accused Ashok Kumar. While appearing as DW3-Ashok Kumar stated that he did not know how to drive a scooter also but DW2 Nihal Singh stated that Ashok Kumar could drive a scooter only. Therefore, it appears that accused Ashok Kumar has made an incorrect statement in this regard. The statements made by DW1-Satwinder Singh and DW2-Nihal Singh that the accused Surinder Kumar and Ashok Kumar respectively were of good character cannot be accepted.

17. So far as the non-examination of Nazar Singh, the owner of the TATA Sumo in question is concerned, the same is not fatal to the prosecution. Undoubtedly, the examination of Nazar Singh could have corroborated the statements made by the prosecution witnesses, but when there is clear and cogent evidence establishing the guilt of the accused the non-examination of Nazar Singh becomes insignificant.

18. The defence plea raised by accused Ashok Kumar during the course of his statement that infact he had accompanied his co-accused Surinder Kumar to the house of his brother-in-law at Mohali due to the matrimonial dispute of the niece of Surinder Kumar and when they were standing near Sales Tax Barrier of Balongi at about 8-30 P.M. both of them were picked up by some wine contractors and thereafter the police and excise officials implicated them in a false case, is not tenable. The accused

did not put any such version to the Investigating Officer and the recovery witnesses during their cross-examination. Moreover, they could not examine the brother-in-law of Surinder Kumar or any other witness to corroborate his version in this regard. He could not tell about the residential address of the brother-in-law of Surinder Kumar. He could not tell the name of the niece of Surinder Kumar or the name of her husband.

19. In this case, the Investigating Officer had taken one bottle out of each case as sample and, thus, 20 bottles were taken as samples. The said bottles were sent to the office of the Chemical Examiner. As per the report of the Chemical Examiner, Ex. PG the contents of the bottles were found to be of 'whiskey'. This is not a case of recovery of unbranded liquor. 20 boxes of branded liquor were recovered. The Investigating Officer took out one bottle out of each box as sample. All the bottles in the cases were in card board boxes and the bottles were duly sealed. The Investigating Officer took out one bottle as sample and remaining 11 bottles and empty card board box, out of which the sample bottle had been taken out, were sealed in those very boxes. The case property was produced before the Court during the course of the statement of PW1 A.S.I.Baljinder Singh. The labels of all the bottles corresponded with the label/card board box, out of which the sample bottle was taken. During the course of cross-examination of PW1 A.S.I. Baljinder Singh nothing could be brought on record that the remaining bottles in the box were of different kind than the bottle which was sent as a sample. Therefore, the contention that the contents of the remaining bottles were not analysed cannot be accepted. Moreover, even if it be assumed that the taking

of 20 samples can prove that only 20 bottles of whisky were recovered from the accused, even then conviction of the petitioners/accused under Section 61 of the Act, cannot be interfered with.

20. 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.

21. As regards imposition of sentence on the accused/petitioner Ashok Kumar, the custody certificate would reveal that he has already undergone the entire sentence imposed upon him. Therefore, no further orders are required to be passed in his case.

22. As regards imposition of sentence on the accused/petitioner Surinder Kumar, admittedly, the occurrence pertains to the year 2002 and as many as 22 ½ years have passed ever since then. A perusal of his custody certificate would shows that he does not have any criminal antecedents and is a first time offender. 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/petitioner Surinder Kumar is reduced to the period already undergone by him i.e. 01 month and 22 days.

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

(JASJIT SINGH BEDI)
JUDGE

20.03.2025
Jitesh

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