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

Date of decision: 02nd November, 2026

\# **CNR No. DLHC010099072004**

\+ CRL.A. 653/2004

STATE .....Appellant

Through: Mr. Ashneet Singh, APP with SI Braham Prakash, PS-Sultan Puri.

versus

SANJAY .....Respondent

Through: Mr. Nishant Yadav, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT(ORAL)

RAVINDER DUDEJA, J.

1. The present appeal has been filed under Section 378 of the Code of Criminal Procedure, 1973 ["Cr.P.C."] against the impugned judgment dated 23rd May, 2003 passed by the learned ACMM, Delhi ["Trial Court"], in case arising out of FIR No. 768/1996 registered at Police Station Sultan Puri, whereby the respondent was acquitted of the charge under Section 61 of the Punjab Excise Act, 1914 (hereinafter, 'the Act').

2. The prosecution case, as per the charge sheet, is that on 18.07.1996, at about 8:15AM, the respondent was found in possession of 100 pouches, each containing 100 ml of illicit liquor, at his house bearing No. B-2/286, Sultan Puri, Delhi, without any licence or

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permit. Upon completion of investigation, charge sheet under Section 173 Cr.P.C. was submitted before the learned Trial Court.

3. The learned Trial Court framed charge for the offence punishable under Section 61 of the Act against the respondent to which he pleaded not guilty. The prosecution examined four witnesses in support of its case.

4. The respondent in his statement recorded under Section 313 Cr.P.C., denied all the incriminating evidence appearing on record against him and claimed innocence. He did not lead any evidence in his defence.

5. Upon conclusion of trial, the learned Trial Court *vide* the impugned judgment dated 23rd May, 2003, acquitted the respondent. The operative para of the judgment reads as under:-

> "*5. Arguments were heard. As per section 75 of Punjab Excise Act, complaint or report by an Excise Officer is must before cognizance of offence Punish able U/s 61 Punjab Excise Act can be taken. A report U/s 173 Crpc filed by the SHO of the Police Station after the investigation of the case can not take the place of complaint or report by the Excise Officer. The case filed by the prosecution is legally not tenable and accused can not be held accountable for the offence Punishable U/s 61 Punjab Excise Act and he is accordingly aquitted of charge U/s 61 Punjab Excise Act. Bail Bonds canceled, surety discharged.*"

6. Feeling aggrieved, the State preferred the present appeal, impugning the judgment dated 23rd May, 2003.

7. Learned Additional Public Prosecutor [APP] appearing for the State submitted that the learned Trial Court erred in holding that the

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report submitted by the SHO could not form the basis for taking cognizance of the offence under Section 61 of the Act.

8. It is submitted that the Notification dated 07th September, 1966, issued by the Lieutenant Governor, Delhi confers the powers of Excise Officers upon police officials. Consequently, the police officials so empowered would fall within the definition of an Excise Officer under Section 3(8) of the Act. It is, therefore, contended that the report submitted by the SHO under Section 173 Cr.P.C. could not have been rejected merely on the ground that it was not submitted by an officer of the Excise Department. Reliance is placed on ***State Vs. Jaswant Singh***, 2013 SCC OnLine Del 4049, wherein this Court, following its judgment in ***Chattar Singh Vs. State***, 1985 SCC OnLine Del 61, held that a report submitted by a duly empowered police officer under Section 173 Cr.P.C. satisfies the requirement of Section 75 of the Act.

9. Learned APP submits that the learned Trial Court failed to examine the aforesaid notification and the statutory empowerment of police officers before arriving at its conclusion. It is, accordingly, prayed that the impugned judgment be set aside and the matter be remanded to the learned Trial Court for consideration in accordance with law.

10. *Per contra*, learned counsel appearing for the respondent supports the impugned judgment and submits that Section 75 of the Act prescribes a specific requirement regarding the source of a complaint or report on the basis of which cognizance of an offence under Section 61 can be taken. It is contended that a report submitted

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by a police officer cannot automatically be treated as a report of an Excise Officer unless such officer is shown to have been duly empowered under the Act. In the absence of such material, the learned Trial Court was justified in holding that the statutory requirement under Section 75 had not been satisfied. The respondent, accordingly, seeks dismissal of the appeal.

11. The Court has considered the rival submissions and perused the material placed on record.

12. The limited question before this Court is regarding the competence of the police officer/SHO who submitted the report under Section 173 Cr.P.C., having regard to the provisions of the Punjab Excise Act, 1914, and the notifications/rules applicable to Delhi.

13. Section 75(1)(a) of the Act, as applicable to Delhi at the relevant time, provides that no Magistrate shall take cognizance of an offence punishable under Section 61 or Section 66 of the Act except upon his own knowledge or suspicion or upon a complaint or report of an Excise Officer. The expression 'Excise Officer' is defined under Section 3(8) of the Act to mean any officer or person appointed or invested with powers under the Act. Thus, the definition is not confined to officers belonging to the Excise Department. A police officer, if duly invested with the requisite powers under the Act, would also fall within the ambit of the expression 'Excise Officer'.

14. In this regard, it would be apposite to refer to the decision of this Court in ***Chattar Singh*** (supra). The relevant paras of the judgment read as under:-

> "*5. Mrs. Anand, learned counsel for the State*

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has brought to my notice statutory rules issued by the Lieutenant Governor of Delhi under section 10 of the Act, designating three classes of excise officers. Rule 3 of the said Rules (appearing in Volume II of Delhi Administration's Excise Department Manual), read as under :-

> *"3.The persons mentioned in group A & B below are under section 11 of the Punjab Excise Act. as applied to the Union Territory of Delhi, invested with the powers of an excise officer of the 1st Class and IIIrd Class, respectively :*
>
> *GROUP'A'*
> *(to exercise the powers of an excise officer of the IIIrd class).*
> *All Superintendents, Assistant Superintendents and Deputy Superintendents of Police,*
> *All Inspectors & Sub-Inspectors of Police,*
> *All Sergeants of Police,*
> *All Assistant sub-inspectors of Police,*
> *All Head Constables.*
>
> *GROUP'B'*
> *(to exercise the powers of an excise officer of the IIIrd class).*
> *All Field Kunungos.*
> *All Police Constables."*

(6) According to the above-said Rule all the Inspectors, Sub inspectors as also all the Head Constables of Police in Delhi have been designated as excise officers and invested with the powers exercised by these officers. Police Officers having been invested with the powers of an excise officer under section 11 of the Act, come within the purview of the definition of an excise officer, quoted above. In this view of the matter, there is no merit in this petition. It Is dismissed. The petitioner, who is on bail, shall surrender his bail bond."

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15. In the aforesaid case, the Court observed that Rule 3, which provided for the investment of powers of Excise Officers upon specified police officials, including Superintendents, Assistant Superintendents and Deputy Superintendents of Police, Inspectors, Sub-Inspectors, Assistant Sub-Inspectors and Head Constables. On an examination of the said rules, this Court held that police officers who had been invested with powers under Section 11 of the Act would fall within the definition of an Excise Officer under Section 3(8) of the Act. Consequently, a report submitted by such an empowered police officer could form the basis for taking cognizance of an offence under Section 61 of the Act.

16. The aforesaid decision makes it clear that the mere fact that a report has been submitted by a police officer, as opposed to an officer belonging to the Excise Department, would not, by itself, render the prosecution incompetent. The determinative consideration is whether the police officer concerned had been duly invested with the powers of an Excise Officer under the Act.

17. In the present case, the State has specifically relied upon Notification dated 07th September, 1966, issued by the Lieutenant Governor, Delhi, in support of its contention that the police officials had been invested with the requisite powers. However, the learned Trial Court, while acquitting the respondent, proceeded on the premise that the report submitted by the SHO could not satisfy the requirement of Section 75 of the Act, without examining the effect and applicability of the aforesaid notification or determining whether the SHO concerned was an officer duly empowered under the Act.

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18. As per the aforesaid Notification and Rule 3 of Volume II of the Delhi Administration's Excise Department Manual, 1976, the SHO was competent to file the final report under Section 173 Cr.P.C., the report filed by the prosecution could not be regarded as legally not tenable, and the appellant could not have been acquitted of the charge under Section 61 of the Act. That being so, the impugned judgment dated 23rd May, 2003 is set aside.

19. Since, the appellant was acquitted on technical ground, and without considering the merits of the case, it would be appropriate to remand the case to the learned Trial Court to decide the matter afresh after hearing arguments on merits from both sides.

20. Copy of this judgement be sent to the learned Trial Court with direction to the appellant to appear before the learned Chief Judicial Magistrate, North-West District, Rohini on 20th November 2026, who shall either try the case himself or assign it to the competent Judicial Magistrate having jurisdiction.

21. The appeal is accordingly allowed.

22. It is clarified that no opinion is expressed on the merits of the prosecution case, which shall be considered by the Trial Court in accordance with law.

RAVINDER DUDEJA, J

NOVEMBER 2, 2026/*AK*

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