
(1993) 06 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 1333 of 1986

Manga Singh and anr.

APPELLANT

Vs

State of Punjab and anr.

RESPONDENT

Date of Decision : 16-06-1993

Acts Referred:

Citation : (1994) 1 AICLR 550 : (1994) 1 RCR(Criminal) 36

Hon'ble Judges : H.S.Barar, J

Advocate : S.S. Dhaliwal, Advocates for appearing Parties

Judgement

H.S. Barar, J.

1. Manga Singh and Surinder Pal petitioners were convicted by the Judicial Magistrate First Class, Patti, vide his judgment dated July 10, 1986, for an offence under Section 61(1)(a) of the Punjab Excise Act, 1914 (hereinafter called the Act) and sentenced to undergo Rigorous Imprisonment for two years and a fine of Rs. 2,000/, in default to undergo further Rigorous Imprisonment for six months, each, The learned Sessions Judge, Amritsar. vide his judgment, dated October 4, 1986 dismissed the appeal filed against the judgment of the trial Court but reduced the sentence of each of the petitioners to rigorous imprisonment for one year and a fine of Rs. 1,000/ in default to further undergo rigorous imprisonment for six months.

2. In this Revision petition the petitioners have challenged the judgments of both the Courts below.

3. The prosecution story, in brief, is that on May 21, 1983, Assistant SubInspector Lakha Singh along with police force was present in Chowk Madohar at Sharhali Road in the area of Patti in connection with Naka. At about 11. 55 p.m. Truck No. PJE294 came from the side of Paringri. The Assistant Sub Inspector tried to stop the truck by giving signal of torchlight, but the truck did not stop and filed away two Sarhail Road. It was chased by the Police. The Assistant SubInspector asked Head Constable Surjit Singh to fire on the tyres

who, fired three shots of 3113 rifle on account of which the three tyres of the truck were burst and the truck driver and another person ran away in the darkness after parking the truck. Later on, they were found to be Daler Singh and Pala Singh. As a result of the search of the truck the petitioners were found sitting on three tubes containing illicit liquor. They were apprehended at the spot. 180 Mls. were taken out as sample from each tube and the remaining liquor was measured. One tube was found containing 200 bottles and the other tubes were found 150 bottles of illicit liquor each. The liquor was transferred back to the tubes. The case property along with the truck were taken into possession vide Memo Exhibit PA, Ruqa Exhibit PA was sent to the Police Station and formal First Information Report Exhibit PB was recorded. Rough Site Plan Exhibit PC was prepared. After receipt of the report of the Chemical Examiner Exhibit PD the petitioners and their companions were sent up for trial.

4. At the trial, the prosecution examined Assistant Sub Inspector Lakha Singh, Head Constable Surjit Singh and Constable Sarmukh Singh as witnesses to the recovery Report of the Chemical Examiner Exhibit PD and statements of formal witnesses on Affidavit Exhibit PE were also tendered into evidence. The petitioners denied the allegations of the prosecution and ultimately they were convicted and sentenced as stated above.

5. The learned counsel for the petitioners contends that no independent witness has been joined particularly when Assistant Sub Inspector Lakha Singh along with police force was present in Chowk Madhor in connection with a Naka. I find force in this plea of the counsel for the petitioners. I find force in this plea of the counsel for the petitioners. It has come in the evidence of PW Lakha Singh, Assistant Sub Inspector that the Place of recovery was a thoroughfare and some vehicles had passed near them when they were holding the Naka and some people also passed near them at the time of the recovery. In these circumstances, it was not difficult for the Investigating Officer to join an independent witness in this case. To my mind, there are a few other reasons which are in favour of the acquittal of the accused petitioners. PW I has stated in his cross-examination that he took into possession empty cartridges numbering three and a Recovery Memo was prepared, but the said Recovery Memo was neither found on the Judicial File nor was it thereon the Police File. He was specifically asked in his cross-examination about the Recovery Memo and he answered as under :

"I took into possession empty cartridges numbering three and a Recovery Memo in that respect was prepared. I have seen Judicial File now. The said Recovery Memo is not on the Judicial File. In the Police File also there is no such Recovery Memo."

It seems that Lakha Singh, Assistant Sub Inspector, Investigating Officer in this case did not take into possession the empty cartridges at all. The factum of his taking into possession the empty cartridges is belied by the sworn testimony of Head Constable Surjit Singh (PW 2) who had stated in his cross-examination that

empties were not taken into possession from the spot. Thus, he specifically contradicted PW 1 Lakha Singh on this point. The Investigating Officer did not even take into possession the documents of the truck. Even the tyres of truck were also not taken into possession. The case property along with the truck was stated to have been taken into possession vide Exhibit PA; Neither Exhibit PA has been found on the File of the trial Court nor any Recovery Memo of the truck is there on the File. In these circumstances. I do not find that prosecution has proved its case against the accusedpetitioners beyond reasonable doubt.

6. In view of my discussion above, this petition succeeds. The judgments of the Courts below are set aside and the petitioners are acquitted of all the charges framed against them.