
(2010) 03 SHI CK 0079

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 197 of 2002 and Cr. M.P. (M) 1436 of 2002.

Rakesh Kumar and Others

APPELLANT

Vs

State of H.P
 State of H.P Vs Rakesh Kumar and
Others

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Punjab Excise Act, 1914 — Section 61(1)

Citation : (2010) 03 SHI CK 0079

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—Both these petitions are being disposed of together as they arise out of the same judgment.

2. The petitioners-accused were convicted for offences u/s 61(1)(a) of the Punjab Excise Act for possessing illicit liquor. The learned trial Court sentenced them to pay a fine of Rs. 1,000/- each and in default to undergo simple imprisonment of one month.

3. Criminal Revision No. 197 of 2002 was admitted and notice of enhancement of sentence on the ground that minimum sentence has not been imposed was issued to the petitioners. Accordingly Cr.M.P.(M) No. 1436 of 2002 was admitted on this point.

4. The prosecution case in brief is that on 19.8.2000, ASI Kanwar Singh (PW-5), alongwith PW-1 Constable Mehar Chand (sic Mehar Singh), PW-2 Constable Fakir Chand and PW-4 LHC Ghambhir Singh, was on Naka duty at Bharara on National Highway No. 22. At around 11.45 at night one white Maruti Van bearing registration No. HP-02-5301 was checked by the police in which four accused were present and three boxes of country liquor, containing 12 pouches of 750 ML each of "Sirmaur No. 1" were recovered. The prosecution case is that these three boxes were wrapped up in one "Boru" (bag of white plastic) which were seized by

the police. Ex.PW-1/A is the seizure memo which records that in the presence of three witnesses; namely; C. Faquir Chand (PW-2), C. Mehar Singh (PW-1) and LHC Ghambir Singh, three boxes containing 12 pouches of 750 ML each total 36 pouches of country liquor "Sirmour No. 1" were recovered from Maruti Van No. HP- 02-5301. These three boxes were wrapped in a white plastic bag. The seizure memo states that these were sealed with a seal bearing impression 'T' and after use the seal was entrusted to PW-2 Fakir Chand.

5. The learned Sub Divisional Judicial Magistrate, Rampur Buseshar, on the evidence of six witnesses including the report of the Chemical Examiner Ex.PW-5/F, convicted all the three accused for possession of illicit liquor. The judgment of the learned Magistrate is sketchy to say the least. It is spread over 13 paragraphs with 10 paragraphs only stating as to what the witness has stated without in any manner touching their cross-examination or the conclusion arrived at by the Court. The judgment thus proceeds that the learned Counsel for the petitioners-accused has tried to argue that no independent witness was associated for the seizure and since the suggestion has been denied by the prosecution witnesses, the case of the prosecution was proved.

6. The learned Sessions Judge has also overruled this objection. The learned appellate Court has gone to the extent of saying that since the police was performing routine patrol duties, it was not possible for them to have associated independent witnesses. The Court then proceeds that the evidence of PW-1 to PW-6 conclusively established the guilt of the accused and that minor contradictions in the statement do not in any manner affect the prosecution case because the witnesses are not supposed to state with computer like accuracy with respect to the factum of seizure as also on the other material aspects of the case. In other words, the learned Sessions Judge holds that minor contradictions which do not go to the root of the case cannot be used for acquitting the accused.

7. I find this to be a strange case indeed. Both the learned Courts below have based their judgment on the fact as if the liquor which was produced in the Court was the same which was sent for analysis to the Chemical Analyst who submitted his report Ex.PW-5/F. In his evidence, PW-2 Fakir Chand has made a specific admission that he was entrusted with the seal mark 'T' which was entrusted to him but that seal was not produced in Court. What happened to it still remains a mystery. One of the intriguing facts to be taken note of is the evidence of PW-3 Constable Sham Lal, who took the samples for analysis to the Chemical Examiner at Kandaghat, who states in his examination-in-chief that the samples of the liquor taken by him were of "Sirmour No. 1". In cross-examination he admits that the liquor produced in Court is "Patiala No. 1". How and in what circumstances, the brand and the seal of the seized liquor changed remains a mystery which has not been explained by the prosecution. Three witnesses of the prosecution who were associated with the seizure, namely, PW-1 Mehar Singh, PW-2 Fakir Chand and PW-4 Ghambir Singh, all police officials have admitted in Court that the samples of the seized liquor produced do not bear any seal or the

First Information Report number. In these circumstances, it becomes impossible to hold that the offence has been proved against the petitioners beyond reasonable doubt. The learned Courts below have given a complete go-bye to this aspect of the case. They should have been aware of the fact that in order to establish the guilt of the accused the corpus had not only be proved but its conscious possession, safekeeping and proper sealing had to be established in Court which has not been done. In these circumstances, the judgment of the two Courts below holding, as a matter of fact, that independent witnesses were not produced is not fatal to the prosecution, cannot be sustained. The Courts below have lost sight of the fact that before guilt is established, the case has to be established beyond all reasonable doubt.

8. In these circumstances, I hold that the judgment of both the Courts below is perverse and is based on findings which are not sustainable in law. The Courts below have ignored an important aspect of the case as discussed by me above.

9. Having held that no offence is made out, the Criminal Revision No. 1436 of 2002 becomes redundant. There is no question of enhancing the punishment to the accused-petitioners. Cr. M.P.(M) No. 1436 of 2002 is dismissed and Revision Petition No. 197 of 2002 is accepted. The petitioners therein are acquitted of the offences. Bail bonds furnished by the petitioners shall stand discharged.