
(2010) 12 P&H CK 0542
In the Punjab And Haryana At Chandigarh
Case No : CRR No. 2366 of 2005

Sham Lal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 360, 361
Punjab Excise Act, 1929 — Section 61, 61(1)

Citation : (2011) 2 RCR(Criminal) 858

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—Tersenessly, the facts, culminating in the commencement, relevant for disposal of the instant revision petition and emanating from the record, are that on 25.2.1998, P. Ws Gurinder Singh and Manjit Singh, Excise Inspectors, alongwith other police officials, were present in the area of village Badali, on excise duty. They received a secret information that Petitioner-convict Sham Lal son of Bhagat Ram (hereinafter to be referred as "the Petitioner") used to and was smuggling liquor in a rented shop in the area of village Chunni Kalan and if raid is conducted, he would be apprehended red handed with liquor. Believing the secret information true, PW3 HC Ved Parkash sent ruqqa (Ex. PE) to police station for registration of the case, on the basis of which, a formal FIR was registered against the Petitioner.

2. Having completed all the formalities, the raiding party raided the disclosed place and apprehended the Petitioner, who made the disclosure statement (Ex. PA) to the effect that he had kept concealed 487 boxes of country made liquor in a rented shop to his exclusive knowledge. In pursuance of disclosure statement, the Petitioner got recovered 487 boxes of liquor (Ex.P1 to Ex.P487). The samples were separated from the liquor. The samples and the remaining liquor were separately sealed with the seal "GS" of Excise Inspector. The sample seal was

also CRR No. 2366 of 2005 prepared. Thereafter, the entire liquor was taken into possession, vide recovery memo (Ex. PB), which was attested by the witnesses.

3. Levelling a variety of allegations and narrating the sequence of events, in all, according to the prosecution that on 25.2.1998, the Petitioner was found to be in illegal possession of 487 boxes of liquor without any permit or licence. On the basis of aforesaid allegations and in the wake of writing (ruqqa-Ex. PE), the present case was registered against the Petitioner, vide FIR No. 21 dated 25.2.1998, on accusation of having committed the offence punishable u/s 61(1) of the Punjab Excise Act, 1929 (for short "the Act"), by the police of Police Station Bassi Pathana, District Fatehgarh Sahib, in the manner indicated here-in-above.

4. Having completed all the codal formalities, the Petitioner-convict was charge sheeted for the commission of the above indicated offence and the case was slated for evidence of the prosecution.

5. The prosecution, in order to substantiate the charge framed against the Petitioner, examined PW1 Excise Inspector Gurinder Singh, PW2 MHC Jagdish Singh, PW3 HC Ved Parkash and PW4 Constable Mewa Singh in oral evidence, besides tendering the liquor bottles with boxes (Ex.P1 to Ex.P487), memo of personal search (Ex. PC), rough site plan (Ex. PF) and the reports of chemical examiner (Ex.PX/1 to Ex.PX/9) in documentary evidence.

6. After the close of evidence of the prosecution, the entire incriminating evidence/material was put to enable the Petitioner to explain any circumstance appearing against him in the prosecution evidence, as contemplated u/s 313 Code of Criminal Procedure. However, he denied the prosecution evidence/version in its entirety and pleaded false implication. In order to prove his plea of defence, he has examined DW1 Jasbir Singh son of Pritam Singh, who has only stated that he has never rented out any shop to accused Sham Lal nor he worked in any capacity in his shop situated in village Chunni Kalan.

7. On ultimate analysis of oral as well as documentary evidence brought on record by the parties, the trial Court convicted and sentenced the Petitioner to undergo rigorous imprisonment for a period of six months, to pay a fine of Rs. 1000/-and in default of payment of fine, to further undergo imprisonment for a period of one month, for the commission of offence punishable u/s 61 of the Act, by virtue of impugned judgment of conviction and order of sentence dated 2.3.2004.

8. Aggrieved by the judgment of conviction and order of sentence of the trial court, the Petitioner filed the appeal, which was dismissed as well by the first appellate court, vide impugned judgment dated 28.11.2005.

9. The Petitioner still did not feel satisfied with the impugned judgments of conviction and orders of sentence of the courts below and filed the instant revision petition.

10. At the very outset, it may be mentioned here that the revision petition earlier came up for hearing before this Court and the learned Counsel for the Petitioner did not join issue of the merits of the case and instead has prayed for showing a lenient tilt towards quantum of sentence stating that the Petitioner is not a previous convict. He is of the age of 41 years having minor children and only bread winner of the family.

11. Sequelly, a Coordinate Bench of this Court (Virender Singh, J.) maintained the conviction, set aside the substantive sentence and instead the Petitioner was ordered to be released on probation, by way of order dated 30.1.2006.

12. This is not the end of the matter. Aggrieved by the order dated 30.1.2006 of this Court, the State of Punjab filed Criminal Appeal No. 1548 of 2009, arising out of SLP(Crl.) No. 3560 of 2006, which came to be decided by Hon''ble Apex Court, by virtue of order dated 17.8.2009 in the following manner:

Leave granted.

Inspite of publication of notice, nobody appears on behalf of the Respondent. According to learned Counsel for the Petitioner this matter is squarely covered by the Ruling of the subsequent judgment in State of Punjab Vs. Prem Sagar and Others, . Therefore, the matter is remanded back to the learned Single Judge with a request to dispose of the matter in the light of the said Ruling.

The appeal is disposed of accordingly.

In this manner, the matter was remanded back to this Court to dispose of the revision petition in the light of Prem Sagar's case (supra). That is how, I am seized of the matter.

13. Having heard the learned Counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to me, there is no merit in the instant petition.

14. What is not disputed here is that initially, the learned Counsel did not join issue of the merits of the case and the conviction of the Petitioner was maintained, by way of earlier order dated 30.1.2006 by this Court.

15. Ex facie, now again the main celebrated arguments of the learned Counsel that the Petitioner has been falsely implicated in this case and since the prosecution did not produce any independent evidence, so, his conviction on the basis of evidence of official witnesses, is not legal, are not only devoid of merit but misplaced as well in this context.

16. As is evident from the record that the prosecution has examined PW1 Excise Inspector Gurinder Singh and PW3 HC Ved Parkash, who have inter-alia maintained, on oath, that on 25.2.1998, in the wake of secret information, the Petitioner was apprehended by the raiding party, who made the disclosure statement (Ex. PA) that he had kept concealed 487 boxes of liquor in a rented shop to his exclusive knowledge. All the witnesses have categorically deposed

that in pursuance of the disclosure statement, 487 boxes of liquor were recovered from possession of the Petitioner without any permit or licence, vide recovery memo (Ex. PB). They have fully supported the prosecution version in its entirety. The witnesses were cross-examined at length, but no material, much less substantial, CRR No. 2366 of 2005 could be elicited in their cross-examination to dislodge their evidence. The mere fact that PW1 Gurinder Singh was Excise Inspector and PW2 MHC Jagdish Singh, PW3 HC Ved Parkash and PW4 Constable Mewa Singh are the official witnesses, ipso facto is not a ground to discard their testimony, particularly when they have categorically supported the prosecution version on all vital counts, coupled with the documentary evidence. No animus could possibly be attributed to the P Ws as to why they would falsely depose against the Petitioner. Moreover, it is highly improbable to believe that they will plant the heavy recovery of 487 boxes of liquor without any reason in order to falsely implicate the Petitioner in this respect.

17. Above all, all the remaining factual contentions now sought to be pressed into service by the learned Counsel for the Petitioner, have already been duly considered and decided by the Courts below. There is ample, ocular and documentary evidence on record to prove the crime committed by the Petitioner in this context. The Courts below have thus rightly accepted the trustworthy and reliable evidence and recorded a finding of fact based on it that 487 boxes of liquor were recovered from the possession of the Petitioner without any permit or licence. Such findings of fact based on the evidence contained in the articulated judgment cannot possibly be interfered, while exercising the limited revisional jurisdiction of this Court, unless the same are perverse and without jurisdiction. No such patent illegality or legal infirmity in the impugned judgment of conviction has been pointed out by the learned Counsel for the Petitioner. Hence, the contrary arguments of the learned Counsel for the Petitioner "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

18. Faced with the situation, the learned Counsel has fairly acknowledged that he will not be in a position to contest the conviction of the Petitioner any more, in view of the finding of facts recorded by the courts below based on the evidence and the legal aspect that this Court cannot re-appreciate and re-evaluate the evidence brought on record in exercise of its revisional jurisdiction. Therefore, the impugned judgment of conviction is maintained, in the obtaining circumstances of the instant case.

19. At the same time, learned Counsel again urged that since the Petitioner is a first offender and only bread earner of the family, so, he be released on probation as before. On the contrary, the learned State counsel submitted that as the earlier grant of probation to the Petitioner by this Court did not find favour with the Hon'ble Supreme Court, therefore, the same benefit of probation cannot legally be granted to him, in view of the law laid down in Prem Sagar's case (supra).

20. Such thus being the position on record, now the core question that arises for

determination in this case is, as to whether the Petitioner deserves the concession of probation or not?

21. Having regard to the rival contentions of the learned Counsel for the parties and the law laid down in Prem Sagar's case (supra), to my mind, the Petitioner is not entitled to be released on probation in this relevant connection.

22. An identical question arose before Hon''ble Apex Court in Prem Sagar's case (supra), which was again a case u/s 61(1) of the Punjab Excise Act. After considering the relevant provisions of probation under Sections 360 and 361 Code of Criminal Procedure and the law laid down by the Hon''ble Supreme Court, it was recently ruled that the offences, which affect public health and touch the social fabric, must be dealt with severely. Therefore, keeping in view the law laid down by Hon''ble Apex Court, to me, it would not be appropriate to extend the concession of probation to the Petitioner, who was found to be in illegal possession of large quantity of 487 boxes of liquor, which would naturally affect the health of the public and touch the social fabric of the society. The law laid down in the aforesaid judgment is fully applicable to the facts and in the circumstances of the instant case and is the complete answer to the problem in hand.

23. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

24. In the light of the aforesaid reasons, as there is no merit, therefore, the instant revision petition is hereby dismissed, in the obtaining circumstances of the case.

25. Needless to mention that the legal consequences will follow accordingly.