
(2001) 01 P&H CK 0132

In the Punjab And Haryana At Chandigarh

Case No : Amended Criminal Miscellaneous No. 21953-M of 2000

State of Haryana

APPELLANT

Vs

Chander Mohan and another

RESPONDENT

Date of Decision : 24-01-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239, 397(3), 401, 482
Punjab Excise Act, 1914 — Section 61, 80

Citation : (2001) CriLJ 2105 : (2001) 2 ILR (P&H) 149 : (2001) 2 RCR(Criminal) 63

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : Mr. L.D. Mohta, A.A.G, for the Appellant; Mr. H.L. Sibal and Mr. Kumar Sethi, for the Respondent

Judgement

V.M. Jain, J.—This is a petition u/s 482 Cr.P.C. filed by the petitioner State, seeking quashment of the order dated 26.5.1999 passed by the Additional Sessions Judge, upholding the order dated 27.2.1999 passed by the Additional Chief Judicial Magistrate, discharging the accused u/s 61 of the Punjab Excise Act, arising out of FIR No. 473 dated 22.12.1996 of P.S. Civil Lines, Hisar.

2. The facts which are relevant for the decision of the present petition are that one DSP H.S. Chopra of the C.B.I. was investigating a case and during investigation, he conducted the search of H.No. 108, Sector 15-A, Part II, Haryana Urban Development Authority, Hisar. During the course of search, two bottles of liquor "Royal Salute" were recovered. From each bottle, 3/4th of the material had already been consumed and only 1/4th material was available in both the bottles. Thereupon, DSP H.S. Chopra sent a ruqa to the S.H.O. P.S. Civil Lines, Hisar, informing him about the abovesaid recovery and for taking necessary action. On receipt of the said ruqa, formal FIR u/s 61 of the Punjab Excise Act was registered in the Police Station. Thereupon, Inspector Inder Singh. SHO of the said police station, reached the spot and took into possession the said liquor, after putting the same in two quarter bottles. A recovery memo

was also prepared at the spot, which was signed by DSP H.S. Chopra and one Mohinder Singh, SDE, Horticulture. In the recovery memo, it was mentioned that both the bottles were recovered from the almirah of a bed room. It was mentioned that the said bed room was of Chaud-hary Bhajan Lal.

3. During the course of investigation, the police collected evidence from Haryana Urban Development Authority, to the effect that said H.No. 107/108, Sector 15-A, Part II, Hisar was owned by accused respondents Chander Mohan and Kuldeep Singh sons of Shri Bhajan Lal. Thereafter, accused respondents Chander Mohan and Kuldeep Singh were arrested in this case, for the offence u/s 61 of the Punjab Excise Act. After completion of the investigation, the challan was put in the Court.

4. After hearing both sides and after perusing the record, the learned Additional Chief Judicial Magistrate, Hisar, exercising powers u/s 239 Cr.P.C, vide order dated 27.2.1999, found that charge against accused respondents was groundless and accordingly discharged the accused of the said offence. Aggrieved against the said order of the learned Additional Chief Judicial Magistrate, the State of Haryana filed revision petition before the Sessions Court. The learned Additional Sessions Judge, after hearing both sides and after perusing the record, dismissed the revision petition vide judgment dated 26.5.1999. Aggrieved against the orders passed by the courts below, the State of Haryana has filed the present petition u/s 482 Cr.P.C in this Court, seeking quashment of the orders passed by the Courts below and for framing of charge u/s 61 of the Punjab Excise Act against the accused respondents.

5. I have heard the learned counsel for the parties and have gone through the record carefully.

6. The first question that comes up for consideration in the present petition is as to what are the powers of this Court u/s 482 Cr.P.C., where second revision is barred u/s 397(3) Cr.P.C.

7. In *Krishnan and another v. Krishnaveni and another*, 1997(4) SCC 241, three Hon'ble Judges of the Supreme Court had held that the object of Section 397(3) Cr.P.C. is to put a bar on simultaneous revisional applications to the High Court and the Court of Sessions so as to prevent unnecessary delay and multiplicity of proceedings. It was further held in the said authority that the inherent power of the High Court is not one conferred by the Code but one which the High Court already has in it and which is preserved by the said Code. It was further held that the word "person" in sub-section (3) of Section 397 Cr.P.C. would include natural person and also juridical person and by implication "State" stands excluded from the purview of the word "person", for the purpose of limiting its right to avail the revisional power of the High Court u/s 397(1) Cr.P.C., for the reason that State being the prosecutor of the offender is enjoined to conduct prosecution on behalf of the society and to take such remedial steps as it deems proper. It was further held in the said authority that the prohibition u/s 397(3)

Cr.P.C. on the revisional powers given to High Court would not apply when the State seeks revision u/s 401 Cr.P.C. and the State is not prohibited to avail there-
visional power of the High Court. It was further held in the said authority that
ordinarily when revision has been barred by Section 397(3) Cr.P.C. a person -
accused/complainant - cannot be allowed to take recourse to take revision to the
High Court u/s 397(1) or under inherent powers of the High Court u/s 482
Cr.P.C., since it may amount to circumvention of the provisions of Section 397(2)
or 397(3) Cr.P.C. It was further held by their Lordships of the Supreme Court that
it is to meet the ends of justice or to prevent abuse of the process that the High
Court is preserved with inherent power and would be justified under such
circumstances to exercise such inherent powers and in an appropriate case, even
revisional power u/s 397(1) read with Section 401 Cr.P.C., but it may be
exercised sparingly so as to avoid needless multiplicity of procedure,
unnecessary delay in trial and protraction of proceedings. After considering the
various judgment earlier rendered by the Hon''ble Supreme Court, it was held by
their Lordships that though the revision before the High Court under sub-section
(1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the
High Court is still available u/s 482 Cr.P.C. and as it is paramount power of
continuous superintendence of the High Court u/s 483, the High Court is justified
in interfering with the order leading to miscarriage of justice and in setting aside
the order of the Courts below.

8. In *Rajathi v. C. Ganesan*, 1999(6) SCC 326, after considering the law laid
down by their Lordships of the Supreme Court in *Krishnan v. Krishnaveni* (supra),
it was held by their Lordships that the exercise of power u/s 482 Cr.P.C. is not a
substitute for second revision u/s 397 Cr.P.C. It was further held that the mere
fact that inherent powers conferred on the High Court are vast would mean that
these are circumscribed and could be invoked only on certain set principles.

9. In view of the law laid down by their Lordships of the Supreme Court in the
aforesaid authorities, in my opinion, it could not be said that the present petition
u/s 482 Cr.P.C. was not maintainable or was outrightly liable to be dismissed. On
the other hand, it is to be considered as to whether any case was made out for
interference by this Court in the exercise of powers u/s 482 Cr.P.C. or even in
exercise of its re-visional powers u/s 397 read with Section 401 Cr.P.C.,
considering that it is a petition filed by the State of Haryana against the orders
discharging the accused.

10. In the present case, even according to the case of the prosecution, two
bottles of liquor, out of which 3/4th of the contents had already been consumed
from each bottle, were recovered from the almirah of a room which was in
possession of Chaudhary Bha-jan Lal. The accused respondents were prosecuted
for being in possession of the said two quarter bottles of liquor on the ground
that they were owners of the house in question from which house the bottles of
liquor had been recovered. As referred to above, even according to the
prosecution the recovery was effected from the almirah of the bedroom which

was the bedroom of Chaudhary Bhajan Lal, father of the accused respondents. The question that comes up for consideration is as to whether in the light of these allegations made by the prosecution could it be said that the accused respondents were in conscious possession of the liquor bottles and whether the orders passed by the Courts below discharging the accused respondents, required interference by this Court in the exercise of its inherent powers u/s 482 Cr.P.C. as also in the exercise of its powers u/s 397 read with Section 401 Cr.P.C.

11. Under the Punjab Excise Act, as amended in the State of Haryana and as applicable at the time of alleged recovery on 22.12.1996, the mere possession of liquor by a person was an offence. In order to hold a person guilty of the offence for having been found in possession of the liquor, the possession has to be conscious possession. The question that comes up for consideration is as to whether on the facts and circumstances of the present case could it be said that the accused respondents were found in conscious possession of the two quarter bottles of liquor, which even according to the case of the prosecution had been recovered from the almirah of the bed room of Chaudhary Bhajan Lal, father of the accused respondents and not from the possession of the accused respondents. Merely because the accused respondents were owners of the said house, by itself, would not be sufficient to hold the accused respondents guilty for the offence of having been found in possession of the liquor, even though there is nothing on the record to show that the accused respondents were in conscious possession of the said liquor.

12. In *Pabitar Singh v. State of Bihar*, AIR 1972 SC 1899, it was held by their Lordships of the Supreme Court that where a gun was recovered from a room of the quarter which was in joint possession of two persons and one of them was not present at the time of raid, the mere presence of the other in that room was not sufficient to make him guilty of the offence unless the Court could come to the conclusion that there was reason to believe that he was aware of the existence of the gun in that room. It was further held in the said authority that since the prosecution had failed to prove that he was in sole occupation of (hat room at the time of raid and the gun was concealed in such a manner that it was not visible to naked eyes, it could not be said that he was aware of the existence of the gun. He was entitled to the benefit of doubt and was thus acquitted. In the present case, the only material which has come on the record is that the house in question was owned by the accused respondents. Nothing has come on the record to show that the accused respondents were in exclusive possession of the said house. On the other hand, the case of the prosecution itself as detailed in the recovery memo is that the liquor was re-covered from the almirah of the bed room of Chaudhary Bhajan Lal ("jis bedroom ki al-mari main yeh bottles mili hein yeh bedroom Chaudhary Bhajan Lal ka apna bedroom hai").

13. In the light of this assertion of the prosecution, in my opinion, by no stretch of imagination, could it be said that the accused respondents were in conscious possession of the liquor which was allegedly recovered from the almirah of a bed

room which was stated to be of Chaudhary Bhajan Lal (father of the accused respondents). On the basis of the material placed on record, both the Courts below were of the opinion (hat the charge against the accused respondents was groundless. Accordingly, the learned Additional Chief Judicial Magistrate vide order dated 27.2.1999 had ordered the discharge of the accused respondents and the learned Additional Sessions Judge vide order dated 26.5.1999 had dismissed the revision petition filed by the State of Haryana, challenging the order of discharge of the accused respondents. On the facts and circumstances of the present case in my opinion, no case is made out for interference by this Court in the present petition u/s 482 Cr.P.C. especially when the petitioner has failed to point out any illegality of irregularity in the orders passed by the courts below.

14. There is another aspect of the matter which requires consideration by this Court. Prohibition was introduced in Haryana State with effect from 1.7.1996 which continued upto 31.3.1998. During prohibition, mere possession of liquor was an offence. Subsequently, the Punjab Excise Act was amended and prohibition was lifted. The Punjab Excise Act was amended vide the Punjab Excise (Haryana Fourth Amendment) Ordinance, 1998 (Haryana Ordinance No. 2 of 1998). Later on, the said ordinance was repeated by virtue of the Punjab Excise (Haryana Third Amendment) Act, 1998 (Haryana Act No. 20 of 1998). By virtue of the said amendment Act, Section 80-A was introduced, whereby the offence by way of possession of liquor not exceeding 4 bottles of 750 ml. each, committed during the period from 1.7.1996 to 31.3.1998, was made compoundable on payment of a sum of Rs. 1000/- per bottle or part thereof and on the payment of said money, the accused person if in custody shall be discharged and no further proceedings shall be taken against him in respect of such an offence. Later on, the Punjab Excise Act was again amended in the State of Haryana by way of the Punjab Excise (Haryana Amendment) Act, 1999 (Haryana Act No. 2 of 1999) by virtue of which Section 80-A of the Punjab Excise Act (as applicable to the State of Haryana) was substituted and it was provided that the Court may accept, by way of composition from any person who has during the period from 31.7.1996 to 31.3.1998 possessed not exceeding 4 bottles of liquor of 750 ml. capacity each, Rs. 100/- per bottle of liquor or part thereof and on payment of the money so specified, the accused person if in custody shall be discharged and no further proceedings shall be taken against him in respect of such an offence.

15. From a perusal of the above amendments to the Punjab Excise Act, as applicable to the State of Haryana, it would be clear that the possession of upto 4 bottles of liquor of 750 ml. capacity each, during the period from 1.7.1996 to 31.3.1998 was an offence which was compoundable on payment of Rs. 100/- per bottle of liquor or part thereof. In the present case, even according to the prosecution, two bottles of liquor were recovered out of which 3/4th of the contents had been consumed from each bottle and the remaining contents were put in two quarter bottles. Thus, the recovery was of less than 1 bottle of 750 ml. The offence would be compoundable on payment of composition fee of Rs.

100/- and on the payment of the said money, no further proceedings shall be taken in respect of said offence. That being the position, in my opinion, even otherwise, the offence being of a trivial nature, no interference is required by this Court, in the exercise of its powers u/s 482 Cr.P.C. or in the exercise of its powers u/s 397 read with Section 401 Cr.P.C.

16. For the reasons recorded above, finding no merit in this petition, the same is dismissed.

17. Petition dismissed.