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(2010) 05 SHI CK 0140

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 226 of 2003

State of Himachal Pradesh — APPELLANT

Vs

Kuldeep Singh and Others — RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:
Punjab Excise Act, 1914 — Section 61

Citation : (2010) 2 ShimLC 153

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—In Criminal Case No. 125-III/2000/1997, the learned trial Court acquitted the respondents vide its detailed judgment delivered on 31st December, 2002, u/s 61(i)(a) of the Punjab Excise Act, as applicable to the State of Himachal Pradesh for allegedly transporting two cartons of Indian Made Foreign Liquor (one carton having 12 bottles of Aristocrat and another carton having 12 bottles of Binny Whisky brand) in white coloured Maruti Van No. DDA-7062 of which respondent No. 3 was the driver and other respondents found sitting therein.

2. State felt aggrieved by the said judgment thus filed the instant appeal.

3. Heard and gone through the evidence on record.

4. The prosecution case is that on 30th May, 1996, Head Constable Naresh Kumar was present in the area of Sansarpur Terrace alongwith other police officials. At about 5.00 p.m. the aforesaid Maruti Van came from Dam side. It was stopped and checked. He recovered two cartons of whisky as aforesaid. The police took the sample from one bottle from each of the cartons in two separate nips, which were sealed with seal impression "PR". The sample of the seal was also taken separately. The case property was taken into possession and Ruka Ext.PW-6/A was sent for the registration of the case. On 9th July, 1996 the

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samples were sent for chemical examination to CTL Kandaghat through PW-4 Constable Gauri Ram, which was deposited by him on 10th July, 1996. After receipt of the chemical analyst report, Challan was presented in the Court for the trial of the respondents, which ended into their acquittal.

5. PW-6 Naresh Kumar, although, stated about the recovery of the alleged material, but did not say whether the case property alongwith sample-nips were deposited in the Malkhana. Although, PW-7 MHC Manjit Singh stated that HC Naresh Kumar had deposited the case property with him on 30th May, 1996, but he did not produce and prove its entry in the Malkhana register. He further stated that on 9th July, 1996 sample nips were sent for examination through Constable Gauri Ram, vide RC No. 88/21. He also did not explain the delay in sending the sample for analysis nor he stated about having sent the sample of seal for its comparison to the laboratory Even the RC aforesaid or its copy was not produced and proved during the trial of the case. Similarly, PW-4 Guari Ram did not state about handing over the sample of seals to him by M.H.C. nor there is any reference to this effect in the police docket Ext.PW-6/D. There is also no mention about the seals to which the sample nips contained. The Chemical analysis report only has the lithographic impression that the seals tallied with the specimen impression of seal sent separately, which appears to have been affixed in a routine manner, especially when no body stated about its deposit and sending it with sample nips.

6. Further, the Investigating Officer took the sample from one bottle from each of the cartons. It is not known what were the contents of other bottles in the cartons. The report of the chemical analyst is also not linked with the recovered material. For the arguments sake, in any case the samples are presumed to have been proved to be that of the recovered articles, even in that eventuality the respondents can only be held responsible only for possessing of two bottles of IMFL from which samples were taken, which is within the permissible limit.

7. Therefore, in the above circumstances, the prosecution cannot be said to have proved its case against the respondents beyond a reasonable doubt. Accordingly, the acquittal of the respondents cannot be interfered with, as such the appeal is dismissed.

8. The respondent is discharged of his bail bonds entered upon by him at any stage during the proceedings of this case.

9. Send down the record forthwith.

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