
(2010) 01 SHI CK 0089
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 77 of 2003

State of H.P

APPELLANT

Vs

Rajinder Pal and Others

RESPONDENT

Date of Decision : 07-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Punjab Excise Act, 1914 — Section 61(1)

Citation : (2010) 01 SHI CK 0089

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—The state has challenged the acquittal of the Respondents, in case No. 351/1 of 1998, u/s 61(1)(a) of Punjab Excise Act, as applicable to the Himachal Pradesh, passed by the learned trial Court.

2. In brief, the prosecution case can be stated thus. On 21st May, 1998, PW10 ASI Tameshwar Singh was heading a police patrolling party in village Behal. He received a secret information that the Respondents being the wine contractors had stored a large number of liquor bottles in a shop, without any permit. On receiving the said information, a ruqa Ex.PW10/A was sent for registration of the case to Police Station Kot-Kehloor, on the basis of which FIR Ex.PW6/A was formally registered.

3. Thereafter, ASI Tameshwar Singh formed a raiding party and associated PW4 K.C. Chauhan, A.E.T.C, Bilaspur and also the Pradhan and a Ward Member of the Panchayat and raided the shops owned by PW1 Bager Singh in village Behal. Out of three shop, two shops were alleged to have rented out to the Respondents. Shops were found locked. Locks were broken open by the police party and in one of the corner shop, 24 halves of liquor, each containing 375 ml., 288 bottles of Imperial Balcon blended with Scotch, and 76 bottles of Pure Gold Whisky each containing 750 ml. liquor were recovered. It was Indian Made Foreign Liquor

(IMFL).

4. Samples were taken from all the three brands of the liquor. Thereafter, each of the sample was sealed with seal impression "T" and the case property was taken into possession vide memo Ex.PW1/A. Seal impression was taken on a separate piece of cloth. The Investigating Officer also prepared site plan Ex.PW10/B.

5. Case property was deposited with MHC of Police Station Kot-Kehloor.

6. Sample nips were sent for the chemical analysis to CTL Kandaghat laboratory. As per report Ex.PX, the contents were found to be that of "Indian Made Foreign Liquor".

7. Police took into possession the record from the Excise Department. Respondents were the partners of the firm M/s Rana and Company, dealing in the liquor trade and for the year 1998-99, the said Firm was having Licenced L-14 Liquor Vend, but they did not possess any licence for storing the "IMFL" in the shop at village Behal, thus they alleged to have committed the excise offence.

8. On completing the investigation, challan was presented in the Court for the trial of the Respondents. Respondents were charge-sheeted for the offence aforesaid. Respondents denied the allegations against them and claimed trial.

9. The prosecution examined its witnesses and the Respondents were also examined under Sections 313 of the Code of Criminal Procedure. They denied that the said premises were taken on rent by them from PW1 Bager Singh, however, no evidence in defence was led.

10. On reappraisal of the evidence on record, I find that the recovery of the liquor from Shop No. 3 at village Behal stands proved, but the actual and conscious possession of the Respondents with respect to the said liquor could not be proved by the prosecution beyond a reasonable doubt.

11. To prove the actual possession of the premises in question, prosecution examined PW1 Bager Singh, the owner of the three shops, located in village Behal. He stated that out of three shops, two were rented out to the Respondents about 21/2 years ago in the presence of Surjeet Kumar and one corner shop was with him, but further stated that he did not see the Respondents storing the liquor into the said shops. The Respondents have categorically denied that they were at any point of time in the possession of said shops on rent or otherwise. Surjeet Kumar was not examined to lend strength to his version. This witness did not fully support the prosecution case. He was declared hostile. No rent deed or the rent receipts were produced. According to him, although the Respondent Rajinder Pal had taken on lease the said premises two and half years ago, but did not pay any rent.

12. There is not even an iota of evidence to show that at any point of time, PW1 Bager Singh has even given the notice for the recovery of rent from the Respondents aforesaid. None of the other witnesses examined by the prosecution

have connected the Respondents with the possession of the premises in question. The trial Court was right in not putting the reliance on the statement of Bager Singh. Therefore, the reasons for the acquittal of the Respondents are borne out from the trial Court record and require no interference. Consequently, the appeal filed by the State is dismissed.

13. The Respondents are discharged of their bail bonds entered upon by each of them at any stage during the proceedings of the case.

14. Send down the records.