

(1965) 05 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 724 of 1963

The State

APPELLANT

Vs

Bikar Singh

RESPONDENT

Date of Decision : 06-05-1965

Acts Referred:

Citation : (1965) 05 P&H CK 0007

Hon'ble Judges : Harbans Singh, J;Falshaw, J

Bench : Division Bench

Advocate : N.S. Bhatia for Mr. U.D. Gaur, for the Appellant; N.S. Grewal, for the Respondent

Final Decision : Dismissed

Judgement

Harbans Singh, J.—This order will dispose of four criminal appeals against acquittal of the charge u/s 61 (1)(a) of the Excise Act. Three of these appeals (Nos. 724, 725 and 728 of 1963) are against the orders of Shri Diali Ram Puri, Sessions Judge, Bhatinda, and the fourth one (No. 907 of 1933) is against the order of Shri R.S. Bindra, Sessions Judge, Hoshiarpur.

2. In Criminal appeal No. 724 of 1963 (State v. Bikar Singh) the quantity of liquor recovered was half a bottle while in other three cases the quantity recovered was one bottle. Admittedly, in view of the notifications issued by the Punjab Government u/s 5 of the Punjab Excise Act any person can keep one quart bottle of country made spirit (vide notification No. 5509 dated 19th October, 1932) or of foreign liquor whether imported or made in India. (Vide notification No. 799-E and T-51/1482 dated 27th March, 1951). It would, therefore, be an offence to keep quantity of liquor up to one bottle only if it is shown that the liquor is not one which is manufactured by any Punjab distillery or any distillery in any other State-manufacturing liquor under licence of the State or Central Government, or which is manufactured by a foreign country and the import of which is permitted under the law. In all the four cases, the report of the Chemical Examiner was practically to the effect that the sample of liquor

was "essentially different from the Punjab distillery spirits and was, therefore of illicit origin."

3. In the State appeal against Garib Dass (No. 997 of 1963) the learned Sessions Judge made a reference to the Chemical examination and he was specifically asked to state if he could say that the sample sent to him was ""illicit in reference to spirits distilled in other States of India under a licence by the Government." The reply received from the Chemical Examiner was to the effect that he was not in a position to examine the sample on the footing mentioned by the learned Sessions Judge or to hold that the same was illicit in reference to spirits manufactured in other States. The point taken in all those appeals on behalf of the State was that once the prosecution established that the constitution of the liquor found in possession of he accused was different from that of spirits distilled in the Punjab distilleries, the burden shifted to the accused to establish that the same was illicit with reference to spirits legally manufactured by any distillery in India or with reference to spirits allowed to be imported from out side the country. I am afraid, there is no warrant for this. Possession of one bottle of liquor is permissible and if it is the case for prosecution that the accused is guilty of an offence u/s 61 of the Punjab Excise Act, because the liquor was of unauthorized origin, the burden lies entirely on the prosecution to establish it, It is too much to ask the accused who is in possession of one bottle of liquor, to get evidence from all over the country, and even from out side, to establish that the liquor conforms to the standards of any spirits from any authorised source. In fact, I consider, it is an utter waste of time of the enforcement staff, the investigating agency and the judicial courts in launching proceedings for recovery of liquor not exceeding one bottle. It would be better if the enforcement staff concens-trates on illicit distillation, or sale of illicit liquor, or its possession in large quantities.

4. In any case, I am definitely of the view that the burden lies entirely on the prosecution to establish that the liquor recovered is of illicit origin vis-a-vis the spirits manufactured by any authorised distillery in this country or of any other distillery import of which is permitted.

5. For the reasons given above, I find no reason to interfere in the orders of acquittal recorded by the learned Sessions Judge, and consequently dismiss these appeals.

Falshaw, C.J.

5. I agree