
(1978) 08 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 318 of 1974

Vijay Singh

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 18-08-1978

Acts Referred:

Punjab Excise Act, 1914 — Section 61(i)(a)

Citation : (1978) 08 P&H CK 0023

Hon'ble Judges : S.S. Sidhu, J

Bench : Single Bench

Advocate : Kirpal Singh, for the Appellant; H.S. Hooda, for A.G. Haryana, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sidhu, J.—Rambir Singh was challaned by the Police of Police Station Saddar, Gurgaon, u/s 61 (i) (a) of the Punjab Excise Act, 1914, hereinafter called the Act, on the allegation that he was found in possession of 279 bottles of licit country liquor while carrying the same in the car bearing registration No. DLI 2338, on 19th June, 1971, in the Court of Judicial Magistrate 1st Class, Gurgaon. Vijay Singh, owner of the said car, made an application to the Magistrate on 21st June, 1971, that since the aforesaid car of which he was the owner was taken in possession by the police in connection with an excise case, State v. Rambir, the same be given on Sapurdari to him, otherwise that would get damaged if it was allowed to be kept in police custody. In compliance with the order dated 22nd June, 1971, of the learned Magistrate passed on the aforesaid application, that car was given on Sapurdari to the applicant Vijay Singh, owner of the car. Since Rambir Singh accused, during trial, did not claim himself to be owner of the car in question involved in commission of the offence, the learned Magistrate, vide his order dated 31st May, 1973, directed that the notice be issued to the owner of the car to show cause as to why the car be not confiscated to the State, if the accused was convicted of the charge. The trial Court, vide its judgment dated 5th

July, 1973, ultimately convicted Rambir. Singh accused u/s 61 (1) (a) of the Act, and sentenced him to imprisonment till the rising of the Court and fine of Rs. 2,000/-, with the direction that in default of payment of fine, he shall further undergo rigorous imprisonment for nine months. The bottles of liquor and the Kattas were directed to be confiscated to the State. As far as the car was concerned, the statement given by Vijay Singh, its owner, as A.W. 1 that that car was borrowed by the accused for going to Gurgaon as the sister of the accused was stated to be ill and that he did not know about the smuggling of liquor in that car and, therefore, the car was not liable to be confiscated, was not relied upon by the trial Court. Rather, the trial Court observed that the stand taken up by Vijay Singh appeared to be an after-thought because in the application for releasing the car on Sapurdari, no such facts were mentioned. That Court further observed that the owner should have proved that the accused was not in the habit of smuggling liquor which would have shown that he gave the car in question to the accused bona fide and, as such, the evidence produced by the owner that the car in question was not used for bringing liquor with his knowledge or consent was not cogent. Accordingly, the trial Court, vide its said judgment, directed that the car be also confiscated to the State.

2. Two appeals were preferred against that judgment dated 5th July, 1973, of the trial Court, one No 122/10 of 1973 by Rambir Singh against his conviction and sentence, and another, No. 103/10 of 1973 by Vijay Singh against the direction given by the trial Court that the car shall stand confiscated to the State. The appellate Court affirmed the above findings of the trial Court and dismissed both the appeals vide its judgment dated 20th December, 1973. Vijay Singh, therefore, has come up in revision against the orders of the Courts below, passed regarding the confiscation of his car No. DLI 2338 to the State.

3. I have heard the learned counsel for the parties and have fully appreciated their arguments in the light of the evidence produced in this case. The relevant portion of section 78 of the Punjab Excise Act reads as under:--

78. (1) Whenever an offence punishable under this Act has been committed ;

(a) * * * *

(b) * * * *

(c) * * * *

(d) every receptacle, package and covering in which any intoxicant or excise bottle, materials, still utensil, implement or apparatus as aforesaid is or are found together with the other contents, if any, of such receptacle or package ; and

(e) every animal, cart, vessel, raft or other conveyance used in carrying such receptacle, package, covering or article as aforesaid, shall be liable to confiscation,

Provided that when it is proved that the receptacles, animals, or other articles specified in Clauses (d) and (e) are not the property of offender, they shall not be liable to confiscation if the owner thereof establishes that he had no reason to believe that such offence was being or was likely to be committed.

In the present case, there is no evidence that Rambir Singh, the offender was the owner of the car in question. Rather he in his statement recorded u/s 342, Code of Criminal Procedure, did not claim himself to be the owner of the same. Both the Courts below also have held that Vijay Singh was the owner of the car in question. If Vijay Singh has been able to establish as provided for in the proviso to subsection (1) of section 78 of the Act that he had no reason to believe then any offence under the Act was being or was likely to be committed by Rambir Singh when he lent his car to him, then that car is not liable to confiscation. In reply to the show cause notice, Vijay Singh owner gave his statement as A.W. 1 to the effect that he was the registered owner of car No. DLI 2338 and that about two years ago that car was borrowed from him by Rambir Singh accused for going to Gargaon as his sister was stated to be ill, he knew the accused before hand, he did not know anything about the smuggling of liquor by using his car. In his cross examination, he stated that the car was meant for private use and was not being plied as a taxi and that the accused was his neighbour. He also added that it was incorrect to suggest that the car was used by the accused with his consent for bringing licit liquor. He also produced the registration certificate of his car. Both the Courts below rejected the above statement of Vijay Singh by observing that the stand taken up by Vijay Singh appeared to be an after thought because in the application for releasing the car on Sarpurdari, no such fact was mentioned. It was further observed by the Courts that the owner should have proved that the accused was not in the habit of, smuggling liquor which would have shown that he gave the car in question to the accused bona fide and, as such, the evidence produced by the owner that the car was not used for bringing liquor with his knowledge or consent was not cogent. Accordingly, the car in question was directed to be confiscated to the State. However, I am unable to endorse the above findings given and the order of confiscation of the car to the State made by the Courts below. When Vijay Singh moved the first application dated 21st June, 1971, he was not expected to tell as to in what circumstances his car had been borrowed by Rambir Singh. At that stage, his sole purpose for presenting the application was to get the car in question on Sarpurdari lest the same should get damaged if it continued to remain in police or judicial custody. The only stage when he could take up his plea in reply to the show-cause notice was at the time when he appeared as A.W. 1. In his statement given as A.W. 1, he has clearly stated that the car in question was borrowed from him by Rambir Singh accused, his neighbour, for going to Gurgaon as his sister was stated to be ill and that he did not know anything about the intended smuggling of liquor by Ram Singh by making use of his car at that time. He also denied the suggestion that the car was used by the accused with his consent for bringing licit liquor. There is not an iota of material on the

file to show that Vijay Singh, owner of the car had any reason to believe that an offence u/s 61(1)(a) of the Act was likely to be committed by Rambir Singh by using his car when he had lent the same to Rambir Singh on his telling that he required the same for going to Gurgaon to see his sister who was lying ill there. In view of this matter. I hold that Vijay Singh has been able to fully discharged the onus placed on him by the provisions contained in the proviso to sub-section (1) of section 78 of the Act. Thus, the only safe conclusion which can be arrived at is that when Vijay Singh lent his car to the accused he had no reason to believe that the same would be used by Rambir Singh for committing any offence under the Act. The observation of the lower Court that the owner should have proved that the accused was not in the habit of smuggling liquor which would have shown that he gave the car in question to the accused bona fide, therefore, is not tenable. Rather, it was for the prosecution, if it so desired, to lead evidence for establishing that Vijay Singh had the required belief when he lent his car to the accused that the latter was taking the same for committing an offence by carrying huge quantity of liquor in an illicit manner in that car. Anyhow, place full reliance on the statement of Vijay Singh owner A.W. 1 and hold that the same is quite sufficient to establish that when he lent the car to his neighbour, Rambir Singh, the offender, he had no reason to believe that an offence under the Act was likely to be committed by Rambir Singh by transporting a large quantity of licit liquor in that car. Thus, the impugned order of the Court below, in so far as those directed confiscation of the car No. DLT 2338 to the State are liable to be quashed, as there has been miscarriage of justice to that extent.

4. In the result, I accept this revision petition, set aside the orders of the Courts below to the extent as stated above and direct for restoration of the car to its owner Vijay Singh Sapurdarinama furnished by Vijay Singh shall stand cancelled.