

Nain Singh Vs State Of H.P

Court: High Court Of Himachal Pradesh

Date of Decision: Nov. 25, 2022

Acts Referred: Punjab Excise Act, 1914 " Section 61(1)(c)
 Code Of Criminal Procedure, 1973 " Section 313, 374

Hon'ble Judges: Satyen Vaidya, J

Bench: Single Bench

Advocate: Karan Singh Kanwar, Desh Raj Thakur, Narender Thakur

Final Decision: Dismissed

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has assailed judgment dated 29.11.2012, passed by learned Sessions Judge, Sirmour, District at Nahan in

Criminal Appeal No. 56-Cr.A/10 of 2011, whereby the judgment and sentence order 25.5.2011/30.5.2011, passed by learned Judicial Magistrate, 1st

Class, Court No.1, Paonta Sahib, District Sirmour, H.P. has been affirmed.

2. The case of prosecution in nut-shell was that on 5.1.2007, HC Bahadur Singh (PW-5) and Constable Kailash Kant (PW-4) were on routine patrol

duty. They met Sh. Telu Ram (PW-1), who was on his way to Village Tikkar. All of them proceeded together in the direction of Village Tikkar. On

the way, they noticed smoke emanating from the side of "Nallah" (Stream). They proceeded towards the direction from where the smoke was

emanating and found that petitioner was operating illicit liquor "Bhatti". About 150 liters of "Lahan" was found in the drum and six bottles of

distilled illicit liquor were found contained in a container. Samples of "Lahan" and illicit liquor were drawn and were sealed. The equipment used

for preparation of illicit liquor was taken into possession. "Rukka" was sent to Police Station and on the basis of which, FIR Ext. PW-4/A was

registered. The samples were sent for chemical examination to CTL, Kandaghat. Those were confirmed to be of "Lahan" and illicit liquor vide

report Ext. PW-6/A. A prima-facie case under Section 61 (1) (c) of Punjab Excise Act, as applicable to the State of Himachal Pradesh (for short

"the Act"), was found against the petitioner.

3. Prosecution examined 7 witnesses and also proved the documents prepared during investigation. Petitioner was examined under Section 313

Cr.P.C. He did not lead any defence evidence.

4. Learned trial Court convicted the petitioner for commission of offence under Section 61 (1) (c) of the Act vide judgment dated 25.5.2011 and

sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs. 5000/-. In default of payment of fine, the petitioner was further

ordered to undergo simple imprisonment for one month vide sentence order dated 30.5.2011.

5. Petitioner has assailed his conviction and sentence before learned Sessions Judge, Sirmour at Nahan by filing appeal under Section 374 of the Code

of Criminal Procedure (for short "the Code"). Learned Appellate Court affirmed the conviction and sentence of petitioner vide judgment dated

29.11.2012.

6. Petitioner has laid challenge to the judgment passed by learned Appellate Court affirming the judgment and sentence passed/imposed by learned

trial Court on the grounds that both the courts below have committed patent illegality in convicting the petitioner whereas, prosecution evidence was

clearly deficient and was full of doubts.

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

8. Prosecution examined PW-1, Telu Ram, PW-4, Constable Kailash Kant and PW-5, HC Bahadur Singh as spot witnesses. PW-1, Telu Ram did not

support the prosecution case. He was cross-examined by learned Prosecutor. This witness admitted having signed the document Ext. PW-2/A i.e. the

recovery memo. The other two spot witnesses supported the prosecution case. Placing reliance upon their testimonies, both the courts below have

convicted the petitioner, as noticed above.

9. Learned counsel for the petitioner has contended that the entire case of prosecution was falsified from the statement of PW-5 made by him during

his cross-examination, whereby he admitted that the drum Ext. PW-3 was in broken condition and nothing could be stored in such drum. He laid stress

on the arguments that as per prosecution case, 150 liters of "Lahan" was found in drum Ext. P-3, which was not possible, keeping in view the

condition of the drum. It was further submitted on behalf of the petitioner that both the courts below have erred by ignoring such a material piece of

evidence.

10. The argument so raised needs rejection for the reasons firstly that the drum Ext. P-3 was taken into possession by police in January, 2007.

Statement of PW-5 was recorded in January, 2011, after four years. The possibility of damage caused to the drum Ext. P-3 during such a long gap

could not be ruled out, as the case properties remain in "Malkhana". It is not necessary that the case properties are kept with due care and

secondly, rather more importantly, the witness (PW-5) was not cross examined about the condition of the drum at the time it was taken into

possession by the police. In absence of such exploration, there was nothing to suggest that the drum Ext. P-3 was taken into possession by police in

the same state, as was found at the time of examination of PW-5 after four years.

11. It was next contended on behalf of the petitioner that reliance placed on the testimonies of police witnesses was not safe as they were the

interested witnesses. Since the independent witness had turned hostile, the benefit of doubt was liable to be given to the petitioner. Learned Appellate

Court has rightly held that conviction can be based on the testimonies of police witnesses, provided they are scrutinized with caution and thereafter

found to be trustworthy. In the instant case after going through the statements of PW-4 and PW-5, no fault can be found with the findings of fact

recorded by both the courts below. Such findings are borne from the statements of said witnesses. It also cannot be ignored that even PW-1 had

identified his signatures on the recovery memo Ext. PW-2/A. He did not allege that his signatures were obtained under any threat or coercion. Only

because the independent witness associated in the investigation had not supported the prosecution case, the testimonies of police witnesses cannot be

brushed aside. The witness turning hostile, in our judicial system, is a common phenomenon and reasons are various and obvious. The fact that PW-1

had signed Ext. PW-2/A lends credence to the prosecution version about recovery made from the petitioner of "Lahan" and illicit liquor from the

spot. PW-1 has failed to explain as to under what circumstances, he had signed Ext. PW-2/A.

12. Learned counsel for the petitioner has also submitted that the spot of recovery was near Village Tikkar and the police could easily procure

witnesses from the said village. As noticed above, it was a chance recovery and the police was already in company of a resident of the area, whom

they had associated in the investigation.

13. The learned courts below have rightly appreciated the evidence and the findings recorded by them cannot be said to be illegal or perverse. Further,

the petitioner has not been able to show from the records that there was any defect or illegality in the process of sampling. It has also not been shown

that there was any tampering of case property at any point of time.

14. In light of above discussions, there is no merit in the instant petition and the same is dismissed. The conviction and sentence as recorded by learned

trial court vide judgment and sentence order 25.5.2011/30.5.2011 and affirmed by learned Sessions Judge, Sirmour, District at Nahan in Criminal

Appeal No. 56-Cr.A/10 of 2011 is further affirmed. Bail bonds, if any, furnished by the petitioner are cancelled. Petitioner is directed to surrender

before learned trial Court to receive the sentence. Pending applications, if any, also stand disposed of. Records be sent back forthwith.