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(1994) 11 P&H CK 0009

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 47 of 1988

Jassa Singh APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision: Nov. 8, 1994

Acts Referred:

- Punjab Excise Act, 1914 - Section 61(1)

Citation: (1995) CriLJ 3539 : (1995) 3 RCR(Criminal) 48

Hon'ble Judges: Sarojnai Saksena, J

Bench: Single Bench

Advocate: Vanita Sapra, for the Appellant; Vikas Cuccria, AAG, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Sarojnai Saksena, J.
The petitioner was convicted u/s 61(1)(c) of the Punjab Excise Act (hereinafter referred to as the ''Act'') and sentenced to undergo rigorous imprisonment for one year with a fine of Rs. 5,000/- in default of which further rigorous imprisonment for 4 months by Shri G. S. Dhiman, Judicial Magistrate 1st Class, Amritsar. The petitioner''s appeal bearing No. 56 of 1987, against this conviction and sentence was dismissed by Shri Nirmal Singh, Additional Sessions Judge, Amritsar.

2. The petitioner''s learned counsel first of all contended that by the raiding party independent witnesses were not associated and hence the petitioner should not have been convicted relying on the testimony of official witnesses.

3. This point was canvassed before the trial Court as well as before the appellate Court, but the Courts below declined to accept this assailment. By now it is settled law that if at the time of search, independent witnesses are not associated, the Court is required to scan the ocular evidence of the official witnesses minutely and with more caution. (Reliance is placed on State of Punjab v. Ram Parkash 1977 PLR

571: 1978 CriLJ 601 (P&H) and Joginder Singh v. State of Punjab. 1982 (2) CLJ NOC 19.

4. Further both the Courts have held that the evidence of these departmental witnesses are not discrepant on any count. In Surjit singh v. State of Punjab 1984 (1) RCR 106. it was held that if an accused is apprehended when police party was on patrol (as was the fact in this case also), it could not be expected that patrol party should have joined independent witnesses. Hence I find that this contention has no substance.

5. The second contention is that it is not proved beyond doubt by the statement of Excise Inspector, Mohinder Singh (PW-1) that the drum containing lahan alleged to have been recovered from a working still being run by the petitioner at the time of search and seizure was the same drum which was examined by him in Police Station, Kapurthala and about which he submitted his report. The learned defence counsel contended that Mohinder Singh (PW-1) could not prove the identity of the drum because when he was examined in the Court, that drum was not produced. Even the seal and exhibit marks were not proved by him to establish the identity of the same drum. Relying on Gurmit alias Lal Miti v. State of Punjab 1987 (2) RCR 586, she stressed that on this count alone, the petitioner is entitled to be acquitted.

6. Even this contention has little force, from the judgment of the Courts below, it is evident that the prosecution has proved beyond doubt by examining ASI Raghbir Singh (PW-4) and Head Constable Padam Nath (PW. 3) that when they made the search and seizure they found the accused distilling illicit liquor by means of a working still. The accused was caught red-handed while feeding fire. These witnesses have categorically testified that the still was cooled down and dismantled and its various parts were taken into possession vide memo Ex.P.8. Rough site plan was also prepared. Sealed illicit distilled liquor was also sent for chemical examination. The Expert''s report is at Ex.PE which shows that the sample was of illicit liquor. Exhibits PF and PG are affidavits of formal witnesses. Thus even if for arguments sake it is held doubtful that the identity of the drum containing lahan was not established at the trial, from all other evidence detailed above, it is proved beyond shadow of doubt that at the time of search and seizure the accused was distilling illicit liquor by men of a working still. Hence, I find that the Courts below have not committed any error in not accepting the contention raised on behalf of the petitioner.

7. It is further contended that even the defence plea of the petitioners was not considered by the appellate Court. The accused has taken a plea of false implication which has not been accepted by the trial Court in its judgment. In the appellate judgment, there is no mention of this defence plea. If a point is not argued before the appellate Court, the ''Court is not bound to consider it. The argument about the defence plea has no substance. It is just a very patent defence plea to save the petitioner from the clutches of law.

8. The last contention is that the petitioner has already undergone rigorous imprisonment for about three months. He was hauled up in this case on 1-4-1985. For the last about 10 years, he is facing the ordeal of criminal prosecution. Hence either the sentence should be reduced or he should be given the benefit of probation.

9. The learned counsel appearing for the respondent-State relying upon the State of Andhra Pradesh Vs. S.R. Rangadamappa, and Ajit Singh v. State of Punjab 1982 CLJ 522 contended that u/s 61 (1) proviso (i) minimum sentence of one year and fine of Rs. 5,000/- is provided. Hence, the question of giving either the benefit of probation or reduction of sentence to the petitioner does not arise. No other point is pressed before me.

10. Finding the Revision meritless, it is hereby dismissed.