
(1993) 04 P&H CK 0046

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 857 of 1986

Jagir Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 27, 1993

Citation: (1993) 3 RCR(Criminal) 104

Hon'ble Judges: A.S.Nehra, J

Advocate: Gulshan Sharma, N. S. Boparai, Advocates for appearing Parties

Judgement

A. S. Nehra, J.

1. The petitioner was convicted under section 61(i)(c) of the Punjab Excise Act, 1974 and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 5000/ and, in default of payment of fine, to undergo further rigorous imprisonment for three months, by the Judicial Magistrate, Ist Class, Zira, vide his judgment/order dated 10.2.1986. The appeal filed by the petitioner was dismissed on 1.7.1986 by the Additional Sessions Judge, Ferozepore. Hence this revision petition.

2. Briefly stated, the facts of the prosecution case are as under :

3. On 26.5.1983 Rur Singh Head, Constable along with Dilbagh Singh, Head Constable and Lqbal Singh Constable was going from village Maujgarh to village Luluwala on cycles in connection with patrol duty. When the police party reached the revenue estate of village Luluwala, Rur Singh Head Constable received a secret information that the petitioner was distilling illicit liquor by means of a working still near the old Railway line and near village Jhuge Sawaiwala. Observing the information reliable, ruqa Exhibit PA was sent to the police station, on the basis of which formal FIR Exhibit PA/1 was registered against the petitioner. Then the informed place was raided. The petitioner was apprehended while distilling illicit liquor by means of a working still on the bank of a pond in the revenue estate of village Luluwala. At that very moment, he was feeding fire under the working still. The working still was cold down and dismantled. It was formed like this:

The hearth was dug in the earth. Two wooden places, Exhibits P1 and P2, were burning in the hearth. On the hearth, drum boiler Exhibit P3 containing about 90 kgs. of Lahan was placed in the horizontal position. On the mouth of the drum boiler, mardani Exhibit P4 was fitted with its reverse side, having two holes, a big one in the side and a small one in the middle. The small hole was closed with mud. Plastic pipe was fitted in the big hole of the mardani and its other end was fitted in the receiver in Exhibit P6, which was lying in a pool of water. On the receiver, jute bag Exhibit P7 was placed as weight. Illicit liquor, after distillation, was coming through the plastic pipe to the receiver. 180 mls. of illicit liquor was separated from the receiver as a sample and the remaining contents, when measured came to the capacity of three bottles, Exhibits P8, P9 and P10. Four drums Exhibits P11 to Exhibit P14 containing Lahan about 150 Kgs. each were also lying near the working still. Drum boiler, other four drums, bottles and sample were sealed with the seal bearing letters R. Specimen of the seal which was used, was kept separately and the seal, after use, was entrusted to Dilbagh Singh, Head Constable. The above said sealed articles along with other component parts of the working still were taken into police possession, vide recovery memo Exhibit PP attested by Dilbagh Singh Head Constable. Site plan Exhibit PC, showing the place of recovery, was also prepared at the spot with correct marginal notes. Statements of the witnesses were recorded. The petitioner was arrested. On return to the police station, the case property was deposited with the Moharrir Head Constable with seals intact.

4. The prosecution to prove its case, examined Rur Singh Head Constable PW1, Dilbagh Singh Head Constable PW2 and Harbax Singh Excise Inspector PW3 who has proved his report Exhibit PD. Report Exhibit PE of the Chemical Examiner and affidavits, Exhibit PF and PG, were tendered into evidence.

5. After the close of the prosecution evidence, the statement of the accused petitioner under section 313 of the Code of Criminal Procedure was recorded, in which the entire incriminating evidence appearing against the accused petitioner was put to him, which he denied and pleaded innocence.

6. The learned counsel for the petitioner has challenged the conviction of the petitioner on the ground that, despite secret information, no independent witness from the village was joined by the police party. The police party was at a distance of 7 or 8 killas away from village Jhuge Sawaike and 12 or 13 Killas from village Luluwala. Had the police party proceeded to join independent witnesses from any of the villages mentioned above, that would have alerted the petitioner who was distilling illicit liquor at that time. In such circumstances, the police party took the right step in raiding the place of working still instead of going to any village for joining independent witnesses. There is no evidence that independent witnesses were available at the time of the alleged secret information or while going from the place of receipt of secret information to the place of recovery. The prosecution witnesses were not inimical towards the petitioner and they had no motive to falsely depose against the petitioner. There is no merit in the contention of the learned counsel for the petitioner and the same is rejected.

7. It was further argued by the learned counsel for the petitioner that there is no mention of the person to whom the seal was handed over after is no after the illicit liquor and Lahan had been sealed. PW2 Head Constable Dilbagh Singh has categorically stated that the seal was handed over to him after it was used.

8. The learned counsel for the petitioner has submitted that the petitioner is a young man and is sole breadearner in the family; that he has aged parents and that, therefore, the petitioner be released on probation. The petitioner is a previous convict under the Excise Act. So, he is not a first offender and there are remote chances of the convict to improve himself.

9. Mr. Gulshan Sharma, Advocate, learned counsel for the petitioner has contended that speedy trial was the essence of justice and inordinate delay in the disposal of the case itself caused sufficient agony to the petitioner and that, therefore, this is a fit case where the petitioner should not be sent to jail at this stage and the sentence awarded to the petitioner may be reduced to the period during which he remained confined. The learned counsel for the petitioner has further contended that the raid in this case was conducted on 26.5.1983 i.e. more than 10 years back that the present revision petition is pending since 1986 that the petitioner is on bail since 15.7.1986 and that this prolonged litigation itself is a ground for treating the petitioner in a lenient manner. In support of this contention, the learned counse for the petitioner has placed reliance on a judgment of the Supreme Court in Braham Dass v. The State of Himachal Pradesh, 1988(2) Prevention of Food Adulteration Cases 13.

10. For the last more than 10 years, the petitioner has faced this protracted litigation and thus has undergone sufficient mental harassment. So, keeping in view other circumstances of the case, I find it a fit case were no useful purpose will be served by sending the petitioner to jail at this stage for undergoing the remaining period of sentence. Resultantly, I partly allow this revision petition and limit the sentence of imprisonment of the petitioner to the period already undergone by him. The sentence of fine along with its default clause is, however, maintained.