(1984) 08 P&H CK 0067

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 1432 of 1983

Balkar Singh — APPELLANT

Vs

State of Punjab — RESPONDENT

Date of Decision: Aug. 16, 1984

Hon'ble Judges: Pritpal Singh, J

Advocate: H.S. Sandhu, Vinod Kataria, Advocates for appearing Parties

Judgement

Pritpal Singh, J.

1. According to the prosecution a police patrolling party headed by Sub Inspector Swarn Singh on November 4, 1980 caught the petitioner Balkar Singh distilling illicit liquor with the help of a working still in the area of village Lassara within the jurisdiction of Police Station Phillaur. The component parts of the working still were taken into possession by the Police. After this recovery the petitioner was interrogated and in pursuance of his disclosure statement 10 drums containing 150 Kgs. of Lahan were further recovered. Two separate cases were registered against the petitioner; on under Section 61 (1) (a) and another under section 6 1 (1) (c) of the Punjab Excise Act (hereinafter] called the Act). Since both the recoveries were in the sarne transaction the two cases were jointly tried, by the Judicial Magistrate, Phillaur. The prosecution examined Swaran Singh, Excise Inspector, (PW 1) and Head Constable Manjit Singh (PW 2). The petitioner when examined under section 313, Code of Criminal Procedure, pleaded false implication. The trial Magistrate relying upon the prosecution. evidence convicted the Petitioner in both the cases. He was sentenced, to undergo one year''s rigorous imprisonment and to pay a fine of Rs. 5000/ under section. 61 (1) (c) and six months'' rigorous imprisonment and a fine of Rs. 1000/ under section 61 (1) (a) of the Act. The sentences of imprisonment in the two cases were ordered to run concurrently. Against this judgment dated April 16, 1982, the petitioner filed an appeal which was decided by the Additional Sessions Judge, Jalandhar, vide judgment dated October 12, 1993. The prosecution witnesses were disbelieved regarding the offence under section 61(1)(a) of the Act

but they were relied upon regarding the offence under section 61(1)(c) of the Act. As a result thereof the petitioner was acquitted of the offence under section 61 (1) (a) but his conviction and sentence under section 61 (1) (c) of the Act were confirmed. Against this judgment the petitioner has come up in revision before this Court.

2. It is contended by the petitioner''s counsel that the contents of the report of the Excise Inspector (Exhibit PB) were not put to the petitioner by the trial Magistrate in his examination under section 313, Code of Criminal Procedure, which vitiated the trial. Reliance has been placed by him on a judgment of this Court in Ram Chander v. The State of Haryana, (1983) Cr. L.T. 58. It has been observed in this, judgment that the object of section 313 of the New Code of Criminal Procedure is to give an opportunity to an accused to answer each and every piece of evidence adduced and relied upon by the prosecution. If such opportunity is denied to the accused by not putting the report of the `Public Analyst specifically and the contents thereof it would amount to the violation of the mandatory provision of section 313, Code of Criminal Procedure, and the conviction of the accused could not be maintained. The reason for arriving at this conclusion is quoted below from the said judgment.

"It is noteworthy that in section 342 of the Old Code, the Court was required to put questions to the accused generally on the case after the witnesses for the prosecution had been examined and before he was called upon to enter his defence. But now the word `personally'' has been entered in section 313 of the New Code. Now, the purpose is to enable the accused personally to explain any circumstance appearing in the evidence against him. The language employed in explicit in terms indicating that a Court is required to question generally on the case to enable the accused personally to explain any circumstance appearing in the evidence against him. This makes it imperative that nothing vague has to be left by the Court in the matter of questioning him on the case. Every material evidence for the prosecution has. to be put to him for his personal explanation. Here, the factum was put to the petitioner that on receipt of the report of the Public Analyst, Exhibit PD, prosecution was launched and he was sent the relevant information about its existence and a copy thereof by post in accordance with law. The fact that the accused stood apprised that there was a report, Exhibit PD, on the file by virtue of that question was taken by the learned Sessions Judge to be sufficient compliance of the provisions of Section 313 of the New Code. The existence of the report Exhibit PD on the record was admitted by the petitioner as also that he had received a copy thereof in compliance with the law. But this aspect stops at that and cannot be taken further that the petitioner should be assumed to have known the contents of Exhibit PD and the extent of adulteration. Then there was nothing for the petitioner to explain old that aspect. This to my mind would in be violative of guarantee of personal explanation given to an accused person under section 313 of the New Code."

3. In the present case admittedly the contents of the report of the Excise Inspector (Ex.PB) have not been put to the petitioner in his statement under section 313, Code or Criminal Procedure. In the ratio of the above mentioned Ram Chander''s case (supra) it has prejudiced the petitioner since the mandatory provisions of section 313. Code of Criminal Procedure, are violated. Hence the conviction of the petitioner is unsustainable and, therefore, has to be set aside on this ground alone.

4. The petitioner has already under gone a part of his sentence. At present he is on bail. He has been facing the prosecution for about four years. Taking these factors into consideration I do not, find that it is a fit case for remand so as to remove the defect of the trial Court having violated the provisions of section 313 of the Code of Criminal procedure.

5. As already noticed above the learned Additional Sessions Judge bag placed reliance on the same set of witnesses in the case under section 61 (1) (c) of the Act whereas they have been disbelieved in the case under section 61 (1) (a) of the Act. Both the offences are said to have been committed in the sarne transaction. This fact also clouds the prosecution case with doubt. If in the same transaction the witnesses are disbelieved regarding the commission of one offence their testimony becomes unreliable swith regard to the other offence also. It is an additional factor which persuades me to decline to affirm the impugned judgment of the learned Additional Sessions Judge.

6. In this view of the matter this revision is accepted and the petitioner is acquitted of the charge. Fine, if already paid by him, be refunded.