

Jagir Singh Vs The State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 16, 2009

Acts Referred: Punjab Excise Act, 1914 &" Section 61(1)(c)

Citation: (2010) 1 RCR(Criminal) 18

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Advocate: P.K. Goklaney, for the Appellant; J.S. Bhullar, Assistant Advocate General, Punjab, for the Respondent

Judgement

Sham Sunder, J.

This revision is directed against the judgement, dated 06.09.02, rendered by the Court of Additional Sessions Judge,

Ferozepur, vide which, it dismissed the appeal, against the judgement of conviction and order of sentence, dated 05.08.2000. rendered by the

Court of Judicial Magistrate 1st Class, Fazilka, convicting the accused (now revision-petitioner), for the offence, punishable u/s 61(1)(c) of the

Punjab Excise Act, 1914 (amended upto date - hereinafter to be called as the `Act" only), and awarding him sentence, to undergo rigorous

imprisonment, for a period of one year, and to pay a fine of Rs. 5000/-. In default of the payment of fine to undergo rigorous imprisonment for a

period of one month.

2. On 12.06.96, Salwinder Singh, Head Constable, alongwith other Police Officials, on receipt of a secret information, against the accused,

conducted raid, and he was found distilling illicit liquor by means of a working still, in the seepage drain (sem nallah), in the area of village

Kathgarh. The working still was cooled down and dismantled. The components of the working still, a drum containing 80 kgs of illicit liquor, 9

bottles of illicit liquor quarter sample of 180 ml, and other articles were taken into possession. The accused was arrested. After the completion of

investigation, he was challaned.

3. On his appearance, in the Court, the accused was supplied the copies of documents, relied upon by the prosecution. Charge u/s 61(1)(c) of the

Act, was framed against him, which was read-over and explained to him, to which he pleaded not guilty, and claimed judicial trial.

4. The prosecution, in support of its case, examined Vinod Kumar, Head Constable (PW1), Harnek Singh, Constable (PW2), Gurjit Singh, Excise

Inspector (PW3), Jagir Singh, LC (PW4), a witness to the recovery, and Salwinder Singh, the Investigating Officer (PW5). Thereafter, the

Additional Public Prosecutor, for the State, closed the prosecution evidence.

5. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, convicted and sentenced the accused,

as stated above.

6. Feeling aggrieved, an appeal was preferred by the appellant (now revision- petitioner), which was dismissed, by the Court of Additional

Sessions Judge, Ferozepur, vide judgement, dated 06.09.02.

7. Still feeling aggrieved, the instant revision petition, was filed by the revision-petitioner.

8. I have heard the Counsel for the parties, and have gone through and perused the evidence and record of the case, carefully.

9. The Counsel for the revision-petitioner, did not assail the conviction recorded by the trial Court, and affirmed by the Appellate Court. Even

otherwise, he could not successfully assail the same. The concurrent findings recorded by the Courts below, that the accused was found distilling

illicit liquor, are based on the cogent, convincing and reliable evidence of Salwinder Singh, Head Constable, PW5, the Investigating Officer, who

apprehended the accused, while distilling illicit liquor, and took into possession the components thereof, as also the illicit liquor already distilled,

Jagir Singh, LC, PW4, a witness, to the recovery, Gurjit Singh, Excise Inspector, PW3, who tested the contents of the drum boiler, and found the

same to be a mixture of gur, water and kikar barks, partially distilled and fit for further distillation, and submitted his report P3, Vinod Kumar,

Head Constable, PW1, the then Moharrir Head Constable, with whom, the case property alongwith the sample parcel was deposited with seals

intact, Harnek Singh, Constable, PW2, who took the sample to the Office of the Chemical Examiner, and deposited the same, with seals intact and

P8, the report of the Chemical Examiner, vide which, he found the contents of the sample to be of illicit liquor. These witnesses were thoroughly

cross-examined, but nothing of consequence, could be got elicited from their mouth, which may go to discredit their evidence. They stood the test

of touchstone of all probabilities, during the course of their cross-examination. Under these circumstances, the finding of the trial Court, regarding

conviction, does not suffer from illegality or perversity. The same deserves to be upheld.

10. The Counsel for the revision-petitioner, however, submitted that the revision-petitioner has been facing the criminal proceedings since

12.06.96, the date on which he was found distilling illicit liquor by means of working still, and already a period of more than 12 years, has expired,

with the damocle's sword hanging on his head. He further submitted that since he was not a previous convict, he be granted the benefit of the

provisions of Section 4 of the Probation of Offenders Act, 1958. The submission of the Counsel for the revision-petitioner, in this regard, appears

to be correct. The recovery, in this case, was effected on 12.06.96. The petitioner has been facing the criminal proceedings, since then. Keeping in

the view the facts and circumstances of the case the nature of offence; the factum that he has been facing the criminal proceedings for the last more

than 12 years; and that he is not a previous convict, in my considered opinion, it is a fit case, in which, he should be granted the benefit of the

provisions of Section 4 of the Probation of Offenders Act, 1958. Accordingly, the finding of the trial Court, awarding sentence to the revision-

petitioner, which was affirmed by the Appellate Court, deserves to be set-aside and instead, the revision-petitioner deserves to be granted the

benefit of Section 4 of the Probation of Offenders Act, 1958.

11. For the reasons, recorded above, the appeal is partly accepted. The judgement of conviction dated 05.08.2000, rendered by the trial Court,

and affirmed by the Appellate Court. is upheld. The order of sentence is set- aside. Instead, the revision-petitioner in view of the circumstances

enumerated above, is ordered to be released, on probation of good conduct, for a period of 2 years, on his furnishing a personal bond; in the sum

of Rs. 5000/-, with one surety in the like amount, to appear and receive sentence, as and when, called upon, during this period and, in the

meantime, to keep the peace and be of good behaviour. He shall also furnish an undertaking that he shall not commit any offence of the like nature,

during the aforesaid period. The revision-petitioner shall also pay costs of the proceedings, to the tune of Rs. 10,000/-. In case, he has already

deposited the amount of fine, to the tune of Rs. 5000/-, that shall be adjusted, against the amount of costs, referred to above. The probation

bonds, alongwith the undertaking, shall be furnished and the costs, referred to above, less than the fine, if already paid, shall be deposited, within a

period of 2 months, from the date of receipt of a copy of the judgement, failing which, the Court concerned, shall proceed, in accordance with the

provisions of law, for compliance of the judgement.