

(2008) 03 P&H CK 0217

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 372 of 1996

Kirpal Singh alias Pala

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 17, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 36, 360, 361
- Probation of Offenders Act, 1958 - Section 3, 4, 6
- Punjab Excise Act, 1914 - Section 61(1)(c)

Citation: (2008) 2 RCR(Criminal) 872

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: M.S. Rai, for the Appellant; Mehardeep Singh, Assistant Advocate General Punjab For the State, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Kanwaljit Singh Ahluwalia, J.

Petitioner Kirpal Singh alias Pala was convicted and sentenced by the Court of learned Judicial Magistrate Ist Class, Ferozepur, u/s 61(1)(c) of Punjab Excise Act to undergo one year rigorous imprisonment and a fine of Rs. 5,000/-, in default whereof to further undergo rigorous imprisonment for two month. Aggrieved against the same, he had filed an appeal and the same was dismissed by the Court of learned Sessions Judge, Ferozepur.

2. Briefly stated a police party was patrolling on bicycles when they received a secret information that the petitioner is running a working still and if the raid is conducted working still along with lahan and illicit liquor can be recovered. The information was reduced into writing and ruqa Ex.PC was sent to the Police Station. When the raid was conducted accused/petitioner was apprehended while running a working still. The working still was dismantled by the raiding party and recovered one drum

boiler Ex.P1 containing 80 Kgs. of lahan. Various instruments of working still, drum boiler, rubber tube were recovered and the accused was sent to trial.

Prosecution examined Head Constable Resham Singh as PW.1.

Excise Inspector Parkash Chand was examined as PW.2

Constable Darshan Singh, PW.3, has tendered his affidavit as Ex.PW.3/A.

Head Constable Lakhwinder Singh appeared as PW.4.

Two Courts below have appreciated their evidence and returned the finding of fact against the petitioner.

3. Mr. M.S. Rai, Advocate, appearing for the petitioner at the outset has stated that he will not be in a position to contest conviction as he is conscious that two Courts below have placed reliance on the witnesses and this Court in a revision cannot re-evaluate and reappraise the evidence. However, he has very fairly stated that he will confine his arguments to grant of probation to the petitioner. It has been stated that occurrence in the present case pertains to year 1991, and 17 years are going to lapse. He has placed reliance upon judgement of this Court rendered in Pakhar Singh v. State of Punjab, 2007 (1) RCR (Criminal) 396. In the said judgement, it has been held as under:-

"5. For an offence u/s 61(1)(c) of the Act, the law prescribes minimum sentence of one year and fine, which shall not be less than Rs. 5,000/- in the case of a working still. However, even if minimum sentence has been prescribed for the offence, that is no ground to deny the relief of probation.

6. In [Ishar Das Vs. The State of Punjab](#), Hon"ble Supreme Court held that sub-section (1) of Section 4 of the Probation of Offenders Act containing the non-obstante clause, would have over-riding effect and shall prevail if the other conditions prescribed were fulfilled. It was held as follows:

"The question which arises for determination is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offence under the Prevention of Food Adulteration Act, the Court can resort to the provision of the Probation of Offenders Act. In this respect we find that sub-section (1) of Section 4 of the Probation of Offenders Act contains the words "notwithstanding anything contained in law for the time being in force." The above non obstante clause points to the conclusions that the provisions of Section 4 of the Probation of Offenders Act would have overriding effect and shall prevail if the other conditions prescribed are fulfilled. Those conditions are (1) the accused is found guilty of having committed an offence not punishable with death or imprisonment for life, (2) the court finding him guilty is of the opinion that having regard to the circumstances of the case, including the nature of the offence and the character of

the offender, it is expedient to release him on probation of good conduct and (3) the accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and, in the meantime, to keep the peace and be of good behaviour. Sub-section (1) of Section 6 of the above mentioned Act, as stated earlier, imposes a duty upon the court when it finds a person under 21 years of age, guilty of an offence punishable with imprisonment other than imprisonment for life, not to sentence him to imprisonment unless the court is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to deal with him u/s 3 or 4 of the Act but to award a sentence of imprisonment."

7. In *Joginder Singh v. State of Punjab*, 1980 PLR 585, a Full Bench of this Court also held that mere prescription of the minimum sentence u/s 61(1)(c) of the Act was no bar to the applicability of Sections 360 and 361 Cr.P.C. Further that the same was not a special reason for denying the benefit of probation to a person convicted thereunder. It was further held that on the same reasoning, there was no bar to the applicability of Sections 4 and 6 of the Probation of Offenders Act. The Full Bench held as follows:-

"To conclude on the legal aspect, therefore, it must be held that the mere prescription of the minimum sentence u/s 61 (1)(c) of the Punjab Excise Act, 1914 is no bar to the applicability of Sections 360 and 361 of the Criminal Procedure Code, 1973 and the same is not a special reason for Criminal Revision No. 372 of 1996 6 denying the benefit of probation to a person convicted thereunder. In the alternative, it is equally no bar to the applicability of Sections 4 and 6 of the Probation of Offenders Act. The answer to the question posed at the outset is rendered in the negative."

4. Taking into consideration submission of learned counsel for the petitioner that in the last 17 years, the petitioner has committed no other offence and is leading his life as peaceful and honest citizen. Ends of justice will be fully met if he is released on probation for one year. He shall execute bonds to the satisfaction of learned Chief Judicial Magistrate, Ferozepur, with an undertaking to keep peace and be of good behaviour during the period of probation. He is ordered to pay Rs. 15,000/- as cost of litigation. Petitioner shall be called upon by the Court of learned Chief Judicial Magistrate, Ferozepur, to furnish the bonds and deposit cost of litigation. Non-deposit of cost of litigation by the petitioner shall be construed as dismissal of the present revision petition.

With these observations, the present revision petition is disposed off.