

**(2009) 11 P&H CK 0195**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Miscellaneous No. M-12326 of 2008

Kamaljit Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

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**Date of Decision:** Nov. 20, 2009

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482

**Citation:** (2010) 2 RCR(Criminal) 331

**Hon'ble Judges:** L.N. Mittal, J

**Bench:** Single Bench

**Advocate:** Balram Singh, for the Appellant; Gaurav Garg Dhuriwala, AAG, Punjab, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

L.N. Mittal, J.

Criminal Misc. No. 58777 of 2009

1. Reply (rejoinder) annexed with the application is taken on record along with Annexures P/6 and P/7, subject to all just exceptions.

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2. Reply on behalf of respondent No. 2 filed today by learned State counsel is taken on record. Copy given to the opposite counsel.

3. Kamaljit Singh has filed this petition u/s 482 of Code of Criminal Procedure (for short, Cr.P.C.) for quashing of FIR No. 137 dated 1.5.2007, u/s 61 of Excise Act, Police Station Maqsuda, District Jalandhar (Annexure P/5).

4. According to the prosecution version, FIR was registered on the basis of secret information. On raid on 1.5.2007, three cartons of country made liquor were recovered from the car of the petitioner and 11 cartons of liquor were recovered

from the shop of the petitioner.

5. The petitioner was licensee of liquor vend for the year 2006-07 vide licence Annexure P/1 i.e. from 1.4.2006 to 31.3.2007. The said licence was extended upto 30.4.2007 vide Annexure P/2.

6. Learned counsel for the petitioner vehemently contended that in view of section 61(A) of the Punjab Excise Act, 1914 (in short, the Act), possession of liquor was no longer offence and only penalty could be imposed for the same. There is considerable merit in the contention. Section 61(A) was inserted in the Act vide Amendment Act No. 32 of 2006 notified on 25.8.2006 and so the said section was operative when the impugned FIR was registered. Section 61(A) of the Act is reproduced herein :-

61-A. Penalty for offences not triable by a court.-

(1) Whosoever, in contravention of any provision of this Act, the rules framed thereunder, any notification issued or any order made or any license, permit or pass granted under this Act, imports, exports, transports, or possesses any liquor, shall alongwith liquor and means of transport, except the passenger buses, owned by the Central Government or the State Government or any of their undertaking, be detained by an Excise Officer, who shall make a report to the Assistant Excise and Taxation Commissioner, in-charge of the district and to the Deputy Excise and Taxation Commissioner, in-charge of the Division, within a period of twenty-four hours of such detention. The Excise Officer shall forward such liquor and the means of transport along with the necessary documents to the Deputy Excise and Taxation Commissioner in-charge of the District. (2) On the receipt of the report referred to in sub-section (1), the Deputy Excise and Taxation Commissioner in-charge of the Division, shall record the statements of the offender and the officers, concerned with the case, and release the offender. (3) The Assistant Excise and Taxation Commissioner in-charge of the district, may impose the following penalties after providing the offender a reasonable opportunity of being heard in case a liquor detained is licit, on which the excise duty and other levies have been paid in the State of Punjab, namely :-

(a) rupees five thousand in case of detection of such liquor upto two cases i.e. 18 bulk litres; and

(b) rupees ten thousand in case of detection of such liquor exceeding more than two cases i.e. 18 bulk litres.

(4) The Assistant Excise and Taxation Commissioner in-charge of the district, may confiscate the illicit liquor and may also impose the following penalties after providing the offender a reasonable opportunity of being heard in case the liquor detained is illicit, on which the excise duty and other levies have not been paid in the State of Punjab, namely:-

(a) rupees twenty five thousand in case of detection of such liquor up to five cases i.e. 45 bulk litres;

(b) rupees fifty thousand in case of detection of such liquor exceeding five cases i.e. 45 bulk litres, but not exceeding fifty cases i.e. 450 bulk litres; and

(c) rupees one lac in case of detection of such liquor exceeding fifty cases i.e. 450 bulk litres.

(5) If the penalty referred to in sub-section (4), is not paid within a period of one week from the date of the order, then the Deputy Excise and Taxation Commissioner in-charge of the Division shall pass a speaking order of confiscation of the means of transport and the liquor after giving an opportunity of being heard to the offender and the owner of the means of transport. In case the owners of the liquor and the means of transport are not available, then the order for confiscation may be passed by the Deputy Excise and Taxation Commissioner in-charge of the Division by affording an opportunity of being heard to the offender, who has been caught with the goods. The confiscated liquor shall thereafter, be destroyed under the supervision of the Deputy Excise and Taxation Commissioner in-charge of the Division and an authenticated copy of the said order shall be supplied to the affected person free of cost.

(6) The Deputy Excise and Taxation Commissioner in-charge of the Division, shall put to auction the confiscated means of transport with a period of thirty days from the date of the order of confiscation passed under sub-section (5). The amount received from auction after deducting the expenditure incurred on it, shall be adjusted towards the payment of penalty by the owner. The unrecovered amount of penalty, if any, shall be recoverable as arrears of land revenue.

7. Perusal of the aforesaid provision reveals that if a person is found in possession of liquor then penalty can be imposed on him in accordance with the provisions contained in section 61(A) of the Act. Possession of liquor is no longer an offence in Punjab in view of insertion of section 61(A) in the Act.

8. Learned State counsel contended that the petitioner is guilty of offence punishable u/s 61(2) of the Act. The said provision is reproduced herein for proper appreciation :-

61(2) Penalty for unlawful import, export, transport, manufacture, possession, sale etc.- Whoever in contravention of any section other than Sections 29 and 30 of this Act or of any rule, notification issued or given there under or order made or of any license, permit or pass granted under this Act

(a) sells any intoxicants; or

(b) cultivates the hemp plant; or

(c) removes any intoxicant from any distillery, brewery or

warehouse established or licensed under this Act; or

(d) bottles any liquor for the purposes of sale; or

(e) tapes or draws tari from any tari producing tree, shall be punishable with imprisonment for a term which may extend to two years and fine which may extend to twenty five rupees.

9. Perusal of the aforesaid provision reveals that possession of liquor is not punishable under this provision. It is not the allegation of the prosecution that the petitioner had sold any intoxicant. Consequently, the petitioner is not covered by clause (a) of section 61(2) of the Act. The petitioner was merely found in possession of liquor which is categorically covered by section 61(A)(1) of the Act.

10. Learned State counsel also referred to clause (c) of section 61 (2) of the Act. However, the said provision refers to removal of any intoxicant from any distillery, brewery or warehouse established or licenced under the Act. However, even according to the prosecution version, the petitioner had not removed the liquor in question from any distillery, brewery or warehouse. Consequently, the act of the petitioner is not covered by clause (c) of section 61(2) of the Act either.

11. In view of the aforesaid, the instant petition is allowed and the impugned FIR No. 137 dated 1.5.2007, u/s 61 Excise Act, Police Station Maqsuda, District Jalandhar (Annexure P/5) is quashed along with all consequential proceedings arising therefrom. However, this is without prejudice to the right of the competent authority to proceed u/s 61(A) of the Act.

The amount of Rs. 52,290/- seized from the car of the petitioner be released to the petitioner.