

(2008) 02 P&H CK 0351

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 488 of 1992

Kashmir Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Feb. 26, 2008

Acts Referred:

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

Citation: (2008) 2 RCR(Criminal) 447

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: Arvind Thakur, for the Appellant; Mehardeep Singh, Assistant Advocate General, Punjab, for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.

Kashmir Singh was tried in case FIR No. 30 dated 14.04.1990 registered at Police Station Sadar, Faridkot, u/s 61(1)(a) of the Punjab Excise Act (for short "the Act").

2. Case in short of the prosecution is that the police party consisting of Mohinder Singh, head Constable, Basant Singh, Head Constable, Daman Singh and Om Parkash, Constable, Karam Singh and Malkiat Singh, Punjab Home Guard Volunteer, was on patrol duty on bicycles. Then Mohinder Singh, Head Constable, received secret information that Kashmir Singh son of Jagat Singh, resident of village Mandwala is distilling illicit liquor by means of working still. Accordingly, police party reached the spot and dismantled the working still and recovered one drum Ex.P1 containing 40 Kgs. of lahan along with one earthen pot Ex.P2 and various instruments of working still, which have been exhibited as Ex.P3 to Ex.P10. Learned trial court found petitioner guilty of the offence and sentenced him for one year rigorous imprisonment and a fine of Rs. 5,000/-, in default of payment of fine to

undergo rigorous imprisonment for three months. Appeal filed by the petitioner was also dismissed by the Court of learned Additional Sessions Judge, Faridkot. Both the Courts below have relied upon testimony of Head Constable Basant Singh, PW.1, and head Constable Mohinder Singh, PW.2 and have ignored the minor discrepancies, which were pointed out to the Courts below.

3. Mr. Arvind Thakur appearing for the petitioner has not been able to point out any illegality, infirmity or irregularity. It has been stated that independent witness has not been examined. Both the Courts below have found the testimony of police witnesses to be trustworthy and reliable. Appeal of the petitioner was also dismissed.

4. In the present case, occurrence pertains to April 1990. Petitioner has undergone protracted trial of about 18 years. Petitioner remained in custody for two days as under-trail. His appeal was dismissed on 18.07.1992. He was granted bail by this Court on August 3, 1992. petitioner has undergone about 16 days of his actual sentence. It has been stated by learned counsel for the petitioner that petitioner is not a previous convict and during the pendency of trial, he has committed no offence. It has been urged that taking into account the protracted trial and his antecedents, petitioner is entitled to grant of probation. Reliance has been placed on judgement of this Court rendered in *Pakhar Singh v. State of Punjab, 2007 (1) RCR (Cri) 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 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 over-riding 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 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 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."

5. Since the petitioner is not a previous convict and has suffered protracted trial of about 18 years, he is ordered to be released on probation for a period of one year. He shall execute bonds to the satisfaction of learned Chief Judicial Magistrate, Faridkot, with an undertaking to keep peace and be of good behaviour during the period of probation. The amount of fine is enhanced from Rs. 5,000/- to Rs. 15,000/- and the same shall be treated as cost of litigation. Petitioner shall be called upon by the court of learned Chief Judicial Magistrate, Faridkot to furnish the bonds and deposit fine. Non-payment of fine by the petitioner shall be considered as dismissal of the present revision petition.

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