

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.372 of 1999

Date of decision: 29.3.2006

State of Himachal Pradesh

Appellant

Versus

Rajeev Brar

Respondent

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

Whether approved for reporting ? NO

For the appellant(s): Mr. J. S. Guleria, Law Officer

For the respondent(s): Mr. G. D. Verma, Senior Advocate
With Mr. B. C. Verma, Advocate

Deepak Gupta, J. (Oral)

This appeal by the State is directed against the judgment of the learned Additional Sessions Judge, Solan whereby he has acquitted the accused of the offence under Section 61 (1) (a) of the Punjab Excise Act as applicable to the State of H.P.

Brief facts of the case are that according to the prosecution on 5.3.1996 at about 3.00 a.m. the accused was apprehended at bus stand, Darlaghat and he was found in conscious possession of 9 bottles of liquor, Aristocrate Premium Malt Whisky without any licence to carry the same. Accordingly the matter was investigated and the accused was charged for committing such an offence. He was summoned by the trial court and charge was framed against him.

Mr.G.D.Verma, learned Senior Advocate appearing for the respondent, points out that in this case there is interpolation in the charge after the same has been framed. He has shown to me a certified copy of the charge which was framed against the accused. This copy has been duly certified to be correct on 3.4.1997. It is a photo copy of the original charge sheet and in this the charge reads as follows:-

“I, Veerta Verma, Sub Divisional Judicial Magistrate Arki, District Solan, H.P. do hereby Charge you as under:-

that on 5.3.96 at about 3.35 PM at place Bus stand Darlaghat , P.S. Darlaghat, you were found in exclusive and conscious possession of 9 bottles of liquor Aristocrate Whisky without license placed in a bag green and purple in colour and thereby you committed an offence punishable under section 61(1)(a) of Punjab Excise Act applicable to the State of H.P. and within my cognizance.

And I hereby direct you to be tried by this court for the aforesaid offence.”

Sd/-SDJM

However, in the court record words 3.35 P.M. have been changed to 3.30 a.m. and after the word Aristocrate the words Premium Malt have been added. The charge sheet as appearing in the trial court file reads as follows:-

“I, Veerta Verma, Sub Divisional Judicial Magistrate Arki, District Solan, H.P. do hereby Charge you as under:-

that on 5.3.96 at about 3.35 AM at place Bus stand Darlaghat , P.S. Darlaghat, you were found in exclusive and conscious possession of 9 bottles of liquor Aristocrate Premium Malt Whisky without license placed in a bag green and purple in colour and thereby you committed an offence punishable under section 61(1)(a) of Punjab Excise Act applicable to the State of H.P. and within my cognizance.

And I hereby direct you to be tried by this court for the aforesaid offence.

Sd/-SDJM”

It is obvious that the words `A.M.' and `Premium Malt' were not existing in the charge as framed on 25.9.1996. In fact this interpolation in the charge sheet has apparently been made after 3.4.1997 when the duly certified copy of the charge sheet was handed over to the accused.

I must point out that with regard to the very same Judicial Officer in another Criminal Appeal being Criminal Appeal No. 347 of 1999, State Vs. Chandresh Kumar, dismissed on 16th March, 2006 similar allegations had been made that interpolations were made in the charge sheet. I had got an inquiry conducted through the Registrar (Vigilance) and as per his inquiry the interpolation prima facie appear to have been done by the Presiding Officer of the court,

Ms.Veerta Verma. Since this officer is no longer in the service, this court had taken the view that no further action is required. However, the copy of the inquiry report as well as the judgment passed by this court was ordered to be placed on the personal file of Ms.Veerta Verma. In the present case also it prima facie appears that the interpolation is in the handwriting of the Presiding Officer itself and obviously this interpolation/forgery in the charge sheet has been made at a much later stage. I have taken on record the certified copy of the charge sheet as supplied by Mr.G.D.Verma, learned Senior Advocate, and the same has been exhibited as Ex.R-1.

Coming to the merits of the case it is obvious that the trial court convicted the accused for a charge for which the charge sheet had not been framed. I have already held that interpolation in the charge sheet has been made at a later stage and record does not depict that amendment was made after informing the accused. Therefore, the accused had no proper occasion to defend himself and trial was not fair. Therefore, the order of acquittal recorded by the learned Additional Sessions Judge calls for no interference.

In view of the above discussion there is no merit in the present appeal and the same is dismissed. The bail bond of the accused is discharged.

March 29, 2006(K)

(Deepak Gupta), Judge