

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 547 of 1999.

Date of decision: 29.11.2006.

State of H.P.	... Appellant
Versus	
Sunil Kumar & Anr.	... Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?¹ No.

For the appellant: Mr. Ashutosh Burathoki, Addl. Advocate General.

For the respondents: Mr. Bhuvnesh Sharma, Advocate.

V.K. Ahuja, J. (Oral):

This appeal has been filed by the State of Himachal Pradesh against the judgment of acquittal dated 4.8.1999 passed by the learned Additional Chief Judicial Magistrate, Hamirpur, in offence under Section 61(1)(a) of the Punjab Excise Act, 1914, as applicable to the State of Himachal Pradesh.

Briefly stated the facts of the case are that on 12.7.1995, a police party headed by Inspector Anand Dhiman at Salasi Nala intercepted a maruti van bearing registration No. HP-02-2373 and on search of the van, 192 bottles containing Indian made foreign liquor were recovered without any permit. Samples were taken out of the recovered liquor and

¹Whether reporters of Local Papers may be allowed to see the judgment? No.

on completion of the investigation, challan was filed and the case was tried which resulted in acquittal as detailed above.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the State of H.P. and Mr. Bhuvnesh Sharma, learned counsel for the respondents and have gone through the records.

The main ground taken by the learned Additional Advocate General was that the learned trial Court had wrongly closed the evidence of the prosecution by order of Court and accordingly, the statement of the Investigating Officer who headed the raiding party could not be recorded and resultantly, the case resulted in acquittal, which findings are liable to be set aside. The learned counsel for the respondents has supported the impugned judgment.

On a perusal of the record of the case, it is clear that the main witness whose evidence has been recorded by the prosecution and is in regard to the recovery is that of PW3 S.I. Sarwan Ram. His statement has been discussed by the learned trial Court. A perusal of his statement shows that he is a witness to the factum of recovery of bottles containing Indian made foreign liquor. However, he has nowhere stated in his statement that which of the accused was the driver of the van or which of the accused was sitting along the driver or how these two accused persons were apprehended by the police whether in the capacity of driver or in the capacity of owner of the vehicle. In the last line of his examination-in-chief, he has stated that accused persons are present in the Court. Accused had not been able to show the permit. This is the only statement made in regard to the identification of the accused or the role played by the accused persons. He has nowhere stated which of the accused was asked about the permit and in what capacity. In the last

line of the cross-examination, he has further stated that he does not know the accused persons by name and can identify them by face. It is this statement of PW3 Sarwan Ram which is sought to be corroborated by recalling PW Anand Dhiman, Investigating Officer, whose evidence was closed by order of the Court. I have gone through the record of the case and it is clear that though time was given to the prosecution to produce their evidence, but there was no direction that the witnesses be produced on own responsibility or last date is being given for evidence of the prosecution, so that effective steps could have been taken by the prosecution to produce the witnesses. The evidence was closed on 25.5.1999 and at times there is no report in regard to the receipt of the summons and as to the fate of the summons issued for the witness of the prosecution. The earlier order sheet dated 23.4.1999 shows that the summons had not been received back and statement of three witnesses were recorded and remaining witnesses were to be summoned through special messenger. On an earlier occasion also, the summons had not been issued as on the previous date while on one or two dates the summons had not been received back.

Thus, it is clear from the above discussion that though opportunities were given to the prosecution to produce the witness, but these cannot be said to be sufficient or giving a notice to the prosecution that in case the witnesses are not produced, the evidence shall be closed by order of the Court. However, even if this witness is allowed to be recalled at this belated stage, when the occurrence has taken place in 1999, it can only corroborate the testimony of PW3 S.I. Sarwan Ram, whose statement is not such which on corroboration can be said to be sufficient to prove the prosecution case. The ends of justice will not be

met in case in view of the evidence led by the prosecution already, the Investigating Officer should be allowed to be re-called at this later stage. Therefore, I am of the opinion that the ends of justice will not be met by recalling the Investigating Officer or setting aside the order passed by the learned Magistrate closing the evidence of the prosecution by order of the Court and, therefore, the final findings recorded by the learned trial Court acquitting the respondents of the charge framed against them calls for no interference and as such, those findings are upheld.

In view of the above discussion, the appeal filed by the appellant/State of H.P. is dismissed. Bail bonds stands discharged. A copy of the judgment along with the record be sent.

November 29, 2006
(BSS)

(V.K. Ahuja),
Judge