

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl.Revn. No.528 of 1996

Date of decision:- October 31, 2007

Waryam Singh

...Petitioner

Versus

State of Punjab

...Respondent

Coram: Hon'ble Mr. Justice Harbans Lal

Present: Mr. Gaurav Chopra, Advocate for the petitioner.

Mr. Anatar Singh Brar, Deputy Advocate
General, Punjab

Harbans Lal, J.

This revision is directed against the judgment and order of sentence dated 31.8.1994 passed by the Court of Chief Judicial Magistrate, Fazilka vide which he convicted and sentenced the petitioner to undergo rigorous imprisonment for two years and to pay a fine of Rs. 7000/-, in default thereof to further undergo rigorous imprisonment for three months under Section 61(1)(c) of the Punjab Excise Act (for short 'the Act') as well as the judgment dated 15.5.1996 rendered by the Court of Additional Sessions Judge, Ferozepur vide which the appeal preferred by the petitioner was dismissed.

As set up by the prosecution on 15.9.1991 Head Constable vidya Sagar, Head Constable Baldev Singh, Constable Jasbir Singh and Punjab Home Guard Volunteer Partap Singh, while on patrolling in connection with excise checking on their respective cycles, reached the bridge of the seepage drain in the area of village Asafwala. Head Constable

Vidya Sagar received a secret information that the accused was running a working still in his cotton field and if raid is conducted, he could be caught red handed and the illicit liquor could be recovered from him. Finding secret information to be reliable, Head Constable Vidya Sagar, Investigating Officer, sent ruqa Exh. PA to Police Station Saddar Fazilka where upon the FIR Exh.PA/1 was registered. When the police party reached near the spot, they saw smoke emerging out of the fields. On seeing the police party the accused, who was operating the working still, run away. The police party followed the accused but he escaped. Thereafter, the Investigating Officer cooled down and dismantled the working still and took the articles of the working still including the drum boiler Exh.P.1 containing lahan about 90 Kilograms. Mardani was fitted on the drum boiler Exh.P.1, Tin container Exh.P.4 was having 11-3/4 bottles of illicit liquor which were measured after separating the sample nip measuring 180 MLs. Besides, the tubes Exh.P.6 containing illicit liquor measuring 99-3/4 bottles and three drums full of lahan Exh.P.7 to Exh.P.9 containing about 150 Kgs. of Lahan were also recovered from the spot and the same were taken into possession vide recovery memo Exh.P.B. After completing all the formalities and after the receipt of the Chemical Examiner Exh.P.D. the challan against the accused was submitted in the court of Sh.H.P.Singh, Judicial Magistrate 1st Class, Fazilka.

In order to substantiate its allegations, the prosecution examined HC Baldev Singh PW1, HC Vidya Sagar PW2, Excise Inspector Mulkh Raj PW3, HC Darbara Singh PW4 and MHC Ranjit Singh PW5 and closed its evidence after tendering into evidence the Chemical Examiner Report Ex.PD. When examined under Section 313 Cr.P.C. the accused

denied all the allegations appearing in the prosecution evidence and offered to lead defence evidence. Without adducing any defence, he closed his evidence.

After hearing the learned A.P.P. as well as the learned defence counsel, the learned trial Court convicted and sentenced the petitioner as noticed at the outset.

Feeling dissatisfied with the judgments/orders rendered by the courts below the petitioner has preferred this revision.

To begin with Mr. Gaurav Chopra, Advocate appearing on behalf of the petitioner, maintained that the accused as alleged by the prosecution had run away from the spot and no test identification parade was got conducted and thus, the prosecution has utterly failed to connect the petitioner with the offence. This contention has been countered by Mr. Antar Singh Brar, Deputy Advocate General, Punjab by urging with full force that both the recovery witnesses as emerged out of their statements had known the accused prior to the recovery and thus, there was not need to arrange the test identification parade. This contention finds favour with me. As would be apparent from the respective statements of the recovery witnesses, they were known to the accused earlier. Sequelly, the test identification parade was not required to be arranged. More to the point, as emanates from their depositions, they could not be shattered or shaken inspite of searching cross-examination. So, this contention being devoid of any merit is repelled. The next argument having been raised by Mr. Chopra is that no independent witness was joined even though there were ample opportunities to join independent witnesses and so much so, the driver of the tractor trolley who carried the case property was also not produced and

it would be going too far to place abundant reliance upon the statements of the official witnesses who are highly interested in the success of the case.

Per contra, Mr. Brar submitted that such a huge recovery could not be planted upon the accused and more so, the evidence of official witnesses is as good as of others and that being so, prosecution story should not be disbelieved merely because of non-joining of any independent witness. There is a substance in this submission. As is well settled, the evidence of official witnesses has to be weighed in the same scales as of others. A meticulous perusal of their evidence would reveal that the same is unimpeachable and no malice on their part towards the petitioner has been ascribed or imputed to any of them, therefore, their statements can be relied upon safely. As such the contention raised by Mr. Chopra is turned down. It has been further submitted by Mr. Chopra that the link evidence is missing as the case property was not proved according to law and that at the time when the same was produced in the Court all the drums were empty and the same were also lying in open and it also did not bear seal of any official. This contention is unacceptable. In re: **Hardeep Singh vs. State of Punjab** 1996(3) Recent Criminal Reports (Criminal) 673 illicit liquor was recovered. The case property produced in the Court did not bear FIR number and Malkhana number and the same was deposited in Malkhana about 7-1/2 years back. The evidence adduced by the prosecution proved that the case property was the same. It was held by this Court that there was no ground to disturb the finding in revision. Here in this case the recovery was effected as far back on 15.9.1991. Needless to say more than 16 years have gone by, HC Baldev Singh PW1 and HC Vidya Sagar PW2 were examined in 1997, obviously after a pretty long time, during which the seals

of the officials affixed on the case property might have got broken and fallen off, while being shifted from one place to the other. The Lahan lying in the drums might have evaporated. It is a matter of common knowledge that due to paucity of space in the building of Malkhana, the case property of such cases is too often stored in the open space with the result it gets exposed to the sun and rain. There is nothing on the record to show that the case property produced to the trial Court was of some other case. So, the contention raised by Mr. Chopra cannot be countenanced.

Last of all, Mr. Chopra realising that he is unable to persuade this Court to depart from the view adopted by the Courts below, he prayed for release of the petitioner on probation. It is apt to be pointed out here that the recovery in this case is of a working still alongwith heavy quantity of illicit liquor i.e. 99-3/4 bottles contained in a tube, 11-3/4 bottles contained in a tin container, 3 drums containing 150 Kgs. of lahan each and drum boiler containing about 90 kgs of lahan. This heavy recovery by no stretch of imagination could be foisted by the investigator. It would not be expedient to bestow the benefit of probation upon the petitioner. Of course, having regard to the fact that the petitioner is facing the agony of trial and undergoing the ordeal of prosecution since long, there is a scope for reduction in sentence. Consequently, the conviction is maintained. The sentence of rigorous imprisonment is reduced from 2 years to one year while maintaining the fine imposed by the learned trial Court as well as its default clause. With this modification in the order of sentence, this revision fails and is dismissed.

October 31, 2007
gsv

(HARBANS LAL)
JUDGE