

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.: 232 of 2001.

Reserved on: 25.02.2008.

Decided on: 29.2.2008.

State of Himachal Pradesh. ... Appellant.

Versus

Madan Singh. ... Accused/Respondent.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?¹ No.

**For the Appellant: Mr. Rajinder Dogra and Mr. Anil
Kumar Jaswal, Deputy Advocate
Generals.**

For the Accused/Respondent: Mr. M.L. Brakta, Advocate.

Rajiv Sharma, Judge:

The respondent was prosecuted in criminal Case No.37/3 of 1998 in the Court of learned Chief Judicial Magistrate, Shimla under Section 61(1)(a) of the Punjab Excise Act, as applicable to the State of Himachal Pradesh and was acquitted on 6.11.2000. The State has filed this appeal against the judgment of acquittal dated 6.11.2000.

The brief facts as gathered from the judgment of the learned trial Court are that on 27.3.1998 Inspector Ram Saran (PW-2) was on patrol duty alongwith Head Constables Rajinder Singh and Ram Narayan, Constables Narinder Mohan (PW-1) and Shri Budhi Singh (PW-4) and Jagdish. It is alleged that at about 11.00 A.M. when they were going

Whether reporters of local papers may be allowed to see the judgment?

towards Lower Bazar via Shiva Bhojanalya, a person was seen coming down the stair from the lane/gali below Shiva Bhojanalya. He was carrying a gunny bag/katta (white in colour) in his hand. He was apprehended and disclosed his name to be Madan Singh. On checking the katta, it was found to have contained 32 pouches of country liquor. He could not produce any permit/licence to justify the carriage of the recovered pouches. One pouch was kept intact as sample and sealed with seal 'A'. The remaining 31 pouches were put in the gunny bag which was sealed with seal 'A' and taken into possession. The F.I.R. was registered and investigation was carried out. The sample was sent for chemical examination. The prosecution to prove the case against the accused had examined 5 witnesses in all. The accused was examined under Section 313 Cr.P.C. He was acquitted on 6.11.2000.

The learned Deputy Advocate General had strenuously argued that the prosecution has proved the case against the accused. Mr. M.L. Brakta had supported the judgment dated 6.11.2000.

I have heard the learned counsel for the parties and perused the record.

Mr. Ram Saran (PW-2), the Investigating Officer had appeared in the witness box and stated that on 27.3.1998 he was on patrol duty alongwith other police officials. He had had stated that the accused was apprehended carrying 32 pouches of country liquor and he could not produce any permit. One pouch was sealed with seal 'A' and the remaining pouches were kept in a gunny bag and taken into possession vide Fard Ex.PW-1/A. He has admitted in his cross-examination that nearby the place of recovery, there were many houses and hotels and the entire process of investigation took about an hour.

PW-1, Shri Narinder Mohan and PW-4 Shri Budhi Singh had supported the version of PW-2. Narinder Mohan had stated that the

policy party remained on the spot for about half an hour and at that time many persons were coming and going. He further stated that the seal was of iron/steel. However, Shri Budhi Singh (PW04) had deposed in cross-examination that they remained on the spot for about two hours and the seal was of coin.

The recovery has taken place at 11.00 A.M. at a place surrounded by residential houses as well as hotels/shops. In the present case no independent witness was associated at the time of recovery of 32 pouches of country liquor. The Investigating Officer could easily associate the independent witnesses since the spot from where the gunny bag containing the 32 pouches was recovered is surrounded by residential houses, hotels and shops. PW-1, Narinder Mohan had categorically stated that many persons were coming and going and the police party remained on the spot for about half an hour. The prosecution has also not produced the seal which was used at the time of effecting the recovery of alleged pouches. No witness had stated that the copy of fard recovery was given to accused Mohan Singh and in token of having received the same, he signed the fard Ex.PW-1/A. The prosecution has also not explained in any manner why the independent witnesses though available were not associated during the search of the accused.

It is thus evident that the prosecution has failed to prove the case against the accused by not associating any independent witness at least at the time of search and recovery of 32 pouches of country liquor.

Accordingly, there is no merit in the appeal and the same is dismissed. The bail bond furnished by the respondent-accused is discharged.

February 29, 2008.
(sck)

(Rajiv Sharma),
Judge.