

REPORTABLE/NON-REPORTABLE
IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
ON THE 29th DAY OF APRIL, 2022
BEFORE
HON'BLE MR. JUSTICE SATYEN VAIDYA.
CRIMINAL APPEAL NO. 252 OF 2010

Between:-

STATE OF HIMACHAL PRADESH

...APPELLANT

**(BY SH. GAURAV SHARMA,
DEPUTY ADVOCATE GENERAL).**

AND

- 1. ANIL KUMAR SON OF SH. CHAMAN LAL,
RESIDENT OF A-154, KALKAJI,
NEW DELHI.**
- 2. MANOJ CHAUDHARY SON OF SH. RAM
KRISHAN, RESIDENT OF SATHERI
TEHSIL JANSIL, MUZAFFARNAGAR,
(UTTER PRADESH).**
- 3. SANTOKH SINGH SON OF JOHAN SINGH
RESIDENT OF RZ-17, NANDA BAKRI
MAHABIR IQBAL, NEW DELHI.**

....RESPONDENTS.

**(BY SH. KAMLENDER BHARDWAJ, ADVOCATE,
FOR RESPONDENT NO.1.)**

**RESPONDENT NO.2 DECLARED AS
PROCLAIMED OFFENDER.**

**SH. AJIT SHARMA, ADVOCATE, FOR
RESPONDENT NO.3).**

**Reserved on : 26.04.2022
Decided on : 29.04.2022**

This appeal coming on for pronouncement of judgment this day, the Court delivered the following:

J U D G M E N T

By way of instant appeal, challenge has been laid to judgment dated 9.3.2010 passed by learned Additional Sessions Judge, Fast Track Court, Kullu, H.P. in Criminal Appeal No. 8 of 2009, whereby the judgment of conviction passed by learned Judicial Magistrate Ist Class, Manali on 30.01.2009 in Criminal Case No. 205-1 of 2007/5-111 of 08 and sentence order passed by such Court were set-aside and respondents were acquitted of all charges.

2. Respondents were charged for offence under Section 61 (1) (a) of the Punjab Excise Act as applicable to the State of Himachal Pradesh in case No. 205-I of 2007/5-111 of 08 by the learned Judicial Magistrate 1st Class, Manali.

3. The allegation against the respondents were that they were found in conscious possession of 36 bottles of Whisky (Blender's Pride), 32 bottles of Rum (Old Monk) and 36 bottles of Beer (King Fisher). It was alleged that respondents Anil Kumar and Santokh Singh were driver and conductor, respectively, of Volvo bus bearing No. DL-1PB-8858. Respondent Manoj Chaudhary was

tour executive. The above mentioned vehicle was detained for checking by the police party at Aloo ground near Green Tax Barrier, Manali on 30.12.2006 at about 6.30P.M. The police party was stated to be accompanied by Excise and Taxation Inspector, Prem Chand, besides Ashwani Kumar and Ajay Kumar as independent persons. On checking of the bus, the aforesaid liquor was found placed in the dickey of the bus. Respondents were found carrying the said liquor without any valid permit or pass. Accordingly, they were booked for the offence as noticed above.

4. After investigation, challan was put in the Court. Respondents were charged and convicted as aforesaid. Each of the respondents were sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1000/-. In default of payment of fine, to undergo simple imprisonment for further period of one month.

5. In appeal, learned Additional Sessions Judge, Fast Track Court, Kullu, set-aside the judgment of conviction and consequent sentence passed by learned trial Court against respondents vide judgment dated 9.3.2010 passed in Criminal Appeal No. 8 of 2009, hence the present appeal on behalf of the State.

6. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

7. In support of its case, prosecution had examined six witnesses. PW-1 Prem Chand the Excise and Taxation Inspector, PW-5 Ashwani Kumar and PW-6 ASI Lal Chand were the spot witnesses. All these witnesses were in unison in stating that Volvo bus No. DL-1PB-8858 was stopped for checking on 30.12.2006 at Aloo ground near Green Tax Barrier, Manali. Respondents were found occupying the cabin of the bus and 36 bottles of Whisky (Blender's Pride), 32 bottles of Rum (Old Monk) and 36 bottles of Beer (King Fisher) were recovered from the dickey of the bus. The respondents could not produce any valid permit or pass to carry the same.

8. In cross-examination, PW-1 Prem Chand, stated that the entire Nakka party including independent persons namely Om Parkash and Ajay Kumar remained on spot till end. The liquor and beer bottles allegedly sealed in carton boxes on spot, when produced in the Court before this witness, were found open and bottles could easily be taken out and replaced. This witness feigned ignorance about the number of passengers in the bus and also whether those passengers had alighted from the bus or not.

He also admitted that the spot where the bus was checked was a public place and large number of people visited that place. As per this witness, at the time of checking of bus also, large number of people were present there. He stated that though police asked many people to be witness but none agreed.

9. PW-5 Ashwani Kumar in his cross-examination stated that he was working as Manager (F&B) in hotel Piccadaly, Manali and was at Aloo ground to fetch vegetables for the hotel. He was stopped by ASI Lal Chand. He denied the suggestion that at the relevant time he was working as a salesman at liquor vend. This witness was confronted with contents of memo Ext. PW-1/B in which his address was mentioned as "Wine Shop" Manali. He explained that he had not read the address before signing the document.

10. PW-6 ASI Lal Chand when cross-examined, stated that he did not remember the occupation of PW-5 Ashwani Kumar. However, it was stated that this witness had enquired the address of said witness and was accordingly written. He also stated that bus passengers had alighted from the bus. He did not make enquiries from any passenger of the bus.

11. Learned trial Court believed the statements of aforesaid witnesses and accordingly convicted the respondents, as noticed above. In addition, PW-2 Inspector Roop Singh proved registration of FIR Ext. PW-2/A. PW-3 MHC Hari Singh was examined to prove the safe custody of seized liquor with him. Samples of seized liquor were stated to have been sent to Laboratory for chemical examination. On examination, the contents of bottles were found to be liquor and beer.

12. Learned Additional Sessions Judge, set-aside the judgment passed by learned trial Court on the grounds firstly that “Rukka” Ext. PW-6/B did not mention the name of respondent Manoj Chaudhary and there was no explanation for such omission. Secondly, the case property produced in the Court was found open, the seals were dis-arranged. Learned Additional Sessions Judge also took exception to the fact that when as per PW-1 all the police officials, who were members of Nakka party, remained at spot till the end of proceedings, how “Rukka” could be taken by Constable Mohinder Pal to the Police Station. The statements of witnesses with respect to location of dicky of the bus were also found discrepant. As per learned Additional Sessions Judge, it was not proved as to what quantity of liquor was taken

for chemical examination. On taking these infirmities into account, learned Additional Sessions Judge allowed the appeal and acquitted the respondents.

13. From the evidence on record, it is revealed that the police party had associated persons, who were neither the employees of Excise Department nor the Police. PW-5 Ashwani Kumar, is one of them and as per prosecution witnesses, one Ajay Kumar was also with police party at the time of checking of the bus in question. Ajay Kumar has not been examined. As far as PW-5 Ashwani Kumar is concerned, he appears to be a procured witness. Though, in his deposition before Court, PW-5 has stated that he was working in hotel Piccadily, but the document Ext.PW-1/B signed by this witness on spot mentioned his address of Village and Post Office, Chintpurni, District Una and presently Wine Shop, Manali. PW-6 Investigating Officer has stated that the address of PW-5 Ashwani Kumar was written on Ext. PW-1/B on the information provided by Ashwani Kumar himself. It being so, the facts appeared to be clearly manipulated. PW-5, being employee of a liquor vend, in all probabilities would be interested to help the official of Excise Department and Police party and thus cannot be said to be an independent witness.

14. In the situation as emerged from the above discussion, the question arises as to why the independent witnesses were not associated to lend credence to the prosecution story. No justifiable answer has come forward. The prosecution witnesses PW-1 and PW-6 have admitted that there were passengers in the bus. There is no explanation that why anyone of such passengers could be associated. Further, it has come in prosecution evidence that Aloo ground Manali, is a place frequented by large number of people and even at the time of search of bus many persons were available on spot. Non-association of any other independent persons at the time of search, casts serious doubt on prosecution story especially when time of such search was 6.30 P.M. It was not a case where no independent witness was available and it can also not be said to be the case of chance recovery as the police party by associating Excise and Taxation Inspector and other persons had already laid a Nakka.

15. Prosecution is required to prove its case beyond all reasonable doubts. Failure to achieve such standard of proof, definitely entitles the accused to benefit.

16. Learned Additional Sessions Judge has rightly held that there was no material to suggest that what was the quantity taken

to Laboratory for test. Further, the case property when produced in Court was not properly sealed and the bottles were found to be easily removable. This also creates serious doubt about the seizure and safe custody of case property.

17. In light of above discussion, it can be safely held that prosecution failed to achieve requisite standard of proof, therefore, the respondents deserved acquittal. Accordingly, the appeal is dismissed. Pending application(s), if any, also stands disposed of.

29th April, 2022
(GR)

(Satyen Vaidya)
Judge