not "adulterated", which may require the quashment of the criminal complaint and subsequent proceedings.

(12) In view of the above, finding no merit in this petition, the same is dismissed. However, it is made clear that the learned trial court shall decide the case on merits without being influenced by the observations made above.

R.N.R.

Before V. M. Jain, J

STATE OF HARYANA—*Petitioner*

versus

CHANDER MOHAN AND ANOTHER—*Respondnets*

CRL. M. No. 21953/M of 2000

24th January, 2001

Punjab Excise Act, 1914—S. 61 (as amended in the State of Haryana in 1996)—Recovery of two quarter bottles of liquor from the almirah of the father of the accused—Accused not in conscious possession of the liquor—Accused owners of the house from where such recovery made—Whether sufficient to hold the accused guilty for the offence u/s 61 of the Act—Held, no.

Held that, under the Punjab Excise Act, as amended in the State of Haryana and as applicable at the time of alleged recovery on 22nd December, 1996, the mere possession of liquor by a person was an offence. In order to hold a person guilty of the offence for having been found in possession of the liquor, the possession has to be conscious possession. It could not be said that the accused—respondents were in conscious possession of the liquor which was allegedly recovered from the almirah of a bedroom which was stated to be of the father of the accused—respondents. On the basis of the material placed on record, both the courts below were of the opinion that the charge against the accused—respondents was groundless. No case is made out for interference by this court in the present petition under Section 482 Cr. P.C. especially when the petitioner has failed to point out any illegality or irregularity in the orders passed by the Courts below.

(Paras 11 & 13)

Code of Criminal Procedure, 1973—Ss. 397 (3) and 482—Addl. C.J.M. discharging the accused of the offence—Sesssions Courts dismissing the revision petition filed by the State—Whether petition under Section 482 filed by the State against the orders passed by the Courts below discharging the accused maintainable—Held, yes.

Held that, though the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under section 482 Cr. P.C. and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below. Hence, it could not be said that the petition under Section 482 Cr.P.C. filed by the State of Haryana against the orders passed by the Courts below discharging the accused was not maintainable or was outrightly liable to be dismissed.

(Paras 7 & 9)

L.D. Mehta, Addl. A.G. Haryana, *for the Petitioner.*

H.L. Sibal, Senior Advocate with Kumar Sethi, Advocate, *for the Respondents.*

ORDER

(1) This is a petition under Section 482 Cr. P.C. filed by the petitioner State, seeking quashment of the order, dated 26th May, 1999, passed by the Additional Sessions Judge, upholding the order dated 27th February, 1999, passed by the Additional Chief Judicial Magistrate, discharging the accused under Section 61 of the Punjab Excise Act, arising out of FIR No. 473, dated 22nd December, 1996, of P.S. Civil Lines, Hisar.

(2) The facts which are relevant for the decision of the present petition are that one H.S. Chopra of the C.B.I. was investigating a case and during investigation, he conducted the search of H. No. 108, Sector 15-A, Part II, Haryana Urban Development Authority, Hisar. During the course of search, two bottles of liquor "Royal Salute" were recovered. From each bottle, 3/4th of the material had already been consumed and only 1/4th material was available in both the bottles. Thereupon, DSP H.S. Chopra sent a *ruqa* to the S.H.O. PS Civil Lines, Hisar, informing him about the abovesaid recovery and for taking necessary action. On receipt of the said *ruqa*, formal FIR under section

61 of the Punjab Excise Act was registered in the Police Station. Thereupon, Inspector Inder Singh, SHO of the said police station, reached the spot and took into possession the said liquor, after putting the same in two quarter bottles. A recovery memo was also prepared at the spot, which was signed by DSP H.S. Chopra and one Mohinder Singh, SDE, Horticulture. In the recovery memo, it was mentioned that both the bottles were recovered from the almirah of a bedroom. It was mentioned that the said bedroom was of Chaudhary Bhajan Lal.

(3) During the course of investigation, the police collected evidence from Haryana Urban Development Authority, to the effect that said H. No. 107/108, Sector 15-A, Part II, Hisar, was owned by accused respondents Chander Mohan and Kuldeep Singh sons of Shri Bhajan Lal. Thereafter, accused respondents Chander Mohan and Kuldeep Singh were arrested in this case, for the offence under section 61 of the Punjab Excise Act. After completition of the investigation, the challan was put in the court. Necessary documents were supplied to the accused respondent.

(4) After hearing both sides and after perusing the record, the learned Additional Chief Judicial Magistrate, Hisar, exercising powers under section 239 Cr. P.C.,—*Vide* order, dated 27th February, 1999, found that charge against accused respondents was groundless and accordingly discharged the accused of the said offence. Aggrieved against the said order of the learned Additional Chief Judicial Magistrate, the State of Haryana filed revision petition before the Sessions Court. The learned Additional Sessions Judge, after hearing both sides and after perusing the record, dismissed the revision petition,—*vide* judgment, dated 26th May, 1999. Aggrieved against the orders passed by the courts below, the State of Haryana has filed the present petition under Section 482 Cr. P.C. in this court, seeking quashment of the orders passed by the courts below and for framing of charge under Section 61 of the Punjab Excise Act against the accused respondents.

(5) I have heard the learned counsel for the parties and have gone through the record carefully.

(6) The first question that comes up for consideration in the present petition is as to what are the powers of this court under section 482 Cr.P.C., where second revision is barred under Section 397 (3) Cr.P.C.

(7) In *Krishnan and another Vs. Krishnaveni and another* (1) three Hon'ble Judges of the Supreme Court had held that the object of Section 397(3) Cr. P.C. is to put a bar on simultaneous revisional applications to the High Court and the Court of Sessions so as to prevent unnecessary delay and multiplicity of proceedings. It was further held in the said authority that the inherent power of the High Court is not one conferred by the Code but one which the High Court already has in it and which is preserved by the said Code. It was furhtèr held that the word "person" in sub-section (3) of Section 397 Cr. P. C. would include natural person and also juridical person and by implication "State" stands excluded from the purview of the word "person", for the purpose of limiting its right to avail the revisional power of the High Court under section 397 (i) Cr. P.C., for the reason that State being the prosecutor of the offender is enjoined to conduct prosecution on behalf of the society and to take such remedial steps as it deems proper. It was further held in the said authority that the prohibition under section 397 (3) Cr. P.C. on the revisional powers given to High Court would not apply when the State seeks revision under Section 401 Cr. P.C. and the State is not prohibited to avail the revisional powers of the High Court. It was further held in the said authority that ordinarily when revision has been barred by section 397 (3) Cr. P.C., a person—accused/complainant—cannot be allowed to take recourse to take revision to the High Court under Section 397 (1) or under inherent powers of the High Court under Section 482 Cr. P.C., since it may amount to circumvention of the provisions of Section 397 (2) or 397 (3) Cr. P.C. It was further held by their Lordships of the Supreme Court that it is to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified under such circumstances to exercise such inherent powers and in an appropriate case, even revisional power under Section 397 (1) read with Section 401 Cr.P.C., but it may be exercised sparingly so as to avoid needless multiplicity of procedure, necessary delay in trial and protraction of proceedings. After considering the various judgments earlier rendered by the Hon'ble Supreme Court, it was held by their Lordships that though the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under section 482 Cr. P.C. and as it is paramount power of continuous superintendence of the High Court under section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below.

(1) (1997) 4 SCC 241

(8) In *Rajathi Vs. C. Ganesan* (2), after considering the law laid down by their Lordships of the Supreme Court in Krishnan Vs. Krishnaveni (supra), it was held by their Lordships that the exercise of power under Section 482 Cr. P.C. is not a substitute for second revision under Section 397 Cr. P.C. It was further held that the mere fact that inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles.

(9) In view of the law laid down by their Lordships of the Supreme Court in the aforesaid authorities, in my opinion, it could not be said that the present petition under Section 482 Cr. P.C. was not maintainable or was outrightly liable to be dismissed. On the other hand, it is to be considered as to whether any case was made out for interference by this court in the exercise of powers under Section 482 Cr. P.C. or even in exercise of its revisional powers under Section 397 read with section 401 Cr. P.C., considering that it is a petition filed by the State of Haryana against the orders discharging the accused.

(10) In the present case, even according to the case of the prosecution, two bottles of liquor, out of which 3/4th of the contents had already been consumed from each bottle, were recovered from the almirah of a room which was in possession of Chaudhary Bhajan Lal. The accused respondents were prosecuted for being in possession of the said two quarter bottles of liquor on the ground that they were owners of the house in question from which house the bottles of liquor had been recovered. As referred to above, even according to the prosecution the recovery was effected from the almirah of the bedroom which was the bedroom of Chaudhary Bhajan Lal, father of the accused respondents. The question that comes up for consideration is as to whether in the light of these allegations made by the prosecution could it be said that the accused respondents were in conscious possession of the liquor bottles and whether the orders passed by the courts below discharging the accused respondents, required interference by this court in the exercise of its inherent powers under Sections 482 Cr. P.C. as also in the exercise of its powers under Section 397 read with Section 401 Cr. P.C.

(11) Under the Punjab Excise Act, as amended in the State of Haryana and as applicable at the time of alleged recovery on 22nd December, 1996, the mere possession of liquor by a person was an offence. In order to hold a person guilty of the offence for having been found in possession of the liquor, the possession has to be conscious

(2) (1999) 6 SCC 326

possession. The question that comes up for consideration is as to whether on the facts & circumstances of the present case could it be said that the accused respondents were found in concious possession of the two quarter bottles of liquor, which even according to the case of the prosecution had been recovered from the almirah of the bed room of Chaudhary Bhajan Lal, father of the accused respondents and not from the possession of the accused respondents. Merely because the accused respondents were owners of the said house, by itself, would not be sufficient to hold the accused respondents guilty for the offence of having been found in possession of the liquor, even though there is nothing on the record to show that the accused respondents were in conscious possession of the said liquor.

(12) In *Pabitar Singh vs. State of Bihar* (3), it was held by their Lordships of the Supreme Court that where a gun was recovered from a room of the quarter which was in joint possession of two persons and one of them was not present at the time of raid, the mere presence of the other in that room was not sufficient to make him guilty of the offence unless the court could come to the conclusion that there was reason to believe that he was aware of the existence of the gun in that room. It was further held in the said authority that since the prosecution had failed to prove that he was in sole occupation of that room at the time of raid and the gun was concealed in such a manner that it was not visible to naked eyes, it could not be said that he was aware of the existence of the gun. He was entitled to the benefit of doubt and was thus acquitted. In the present case, the only material which has come on the record is that the house in question was owned by the accused respondents. Nothing has come on the record to show that the accused respondents were in exclusive possession of the said house. On the other hand, the case of the prosecution itself as detailed in the recovery memo is that the liquor was recovered from the almirah of the bed room of Chaudhary Bhajan Lal (*jis bed room ki almari main yeh bottles mili hein yeh bedroom Chaudhary Bhajan Lal ka apna bed room hai"*).

(13) In the light of this assertion of the prosecution, in my opinion, by no stretch of imagination, could it be said that the accused respondnets were in conscious possession of the liquor which was allegedly recovered from the almirah of a bed room which was stated to be of Chaudhary Bhajan Lal (father of the accused respondents). On the basis of the material placed on record, both the courts below were of the opinion that the charge against the accused respondents was groundless. Accordingly, the learned Additional Chief Judicial

(3) AIR 1972 SC 1899

Magistrate,—*vide* order dated 27th February, 1999 had ordered the discharge of the accused respondents and the learned Additional Sessions Judge—*vide* order dated 26th May, 1999 had dismissed the revision petition filed by the State of Haryana, Challenging the order of discharge of the accused respondents. On the facts and circumstances of the present case in my opinion, no case is made out for interference by this court in the present petition under Section 482 Cr. P.C., especially when the petitioner has failed to point out any illegality or irregularity in the orders passed by the courts below.

(14) There is another aspect of the matter which requires consideration by this court. Prohibition was introduced in Haryana State with effect from 1st July, 1996 which continued up to 31st March, 1998. During prohibition, mere possession of liquor was an offence. Subsequently, the Punjab Excise Act was amended and prohibition was lifted. The Punjab Excise Act was amended,—*vide* the Punajb Excise (Haryana Fourth Amendment) Ordinance 1998 (Haryana Ordinance No. 2 of 1998). Later on, the said ordinance was repealed by virtue of the Punjab Excise (Haryana Third Amendment Act) 1998 (Haryana Act no. 20 of 1998). By virtue of the said amendment Act, Section 80-A was introduced, whereby the offence by way of possession of liquor not exceeding 4 bottles of 750 ml. each, committed during the period from 1st July, 1996 to 31st March, 1998, was made compoundable on payment of a sum of Rs. 1,000 per bottles or part thereof and on the payment of said money, the accused person if in custody shall be discharged and no further proceedings shall be taken against him in respect of such an offence. Later on, the Punjab Excise Act was again amended in the State of Haryana by way of The Punjab Excise (Haryana Amendment) Act, 1999 (Haryana Act No. 2 of 1999) by virtue of which Section 80-A of the Punjab Excise Act (as applicable to the State of Haryana) was substituted and it was provided that the court may accept, by way of composition from any person who has during the period from 31st July, 1996 to 31st March, 1998 possessed not exceeding 4 bottles of liquor of 750 ml. capacity each, Rs. 100 per bottle of liquor or part thereof and on payment of the money so specified, the accused person if in custody shall be discharged and no further proceedings shall be taken against him in respect of such an offence.

(15) From a perusal of the above amendments to the Punjab Excise Act, as applicable to the State of Haryana, it would be clear that the possession of up to 4 bottles of liquor of 750 ml. capacity each, during the period from 1st July, 1996 to 31st March, 1998 was an offence which was compoundable on payment of Rs. 100 per bottle of liquor or part thereof. In the present case, even according to the

prosecution, two bottles of liquor were recovered out of which 3/4th of the contents had been consumed from each bottle and the remaining contents were put in two quarter bottles. Thus, the recovery was of less than 1 bottle of 750 ml. The offence would be compoundable on payment of composition fee of Rs. 100 and on the payment of the said money, no further proceedings shall be taken in respect of said offence. That being the position, in my opinion, even otherwise, the offence being of a trivial nature, no interference is required by this court, in the exercise of its powers under Section 482 Cr. P.C. or in the exercise of its powers under Section 397 read with section 401 Cr. P.C.

(16) For the reasons recorded above, finding no merit in this petition, the same is dismissed.

R.N.R.

Before Mehtab S. Gill, J

PAWAN KUMAR GARG,—*Petitioner*

versus

THE PUNJAB COOPERATIVE COTTON MARKETING & SPINNING MILLS FEDERATION LTD & OTHERS,—*Respondents*

C.W.P. No. 14340 of 2000

20th February, 2001

Constitution of India, 1950—Arts. 226 & 311—Punjab Civil Services (Punishment & Appeal) Rules, 1970—Rl. 9—Enquiry Officer exonerating the petitioner of all the charges—Punishing Authority disagreeing with the Enquiry Officer—Whether he can order a de novo *inquiry into the same charges by another Enquiry Officer—Held, no—Order of punishing authority ordering a fresh inquiry quashed with liberty to restart the inquiry from the stage when the inquiry report was submitted.*

Held that it is no where mentioned in Rl. 9 of the 1970 Rules that the Punishing Authority can order a *de novo* inquiry. All that he can order is further inquiry by the same Inquiry Officer who held the inquiry in the first instance or if he disagrees with the finding of the Inquiry Officer, then he will have to record his reasons as to why he was dis-agreeing. The Punishing Authority has not gone into the details