

(60) However, with a view to enable the contemnor to exercise his right to appeal, if so advised, we direct that the sentence *qua* seven days' civil imprisonment shall remain suspended for a period of 90 days subject to the contemnor's depositing the fine of Rs. 1 lac with the High Court Legal Service Committee within two weeks from the date of receipt of certified copy of this order.

(61) The contemnor shall file a compliance affidavit along with receipt of the deposit of the fine in the Registry.

(62) Dasti.

R.N.R.

Before Harbans Lal, J.

BALDEV SINGH.,—Petitioner

versus

STATE OF PUNJAB,—Respondent

Crl. R. No. 654 of 1996

7th January, 2010

Punjab Excise Act, 1914—S.61(1)(c)—Petitioner convicted and sentenced under section 61(1)(c)—Two cases registered—Trial Court disbelieving same set of evidence in one case and believing in another case—Set of material witnesses in both cases same—Beyond comprehension as to how presence of Excise Inspector could be assumed in one case, when same in another case held to be doubtful—Evidence tendered by official witnesses also not finding corroboration from any independent source on record—Petition allowed, judgments of both Courts below set aside.

Held, that the set of material witnesses in both the cases was the same. It is beyond comprehension as to how the presence of the Excise Inspector could be assumed in the present case, when the same in the lahan's case has been held to be doubtful. It is also pertinent to point out here that the evidence tendered by the official witnesses do not find

corroboration from any independent source on the record. This being a case of secret information, the Investigator had ample opportunities to associate the public men before proceeding to the spot. In such sorry state of affairs, it would not be free from risk to maintain the conviction/sentence recorded/affirmed by both the Courts below.

(Para 10)

D.S. Pheruman, Advocate, *for the petitioner*

R.S. Rawat, Assistant Advocate General, Punjab

HARBANS LAL, J.

(1) This revision is directed against the judgment dated 3rd August, 1996 passed by the learned Additional Sessions Judge, Amritsar whereby he dismissed the appeal against the judgment/order of sentence dated 1st October, 1994 rendered by the learned Judicial Magistrate 1st Class,—*vide* which he convicted and sentenced Baldev Singh *alias* Deva accused to undergo rigorous imprisonment for one year and to pay fine of Rs. 500/- under Section 61(1)(c) of the Punjab Excise Act, 1914 (hereinafter to be referred as the Act) and in default of payment of fine to further undergo rigorous imprisonment for three months.

(2) As set up by the prosecution, on 1st December, 1992 Sub Inspector Amrik Singh accompanied by other police officials went to village Gharakka, where he received information to the effect that Baldev Singh *alias* Deva accused in distilling illicit liquor by means of a working still on the bank of the river. On receipt of such information, the police party conducted raid at the said place, where the accused was found distilling illicit liquor by working a still. At that moment, he was feeding fire under the hearth. He was arrested at the spot. The working still was cooled down and dismantled. There was 200 kgs of 'lahan' in the boiler, whereas the receiver did contain 7500 mls of illicit liquor. The sample was drawn from the receiver. The remaining liquor after measurement was transferred into a can. The boiler, the sample and the can were sealed with the seal bearing letters A.S. These articles alongwith the component parts of the working still were seized,—*vide* memo. The seal after use was handed over to Constable Inderpal Singh. Ruqa was sent to the Police

Station where on its basis formal FIR was registered. The rough site plan showing the place of recovery was drawn. The excise Inspector Baldev Singh was called at the spot. After testing the contents of the boiler, he vide his report opined that the same were partly distilled 'lahan' fit for further distillation of illicit liquor. The charge-sheet was laid in the court of learned Haqa Magistrate for trial of the accused.

(3) The accused was charged under Section 61(1)(c) of the Act to which he did not plead guilty and claimed trial. To bring home guilt against the accused, the prosecution examined Excise Inspector Baldev Singh (PW-1), Head Constable Inderpal Singh (PW-2), Sub Inspector Amrik Singh (PW-3) and Head Constable Narinder Singh (PW-4). When examined under Section 313 Cr. P.C. the accused denied all the incriminating circumstances appearing in the prosecution evidence against him and pleaded false implication. However, he did not lead any evidence in his defence.

(4) After hearing the learned counsel for the accused as also the learned Assistant Public Prosecutor for the State and examining the evidence on record, the learned Trial Court convicted and sentenced the accused as noticed at the outset. Feeling aggrieved therewith he went up in appeal which met failure as noticed at the outset. Being undaunted and dissatisfied with the judgments recorded by both the Courts below, he has preferred this revision petition.

(5) I have heard the learned counsel for the parties, besides perusing the record with due care and circumspection.

(6) To begin with, Mr. D.S. Pheruman, Advocate, appearing on behalf of the petitioner eloquently urged that there were two cases registered against the petitioners by the same Investigator one,—*vide* FIR No. 94 and the other is under FIR No. 95 in the same Police Station and both the cases were tried separately. The learned Additional Sessions Judge disbelieved the same set of evidence in FIR No. 95 dated 1st December, 1992 of Police Station Sarhali though believed the same in FIR No. 94 of 1st December, 1992. It is a celebrated dictum of law that while one set of witnesses is disbelieved in one case, the same cannot be believed in the other one. To buttress this stance, he has sought to place abundant reliance upon **Chotte Singh versus State of Haryana, (1)**.

(1) 1987 Punjab Acts and Precedents 293

(7) As against this, the learned State Counsel maintained that the petitioner was acquitted in lahan's case by the Additional Sessions Judge on the technical ground that his alleged disclosure statement was lacking his signatures/thumb impression. Thus the observations in re : Chotte Singh (supra) in no manner can be helpful to the petitioner. This contention merits rejection for the reasons to be recorded hereinafter.

(8) In the present case, the witnesses examined by the prosecution are Excise Inspector Baldev Singh (PW-1), Head Constable Inderpal Singh (PW-2), Sub Inspector Amrik Singh (PW-3) and Head Constable Narinder Singh (PW-4). In lahan's case the prosecution examined PW-1 Baldev Singh Excise Inspector, PW-2 Inderpal Singh HC and PW-3 Amrik Singh SI. Palpably, the set of witnesses examined in both the cases in almost the same. As projected by the prosecution, the petitioner was arrested while distilling illicit liquor and during investigation he suffered disclosure statement which led to the recovery of lahan. The petitioner has also placed on record the certified copy of the judgment rendered by the learned Additional Sessions judge, Amritsar in lahan's case. In paragraph 9 of the same, it has been observed that **“the presence of the Excise Inspector at the spot is also doubtful** because in his report Ex. PA he has first written that the case property was sealed with his seal bearing letters B.S., but later on, he had changed the letters of the seal making it A.S. This aspect of the case also makes the prosecution case doubtful and it also make it clear that the Excise Inspector prepared his report not at the spot but in the Police Station. The memos Ex. PB and Ex. PC were allegedly prepared at the spot, but they are with different pen and ink and the hand writing of the two documents is also not the same. So, all these facts show that these documents were not prepared at one and the same time.” These observations ostensibly speak volumes of the fact that the presence of the Excise Inspector at the spot was found to be doubtful. In paragraph 12 of the impugned judgment, the same Court has observed that “Similarly discrepancy with regard to link evidence and testing of the ‘lahan’ by the Excise Inspector is no discrepancy at all, because in the cross-examination S.I. Amrik Singh has made it clear that Excise Inspector Baldev Singh was brought to the spot by H.C. Balraj Singh and then the Excise Inspector stated that he had tested the ‘lahan’ at the spot. He has also stated that he was not having his seal with him and that is why the seal of Sub Inspector was used. After test, the seal was

handed over to the constable and no doubt this witness has not stated that he got the seal from the constable and then sealed the drum, **but the factual position is clear from over-all evidence of these witnesses that the case property was tested at the spot by the Excise Inspector** and at that time, it was sealed with the seal mark A.S. and then the E.I. broke open the seal and after test, he resealed the drum with some other seal bearing letters A.S. So, the link evidence is not missing in this case.”

(9) A combined reading of the afore-extracted observations would reveal that in one case the learned Additional Sessions Judge held that the presence of Baldev Singh Excise Inspector at the spot is doubtful though in the case in hand he believed the presence of the same very Excise Inspector at the spot *albeit* both the recoveries were effected in the course of same transaction. To my mind, in the face of the observations rendered in *lahan's* case, the learned Additional Sessions Judge was not justified in relying upon the statement of the Excise Inspector as both the recoveries were effected at the same place, date and time. In re: *Chotte Singh* (*supra*), the accused was found to be carrying 40 kgs of poppy husk and 40 grams of opium. Two separate cases were registered against him in respect of this incident, one under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the other under Section 17. The witnesses examined against the appellant in both the cases were same namely Constable Jaimal Singh and ASI Shri Ram. Both the cases were tried by the same Sessions Judge, who on July 10, 1986 acquitted the appellant in respect of the charge pertaining to possession of 40 grams of opium, but on the next day that is July 11, 1986, he convicted the appellant under Section 15 of the Act with regard to possession of poppy husk. It was held by this Court that **“Once these two witnesses are held to be unworthy of belief in respect of the recovery of opium, it is not understandable how they could be relied upon with regard to the recovery of poppy husk, when this too occurred at the same time and as part of the same transaction. Admittedly, if the evidence of these witnesses cannot be relied upon, there is no other material on record to uphold and maintain the conviction/sentence of the appellant.”**

(10) Harking back to the present one, needless to say that the set of material witnesses in both the cases was the same. It is beyond comprehension as to how the presence of the aforementioned Excise

Inspector could be assumed in the present case, when the same in the lahan's case has been held to be doubtful. So, the observations rendered in Chotte Singh's case apply to the instant one. It is also pertinent to point out here that the evidence tendered by the official witnesses do not find corroboration from any independent source on the record. This being a case of secret information, the Investigator had ample opportunities to associate the public men before proceeding to the spot. In such sorry state of affairs, it would not be free from risk to maintain the conviction/sentence recorded/affirmed by both the Courts below.

(11) As a sequel of the above discussion, this appeal is accepted setting aside the judgments recorded by both the Courts below. Consequently the accused-revisionist stands acquitted of the charged offence.

R.N.R.

Before Harbans Lal, J.

JASWINDER SINGH ALIAS BINDER,—Appellant

versus

STATE OF PUNJAB,—Respondent

CrI. A. No. 1396 of 2002

6th November, 2009

Narcotic Drugs and Psychotropic Substances Act 1985—Ss. 15,35 and 54—Code of Criminal Procedure, 1973-S. 313—Allegation against accused indulging in sale of poppy husk—Question of possession not put to accused while examined u/s 313 of Cr.P.C. vitally affects prosecution case—No presumption can be raised against accused u/ss 35 or 54 of NDPS Act or even u/s 114 of Evidence Act that he was in conscious possession of alleged contraband unless a specific question has been put to him regarding conscious possession—Conscious possession of appellant not established—Appeal allowed, judgment/order of sentence set aside.

Held, that the meticulous perusal of the appellant's statutory statement would reveal that the question of possession was not put to him while being examined under Section 313 of Cr.P.C. That being so, this omission vitally