

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1178-2024 (O&M)

Decided on 15.01.2025

Parshotam Singh

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Dixit Raj Kapoor, Advocate for the petitioner

Mr. Jaspal Singh Guru, AAG Punjab

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the impugned judgment dated 04.04.2024 passed by Sh. Arun Gupta, Sessions Judge, Fatehgarh Sahib as well as the judgment dated 11.12.2019 passed by Mahesh Grover, CJM, Fatehgarh Sahib vide which the petitioner has been convicted and sentenced to undergo RI for two years with fine of Rs.2 lakhs in case FIR No.108 dated 24.10.2017 under Section 61 of Punjab Excise Act, 1914 registered at Police Station Bassi Pathana.

(2). Brief facts of the case drawn by the trial court as emanating from the final report under section 173 Cr.P.C. are reproduced as under:-

“...on 24.10.17, ASI Inderjit Singh along with other police officials was present at bridge of drain of Allam in a private vehicle in connection with routine checking and patrolling duty. At about 12.15 PM, ASI Inderjit Singh received a secret information that Prabhjit Singh and Parshotam Singh are in the business of selling illicit liquor. Today also they are coming alongwith heavy quantity of liquor in a XYLO car bearing No. PB 10 CN 7203 of black colour from the side of Morinda towards Sirhind and they can be apprehended alongwith said liquor, if nakabandi is laid.

Accordingly, a ruqa was scribed and sent to the police station concerned for registration of the case through PHG Suba Singh. The police party headed by ASI Inderjit Singh held a naka and stopped one XYLO car bearing no. PB 10 CN 7203 which came at the Naka from the side of Morinda but the driver of the said car succeeded in fleeing away from the spot, however the person who was sitting on the seat adjoining to the driver seat as well as a person on back seat were apprehended and the person sitting in front seat disclosed his name as Parshotam Singh son of Baljeet Singh while the person who was sitting on the rear seat disclosed his name as Prabhjeet Singh son of late Deep Singh. During interrogation, they disclosed that the person who was driving the vehicle, his name is Gujjar. During search of the said car, 40 boxes were recovered from its boot (dickey) which were taken out of the same. Each box was containing 12 bottles of 'Cas Santra' i.e. total 480 bottles were recovered upon which for 'sale in Chandigarh only' was written. The above said persons could not produce any permit or license for retaining the huge quantity of liquor with them. Then, ASI Inderjit Singh poured 20 boxes each i.e. 240 bottles each measuring 180 Litre each in two different plastic drums. Two sample nips of 180 ml each were drawn from the said two plastic drums and the empty bottles i.e 120 bottles each were put in four plastic bags and their parcels were prepared. Two samples of 180 ML each, four parcels containing empty bottles and two drums each containing 179 Litres and 880 ML of liquor were sealed by ASI Inderjit Singh with his seal bearing impression IS. Sample seal was also prepared. The seal after use was handed over to HC Piare Lal. Above said case property and samples were taken in police possession vide a separate recovery memo. The above said XYLO car was also taken in police possession vide a separate memo. Rough site plan was prepared and accused were arrested. Statements of witnesses were recorded. Despite efforts being made, the driver of the said car

could not be traced and apprehended. After completion of investigation, the present challan was presented in the court against accused.

(3). Learned counsel for the petitioner submits that the trial court held that the chain of the evidence on record is very much complete, clear and unerring to hold the petitioner guilty inasmuch as conscious and huge possession of 480 bottles of country-made liquor was proved against the petitioner and as such vide judgment and order dated 11.12.2019, the trial court convicted him under Section 61 of the Punjab Excise Act, 1914 and sentenced him to undergo two years' rigorous imprisonment and to pay a fine of Rs.2 lakhs.

(4). It is argued that the courts below failed to consider the fact that as per the prosecution version, the driver of the car could not be traced and a witness namely, Chamkaur Singh, Clerk RTA, Ludhiana deposed in the witness box that the alleged car was registered in the name of Harminder Singh whereas the driver of the car, namely, Gujjar had fled away from the spot, who is still untraceable nor the actual owner of the car has been involved.

(5). Learned counsel further urged that the courts below also did not appreciate that HC Piara Lal deposed that 10-12 vehicles were checked at the spot but no list was prepared regarding the registration number of the vehicle and their owners and also he had no knowledge as to whether the vehicle involved was in working condition or not and that how many copies of Form-29 was prepared by the investigating officer at the time of taking samples of the seized bottles.

(6). Further it has been vehemently argued that as per the statement of Const.Navjot Singh, he deposited the sample with Chemical Examiner on 02.11.2017 and deposited its receipt in the police station but failed to disclose whether any DDR entry of sample was made by HC Piara or not and also that HC Piara did not remember the receipt number issued by Chemical Laboratory, Kharar. He exhorted that the courts below have failed to take into account the delay of 9 days in depositing the sample and registration of FIR, for, the sample so seized is required to be sent for chemical examination within 72 hours of the registration of the FIR.

(7). Learned State counsel, on the other hand, submits that from the prosecution evidence on record, it stands proved that the petitioner and his co-accused were found in possession of 40 boxes containing total 480 bottles of country made liquor without any requisite permit or licence. He further submits that the judgments passed by both the courts below is based on facts and law as the petitioners have failed to prove that they were not present at the spot and their false implication has been rightly disbelieved by the courts below.

(8). Heard learned counsel for the parties.

(9). A perusal of the judgment passed by the trial court would show that ASI Inderjit Singh received the secret information, he apprehended the XYLO car bearing registration No.PB-10-CN-7203 wherein the petitioner and another co-accused were found and in the boot of the car, 480 bottles of liquor were found without any licence and permit. The ruqa Ex.PW-2/I was sent to the police station leading to registration of the instant FIR. It can be seen that ASI Inderjit Singh is the complainant and investigating officer of the present

case, however, no evidence is available on the file that any prejudice has been caused to the petitioner.

(10). It is trite that there is no specific bar against conducting the investigation by the informant himself, for, there cannot be any general proposition of law to be laid down that in every case where the informant is the investigator, the trial is vitiated and the accused is entitled to acquittal. Even in respect of offence under the IPC or any other penal or special legislations, there is no specific bar against the informant/complainant investigating the case unless, where the accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum-investigator and the matter has to be decided depending upon the fact situation of the case without any universal generalisation. As such, it is not proper to lay down a broad and unqualified proposition that in every case where the police officer who registered the case by lodging the first information, conducts the investigation that itself had caused prejudice to the accused and thereby it vitiates the entire prosecution case and the accused is entitled to acquittal as has been authoritatively held vide pronouncement of Constitution Bench of the Apex Court in **Mukesh Singh vs State (Narcotic Branch Of Delhi), AIR 2020 SC 4794**, the relevant portion whereof reads as under:-

“...Therefore, considering the NDPS Act being a special Act with special procedure to be followed under Chapter V, and as observed hereinabove, there is no specific bar against conducting the investigation by the informant himself and in view of the safeguard provided under the Act itself, namely, Section 58, we are of the opinion that there cannot be any general proposition of law to be laid down that in every case where the informant is the

investigator, the trial is vitiated and the accused is entitled to acquittal. Similarly, even with respect to offences under the IPC, as observed hereinabove, there is no specific bar against the informant/complainant investigating the case. Only in a case where the accused has been able to establish and prove the bias and/or unfair investigation by the informant-cum- investigator and the case of the prosecution is merely based upon the deposition of the informant-cum-investigator, meaning thereby prosecution does not rely upon other witnesses, more particularly the independent witnesses, in that case, where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record. Therefore, as rightly observed by this Court in the case of Bhaskar Ramappa Madar (supra), the matter has to be decided on a case to case basis without any universal generalisation. As rightly held by this Court in the case of V. Jayapaul (supra), there is no bar against the informant police officer to investigate the case. As rightly observed, if at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer the question of bias would depend on the facts and circumstances of each case and therefore it is not proper to lay down a broad and unqualified proposition that in every case where the police officer who registered the case by lodging the first information, conducts the investigation that itself had caused prejudice to the accused and thereby it vitiates the entire prosecution case and the accused is entitled to acquittal.

(11). That apart, the Courts below have rightly observed that though there are minor discrepancies in the depositions of the investigating officer but those discrepancies are bound to occur with the passage of time. In the present case, ASI Inderjit Singh and HC Piara Lal faced cross examination after about 1 ½ years and as such, it is not expected from a person of general prudence to

orate the exact sequence of the whole case. Besides, the mismanagement drawn at the instance of the petitioner against the prosecution in regard to the quantity of liquor in the recovery memo, itself does not mar the prosecution case keeping in view the undeniable and proven fact that the petitioner were found in conscious possession of 480 bottles of illegal liquor regarding which they possessed no permit or licence.

(12). In view of the above discussion, there is no legal infirmity and perversity in the order passed by the courts below. Hence the present revision petition is dismissed.

15.01.2025

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No