

CRR-2738-2009

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(206-2)

Date of decision: 18.02.2025

(1) CRR-2738-2009 (O & M)

Jagdish Kumar @ Jaggi

... Petitioner

V/s

State of Punjab

...Respondent

(2) CRR-2705-2009 (O & M)

Gagandeep Singh

... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Mandeep Kaushik, Advocate, (in CRR-2738-2009)
and Ms. Neha, Advocate
for Mr. Hemant Saini, Advocate (in CRR-2705-2009)
for the petitioner(s).

Mr. Harkanwar Jeet Singh, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

This order shall dispose of two criminal revision petitions i.e. CRR-2738-2009 titled as 'Jagdish Kumar @ Jaggi versus State of Punjab' and CRR-2705-2009 titled as 'Gagandeep Singh versus State of Punjab' as the same are arising out of the same FIR. However, for the sake of convenience, the facts have been taken from CRR-2738-2009.

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2. The prayer in these revision petitions is for setting aside the judgment dated 06.10.2009 passed by the Additional Sessions Judge, Ludhiana whereby the appeal against the judgment of conviction and order of sentence dated 19.11.2008 passed by the Judicial Magistrate Ist Class, Ludhiana, has been dismissed.

3. The FIR in the present case came to be registered on 31.07.2001. The judgment of conviction and order of sentence was passed on 19.11.2008 by the Judicial Magistrate Ist Class, Ludhiana. The Appeal filed against the judgment of conviction and order of sentence was dismissed on 06.10.2009 by the Additional Sessions Judge, Ludhiana. The instant revision petitions were filed on 22.10.2009 and 14.10.2009 respectively and have come up for final hearing now i.e. after a period of more than 23 years from the date of registration of the FIR.

4. The case of the prosecution, in brief, is that on 31.07.2001, ASI Manjit Singh alongwith the police party was present in the area of Bridge Canal, Dugri in connection with checking. ETO R.K.Grover, Excise Inspector Ashok Kumar and Excise Chowkidar Major Singh were also joined in the police party. They were talking with each other. In the meantime ASI Manjit Singh received secret information that accused Jagdish Kumar and Gagandeep Singh were selling Indian Made Foreign Liquor make Directors Special which is for sale in Chandigarh only at a public place in Urban Estate, Phase-III, Dugri and on the bottles, 'For sale in Chandigarh' is also written. If a raid was conducted at the spot, accused

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Jagdish Kumar and Gagandeep Singh could be apprehended red-handed. The information was reliable. A ruqa was sent to the police station on the basis of which the present case FIR was registered. Thereafter, a raid was conducted at the specified place at about 5.20 p.m. where two short hair men were arrested with the help of passersby who were having boxes of liquor. On inquiry, they disclosed their names as mentioned. From their possession 240 bottles of 750 ML each of Indian Made Foreign Liquor make Director Special 'For sale in Chandigarh only', was recovered. One sample nip of 180 ML from each bottle was taken out. Case property was then sealed and taken into possession vide separate recovery memo. Seal after use was handed over to HC Kuldip Singh. Sample seal was also separately prepared. Statements of witnesses were recorded. Site pan of the place of occurrence was prepared. Further investigation were started and after completion of investigations, challan against the accused was prepared and presented in the court.

5. A *prima facie* case U/s 61 (1) (a) of Punjab Excise Act was made out against the accused. Charge was accordingly framed against them to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined PW1 ASI Manjit Singh Investigating Officer, PW2 E.I. Ashok Kumar, PW3 HC Kuldip Singh, PW4 HC Narinder Singh.

7. Statements of the accused U/s 313 Cr.P.C. were recorded in which all the incriminating evidence was put to them but they denied all the



allegations and pleaded their innocence. However they did not lead any evidence in their defence.

8. Based on the evidence led, both the accused-petitioners, namely, Jagdish Kumar @ Jaggi and Gagandeep Singh came to be convicted and sentenced by the court of the Judicial Magistrate Ist Class, Ludhiana vide judgment of conviction and order of sentence dated 19.11.2008 as under:-

Offence	RI Sentence	Fine	RI in default of payment of fine
U/S 61(1)(a) of the Punjab Excise Act	01 year each	Rs.2,000/- each	01 month each

9. The accused-petitioners preferred an appeal which came to be dismissed by the Additional Sessions Judge, Ludhiana vide judgment dated 06.10.2009.

10. The aforementioned judgments are under challenge in the present petitions.

11. During the pendency of the instant revision petitions, the sentences of the accused/petitioners were suspended vide separate orders dated 04.11.2009 passed by this Court in both the revision petitions.

12. The learned counsels for the petitioners in both the petitions contend that the judgments of conviction and order of sentence are based on conjectures and surmises. No independent witness was examined in support of the official witnesses. The cartons/boxes containing the recovered bottles

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of liquor produced in the Court were not the same which were allegedly recovered from the accused. Thus, the accused-petitioners were liable to be acquitted. They further contend that, in case, this Court was to come to the conclusion that the petitioners ought to be convicted, it is prayed that as the occurrence was of the year 2001 and the accused-petitioner/Gagandeep Singh (in CRR-2705-2009) had clean antecedents whereas the accused-petitioner/Jagdish Kumar @ Jaggi (in CRR-2738-2009) had already been acquitted in both the cases registered against him, they be released on probation or their sentence be reduced to the period already undergone by them.

13. The learned counsel for the State, on the other hand, has filed separate custody certificates dated 18.02.2025 of the accused-petitioners, which are taken on record. As per the said custody certificates, the accused-petitioners have undergone more than one month out of their substantive sentence. He contends that the judgments of conviction and orders of sentence are based on proper appreciation of the evidence on record. Mere non-examination of an independent witness is not fatal to the prosecution case, particularly, when an attempt had been made by the investigating agency to procure the same. The cartons of liquor were produced in the Court after a significant period of time had elapsed between the recovery and production in the Court and therefore they might have been damaged with the passage of time. The accused could not take the advantage of that



fact. He, therefore, contends that the present revision petitions are liable to be dismissed.

14. I have heard the learned counsel for the parties.

15. It has come in the evidence that the place of recovery of the liquor was a public place and the raid was conducted on the basis of secret information. Questions were put in the cross-examinations of the Investigating Officer of the case, namely, ASI Manjit Singh who stepped in the witness box as PW1 as to whether independent witnesses were joined by the police or not. There is a clear reply that none was ready to join. When a reasonable explanation has come forth and it has also been proved on record that the police party had tried its level best to join independent witness but none was ready to join, then the prosecution cannot be blamed for non-joining of independent witness. Further, the mere non joining of independent witness cannot wash away the evidence of the remaining PWS. The evidence of the official witnesses is consistent in material particulars regarding search and seizure. Both the prosecution witnesses of the recovery were cross-examined at length by the defence but he could not point out any material contradiction in their statements and in fact, they have made consistent statements and those statements inspire confidence.

16. It is pertinent to mention here that the accused have not led any defence evidence nor have they been able to prove on record any ill motive, *mala fide* intention or enmity with the police official which could have led to their false implication in the present case. Moreover, a heavy quantity of

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liquor was recovered and it is difficult to expect that liquor of such high value has been planted by the officials, particularly, when no ill will or enmity has either been alleged or proved by the accused.

17. PW2 has admitted in his cross-examination that it was correct that the cartons containing the bottles of liquor produced in the Court were not the same which were recovered from the possession of the accused and were in torn condition but merely on this ground, it cannot be assumed that no recovery was effected from the accused and they have been falsely implicated in the present case. The necessary items of the case property were bottles containing liquor allegedly recovered from the possession of the accused and not the cartons which might have been damaged with the passage of time as the recovery in this case was effected on 31.07.2001 and the case property was produced in the Court on 26.11.2002 i.e. after more than one year.

18. In view of the aforementioned discussion, I find no infirmity in the impugned judgments dated 19.11.2008 and 06.10.2009 passed by the Trial Court as well as the Lower Appellate Court. Thus, the present petitions stand dismissed.

19. As regards imposition of sentence, admittedly, the occurrence pertains to the year 2001 and as many as 23 years have passed ever since then. Therefore, the sentence of the accused/petitioners is reduced to the period already undergone by them i.e. 01 month and 12 days (accused/petitioner-Jagdish Kumar @ Jaggi in CRR-2738-2009) and 01

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month and 09 days (accused/petitioner-Gagandeep Singh in CRR-2705-2009) respectively. However, the fine amount and the sentence in default of payment of the fine shall remain intact.

20. The present revision petitions stand disposed of alongwith the applications, if any.

**(JASJIT SINGH BEDI)
JUDGE**

February 18, 2025
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No