

Sunil Vs. State

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Court : Delhi

Decided On : Nov-17-1998

Reported in : 77(1999)DLT435; 1999(48)DRJ314

Judge : J.B. Goel, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 397; Punjab Excise Act - Sections 61

Appeal No. : Crl. R. No. 319/98

Appellant : Sunil

Respondent : State

Advocate for Def. : Ms. Santosh Kolhi, Adv.

Advocate for Pet/Ap. : Mr. K.L. Juneja, Adv

Judgement :

J.B. Goel, J.

1. The petitioner has been convicted by the learned Metropolitan Magistrate (M.M.) for offence under Section 61 of the Punjab Excise Act (for short 'the Act') and sentenced to SI of one year and a fine of Rs. 1500/- vide judgment and order dated 17.1.1998 and 2.2.1998. His appeal has been dismissed by the learned

Addl. Sessions Judge (A.S.J.) on 1.8.1998. The petitioner challenges the legality and propriety of these judgments of conviction and sentence.

2. Learned counsel for the petitioner has contended that the Moharar Malkhana with whom the case property was deposited has not been examined and PW-6 another Malkhana Mohrar examined has not deposed that the case property has not been tampered with. And thus the link evidence is missing and the conviction is not valid and legal. Reliance has been placed by him on The State of Rajasthan Vs . Daulat Ram : 1980 CriLJ929 . It is also contended that all the 25 bottles alleged to have been recovered and seized should have been sent to the Analyst whereas only 7 bottles were sent. The conviction is thus illegal and not justified. For this reliance is placed on re, Subramaniam Gounder 1976 C L.J. 1200. Lastly it is contended that the petitioner is a young boy of 22 years and the sentence is too harsh and excessive.

3. Learned counsel for the State has contended that this Court in revision cannot reappraise evidence; the finding of conviction is based on material on record, is reasonable and justified and the case has also been considered in detail by the appellate court and there is no ground to interfere in the concurrent findings of the two courts below.

4. The petitioner was charged that on 10.10.1994 at about 3.30 p.m. he was found in possession of 25 bottles of country made liquor without any license or permission as prescribed by the notification of the Delhi Administration. He was apprehended on the basis of a secret information by Head Constable who Along with two constables PW. 1 and PW. 2 was on patrolling duty.

These bottles were seized and sealed with the seal of 'HPK', 7 of them were taken as samples and were deposited in the Malkhana of the Police Station on the same day and later on sample bottles were sent to the laboratory for test which gave positive test for liquor.

5. All three have deposed these facts.

6. Though both the courts below have believed the testimony of these witnesses, however, it has not been noticed by both the courts that the report of the Analyst has not been proved on record. So it is not proved that the sample bottles contained country made liquor. This has been over-looked by both the courts below. No effort has been made before the courts below and even in this Court to prove the report of the Analyst. In the absence of proof that the contents of the seized bottles were country made liquor it is not proved that the petitioner is guilty of offence under Section 61 of the Act.

7. The conviction of the petitioner is thus not legal and valid.

8. No public witness has been joined. The trap was laid by a Head Constable and he had also acted as the Investigation Officer. There seems to be no reason why another higher officer was not entrusted the investigation. This casts some doubt and suspicion in the prosecution case. In the facts and circumstances, I do not deem it fit and proper to remand the case to the trial court for taking further evidence.

9. This revision petition is accordingly allowed, the judgment of conviction and order of sentence passed by the learned M.M. and the judgment of the appellate court upholding the same are accordingly set aside. The petitioner is acquitted of the charge for offence under Section 61 of the Act. He shall be set free forthwith if not required in any other case. The amount of fine, if any, paid by the petitioner shall be refunded to him.

10. Jail authorities be informed accordingly.