

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 202 OF 2002

Chand Gupta and Ors.

.....Appellants

Versus

State of Himachal Pradesh

.....Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J

1. Challenge in this appeal is to the judgment of a learned Single Judge of Himachal Pradesh High Court upholding the conviction of the appellants for offence punishable under Section 61(1)(a) of the Punjab Excise Act, 1914 (in short the 'Act') as applicable to the State of Punjab and the sentence of imprisonment for three years and a fine of Rs.2,000/- with default stipulation.

2. The Judicial Magistrate, Ist Class, Solan recorded the conviction as noted above and in appeal, learned Additional Sessions Judge, Solan confirmed the judgment and order of the trial Court. A revision petition was filed before the High Court which dismissed the same by the impugned order.

3. Background facts as noted by the High Court are as follows:

In the year 1992 accused Chand Gupta was the owner of M/s Shiva Enterprises, Solan dealing in L-2 and L-14 liquor business. Accused Kashmir Singh was the Salesman of the Firm, whereas accused Jagdish Chander was the supervisor looking after the godowns of the concern located at Solan. On 6.6.1992 at about 1.00 p.m. Shri Harbhajan Singh, Deputy Superintendent of Police, Enforcement, South Zone, Shimla alongwith Om Parkash Sharma, Excise and Taxation Officer (P.W.-1), Jagdish Raj Punj, Excise and Taxation Inspector [P.W.8), Mangat Ram, Sub Inspector [P.W.-9] and other police staff officials were on special checking when they received a secret information that in the godowns of M/s Shiva Enterprises at Solan a large quantity of liquor was concealed without valid permit and pass. On the basis of the said information the

godowns of M/s Shiv Enterprises were checked by the raiding party where accused Kashmir Singh, Salesman and accused Jagdish Chander, Supervisor, were present. Accused Kashmir Singh handed over the keys of five godowns to the raiding party and on checking the godowns in the presence of both the accused persons, large quantity of liquor was found concealed by the accused without permit, in excess of the quantity of liquor authorised by the competent authority under the permit. It was also the case of the prosecution that on checking the sale and stock register for the year 1992-93, 17 boxes of DM XXX Rum, 21 boxes of Bison XXX Rum, 2 bottles and 7 boxes of half bottles and 17 boxes of Old Taren whisky along with 18 Nips were not entered in the register after 3.6.1997. Harbhajan Singh, Deputy Superintendent of Police, sent Ruqua Ext. PW-9/B to the Station House Officer, Police Station, Enforcement, South Zone, Shimla, on the basis of which F.I.R. Ex.PW-5/B came to be registered by Ram Rattan, Station House Officer. The investigation of the case was conducted by Shri Mangat Ram, Inspector Enforcement (PW-9) who took into possession the seized bottles of liquor vide recovery memo Ext. PW-3/A. Licence of the liquor vend Ext. PW-6/A was also taken into possession. He prepared site map Ext. PW-9/C. Statements of the witnesses were recorded by him and on receipt of the report of the Chemical Analyser Ext.PW-9/E

the Police Report under Section 173 of the Code of Criminal Procedure, 1973 (in short the 'Code') was filed before the learned trial Magistrate against the accused persons for commission of offence punishable under Section 61(1)(a) of the Act. The learned trial Magistrate charged the accused for the commission of the alleged offence. Since the accused pleaded not guilty, the trial was held. In trial, the trial Court convicted the appellant. Appeal was dismissed.

The appellant No.1 admitted before the High Court that he was owner of M/s Shiva Enterprises in L-2 and L-14 liquor business. Liquor found in the godown by the raiding party in excess of authorized quantity of liquor was meant for transportation to Dhabota Vend and the consignment could not be transported due to some agitation in that area and, therefore, was unloaded in the godown at Solan. It was also submitted that appellant No.1 was not present at the spot when the raiding party conducted raid of his godown and seized the excess quantity of liquor. The accused appellant Jagdish Chander admitted his engagement as Supervisor. He admitted the checking of the godowns by the raiding party. Similar stand as that of Accused No.1 was taken by accused Jagdish Chander. Accused Kashmir

Singh admitted his engagement as a Salesman. He admitted checking of the godown by the raiding party.

Basic stand of the appellant is that the omission to cancel permit under Section 65 (c) of the Act was not unlawful possession of liquor under Section 61 of the Act. With reference to Section 65 (c) of the Act it is submitted that if a valid holder of a license, permit or pass, as granted under the Act willfully breaches or omits to abide by any of the conditions in such license, permit or pass such holder of the permit will be punishable with such fine as extendible to an amount of Rs.5,000/-. It was submitted that appellants have improperly omitted to cancel the pass for the transport of liquor from their licensed premises over to the Vend at Dhabota within a reasonable period of time. Such technical omission as understood under Section 65 (c) of the Act is further established from a perusal of the statement by the prosecution witnesses. It was submitted that at the most the appellants are liable for conviction under Section 65 (c) relating to minor offence as it was established that the appellants have improperly omitted to cancel their transport permit for a consignment of liquor not transported. It is also submitted that the Sections 4 and 6 of Probation of Offenders Act, 1958 (in short the 'Probation Act') or in any event Section 360 and Section 361 of the Code have clear application to the facts of the case.

4. Therefore it is submitted that the explanation appended to Section 65 (c) is applicable and not Section 61(1)(a).

5. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court.

6. Sections 61 and 65 so far as relevant reads as follows:

- “61. Penalty for unlawful import, export, transport, manufacture, possession, etc.— (1) Whoever, in contravention of any section of this Act or of any rule, notification issued or given thereunder or order made, or of any license, permit or pass granted under this Act—
- (a) imports, exports, transports, manufactures, collects, or possesses any intoxicant; or
 - (b) constructs or works any distillery or brewery; or
 - (c) uses, keeps or has in his possession any material still, utensils, implement or apparatus whatsoever for the purpose of manufacturing any [intoxicant] other than tari;

shall be punishable for every such offence with imprisonment for a term which may extend to three years and with fine upto two thousand rupees and if found in possession of a working still for the manufacture of any intoxicant, shall be punishable with minimum sentence of six month's imprisonment and fine of two hundred rupees

“65. Penalty for certain acts by licensee or his servant.—
Whoever, being the holder of a license, permit or pass granted under this Act, or being in the employ of such holder or acting on his behalf:-

- (a) fails wilfully to produce such license, permit or pass on the demand of any excise officer or of any other officer duly empowered to make such demand; or
- (b) in any case not provided for in section 61 wilfully contravenes any rule made under section 58 or section 59; or
- (c) wilfully does or omits to do anything in breach of any of the conditions of the license, permit or pass not otherwise provided for in this Act;

shall be punishable in case (a) with fine which may extend to two hundred rupees, and in case (b) or case (c) with fine which may extend to five hundred rupees.”

7. The factual position needs to be noted. The date of occurrence is 6.6.1992. The pass was issued on 30.3.1992. It is submitted that the appellants were not in any unlawful possession as stated in Section 61(1)(a) and there was merely a default of irregularity as provided in Section 65 (c) of the Act. Additionally, it is submitted that the sentence is severe and the Probation Act can be made applicable. The permit or pass was issued for the period from 4.6.1992 to 6.6.1992. The accused appellants were in possession of unauthorized quantity of liquor in the godown at Solan. Section 65 prescribes punishment for failing to produce license, permit or

pass on demand of any excise officer or of any other officer duly empowered to make such demand, on contravention of any rules framed under Section 58 or Section 59 in any case not provided for in Section 61 of the Act or breach of any conditions of the license, permit or pass not otherwise provided for in the Act. Undisputedly, PWs 1, 8 and 9 i.e. officials found when the godowns of the accused appellant No.1 was raided by them seized bottles of liquor were found in possession of the accused in excess of the prescribed quantity of liquor authorized by the department under the permit granted to the lessee. The benefit of Probation Act was denied as huge quantity of liquor was kept in the godown without any permit. A minimum sentence is provided in Section 61. Considering the nature of the accusations, the High Court has rightly held that the Probation Act has no application. That being so, there is no merit in this appeal which is accordingly dismissed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
May 08, 2009