

Before : Ujagar Singh, J.

KAKA SINGH,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Criminal Revision No. 1220 of 1985

20th April, 1989.

Punjab Excise Act (1 of 1914)—S. 61(1)(a)—Conviction under—Subject matter of personal bond and surety bond added by different scribe in different ink—Signatures of petitioners obtained on blank paper—Prosecution version doubtful—Benefit of doubt must go to petitioner—Verification of affidavits—No indication as to which part based on information or knowledge—Affidavits—Not legally admissible in evidence.

Held, that the circumstances and the testimony of the witness, however, do not leave any doubt that these portions came into existence on a blank paper leaving the remaining space blank for writing the subject matter of the bonds later. With this conclusion the whole thing becomes doubtful and prosecution has failed to prove that the petitioner was arrested and bailed out immediately on the spot. In the circumstances in which the bail bond and surety bond came into existence, the prosecution version definitely becomes doubtful, and the benefit of doubt must go to the petitioner.

(Para 4)

Held, that verifications on the affidavits show that the contents of the affidavits are said to be correct on the deponent's knowledge as well as his information, without indicating as to which part is based on information or knowledge. Thus, such affidavits are not legally admissible in evidence.

(Para 5)

Petition for revision of the order of Shri J. S. Sidhu, Sessions Judge, Bhatinda dated 10th September, 1985, affirming that of Shri Harbans Lal, JMIC, Phul dated 4th February, 1985, convicting and sentencing the petitioner.

CHARGE : Under Section 61(1) (a) of Punjab Excise Act.

SENTENCE : RI for 6 months and a fine of Rs. 1,000 or in default further RI for 4 months.

Mr. T. S. Sangha, Advocate, for the Petitioner.

Mr. V. S. Kapur, Advocate, for the Respondent.

JUDGMENT

Ujagar Singh, J.

(1) A.S.I. Jugraj Singh alongwith other police-officials was present on the canal bridge of village Sidhana, on 3rd July, 1983, at about 7.00 A.M. They had started from the police-station at about 6.00 or 6.15 A.M. The petitioner was seen coming from the side of village Harnam Singh Wala and on seeing the police-party tried to give a slip towards his right hand side. He was apprehended and on suspicion was subjected to personal search. The petitioner was found carrying a *can* containing illicit liquor. Sample was drawn into a nip and the remaining contents of the *can* were measured and found to be 19½ bottles and poured again into the same *can*. Sample and the *can* were separately sealed with the seal of JS and the sample seal was entrusted to constable Gurjant Singh. Both, sample nip and *can* were taken into possession,—*vide* memo Ex. PA, attested by constable Gurjant Singh. Rukka Ex. PB was sent for the registration of the case and F.I.R. Ex. PB/1 was recorded. After completion of investigation, report under Section 173 Cr. P.C. was submitted and after getting the charge framed the prosecution examined PW1 constable Gurjant Singh and PW-2 ASI Jugraj Singh. The prosecution also tendered in evidence report Ex. PD from the Chemical Examiner and affidavits Exs. PE and PF of AMHC Major Singh and Constable Ranjit Singh respectively. On close of the prosecution evidence, the petitioner was examined under section 313 Cr. P.C. wherein he denied the allegations made against him by the prosecution. In defence he examined DW-1 Shri Jagroop Singh and the defence was closed. After hearing the arguments and going into the record, the trial Court convicted the petitioner under section 61(1)(a) of the Punjab Excise Act and sentenced the petitioner to undergo rigorous imprisonment for a period of 6 months and to pay a fine of Rs. 1000 and in default of payment of fine he was further directed to undergo rigorous imprisonment for a period of four months. The petitioner filed an appeal challenging his conviction and sentence but the Sessions Court found it without merit and dismissed it. He has now challenged his conviction and sentence by way of this criminal revision.

(2) Learned counsel for the petitioner has argued that portion A to A.1 in Ex. DA (personal bond) and also in Ex. DB (surety bond), at the foot of these bonds are in different hand writing than

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the rest of the contents of the documents and this proves that the subject matter of these documents was written later. ASI Jugraj Singh when cross-examined was unable to tell as to who had written these portions. He has raised another argument arising out of this argument that the petitioner is said to have released on the spot but if these bonds are proved to be false the whole thing becomes doubtful. The next argument advanced by the counsel is that the affidavits Exs. PE and PF, cannot be read into evidence as verification on the same is not in accordance with law. He has also relied upon statement of DW-1 Jagroop Singh who had stood surety for the petitioner.

(3) The counsel for the State argued that both the witnesses PW-1 constable Gurjant Singh and PW-2 ASI Jugraj Singh are official witnesses and there is no reason to disbelieve their testimony. As regard DW-1 Jagroop Singh, the argument is that he is a co-villager of the petitioner and was out to favour him specially when he could not disclose the date when the petitioner is said to have been taken away from his house.

(4) I have heard the learned counsel for the parties at length and have also gone through the record. The appellate Court in its judgment observed that there was no doubt that portions A to A. 1 in bonds Exs. DA and DB existing at the foot of the two bonds, are in different handwriting than the rest of the contents of the two documents. It is further admitted that portion A to A.1 in Ex. DA, is on the thumb-impression of Kaka Singh petitioner and merely records that this is L.T.I. of Kaka Singh and gives his parentage and address. The appellate Court further admits that likewise portion A to A.1 in Ex. DB, sets out the name, parentage and address of Jagroop Singh DW-1, who had stood surety for the petitioner after his arrest. Admitting this fact the appellate Court said that this was of little significance. I have myself looked into these documents. The disputed writings on the personal bond and the surety bond were admittedly written by scribe other than Jugraj Singh ASI, who himself could not say as to who had written it. To this extent the testimony of DW-1 Jagroop Singh cannot be doubted, and to me it appears that the subject matter of this personal bond and the surety bond was added later by a different scribe, may be by Jugraj Singh ASI. There is enough space left blank at the end of the subject matter of this document Ex. DA on one side and signatures of Jugraj Singh ASI including the words P. S. Phul and the date 3rd July, 1983 on the other. Had it been otherwise i.e., the subject

matter had been written and signed by Jugraj Singh with the date thereon and the name of the petitioner had been written thereafter and the thumb impression in that situation would be after the whole document was complete. Not only that the ink of portion A to A.1 is different on Ex. DA but also it is doubtful that this portion is written by Jugraj Singh A.S.I. himself. Two lines of portion A to A.1 are above the thumb impression of the petitioner except that some portion of the word resident (wass) and Burj in Gurmukhi, and the letters L.T.I. are parallel to the thumb-impression. The date given by Jugraj Singh ASI under his signatures is also given parallel to portion A to A.1 and is in a slanting position. Similar is the position in Ex. DB. Thus, it looks certain that at whatever point of time the thumb-impression of the petitioner and the signatures of Jagroop Singh were obtained on different blank papers, the purpose for doing so, is better known to Jugraj Singh ASI. The Court can only draw an inference about the purpose and the stage at which the petitioner came to be involved. Even according to the prosecution case, as put up in the FIR, as well as in the Court, the presence of DW-1 Jagroop Singh having given bail of the petitioner cannot be denied DW-1 Jagroop Singh stated that he was sitting at a common place at about 5.30 P.M. and the petitioner was being taken under arrest. He asked the constable about this who told him that the petitioner was being taken to the police-station in pursuance of the order of the Thanedar. The constable also invited him to accompany him to the police-station and he went with him and found a Moharrir Head Constable present there. The Moharrir Head Constable had told him that he could take the petitioner with him but after giving signatures and thumb-impression. The witness told the Moharrir Head Constable that he would not sign a blank paper but on assurance given by the Moharrir Head Constable he was persuaded to sign a blank paper and similarly the petitioner's thumb-impression was obtained. This witness further stated that the MHC in his own hand writing wrote his name and obtained his signatures and similarly MHC wrote name and particulars of the petitioner and obtained his thumb-impression. In his statement PW-2 ASI Jugraj Singh has clearly admitted that he did not know as to who had written portion A to A.1 in Exs. DA and Exs. DB and this statement leads to the inference that either the subject matter of the personal bond and surety bond was written in the blank space left on the paper before writing this portion in the absence of Jugraj Singh ASI or this portion was written after the subject matter of these bonds had come into existence and these

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portions were added when Jugraj Singh ASI was absent. The circumstances and the testimony of the witness, however, do not leave any doubt that these portions came into existence on a blank paper leaving the remaining space blank for writing the subject matter of the bonds later. With this conclusion the whole thing becomes doubtful and prosecution has failed to prove that the petitioner arrested and bailed out immediately on the spot. In the circumstances in which the bail bond and surety bond came into existence, the prosecution version definitely becomes doubtful, and benefit of doubt must go to the petitioner. Other discrepancies pointed out during arguments need not be discussed, in this view of the matter.

(5) Verifications on the affidavits Exs. PE and PF shows that the contents of the affidavits are said to be correct on the deponent's knowledge as well as his information, without indicating as to which part is based on information or knowledge. Thus, Exs. PE and PF are not legally admissible in evidence.

(6) In view of the above observations, this criminal revision is accepted, conviction and sentence awarded to the petitioner, are set aside and he is acquitted of the charge. Fine if paid, be refunded.

P.C.G.

Before : M. R. Agnihotri, J.

K. G. WALIA AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1570 of 1989.

28th August, 1989.

Constitution of India, 1950—Arts. 226, 309—Punjab Re-organisation Act, 1966—S. 82(6)—Punjab Civil Services Rules, Vol. I, Part I—Rls. 2.44 & 6.19-C—“Emoluments” includes “pay”—“Special pay”—Cannot be excluded from “pay” or emoluments—Rules cannot be changed to disadvantage of employees without the previous approval of Central Government—Rules framed under Art. 309—Whether can be amended or modified by executive orders.