

## State vs Sandeep on 17 May, 2025

IN THE COURT OF SH. ABHINAV AHLAWAT JUDICIAL  
MAGISTRATE FIRST CLASS-09 (SOUTH-WEST) DWARKA  
COURTS: DELHI

State Vs. : Sandeep  
FIR No : 120/2023  
U/s : 33/38 Delhi Excise Act  
P.S. : Jafarpur Kalan

1. CNR No. of the Case	: DLSW020275042024
2. Date of commission of offence	: 30.06.2023
3. Date of institution of the case	: 30.04.2024
4. Name of the complainant	: Ct. Sombit
5. Name of accused, parentage & address	: Sandeep S/o Jagan Nath, R/o VPO Dhansa, New Delhi.
6. Offence complained of	: 33/38 of Delhi Excise Act
7. Plea of the accused	: Pleaded not guilty
8. Final order	: Acquitted
9. Date of final order	: 17.05.2025

Argued by:- Mr. Parvez Alam, Ld. APP for the State  
Mr. Arvind Aggarwal, Ld. Counsel for accused.

ABHINAV

Page 1 of 16

FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep

AHLAWAT

### JUDGMENT

#### BRIEF STATEMENT OF REASONS FOR THE DECISION:

##### FACTUAL MATRIX-

1. Briefly stated, the case of the prosecution is that on 30.06.2023 at about 06:30 PM, at Firni Road, Near Guest House, VPO Dhansa, you were found in possession of illicit

liquor without having valid licence or permit in that regard and knowing the prescribed duty has not been paid and thereby committed the offence punishable under Section 33/38 of Delhi Excise Act, for which FIR no.120/2023 was registered at the police station Jafarpur Kalan, New Delhi.

## INVESTIGATION AND APPEARANCE OF ACCUSED

2. After registration of the FIR, the Investigating Officer (hereinafter, "IO") undertook investigation and on culmination of the same, the chargesheet against the accused person was filed. The court took the cognizance against the accused person and summons were issued to the accused. On his appearance, a copy of the chargesheet was supplied to the accused in terms of section 207 of the Code of Criminal Procedure, 1973 (hereinafter, "CrPC"). On finding a prima facie case against the accused person, charge under Section 33/38 of Delhi Excise Act was framed against the accused on 25.09.2024. The accused pleaded not guilty and claimed trial.

## PROSECUTION EVIDENCE

3. During the trial, prosecution led the following oral and documentary evidence against the accused to prove its case beyond reasonable doubt:-

FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep Page 2 of 16 ABHINAV AHLAWAT AHLAWAT 2025.05.17 15:47:07 +0530 ORAL EVIDENCE PW-1 Ct. Sombit PW-2 HC Sanjay Kumar PW-3 HC Puran Mal Meena DOCUMENTARY EVIDENCE Ex.PW1/A Statement of complainant Ex.PW1/B Seal handing over memo Ex.PW3/A Seizure memo Ex.PW3/B Tehrir Ex.PW3/C Site plan Ex.PW3/D Arrest memo Ex.PW3/E Personal search memo ADMITTED DOCUMENTS Ex.A1 FIR alongwith certificate under Section 65B of Indian Evidence Act Ex.A2 DD No. 085A dated 30.06.2023 Ex.A3 Chemical examination result dated 25.09.2023 Ex.A4 RC no.106/21/23 Ex.A5 Entry in register no.19

4. To prove its case, prosecution examined the following witnesses, the same are as follows.

PW1 Ct. Sombit (complainant) deposed that on 30.06.2023 at about 06:30 pm, he was on area patrolling duty and during patrolling, he saw one person coming towards guest house near Dhansa Village near Phirni Road who was carrying one katta (sack) white colour on his head and as soon as he saw him, he turned around and walking in hasty manner. He stated that he got suspicious seeing his conduct and thereafter he chased him and stopped him. He stated that after stopping him, he checked the said katta and found two cartons and in one carton there were some quarter bottles and in another carton there were some half bottles and all had label "Fresh Mota Orange Masaledar Desi Sharab for sale in Haryana only". He stated that on inquiry, his FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep Page 3 of 16 ABHINAV AHLAWAT Date:

AHLAWAT 2025.05.17 15:47:24 +0530 name was revealed as Sandeep S/o Jagan Nath and thereafter, he informed about the same to the DO PS J. P. Kalan and after

sometime, HC Puran Lal alongwith HC Malkhan came to the spot and he handed over the accused alongwith recovered case property over to HC Puran Lal. He stated that HC Puran Lal recorded his statement at the spot Ex.PW1/A and counted the recovered liquor which was found to be total 74 in number (24 half bottles and 50 quarter bottles) He stated that HC Puran Lal poured all the bottles in a plastic container and took seven liters as sample which was kept in different plastic can and the plastic can was sealed with the seal of PM and was given "Mark 1" and put the remaining liquor in a plastic can and sealed the same with the seal of PM and same was given "Mark 2". He stated that empty bottles of 24 half bottles and 50 quarter bottles alongwith two cartons were put in the white sack and sealed with the seal of PM and it was given "Mark 3" and the same were seized by HC Puran Lal. He stated that M-29 Form was also prepared at the spot and seal was handed over to him after use and thereafter, HC Puran Lal prepared tehrir and got the FIR registered through HC Makhan Lal. He stated that after registration of FIR, he came back to the spot and handed over the copy of FIR and original tehrir to the IO and seal handing over memo was prepared by the IO Ex.PW1/B and thereafter, he left the spot. In the cross-examination, he stated that HC Puran Lal came to the spot at about 07:15 pm but he did not remember as to how he came to the spot. He stated that he did not remember whether any instrument was used by the IO to measure the liquor and he did not remember the time when HC Malkhan went to PS alongwith tehrir to get the FIR registered and when he came back to the spot. He stated that the plastic cans in which the illicit liquor was Digitally signed by ABHINAV ABHINAV AHLAWAT FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep Page 4 of 16 AHLAWAT Date:

2025.05.17 15:47:32 +0530 transferred by the IO were brought by the IO himself when he came to the spot. He stated that he had not asked any public person to join the investigation when he had made recovery from accused and he had not prepared any body search memo before conducting recovery proceedings. He stated that there was no independent witness before whom the said transfer of liquor was done by the IO and he deposited the seal in malkhana but he had not handed over the receipt of the same to the IO. He stated that he did not remember the dimention of said seal and the sample seal on the seal handing over memo was also affixed in his presence but there was no public witness to the seal handing over memo. He stated that no CCTV camera was installed at the spot and IO did not click the photographs of the case property or the spot. He stated that IO did not record statement of any public persons who were present at the spot and no notice was served upon them for not joining the investigation. He stated that IO had not conducted any investigation on the point that from where and from whom accused get the case property. He stated that IO did not obtain signature of any public person on the site plan and IO did not call the Crime Team for obtaining uplifting chance print of accused from plastic bag.

5. PW2 HC Sanjay Kumar deposed regarding collection of excise result and submission of charge-sheet before the concerned court. In the cross-examination, he stated that he was not the eye- witness for recovery of case property from accused and he did not record statement of any

public person during investigation and he never visited the spot.

6. PW3 HC Puran Mal Meena deposed that on 30.06.2023, he received DD no.085A and thereafter he along with HC Malkhan ABHINAV AHLAWAT FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep Page 5 of 16 Date:

AHLAWAT 2025.05.17 15:47:37 +0530 went to spot and after reaching the spot, they met with Ct. Sombir thereafter he handed over to him custody of accused along with case property. He stated that thereafter, he recorded statement of Ct. Sombir at the spot and counted the recovered liquor which was found to be total 74 in number (24 half bottles and 50 quarter bottles). He stated that he poured all the bottles in a plastic container and took seven liters as sample which was kept in different plastic can and the plastic can was sealed with the seal of PM and was given "Mark 1" and thereafter, he put the remaining liquor in a plastic can and sealed the same with the seal of PM and same was given "Mark 2". He stated that empty bottles of 24 half bottles and 50 quarter bottles along with two cartons were put in the white sack and sealed with the seal of PM and it was given "Mark 3" and same were seized by him vide seizure memo Ex.PW3/A. He stated that M-29 Form was also prepared at the spot and seal was handed over to HC Malkhan after use and thereafter, he prepared tehrir Ex.PW3/B and got the FIR registered through HC Makhan Lal. He stated that he also prepared seal handing over memo, site plan at the instance of Ct. Sombir Ex.PW3/C, arrested the accused and conducted his personal search vide memos Ex.PW3/D and Ex.PW3/E and also recorded disclosure statement of accused Ex.PW3/F. He stated that he asked some public person to join the investigation but they refused to join the investigation and left the spot without disclosing their names and addresses. Thereafter, they left the spot and reached at PS and after reaching PS, he deposited the case property at malkhana. He stated that he produced the accused before the concerned court and concerned court sent him to JC and he also sent the samples to Vikas Bhawan, ITO at Excise Lab. He stated that he recorded statement of witnesses FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep Page 6 of 16 ABHINAV AHLAWAT AHLAWAT Date:

2025.05.17 15:47:44 +0530 u/S 161 Cr. P. C. and thereafter, he was transferred to PS Uttam Nagar and he deposited the case file with MHC (R). The witness correctly identified accused present before the court and one plastic can bearing Mark 2 without seal (seal is already broken in the testimony of PW1). In the cross-examination, he stated that he was not the eye-witness of the recovery of case property from accused and he did not click the photographs of the spot and case property and no CCTV camera installed at the spot. He stated that he reached at the spot by using motorcycle but he did not know whether he entered the motorcycle number in DD entry or not. He stated that he did not remember the arrival and departure entries and he did not interrogate the person namely Sonu who provide the abovesaid case property to accused as accused failed to provide the correct address of Sonu.

7. On account of admission of accused u/s 294 Cr.P.C, remaining in the prosecution list were dropped and the formal proof of the documents sought to be proved by them was dispensed with. No other PW was left to be examined, hence, P.E was closed.

STATEMENT OF THE ACCUSED AND DEFENCE EVIDENCE

8. Thereafter, before the start of defence evidence in order to allow the accused person to personally explain the incriminating circumstances appearing in evidence against him, the statement of the accused person was recorded without oath under section 281 r/w 313 CrPC, wherein he stated that he was innocent and was falsely implicated in the present case. He further stated that he does not want to lead defence evidence.

ABHINAV AHLAWAT FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep Page 7 of 16  
AHLAWAT Date:

2025.05.17 15:47:50 +0530 FINAL ARGUMENTS

9. I have heard the Ld. APP for the State and Ld. Counsel for the accused at length. I have also given my thoughtful consideration to the material appearing on record.

10. It is argued by the Ld. APP for the State that all the ingredients of the offence are fulfilled in the present case. He has argued that prosecution witnesses have categorically deposed about the commission of offence and there is no ground to disbelieve their testimony. He further contends that the documentary evidence has proved the offence beyond reasonable doubt. As such, it is prayed that the accused be punished for the said offence.

11. Per contra, the Ld. Counsel for the accused has argued that the State has failed to establish its case beyond reasonable doubt.

The Ld. Counsel further argued that the entire case of the prosecution is false and fabricated and the same is evident from the material inconsistencies and contradictions borne out from the material on record. It is argued that the prosecution has failed to discharge the burden cast upon it . As such, it is prayed that the accused be acquitted for the said offence.

INGREDIENTS OF THE OFFENCE

12. In order to sustain conviction under Section 33/38 of Delhi Excise Act, prosecution is required to prove the following ingredients:

(i) Accused was found in possession of the illicit liquor and

(ii) He was possessing the same without any licence / permit.

ABHINAV AHLAWAT AHLAWAT 2025.05.17 FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep Page 8 of 16 15:47:56 +0530

13. The accused has been charged for the offence of possessing illicit liquor under Section 33/38 of Delhi Excise Act in the present case. The prosecution has also required to prove that the accused was possessing the illicit liquor without having any licence/ permit in that regard.

14. It is also significant to note that Section 52 of Delhi Excise Act lays down a rebuttable presumption which goes as follows:

"Section 52. Presumption as to commission of offence in certain cases:

1. In prosecution under Section 33/38, it shall be presumed, until the contrary is proved, that the accused person has committed the offence punishable under that section in respect of any intoxicant, still, utensil, implement or apparatus, for the possession of which he is unable to account satisfactorily.

2. ...."

#### APPRECIATION OF EVIDENCE

15. It is trite law that the burden always lies upon the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence and that the law does not permit the court to punish the accused on the basis of moral conviction or on account of suspicion alone. Also, it is well settled that accused is entitled to the benefit of every reasonable doubt in the prosecution story and such doubt entitles him to acquittal. The words "for the possession of which he is unable to account satisfactorily" used in Section 52(1) of the Delhi Excise Act clearly reveal that as a pre-requisite for the presumption under the aforesaid provision being raised against the accused, it is imperative for the prosecution to successfully establish the recovery of the said alleged articles from the possession of the accused.

It is only after the prosecution has proved the possession of the alleged articles by the accused, that the accused can be called FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep Page 9 of 16 ABHINAV AHLAWAT AHLAWAT 2025.05.17 15:48:01 +0530 upon to account for the same. However, as discussed hereinafter, careful scrutiny of the evidence placed on record brings to light the fact that the case of the prosecution is fraught with multiple inconsistencies, rendering the prosecution version incredible, owing to which, no presumption, as provided for under Section 52 of the Act, can be raised against the accused in the present case.

The non-joining of any independent / public witness.

16. It is evident from the testimony of the prosecution witnesses that no public witness to the recovery of the liquor has been either cited in the list of prosecution witnesses or has been examined by the prosecution. Apparently, PW1 stated that he was on patrolling duty at about 06:30 pm when

he apprehended the accused from Firni Road, Dhansa Village. As per IO PW3 who went at the spot where he was handed over the case property and accused. Further, as per complainant PW1, who stated in his cross-examination that he had not asked any public person to join the investigation or to join the recovery proceedings. As evident the alleged apprehension of accused with illicit liquor happened at about 06:30 pm from the spot which was usually frequented by public persons. Thus, it is not the case of prosecution that public witnesses were not available at the spot. However, from a perusal of the record, no serious effort for joining public witnesses appears to have been made by the investigating officer. These facts are squarely covered by the ruling of the Hon'ble High Court of Delhi in the case titled as, Anoop Joshi Vs. State" 1992 (2) C.C. Cases 314 (HC), wherein it was observed as under:

ABHINAV AHLAWAT Date:

FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep AHLAWAT 2025.05.17 15:48:06 +0530 ".....18. It is repeatedly laid down by this Court in such cases it should be shown by the police that sincere efforts have been made to join independent witnesses. In the present case, it is evidence that no such sincere efforts have been made, particularly when we find that shops were open and one or two shopkeepers could have been persuaded to join the raiding party to witness the recovery being made from the appellant. In case any of the shopkeepers had declined to join the raiding party, the police could have later on taken legal action against such shopkeepers because they could not have escaped the rigours of law while declining to perform their legal duty to assist the police in investigation as a citizen, which is an offence under the IPC."

17. Further, in a case law reported as Roop Chand v. The State of Haryana, 1999 (1) C.L.R. 69, Hon'ble Punjab & Haryana High Court held as under:

".....The recovery of illicit liquor was effected from the possession of the petitioner during noon time and it is in the evidence of the prosecution witnesses that some witnesses from the public were available and they were asked to join the investigation. The explanation furnished by the prosecution is that the independent witnesses were asked to join the investigation but they refused to do so on the ground that their joining will result into enmity between them and the petitioner."

18. It is well settled principle of the law that the Investigating agency should join independent witnesses at the time of recovery of contraband articles, if they are available and their failure to do so in such a situation casts a shadow of doubt on the prosecution case. In the present case also admittedly, the independent witnesses were available at the time of recovery but no serious efforts were undertaken by the investigating agency to join them. This explanation does not inspire confidence because the police officials who are the only witnesses examined in the case have not given the names and addresses of the persons contacted to join it is a very common excuse that the witnesses from the public refused to join the investigation. A police officer conducting investigation of a crime is entitled to ask anybody to ABHINAV AHLAWAT FIR No. 120/2023, PS Jafarpur Kalan

State vs. Sandeep Page 11 of 16 Date:

AHLAWAT 2025.05.17 15:48:12 +0530 join the investigation and on refusal by a person from the public the Investigating Officer can take action against such a person under the law. Had it been a fact that the witnesses from the public had refused to join the investigation, the IO must have proceeded against them under the relevant provision of law. The failure to do so by the police officer is suggestive of the fact that the explanation for non-joining the witnesses from the public is an afterthought and is not worthy of credence. All these facts taken together make the prosecution case highly doubtful.

19. In fact, in this regard, Section 100 of the Cr.P.C also accords assistance to the aforesaid finding, by providing that whenever any search is made, two or more independent and respectable inhabitants of the locality are required to be made witnesses to such search, and the search is to be made in their presence.

Under Section 100(8) Cr.P.C, refusal to be a witness can render such non-willing public witness liable for criminal prosecution. Despite the availability of such a provision, no sincere attempts were made by the police to join witnesses in the present case. Therefore, non-compliance of the mandatory provisions of law, even though public witnesses were easily available in the vicinity, makes the prosecution version highly doubtful.

20. This court is conscious of the legal position that non-joining of independent witnesses cannot be the sole ground to discard or doubt the prosecution case, as has been held in Appabhai and another v. State of Gujarat, AIR 1988 SC 696. However, evidence in every case is to be sifted through in light of the varied facts and circumstances of each individual case. As FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep Page 12 of 16 ABHINAV AHLAWAT Date:

AHLAWAT 2025.05.17 15:48:19 +0530 observed above, the testimony of the police witnesses in the present case is not worthy of credit. In such a situation, evidence of an independent witness would have rendered the much-needed corroborative value, to the otherwise unconvincing case of the prosecution, as discussed above, and hereinafter.

Possibility of misuse of seal of the investigating officer

21. As per the version of the prosecution witnesses, after sealing the case property and the samples of illicit liquor with the seal of "PM", the seal was handed over to Ct. Sombir, who is the complainant who apprehended the accused person with alleged illicit liquor. As per seal handing over memo Ex.PW1/B, IO PW2 had handed over the seal of PM after use to PW1 complainant only who is the police official of the same police station. It is further stated by PW1 that he had deposited the seal in the malkhana, however, there is no DD entry or other documentary proof to establish the fact that seal after use was given to PW1 was subsequently submitted in malkhana. Therefore, the circumstances under which the seal was obtained and used is under a shadow of doubt. As such, the



seal was never handed over to any independent witness. This assumes great significance owing to the fact that the sample was sent to Excise Lab only on 03.08.2023, i.e. almost 34 days from the date of alleged seizure i.e. 30.06.2023. There is no receipt regarding deposit of seal in the malkhana. Hence, it can be presumed that the seal was never deposited in malkhana. In addition to this, there is no taking over or handing over memo on record to show as to when the seal was taken back from malkhana or if it remained with malkhana forever. The seal remained with the police officials of the same police station and therefore, the possibility of tampering with the Digitally signed by ABHINAV ABHINAV AHLAWAT FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep Page 13 of 16 AHLAWAT Date:

2025.05.17 15:48:24 +0530 case property cannot be ruled out. Moreover, it is not even the case of the prosecution that the seal was not within the reach of the IO and thus, there was no scope of tampering of case property.

22. In this regard, judgment in case titled as Ramji Singh Vs. State of Haryana 2007 (3) RCR (CRIMINAL) 452, may be adverted to, wherein it was observed in paragraph 7 that:

"....The very purpose of giving seal to an independent person is to avoid tampering of the case property. It is well settled that till the case property is not dispatched to the forensic science laboratory, the seal should not be available to the prosecuting agency and in the absence of such a safeguard the possibility of seal, contraband and the samples being tampered with cannot be ruled out. In the present case, the seal of Investigating Officer-Hoshiar Singh bearing impression HS was available with Maha Singh, a junior police official and that of Deputy Superintendent of Police remained with Deputy Superintendent of Police himself. Therefore, the possibility of tampering with seals as well as seized contraband and samples cannot be ruled out."

23. Similarly, Hon'ble High Court of Delhi in Safiullah v. State, (1993) 49 DLT 193, had observed:

"9. ... The seal after use were kept by the police officials themselves therefore the possibility of tempering with the contents of the sealed parcel cannot be ruled out. It was very essential for the prosecution to have established from stage to stage the fact that the sample was not tempered with. The prosecution could have proved from the CFSL form itself and from the road certificate as to what articles were taken from the Malkahana. Once a doubt is created in the preservation of the sample the benefit of the same should go to the accused..."

11. It is nowhere the case of the prosecution that the seal after use was handed over to the independent witness P.W.5. Even the I.O. P.W.7 does not utter a word regarding the handing over of the seal after use. Therefore, the conclusion which can be arrived at is that the seal remained with the Investigating Officer or with the other member of the raiding party therefore the possibility of interference or tempering of the seal and the contents of the parcel cannot be ruled out...."

ABHINAV AHLAWAT FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep Page 14 of 16  
AHLAWAT Date:

2025.05.17 15:48:29 +0530

24. Thus, in light of the aforesaid discussion, the possibility of misuse of seal and tampering of case property cannot be ruled out.

Other infirmities in the prosecution case

25. Furthermore, doubts are raised with respect to false implication of accused person from the fact that although all the prosecution witnesses remained at the spot for considerable period of time but no photographs of the case property or the spot were taken. No efforts were taken to lift chance prints of the accused person from the illicit liquor which could have lend credence to the prosecution version.

26. Further, fact of the accused being present at the spot is also shrouded with clouds of ambiguity and cast doubt over the actual presence of the accused at the spot as no credible piece of evidence has been brought by the prosecution, rendering the version of the prosecution unworthy of credit and giving rise to the suspicion that the accused person has been falsely implicated in the present case.

## CONCLUSION

27. It is a cardinal principle of criminal jurisprudence that prosecution has to prove its case beyond reasonable doubts by leading reliable, cogent and convincing evidence. It is a settled proposition of criminal law that in order to successfully bring home the guilt of the accused, prosecution is supposed to stand on its own legs and it cannot derive any benefits whatsoever from the weakness, if any, in the defence of the accused. Accused is entitled to the benefit of every reasonable doubt in the ABHINAV AHLAWAT FIR No. 120/2023, PS Jafarpur Kalan State vs. Sandeep Page 15 of 16 Date:

AHLAWAT 2025.05.17 15:48:35 +0530 prosecution story and any such doubt in the prosecution case entitles the accused to acquittal.

28. There is no gainsaying that if two reasonably probable and evenly balanced views of the evidence are possible, one must necessarily concede to the existence of a reasonable doubt. The aforementioned lacunae in the story of the prosecution render the version of the prosecution doubtful, leading to the irresistible conclusion that the burden of proving the guilt of the accused beyond reasonable doubt has not been discharged by the prosecution. Thus, this Court is of the opinion that the prosecution has failed to bring on record any cogent evidence in order to prove the commission of and guilt of the accused for offence u/s 33/38 of Delhi Excise Act beyond reasonable doubt, thus, entitling the accused person to benefit of doubt and acquittal.

29. Accordingly, this Court hereby accords the benefit of doubt to the accused for the offence u/s 33/38 of Delhi Excise Act and holds the accused not guilty of commission of the said offence. Accused Sandeep S/o Jagan Nath is thus, acquitted of the offence u/s 33/38 of Delhi Excise Act.

Announced in the open court Digitally signed by ABHINAV on 17.05.2025 in the presence ABHINAV AHLAWAT AHLAWAT Date:

of the accused.

2025.05.17 15:48:40 +0530 (Abhinav Ahlawat) Judicial Magistrate First Class-09, Dwarka, Delhi/17.05.2025 Note:- This judgment contains 16 pages and each page has been signed by me. ABHINAV AHLAWAT Date: 2025.05.17 (Abhinav Ahlawat) Judicial Magistrate First Class-09, Dwarka, Delhi/17.05.2025