

State vs Sumit on 17 May, 2025

IN THE COURT OF SH. ANKIT KARAN SINGH
JUDICIAL MAGISTRATE FIRST CLASS-08, WEST
TIS HAZARI COURTS, DELHI

CNR No. DLWT02-002535-2020
CIS No. 1387/20
State Vs. Sumit
FIR No. 560/2019
PS. Ranhola
U/s. 33/38 Delhi Excise Act

JUDGMENT

1) The date of commission of offence	: 03.09.2019
2) The name of the complainant	: Ct. Harish Seharawat
3) The name & parentage of accused	: Sumit S/o Sh. Shyam Singh, R/o H.no. 29A, Ranhola Vihar, Ganga Ram Park, Delhi
4) Offence complained of	: u/s. 33 /38 Delhi Excise Act
5) The plea of accused	: Pleaded not guilty
6) Final order	: Acquittal
7) The date of such order	: 17.05.2025
Date of Institution	: 10.02.2020
Final Arguments heard on	: 17.05.2025
Judgment reserved on	: 17.05.2025
Judgment announced on	: 17.05.2025

State Vs. Sumit FIR No. 560/19 U/s. 33/38 Delhi Excise Act 1/9
JUDGMENT

1) The case of the prosecution against the accused is that on 03.09.2019 at about 7.00 pm at Main Nangli Najafgarh Road, Near Fouji Dairy, Delhi within the jurisdiction of PS Ranhola, accused was found in possession of illicit liquor as detailed in seizure memo Mark 'A' without any permit or licence and accused charged with an offence U/s 33/38 Delhi Excise Act.

2) After investigation, charge-sheet was filed against the accused. The copy of charge-sheet was supplied to the accused in compliance of Section 207 Cr. P.C. Thereafter, charge was framed against the accused under Section 33/38 Delhi Excise Act to which accused pleaded not guilty and claimed trial.

3) In support of its version, prosecution has examined two witnesses. Accused admitted as per section 294 Cr.PC, the factum as to the FIR no. 560/19 is Ex. A1, certificate U/s 65B of IE Act is Ex. A2, DD no.27B dated 03.09.2019 is Ex. A3, DD no. 53B dated 03.09.2019 is Ex. A4, Chemical Examiner Report is Ex. A5 and Statement of Ct. Sumit is Ex. A6. The documents were admitted and the concerned witnesses were dropped.

4) After conclusion of prosecution evidence, statement of accused was recorded separately wherein accused claimed to be innocent and denied the allegations against him. Accused opted not to lead any DE.

5) I have heard Ld. APP for State and Ld Counsel for accused. I have also perused the record carefully.

6) The testimonies of prosecution witnesses are being touched upon, in brief, as follows:-

6.1) PW-1 HC Harish deposed that on 03.09.2019, PW1 was posted at PS Ranhola as Constable. It is further stated by PW1 that on that day, PW1 was on patrolling duty in the area of Beat no.6. It is further stated by PW1 that on that day, at about, 7.00 pm, while patrolling when PW1 reached near Fauji Dairy, Ganga Ram Park Ranhola Vihar Delhi , PW1 saw one person carrying one plastic sack on his shoulder. It is further stated by PW1 that on suspicion, PW1 stopped that person and State Vs. Sumit FIR No. 560/19 U/s. 33/38 Delhi Excise Act 2/9 upon enquiry, he told his name as Sumit. It is further stated by PW1 that PW1 asked him to keep the said plastic sack on ground and when PW1 checked the said plastic sack, it was found to be containing some illicit liquor quarter bottles of the make of Asli Santara Masaledar Desi Shraab (for sale in Haryana only 180 ML). It is further stated by PW1 that thereafter, PW1 informed the Duty Officer present at the PS and after some time, the IO/HC Vijender reached the spot and PW1 handed over the custody of accused and case property to him for further course of action. It is further stated by PW1 that IO asked some public persons to join the investigation. It is further stated by PW1 that however, nobody agreed for the same. It is further stated by PW1 that IO checked the said plastic sack and found it to be containing total of 72 illicit liquor quarter bottles of the make of Asli Santara Masaledar Desi Shraab (for sale in Haryana only 180 ML) . It is further stated by PW1 that IO took out one quarter bottle as a sample and gave it serial no. 1 and sealed it with the seal of VS and kept back the remaining bottles in the said plastic sack and closed its mouth with the help of a white cloth and sealed it with the seal of VS and gave it serial no.

1-A. It is further stated by PW1 that IO prepared form M-29 and recorded his statement on the basis of which, the tehrir was prepared, which is now exhibited as Ex. PW-1/A. It is further stated by PW1 that the seal was handed over to PW1 after use vide memo exhibited as EX PW-1/D. It is further stated by PW1 that PW1 went to the PS with original tehrir and handed over the same to DO for getting the FIR registered. It is further stated by PW1 that after some time, PW1 came back to the spot and handed over the original tehrir and copy of FIR to the IO for further course of action. It is further stated by PW1 that IO prepared the site plan at his instance which is now exhibited as Ex. PW-1/B. It is further stated by PW1 that IO seized the case property in his presence vide seizure memo Ex. PW-1/C. It is further stated by PW1 that IO carried out the personal search of accused vide memo Ex. PW-1/E. It is further stated by PW1 that IO arrested the accused vide memo Ex. PW-1/F. It is further stated by PW1 that IO recorded disclosure statement of accused vide memo Ex. PW-1/G. It is further stated by PW1 that thereafter, they all came back to the PS along with the accused and the case property was deposited in the malkhana State Vs. Sumit FIR No. 560/19 U/s. 33/38 Delhi Excise Act 3/9 of PS by the IO. It is further stated by PW1 that PW1 alongwith Ct. Vijender took the accused for his medical examination at DDU Hospital on the directions of the IO and after getting the same conducted, they came back to the PS and PW1 handed over the custody of the accused to the IO and thereafter, PW1 was relieved from the investigation. It is further stated by PW1 that IO recorded his statement at the spot itself.

6.2) PW-2 ASI Vijender deposed that on 03.09.2019, PW2 was posted at PS Ranhola as Head Constable. It is further stated by PW2 that on that day, PW2 received one dd number 53B and after receiving at the spot and PW2 went at the spot and met Ct. Harish there who produced the accused and illicit liquor. It is further stated by PW2 that PW2 asked some public persons to join the investigation. However, nobody agreed for the same. It is further stated by PW2 that PW2 checked the said plastic sack and found it to be containing total of 72 illicit liquor quarter bottles of the make of Asli Santara Masaledar Desi Shraab (for sale in Haryana only 180 ML). It is further stated by PW2 that PW2 took out one quarter bottle as a sample and gave it serial no. 1 and sealed it with the seal of VS and kept back the remaining bottles in the said plastic sack and closed its mouth with the help of a white cloth and sealed it with the seal of VS and gave it serial no. 1-A. It is further stated by PW2 that PW2 prepared form M-29 which is now Ex. PW-2/A and PW2 seized the case property vide seizure memo already Ex. PW-1/C and recorded the statement of Ct. Harish on the basis of which, the tehrir was prepared, which is already exhibited as Ex. PW-1/A and endrose the tehrir and Ex. PW-2/B. It is further stated by PW2 that the seal was handed over to Ct. Harish after use vide memo exhibited as already Ex PW-1/D. It is further stated by PW2 that Ct. Harish went to the PS with original tehrir and handed over the same to DO for getting the FIR registered. It is further stated by PW2 that after some time, he came back to the spot and handed over the original tehrir and copy of FIR to PW2 for further course of action. It is further stated by PW2 that PW2 prepared the site plan at his instance which is already exhibited as Ex. PW-1/B. It is further stated by PW2 that PW2 carried out the personal search of accused vide memo already Ex.

State Vs. Sumit FIR No. 560/19 U/s. 33/38 Delhi Excise Act 4/9 PW-1/E. It is further stated by PW2 that PW2 arrested the accused vide memo already Ex. PW-1/F. It is further stated by PW2 that PW2 recorded disclosure statement of accused vide memo already Ex. PW-1/G. It is further stated by PW2 that thereafter, they all came back to the PS along with the accused and the case property was

deposited in the malkhana of PS by PW2. It is further stated by PW2 that Ct. Harish took the accused for his medical examination at DDU Hospital on his direction and after getting the same conducted, they came back to the PS and further accused was produced before the court and sent to J/C. It is further stated by PW2 that PW2 recorded statement of witnesses u/s 161 Cr. PC. It is further stated by PW2 that PW2 sent the sample bottle to the excise result and after receiving the excise result which is already Ex. A-5 and PW2 prepared the chargesheet and file the same before the court.

7) It is the cardinal principle of Criminal Justice delivery system that the prosecution has to prove the guilt of accused person beyond reasonable doubts. No matter how weak the defence of accused is but, the golden rule of the Criminal Jurisprudence is that the case of the prosecution has to stand on its own leg.

8) Ld. counsel for the accused vehemently argued that the present case is a false one and is the example of high handedness of the police. He argued that the accused has been illegally framed in the present case and it is evident from the fact that the accused was allegedly apprehended from the public place and but there is no public witness to the proceedings. He argued that police officials conducted the entire proceedings and same is not trustworthy. Ld APP for the State argued that the public persons did not join the proceedings despite requests.

9) The manner in which the inquiry, seizure and search etc. was stated to be conducted on the spot at the time of arrest of the accused and alleged recovery of liquor makes the prosecution version highly doubtful. It is evident from the testimony of PW-1 and PW-2 that accused was apprehended along with the alleged illicit liquor at public place but there is no public witness in the present case. Regarding the importance of joining independent witness during investigation in a case like the present one, reliance may be placed on the following case laws:-

State Vs. Sumit FIR No. 560/19 U/s. 33/38 Delhi Excise Act 5/9 In a case law reported as Anoop Joshi Vs. State 1999(2) C.C. Cases 314 (HC), Hon'ble High Court of Delhi has observed as under:

"18. It is repeatedly laid down by this court that 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 evident 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".

10) The names of the persons to whom the request was made to join the investigation has nowhere mentioned. No written notice has been placed on record which must be given to the public persons. Merely deposing that public person refused to join the investigation is of no avail. Considering the

aforesaid observations made by the Higher Courts, the omissions/failure on the part of investigating agency to join independent public witnesses create reasonable doubt in the prosecution story and are fatal to the prosecution version which establishes the defence version that there is total false implication of the accused in the present case and that the recovery was planted upon the accused.

11) It appears that no efforts was made to hand over the seal after use to independent person. I am conscious of precedent laid down by Hon'ble Delhi High Court in Safiullah v. State, 1993 (1) RCR (Criminal) 622, that:

State Vs. Sumit FIR No. 560/19 U/s. 33/38 Delhi Excise Act 6/9 "10. The seals after use were kept by the police officials themselves. Therefore the possibility of tampering 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 tampered with. Once a doubt is created in the preservation of the sample the benefit of the same should go to the accused."

Hon'ble Punjab & Haryana High Court also held in Ramji Singh vs. State of Haryana, 2007 (3) RCR (Criminal) 452, that "7. The very purpose of giving seal to an independent person is to avoid tampering of the case property."

12) No seal handing over memo is on record. The police official having the possession of the seal was posted in the same police station in the malkhana of which the case property was lying. There was ample opportunity for tempering with case property. Hence, considering the legal position, the benefit of doubt should be given to the accused.

13) Besides all this, in the present case, the seizure memo of illicit liquor Ex.PW1/C bears the number of FIR. As per the rukka and testimony of witnesses, the seizure memo was prepared prior to registration of FIR. If that be so then how seizure memo bears the FIR number. Now, I consider the observation made by Hon'ble Delhi High Court in Giri Raj v. State, 83 (2000) DLT 201. This gives rise to two inferences that either the FIR was recorded prior to the alleged recovery of the case property or number of the said FIR was inserted in the document after its registration. In both the situations, it seriously reflects upon the veracity of the prosecution version and creates a good deal of doubt about the recovery of the case property in the manner alleged by the prosecution. That being so, the benefit arising out of such a situation must necessarily go to the accused.

14) Further the case property was sent for chemical examination on 01.10.2019 while the same was seized on 03.09.2019. The entire paper formalities were completed in 03.09.2019 only. When the entire codal formalities were completed on 03.09.2019 than the delay of around one month in sending the exhibits for State Vs. Sumit FIR No. 560/19 U/s. 33/38 Delhi Excise Act 7/9 chemical examination is beyond comprehension. Again the police official having the possession of the seal was posted in the same police station where the case property was lying. There was ample opportunity for tampering with the case property and benefit of this laxity on the part of investigating officer should go to the accused.

15) Being guided by above-said case laws, it can be said that the search, seizure and recovery made by the above said police officials was in complete violation of the well established principles of law and the same can be said to be illegal which create grave doubts on the prosecution's version of recovery of liquor from the possession of the accused from the spot and substantiates the defence version that the alleged recovery was planted upon the accused at the police station and that entire proceedings were recorded at the police station and not on the spot.

16) In the judgment titled as "S.L.Goswami v. State of M.P" reported as 1972 CRI.L.J.511(SC) the Hon'ble Supreme Court held:-

"..... In our view, the onus to proving all the ingredients of an offence is always upon the prosecution and at no stage does it shift to the accused. It is no part of the prosecution duty to somehow hook the crook. Even in cases where the defence of the accused does not appear to be credible or is palpably false that burden does not become any the less. It is only when this burden is discharged that it will be for the accused to explain or controvert the essential elements in the prosecution case, which would negative it. It is not however for the accused even at the initial stage to prove something which has to be eliminated by the prosecution to establish the ingredients of the offence with which he is charged, and even if the onus shifts upon the accused and the accused has to establish his plea, the standard of proof is not the same as that which rests upon the prosecution"

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17) The onus and duty to prove the case against the accused is upon the prosecution and the prosecution must establish the charge beyond reasonable doubt. It is also a cardinal principle of criminal jurisprudence that if there is a reasonable doubt with regard to the guilt of the accused the accused is entitled to benefit of doubt resulting in acquittal of the accused. Reference may also be made to the judgment titled as Nallapati Sivaiah v. Sub Divisional Officer, Guntur reported as VIII(2007) SLT 454(SC).

18) In view of the aforesaid discussion, in my opinion accused has been able to raise a probable defence creating doubt about the existence or veracity of the prosecution version which renders the same untrustworthy. Accordingly, accused Sumit stands acquitted of charged offences. Case property be confiscated to the State. Same be destroyed. Personal bail bonds U/s 437 A Cr.PC furnished. File be consigned to Record Room after due compliance.

ANKIT

ANKIT KARAN

KARAN

SINGH

Date: 2025.05.17

SINGH

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Announced in the open court
on 17.05.2025

(ANKIT KARAN SINGH)
JMIC-08, West District,
Tis Hazari Courts, Delhi.

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