

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 370 of 2014

Reserved on: 02.12.2025

Date of Decision: 01.01.2026.

Deepak Kumar

...Petitioner

Versus

State of H.P.

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

***Whether approved for reporting?*¹ No**

For the Petitioner : Mr Sparsh Bhushan,
Advocate.

For the Respondent/State : Mr Ajit Sharma, Deputy
Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 15.10.2014, passed by learned Additional Sessions Judge-II, Shimla (learned Appellate Court), vide which the judgment of conviction dated 14.08.2013 and order of sentence dated 16.08.2013, passed by learned Judicial Magistrate First Class, Court No.6, Shimla, District Shimla, H.P. (learned Trial Court)

¹

Whether reporters of Local Papers may be allowed to see the judgment? Yes.

were upheld. (*Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.*)

2. Briefly stated, the facts giving rise to the present revision are that the police presented a challan before the learned Trial Court against the accused for the commission of an offence punishable under Section 61(1) (a) of the Punjab Excise Act as applicable to the State of H.P. It was asserted that HC Sanjeev Kumar (PW7), Constable Suresh Kumar (not examined) and constable Rajesh Kumar (PW4) had gone for patrolling towards Lower Bazaar, Mall Road and Middle Bazaar on 27.10.2009. They were present on the Mall Road when they saw the accused carrying a plastic bag (Ext.P1) coming from CTO and going towards Scandal Point. He returned after seeing the police and tried to run away. The police apprehended him. The police joined Om Prakash Sharma (PW5) and Kishori Lal (PW1) and enquired about the name of the accused. He identified himself as Deepak Kumar.

3. The police checked the bag and found 12 bottles of Green Label Whisky, each containing 750 ml of IMFL. The police

retained four bottles as samples, seized the remaining 8 bottles (Ext. P2 to Ext. P9), put them in the bag and sealed the bag with seal 'A'. Seal impression (Ext. PX) was obtained on a separate piece of cloth, and the bag was seized vide memo (Ext.PW1/A). HC Sanjeev Kumar (PW7) prepared the rukka (Ext.PW7/B) and sent it to the Police Station, where FIR (Ext.PW3/A) was registered. HC Sanjeev Kumar (PW7) investigated the matter. He prepared the site plan (Ext.PW7/C) and recorded the statements of witnesses as per their version. He deposited the case property with HC Sita Ram (PW2), who deposited them in Malkhana and sent them to CTL Kandaghat for analysis. The results of the analysis (Ext.PY and PZ) were issued, mentioning that each sample contained 75.0 per cent proof alcohol in it. The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

4. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 61(1) (a) of the Punjab Excise Act as

applicable to the State of H.P., to which he pleaded not guilty and claimed to be tried.

5. The prosecution examined 8 witnesses to prove its case. Kishori Lal (PW1), Constable Rajesh Kumar (PW4), and Om Prakash Sharma (PW5) are the witnesses to recovery. HC Sita Ram (PW2) was working as MHC with whom the case property was deposited. SI Bali Ram (PW3) signed the FIR. Inspector Shakuntla (PW6) prepared the challan. HC Sanjeev Kumar (PW7) investigated the matter. HC Raj Pal (PW8) carried the case property to CTL Kandaghat.

6. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. He stated that a false case was made against him. He did not produce any evidence in defence.

7. Learned Trial Court held that the testimonies of the prosecution witnesses corroborated each other. There was nothing in their cross-examination to show that they were making false statements. Minor contradictions in the statements of witnesses were not sufficient to discard them. The accused was found in possession of 12 bottles of Green Label

Whisky. He failed to produce any permit to possess the liquor. Hence, the learned Trial Court convicted the accused of the commission of an offence punishable under Section 61 (1) (a) of Punjab and Excise Act as applicable to State of H.P. and sentenced him to undergo simple imprisonment for six months, pay a fine of ₹2000/- and in default of payment of fine to undergo further simple imprisonment for 15 days.

8. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Additional Sessions Judge-II, Shimla (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by the learned Trial Court that the testimonies of the prosecution witnesses corroborated each other. The minor contradictions were not sufficient to doubt the prosecution's case. The accused could not produce any permit to possess the liquor. Hence, he was rightly convicted by the learned Trial Court. The sentence imposed by the learned Trial Court was adequate, and no interference was required with it. Hence, the appeal was dismissed.

9. Being aggrieved by the judgments and order passed by the learned Trial Court, the accused has filed the present revision asserting that the learned Courts below erred in appreciating the evidence on record. The Investigating Officer admitted in his cross-examination that the bag (Ext.P1) produced in the Court was not a plastic bag, which would make the integrity of the case property suspect. SI Bali Ram (PW3) stated in his cross-examination that he had received a rukka at 6:40 PM. Constable Rajesh Kumar (PW4), on the other hand, stated that police saw the accused at 6:40 PM and he reached the Police Station at 7 PM. The discrepancy regarding the time made the prosecution's case suspect. Therefore, it was prayed that the present revision be allowed and the judgments and order passed by the learned Trial Court be set aside.

10. I have heard Mr Sparsh Bhushan, learned counsel for the petitioner/accused and Mr Ajit Sharma, learned Deputy Advocate General, for the respondent-State.

11. Mr Sparsh Bhushan, learned counsel for the petitioner/accused, submitted that the learned Courts below did not properly appreciate the material on record. There were

various contradictions in the testimonies. The prosecution witnesses asserted that the accused was carrying the bottles in the plastic bag. However, the bag produced in the Court was not a plastic bag, and this made the prosecution's case highly suspect. The time of the recovery was also suspect. These aspects were ignored by the learned Courts below. Hence, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside.

12. Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State, submitted that the discrepancy regarding the nature of the bag was not material. Learned Courts below have concurrently held that the accused was in possession of 12 bottles of IMFL, and this Court should not interfere with the concurrent findings of fact recorded by learned Courts below. Hence, he prayed that the present revision be dismissed.

13. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

14. It was laid down by the Hon'ble Supreme Court in *Malkeet Singh Gill v. State of Chhattisgarh*, (2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786 that a revisional

court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207: -

“10. Before advertiring to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error that is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

15. This position was reiterated in *State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294*, wherein it was observed at page 695:

“14. The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect

or an error of jurisdiction or law or the perversity which has crept in such proceedings.

15. It would be apposite to refer to the judgment of this Court in *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986, where the scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice *ex facie*. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the

exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC."

16. It was held in *Kishan Rao v. Shankargouda*, (2018) 8 SCC 165: (2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651 that it is impermissible for the High Court to reappreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

"12. This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for exercising the revisional jurisdiction by the High Court. In *State of Kerala v. Puttumana Illath Jathavedan Namboodiri*, (1999) 2 SCC 452: 1999 SCC (Cri) 275, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)

5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to a gross

miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

“14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction.”

17. This position was reiterated in *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13, wherein it was observed at page 205:

“16. It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

17. As held by this Court in *Southern Sales & Services v. Sauermilch Design and Handels GmbH*, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative.”

18. This position was reiterated in *Sanjabij Tari v. Kishore S. Borcar*, 2025 SCC OnLine SC 2069, wherein it was observed:

“27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings [See: *Bir Singh*(supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. As held by this Court in *Southern Sales & Services v. Sauermilch Design and Handels GMBH*, (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the

concurrent findings of the Trial Court and the Sessions Court.

19. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

20. The seizure memo (Ext.PW1/A) mentions that the accused Deepak Kumar was carrying a black and yellow plastic bag having 12 bottles of country liquor bearing the mark 'Green Label Whisky', each containing 750 ml of IMFL. Kishori Lal (PW1) admitted in his cross-examination that the bag (Ext.P1) was not made up of plastic but rexine. HC Sanjeev Kumar (PW7) stated in his cross-examination that the bag (Ext.P1) was made of synthetic cloth. The statements of these witnesses show that the bag produced in the Court is not the plastic bag stated to have been recovered at the spot. If the bag in which the bottles were recovered could be changed, there is no certainty about the contents of the bag, which would make the prosecution's case suspect.

21. Rukka (Ext.PW7/B) mentions that the accused was found coming from CTO towards the Scandal Point. Kishori Lal (PW1) stated that he was going towards Snowdan. He saw the accused coming from the opposite side. The police asked him to

stop, but he ran away. The testimony of this witness shows that the accused was coming from Snowdan, which is in the opposite direction from the CTO. Thus, the testimony of Kishori Lal (PW1) makes it suspicious that the accused was coming from CTO towards Scandal point when he was apprehended.

22. Rukka (Ext.PW7/B) mentions that the accused was carrying a bag in his right hand. HC Sanjeev Kumar (PW7) also stated on oath that the accused was carrying a bag in his right hand. However, Kishori Lal (PW1) stated in his cross-examination that the accused was carrying the bag on his back. Thus, the witnesses also made different statements regarding the manner of holding the bag.

23. Rukka (Ext. PW7/B) mentions that the accused was found near the shop of John Player. The site plan (Ext.PW7/C) shows the place where the accused was apprehended at point 'C' opposite the shop of John Player. Kishori Lal (PW1) stated in his cross-examination that he saw the accused near the statue of Lala Lajpat Rai. He was not aware of the location of John Player's shop on the Mall road. The statue of Lala Lajpat Rai is located at the scandal point. Hence, he has shifted the place of the incident

from the opposite side of the shop of John Player to the Scandal Point, which would make his testimony highly suspect.

24. SI Bali Ram (PW3) stated in his cross-examination that he had received the rukka at 6:40 PM, and he recorded the FIR after 15-20 minutes. His testimony that rukka was received at 6:40 pm will make the prosecution's case suspect that the accused was apprehended at 6:40 pm.

25. Constable Rajesh Kumar (PW4) carried the rukka to the Police Station. He stated in his cross-examination that the police had reached the scandal point at 6:00 PM. The accused was apprehended at 6:40 PM. He reached the Police Station at 7:00 PM and took the rukka from the spot at 6:45 PM. The Investigating Officer had recorded the statements of Kishori Lal (PW1), Om Prakash Sharma (PW5) and his statement before sending the rukka. The seizure memo was also prepared before sending the rukka, and the bottles were sealed on the spot. It took about 15-20 minutes to complete this investigation. The fact that he specifically stated about the apprehension of the accused at 6:40 PM shows that he is not mistaken regarding the time, and his testimony regarding the time is acceptable. His

statement also makes it doubtful that the accused was apprehended at 6:40 pm. It was difficult to seize the bottles, prepare the seizure memo, record the statements of the witnesses and prepare the rukka within 5 minutes to enable him to take the rukka at 6:45 pm.

26. Learned Courts below were swayed by the fact that the witnesses had made consistent statements and the independent witnesses had supported the prosecution's case. This was not sufficient. They failed to notice the discrepancies noticed above and their impact on the prosecution's case.

27. It was laid down by the Hon'ble Supreme Court in *Krishnan v. State, (2003) 7 SCC 56: 2003 SCC (Cri) 1577: 2003 SCC OnLine SC 756* that the evidence of the prosecution must be tested for its inherent consistency: consistency with the account of other witnesses and consistency with undisputed facts. It was observed:

“21. Witnesses, as Bentham said, are the eyes and ears of justice. Hence, the importance and primacy of the quality of the trial process. Eyewitnesses' accounts would require a careful, independent assessment and evaluation for their credibility, which should not be adversely prejudged, making any other evidence, including the medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its

inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the “credit” of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.”

28. It was held in *David Piper vs Mark Hales 2013 EWHC B1 (QB)* that the Court has to see whether the statement of the witness is consistent or not. It was observed: -

34. The guidance about how courts approach this is given in the extra-judicial writing of the late Lord Bingham of Cornhill, approved by the courts, and is apposite. In "*The Judge as Juror: The Judicial Determination of Factual Issues*", published in "*The Business of Judging*", Oxford 2000, reprinted from *Current Legal Problems, vol 38, 1985, p 1-27*, he wrote:

"... Faced with a conflict of evidence on an issue substantially affecting the outcome of an action, often knowing that a decision this way or that will have momentous consequences on the parties' lives or fortunes, how can and should the judge set about his task of resolving it? How is he to resolve which witness is honest and which dishonest, which reliable and which unreliable?

The normal first step in resolving issues of primary fact is, I feel sure, to add to what is common ground between the parties (which the pleadings in the action should have identified but often do not) such facts as are shown to be incontrovertible. In many cases, letters or minutes written well before there was any breath of dispute between the parties may throw a very clear light on their knowledge and intentions at a particular time. In other cases, evidence of tyre marks, debris or where vehicles

ended up may be crucial. To attach importance to matters such as these, which are independent of human recollection, is so obvious and standard a practice, and in some cases so inevitable, that no prolonged discussion is called for. It is nonetheless worth bearing in mind, when vexatious conflicts of oral testimony arise, that these fall to be judged against the background not only of what the parties agree to have happened but also of what plainly did happen, even though the parties do not agree.

The most compendious statement known to me of the judicial process involved in assessing the credibility of an oral witness is to be found in the dissenting speech of Lord Pearce in the House of Lords in *Onassis v Vergottis [1968] 2 Lloyds Rep 403* at p 431. In this, he touches on so many of the matters which I wish to mention that I may perhaps be forgiven for citing the relevant passage in full:

"'Credibility' involves wider problems than mere 'demeanour', which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and if so, has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias, wishful thinking or by too much discussion of it with others? Witnesses, especially those who are emotional and who think that they are morally in the right, tend very easily and

unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes, the memory becomes fainter, and the imagination becomes more active. For that reason, a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point, it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process. And in the process, contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part."

Every judge is familiar with cases in which the conflict between the accounts of different witnesses is so gross as to be inexplicable save on the basis that one or some of the witnesses are deliberately giving evidence which they know to be untrue . . . more often dishonest evidence is likely to be prompted by the hope of gain, the desire to avert blame or criticism, or misplaced loyalty to one or other of the parties. The main tests needed to determine whether a witness is lying or not are, I think, the following, although their relative importance will vary widely from case to case:

- (1) the consistency of the witness's evidence with what is agreed, or clearly shown by other evidence, to have occurred;
- (2) the internal consistency of the witness's evidence;
- (3) consistency with what the witness has said or deposited on other occasions;
- (4) the credit of the witness in relation to matters not germane to the litigation;
- (5) the demeanour of the witness.

The first three of these tests may, in general, be regarded as giving a useful pointer to where the truth lies. If a witness's evidence conflicts with what is clearly shown to have occurred or is internally self-contradictory, or conflicts with what the witness has previously said, it may usually be regarded as suspect. It may only be unreliable and not dishonest, but the nature of the case may effectively rule out that possibility.

The fourth test is perhaps more arguable. . . ."

35. The following guidance of Lord Goff in *Grace Shipping v. Sharp & Co* [1987] 1 *Lloyd's Law Rep.* 207 at 215-6 is also helpful.

"And it is not to be forgotten that, in the present case, the Judge was faced with the task of assessing the evidence of witnesses about telephone conversations which had taken place over five years before. In such a case, memories may very well be unreliable, and it is of crucial importance for the Judge to have regard to the contemporary documents and the overall probabilities. In this connection, their Lordships wish to endorse a passage from a judgment of one of their number in *Armagas Ltd v. Mundogas S.A. (The Ocean Frost)*, [1985] 1 *Lloyd's Rep.* 1, when he said at p. 57: -

"Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not, and where there is a conflict of evidence, such as there was in the present case, reference to the *objective facts and documents, to the witnesses' motives, and the overall probabilities*, can be of very great assistance to a Judge in ascertaining the truth." [emphases added].

That observation is, in their Lordships' opinion, equally apposite in a case where the evidence of the witnesses is likely to be unreliable, and it is to be remembered that in commercial cases, such as the present, there is usually a substantial body of contemporary documentary evidence."

In that context, he was impressed by a witness described in the following terms.

"Although, like the other main witnesses, his evidence was a mixture of reconstruction and original recollection, he took considerable trouble to distinguish precisely between the two, to an extent which I found convincing and reliable."

That is so important and so infrequently done."

36. This approach to fact-finding was amplified recently by Lady Justice Arden in the Court of Appeal in *Wetton (as Liquidator of Mumtaz Properties) v. Ahmed and others [2011] EWCA Civ 610*, in paragraphs 11, 12, & 14:

11. By the end of the judgment, it is clear that what impressed the judge most in his task of fact-finding was the absence, rather than the presence, of contemporary documentation or other independent

oral evidence to confirm the oral evidence of the respondents to the proceedings.

12. There are many situations in which the court is asked to assess the credibility of witnesses from their oral evidence, that is to say, to weigh up their evidence to see whether it is reliable. Witness choice is an essential part of the function of a trial judge, and he or she has to decide whose evidence and how much evidence to accept. This task is not to be carried out merely by reference to the impression that a witness made by giving evidence in the witness box. It is not solely a matter of body language or the tone of voice or other factors that might generally be called the 'demeanour' of a witness. The judge should consider what other independent evidence would be available to support the witness. Such evidence would generally be documentary, but it could be other oral evidence, for example, if the issue was whether a defendant was an employee, the judge would naturally consider whether there were any PAYE records or evidence, such as evidence in texts or e-mails, in which the defendant sought or was given instructions as to how he should carry out work. This may be particularly important in cases where the witness is from a culture or way of life with which the judge may not be familiar. These situations can present particular dangers and difficulties to a judge.

14. In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present, but the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the

party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence, and the judge may be able to draw inferences from its absence.

37. Contemporaneity, consistency, probability and motive are key criteria and more important than demeanour, which can be distorted through the prism of prejudice: how witnesses present themselves in a cramped witness box surrounded for the first time with multiple files can be distorted, particularly elderly ones being asked to remember minute details of what happened and what was said, and unrecorded, nearly 4 years later as here. Lengthy witness statements prepared by the parties' lawyers long after the events also distort the accurate picture, even though they are meant to assist the court.”

29. Thus, the prosecution's case became suspect because of the discrepancies noticed above, and the judgments of the learned Courts below that the prosecution had succeeded in proving its case beyond a reasonable doubt cannot be sustained.

30. In view of the above, the judgments and order passed by the learned Trial Court cannot be sustained; hence, the present revision is allowed, and the judgments and order passed by the learned Courts below are set aside. The petitioner/accused is acquitted of the commission of an offence punishable under Section 61 (1) (a) of the Punjab Excise Act as applicable to the State of H.P. The fine, if deposited be refunded to the petitioner/accused after the expiry of the period of limitation, in

case no appeal is preferred, and in case of appeal, the same be dealt with as per the orders of the Hon'ble Supreme Court of India.

31. In view of the provisions of Section 437-A of the Code of Criminal Procedure [Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)], the petitioner/accused is directed to furnish personal bond in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Registrar (Judicial) of this Court/learned Trial Court, within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitioner/accused, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

32. A copy of this judgment, along with the records of the learned Trial Court, be sent back forthwith. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(Rakesh Kainthla)
Judge

1st January, 2026
(Nikita)