



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. Revision No. 52 of 2009.
Date of Decision: 25.10.2016**

Sanjeev Kumar & Ors.

Versus

State of H.P.

.....Petitioners

.....Respondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting¹? Yes

For the petitioners: Mr. Virender Thakur, Advocate.

For the respondent: Mr. P.M. Negi, Additional Advocate General with Mr. Ramesh Thakur, Deputy Advocate General.

Sandeep Sharma, J. (Oral)

The present criminal revision petition filed under Sections 397/401 of the Cr.PC, is directed against the judgment dated 17.4.2009,

passed by the learned Additional Sessions Judge, Sirmaur District at Nahan, HP, in Criminal Appeal Nos. 4-N/10 of 2007 and 6-N/10 of 2007, affirming the judgment dated 28.5.2007, passed by the learned Judicial Magistrate, 1st Class, Rajgarh, District Sirmaur, HP, in Criminal Case No.

5/2 of 2006, whereby the accused have been sentenced to undergo simple imprisonment for a period of six months for commission of offence punishable under Section 61(1) (a) of the Punjab Excise Act (as applicable to State of Himachal Pradesh), in default of payment of fine

Whether reporters of the Local papers are allowed to see the judgment? Yes.

amount, each convict shall further undergo simple imprisonment for one month.

2. Briefly stated facts as emerged from the record are that on 22.5.2005, at about 7:20 pm, police received information at Police Station Rajgarh that one truck bearing registration No. HP-18-3624 was on its way from Naina Tikkar to Giripul carrying huge quantity of liquor illegally. On the basis of aforesaid information, report Ext.PW7/A in daily diary was entered and SI Chain Ram (PW12), the then SHO PS Rajgarh along with HC Arjun Singh (PW4), Bhagat Singh Thakur (PW6) the then SDPO, Rajgarh, Constable Raj Kumar (PW11) Constable Vidhi Nand, Constable Rajender Kumar proceeded towards Giripul in official vehicle and at Giripul constituted a raiding party, wherein Jagdish Chand (PW9), Prem Singh (PW1), Sunder Singh (PW2), Satish Kumar and forest official Prem Singh were associated and naka was laid. After some time, the aforesaid truck driven by the accused Mehar Singh was stopped for checking at that relevant time. Co-accused, Sanjeev Kumar and Vinod Kumar were also sitting in the truck. Raiding party conducted the search of truck, wherein it found that liquor was being transported in the truck without there being any permit. On asking, accused namely Sanjeev Kumar produced three expired permits i.e. Ext.PW2/A to PW2/C issued by Excise and Taxation Inspector, Sarahan. During the raid, police found 124 crates of country liquor bearing label

"Sirmaur No.1", 173 crates of Masaledar Country Liquor, 4 crates of liquor bearing label "Royal Stag" and 10 crates of liquor labeled "Mcdowell". Police opened the said crates and the same were found to be containing 3732 bottles in total and each bottle was containing 750 ml. of liquor. As per prosecution, one bottle from each of the five crates of country liquor bearing label "Sirmaur No.1", one bottle each from five crates of country liquor labeled "masaledar Sarur", one bottle each from five crates of Mcdowell and one bottle each from four crates of Royal Stag were separated and after breaking the seals of the said 19 bottles, a nip of liquor was separated from each of 19 bottles as samples and thereafter, the samples as well as 19 bottles containing residue liquor were sealed with seal impression 'B' and the seal after use was handed over to witness Jagdish Chand (PW9). Police also took specimen of the seal used, separately, which is Ext.PW2/D. The crates of the liquor along with samples, truck and documents were taken into possession vide memo Ext.PW1/A. Rukka Ext.PW7/B was prepared and was sent to Police station through Constable Raj Kumar (PW11) on the basis of which, FIR Ext.PW7/C came to be registered at Police Station, Rajgarh by ASI Chet Ram (PW7). Police also prepared site plan Ext.PW12/A. Police deposited the case property with HC Surjeet Singh (PW10), the then MHC Police Station, Rajgarh along with the samples, who on 7.6.2005 forwarded the samples of the liquor along with sample

seal to CTL Kandaghat through HHC Surender. PW3 vide RC No. 26/05, deposited the same in safe condition along with sample seal. The statements of the witnesses were also recorded under Section 161 Cr.PC and police also obtained report of chemical examiner Ext.PW12/B to PW12/G, wherein it was reported that samples were found to be of country liquor and Indian made foreign liquor.

3. Police after completion of investigation found the petitioners-accused guilty of having committed offence under Section 61(1) (a) of the Punjab Excise Act, as applicable to State of H.P. (as applicable to State of Himachal Pradesh) and under Sections 420, 120-B of the IPC and accordingly, presented the Challan before the competent court of law.

4. Learned Judicial Magistrate, 1st Class, Rajgarh, District Sirmour (HP), after satisfying itself that prima facie case exists against the accused persons, put a notice of accusation, to which they pleaded not guilty and claimed trial. Learned trial Court on the basis of evidence adduced on record by the prosecution, found the accused guilty of having committed offence under the Punjab Excise Act and convicted and sentenced them as per description already given above, however, fact remains that charges framed against the accused under Sections 420 and 120-B were dropped for want of evidence.

5. The present petitioners-accused being aggrieved with the judgment of conviction passed by the learned trial Court, filed appeal under Section 374 of Cr.PC before the Court of learned Additional Sessions Judge, Sirmaur District at Nahan, HP, who vide judgment dated 17.4.2009, dismissed the appeal. Hence, this criminal revision petition before this Court.

6. Mr. Virender Thakur, Advocate, representing the petitioners vehemently argued that the impugned judgments of conviction and sentence recorded by the Courts below are not sustainable as the same are not based upon the correct appreciation of evidence available on record, and same deserve to be quashed and set-aside. Mr. Thakur further contended that learned trial Court below while recording conviction of the petitioners accused miserably failed to appreciate the facts, law as well as evidence in its proper perspective, as a result of which, erroneous findings have been returned on record causing great prejudice to the rights of the petitioners. With a view to substantiate, his aforesaid argument, Mr. Thakur, made this Court to travel through the judgments passed by both the courts below and statements made by the PWs to demonstrate that despite there being material contradiction in the statement of PWs, courts below have convicted the petitioners on very flimsy grounds and as such, impugned judgments passed by the courts below cannot be allowed

to sustain. Mr. Thakur, further contended that while convicting the petitioners, Courts below overlooked the material discrepancies and omissions having been committed by the prosecution. He further stated that courts below gave undue weightage to the statements given by the PWs especially PW4 and PW13, who being police witnesses were interested witnesses. Mr. Thakur, while concluding his arguments stated that since there was no independent witness to support the case of the prosecution, court below ought to have exercised due care and caution while placing reliance upon the other witnesses who were admittedly police officials and as such, judgments based upon the statements of police officials deserve to be quashed and set-aside. He also stated that so called independent witnesses were declared hostile since they had not supported the prosecution version and as such, courts below should have acquitted present petitioners accused by extending benefit of doubt. In the aforesaid background, Mr. Thakur, prayed for acquittal of petitioners after setting aside the judgment of conviction recorded against them by the courts below.

7. Per contra, Mr. P.M. Negi, Additional Advocate General duly assisted by Mr. Ramesh Thakur, Deputy Advocate General, representing the respondent-state, supported the impugned judgments passed by the courts below. Mr. Negi, vehemently argued that bare perusal of the impugned judgments suggests that courts below have

dealt with each and every aspect of the matter very meticulously and there is no scope, whatsoever, of interference of this Court, especially, in view of the concurrent findings of fact and law recorded by the courts below. Mr. Negi with a view to substantiate his aforesaid argument, invited attention of this Court to the judgment passed by both the courts below to demonstrate that there is overwhelming evidence suggestive of the fact that at that relevant date, liquor was being transported illegally without any permission from the Excise Department. Mr. Negi further stated that since accused failed to produce valid permit/ papers for transportation of the liquor, they were rightly booked for having committed offences under the aforesaid act. While controve~~rt~~ting the submissions having been made by the counsel representing the petitioners that there are material contradictions in the statements of PWs, Mr. Negi made this Court to travel through the statements of PWs to demonstrate that prosecution has proved its case beyond reasonable doubt and present petition deserves to be dismissed. While concluding his arguments Mr. Negi forcefully contended that this Court has very limited powers while exercising its revisionary powers under Section 397 of the Cr.PC to re-appreciate the evidence, and as such, there is no scope of re-appreciation of evidence already taken into consideration by the courts below while recording the conviction of the petitioners. In this regard, reliance is

placed upon the judgment passed by Hon'ble Apex Court in case **State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri** (1999)2 Supreme Court Cases 452, wherein it has been held as under:-

"In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying 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 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 re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

8. I have heard learned counsel for the parties as well carefully gone through the record
9. True, it is that this Court has very limited powers under Section 397 Cr.PC while exercising its revisionary jurisdiction but in the instant case, where accused have been convicted and sentenced, it would be apt and in the interest of justice to critically examine the statements of the prosecution witnesses solely with a view to ascertain that the judgments passed by learned courts below are not perverse and same are based on correct appreciation of the evidence on record.
10. As far as scope of power of this Court while exercising revisionary jurisdiction under Section 397 is concerned, the Hon'ble

Apex Court in **Krishnan and another Versus Krishnaveni and another**,

(1997) 4 Supreme Court Case 241; has held that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order. The relevant para of the judgment is reproduced as under:-

8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order."

11. In the present case, prosecution with a view to prove its case examined as many as twelve witnesses. Learned trial Court also recorded the statements of the petitioners-accused under Section 313 Cr.PC, wherein they pleaded innocence and claimed trial however, they did not lead any evidence in their defence.

12. After carefully perusing the record made available to this Court, it clearly emerges that on 22.5.2005 police intercepted vehicle bearing registration No. HP-18-3624, transporting 124 crates of country liquor bearing label "Sirmaur No.1", 173 crates of "Masaledar Country Liquor", 4 crates of liquor bearing label "Royal Stag" and 10 crates of liquor labeled "Mcowell". Police opened the said crates and the same were found to be containing 3732 bottles in total and each bottle was containing 750 ml. of liquor. It also stands duly proved on record with the report of chemical examiner Ext.PW12/B to Ext.PW12/G that samples were found to be containing country and Indian made foreign liquor. It is an admitted case of the prosecution that after recovery aforesaid cartons of country liquor as well as Indian made foreign liquor, one bottle from each 15 cartons of country liquor bearing label "Sirmaur No.1" , one bottle each from five cartons of country liquor "Masaledar Sarur" and one bottle each from five cartons of "Mcowell" and one bottle from four cartons of "Royal Stag" were separated and after breaking the seals of the said 19 bottles, a nip of liquor was separated from each bottle and the same were sealed with seal impression 'B' and the seal after use was handed over to witness Jagdish Chand for safe custody. It is also admitted case of the prosecution that aforesaid 19 samples drawn by police were sent to CTL Kandhagha, through HHC Surender PW3 vide RC No. 26/2005, who

deposited the same in safe condition. It is also undisputed in the report of chemical analyst that only 19 samples were admittedly drawn from 19 bottles out of 3732 bottles, allegedly recovered by the police from the vehicle being driven by petitioner No.1. Before proceeding to decide the matter on merit, it would be profitable to refer to the judgments passed by this Court in **State of HP vs. Jagjit Singh latest HLJ 2008 (HP) 919**, wherein this Court had observed in para 6 and 7 as under:

"6. At the very outset, I would like to say that neither the non-compliance of sub-section (6) of Section 100 of the Code of Criminal Procedure will render the search illegally nor the respondent can be acquitted on this sole ground. However, in the instant case the regrettable feature is that as per the case of the prosecution 72 pouches of country liquor of "Gulab" brand country liquor containing 180 ml. each were recovered from the possession of the respondent. Admittedly, one pouch of 180 ml. out of the recovered quantity was retained as a sample, which was of illicit origin as opined by the Chemical Analyst.

7. There is nothing on record to show that the remaining 71 pouches alleged to have been recovered from the respondent also contain the country liquor more than the permissible quantity without the permit or licence. Before the respondent could be convicted for the offence charged, it was incumbent upon the prosecution to prove that the respondent was in actual and conscious possession of the illicit liquor in excess of the prescribed limit."

13. Careful perusal of the aforesaid judgment leaves no doubt in the mind of this Court that before convicting the accused for the offence qua which they were charged, it was incumbent upon the prosecution to prove that they were in actual and conscious possession of the illicit liquor in excess of the prescribed limited. In the facts and

circumstances of the case, as emerged from the record are that 124 crates of country liquor bearing label "Sirmaur No.1", 173 crates of Masaledar Country Liquor, 4 crates of liquor bearing label "Royal Stag" and 10 crates of liquor labeled "McDowell" were found containing total 3732 bottles from the conscious possession of the present petitioners-accused. As has been observed in the earlier part of the judgment, only one bottle from each of the five crates was separated and after breaking the seal of 19 bottles as samples, the samples and said 19 bottles containing residue liquor were sealed with seal impression "B" and after use seal was handed over to witness Jagdish Chand (PW-9). It stands duly proved on record that only 19 bottles out of 3932 bottles in total, allegedly recovered by the police were sent for chemical analysis. If action of police in sending only 19 bottles admittedly drawn from 19 bottles out of 3732 bottles for chemical examination, is examined/tested in the light of the judgment passed by the co-ordinate bench of this Court, it can be safely concluded that prosecution could only prove recovery of 19 bottles of the country liquor from the possession of petitioners, which is admittedly not an offence as in the case referred supra, 71 pouches in total were allegedly recovered from the accused but only one pouch was retained as sample and sent for analysis. Accordingly, Court came to

conclusion that prosecution could only prove that accused was only in possession of one pouch of 180 ml. country liquor in his possession.

14. While applying aforesaid ratio laid down in the Jagdish's case supra, this Court has no hesitation to conclude that accused were not carrying liquor beyond permissible limit. If the story of prosecution is taken to be correct on its face value, even in that event only recovery of 19 bottles is required to be taken into consideration not of 3732 as alleged by the prosecution.

15. At this stage, Mr. Negi learned Additional Advocate General, vehemently argued that sending of one bottle from each box was sufficient to ascertain the contents of other bottles admittedly recovered from the same crates and entire recovery cannot be said to be vitiated on account of alleged omission, if any, on the part of the police. This Court in peculiar facts and circumstances finds it difficult to accept the aforesaid contention put forth on behalf of Mr. Negi, because police by sending 19 samples admittedly drawn from 19 bottles, one from each carton, was only able to prove the content of the liquor in 19 bottles. Moreover, chemical examiner, in his report opined that each sample was containing 750 ml. of liquor each. Hence, recovery, if any, can be said of 19 bottles, which were actually sent for chemical analysis. It is not understood that when only 19 samples drawn from 19 bottles were sent for chemical analysis, how

court below came to conclusion that remaining 3713 bottles were also containing liquor in the same.

16. This Court is of the view that since remaining bottles were not sent for chemical examination, by no stretch of imagination it can be said that all those bottles were also containing liquor. Since all bottles were not sent for chemical examination, this Court has no hesitation to conclude that entire recovery effected by police stands vitiated on account of aforesaid serious omission on the part of the police.

17. If this matter is viewed from other angle also, as per ratio of law applied in this case, prosecution has been able to prove recovery of 19 bottles and in view of same, accused persons may be considered carrying only 3 bottles each in excess of prescribed limit. In view of the recovery of 19 bottles from the possession of the accused, each accused may be considered carrying three bottles beyond permissible limit, hence, no appeal, if any, was maintainable in terms of Section 378 (1) (A) as far as bailable offence is concerned. Section 378 1 (A) reads as under:-

"378. Appeal in case of acquittal-[(1) Save as otherwise provided in Sub-Section (2), and subject to the provisions of Sub-Sections (3) and (5),--

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(2). If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, [the Central Government may, subject to the provisions of Sub-Section (3), also direct the Public Prosecutor to present an appeal—

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision]."

18. While examining the aforesaid aspect of drawing 19 samples from 19 bottles out of 3732, this court also noticed that prosecution witnesses categorically deposed before the trial Court that the crates of liquor along with case property were taken into possession vide memo Ext.PW1/A. PW10 HC Surjeet Singh testified that he was MHC Police Station Rajgarh. He further stated that on 22.5.2006, SI Chain Ram deposited with him 173 crates of country liquor, 124 crates of liquor labeled "Sirmaur No.1", 10 crates of McDowell and 4 crates of Royal Stag along with 19 samples and 19 bottles comprising 5 bottles of liquor labeled "Sirmaur No.", 5 bottles of McDowell, 4 bottles of Royal Stag and 5 bottles of liquor labeled "Desi Sarur", which were sealed with seal impression 'B' and the 19 samples were also sealed with seal impression 'B' along with sample seal Ext.PW2/D and on 7.6.2005 vide

RC No. 26/05, he forwarded the same along with sample seal to CTL, Kandaghat through HHC Surinder Singh.

19. Similarly, PW11 C. Raj Kumar corroborated the version put forth by PW10. But interestingly, PW9 Jagdish Chand, who was associated as independent, nowhere supported the prosecution story. He specifically stated that nothing was recovered in his presence and liquor was outside the vehicle on road and 15-20 people were collected there. He in his cross-examination identified his signatures on Ext.PW1/A, but perusal of cross examination conducted on these PWs nowhere suggests that prosecution was able to extract something which could be beneficial for the prosecution to prove its case beyond reasonable doubt. In his cross examination, he admitted that no liquor was found in his presence; rather, he stated that he remained with the police till 1 pm. He further stated that police persons remained near the liquor shop.

20. PW8 Jogi Ram, owner of the truck, in his cross examination stated that his driver was Mehar Singh, and he was from the Paonta Sahib. PW7 ASI Chet Ram also stated that after receiving information that truck No. HP-18-3624 was coming with liquor. Report i.e. Ext.PW7/A was entered in Rojnamcha and the rukka Ext.PW7/B was sent through C. Raj Kumar No. 198, to police station, on the basis of which FIR Ext.PW7/A was registered. PW6 official of excise department, Bhagat

Singh Thakur, also testified that he was also present on the barrier with the raiding party on 22.5.2005 and at that time, one truck No. HP 18-3624 Tata 407 was stopped by ASI Chain Ram and was checked. He also supported the story of prosecution as far as recovery of contraband from the vehicle is concerned. However, PW5 Partap Singh, Excise and Texation Officer, testified that permits Ext.PW2/A to Ext.PW2/C shown by the accused at the time of raid, were correct as per original record, however, he stated that validity of the pass Ext.PW2/A was upto 19.5.2005, Ext.PW2/B was valid up to 20.5.2005 and Ext.PW2/C was valid upto 20.5.2005.

21. PW4 HC Arjun Singh, testified and corroborated the versions of PW1 and PW2 and testified that Sanjiv Kumar had shown three expired permits. He stated that he had signed the recovery memo Ext.PW1/A along with Jagdish Chand, Satish Kumar Prem Singh HHC Arjun Singh and the accused. PW4 further stated that there were residential houses near the barrier and he knew the accused persons.

22. PW2 HHC Surender Singh, stated that he was posted at Giripul on 22.5.2005. He further stated that SHO Chain Ram, HC Arjun Singh had come to the Giripul along with Prem Singh, Satish Kumar and Jagdish was included in the raiding party. He stated that in the night, truck in question was intercepted, wherein driver Mehar Singh and other accused were found sitting inside the truck. He also stated that

311 crates which included 124 crates of Sirmaur No.1 and each crate had 12 bottles inside it. There were 173 crates of Surur, 4 crates of Royal Stag and 10 crates of Mcdowell. He further corroborated the version of taking of the sample and sealing the samples and the liquor with seal "B" vide memo Ext.PW1/A, which was signed by this witness and the accused. He further stated that police had also recovered the documents Exts. PW2/A, B and C, which were already expired. PW3 HHC Surender Singh had taken 19 samples to CTL from MHC Surjeet Singh vide receipts.

23. Interestingly, this Court after perusing the entire evidence available on record found that material PWs while deposing before the trial Court stated that the case property was taken into possession vide seizure memo and one bottle from each carton was taken for sample and then after use, same was handed over the independent witness namely Jagdish. Similarly, PWs stated that they identified the bottles but none of the prosecution witnesses stated something qua the tag of FIR, if any, on the crates allegedly recovered from the vehicle being driven by the accused. There is nothing in the statements of PWs qua the tag of FIR on the case property. Hence, this Court is compelled to infer that after deriving samples from 19 bottles, one each from each crate, remaining case property was taken into possession vide memo Ext.PW1/A but no tag of FIR was put on the same and as such,

identification by the PWs, of the case property produced before the Court, cannot be said to be in accordance with law. Since no FIR number was tagged in the alleged contraband, it is not understood how PWs later on identified the same before the Court in the absence of the tag offIR on it.

24. Apart from above, this Court also noticed glaring discrepancy in the prosecution case. As per story of prosecution, seal with which samples were sealed, was handed over to independent witness Jagdish Chand, PW9. All the material prosecution witnesses stated that seal having impression "B" after sealing the samples was handed over to PW9 but interestingly there is no mention qua the production of seal in the Court. Careful perusal of judgment passed by the Courts below, nowhere suggests that there is any mention, if any, qua the production of seal in the Court. PW10 HC Surjeet Singh stated that SI Chain Ram had sent Rukka with C. Raj Kmar on which FIR was registered bearing endorsement Ext.PW7/B. He further stated that Chain Ram had come from the spot and had deposited 173 crates of country liquor Surur, 124 crates of Sirmaur No.1, 10 crates containing 12 bottles. He further testified that there were 19 samples taken from 19 bottles which he had sent to CTL Kandaghat through HHC Surinder Singh No. 404, who had deposited the receipts back to him. PW10 Surjeet Singh categorically stated the after use, seal was handed over

to witnesses Jagdish. But PW9 has, nowhere supported the case of the prosecution, who in his statement denied the recovery, if any, from the conscious possession of the accused. He categorically stated that bottles were lying outside the vehicle on the road and 15-20 people have collected there and he nowhere produced the seal before the Court below. Hence, this court is of the view that recovery, if any, cannot be said to be proved in accordance with law. Both the courts below have failed to notice the aforesaid glaring discrepancy in the case of the prosecution while recording conviction against the petitioners. In the absence of seal, it cannot be said that prosecution was able to prove its case beyond reasonable doubt that there was recovery of illicit liquor.

25. Close scrutiny of record, by this Court clearly suggests that police had drawn 19 bottles, one each from each one crate for sending the same to the CTL, but no seal whatsoever, was produced in the Court. Aforesaid glaring discrepancy has rendered prosecution story untrustworthy and unreliable and could not be relied upon by the courts below while recording the conviction of the petitioners in the totality of the facts and circumstances of the case.

26. Similarly, this Court after perusing the evidence available on record is compelled to conclude that prosecution has failed to prove recovery of liquor from the conscious possession of the accused.

As clearly emerge from the record, neither there is any seal nor any tag of FIR on the case property coupled with the fact that seal was not produced before Court below, as a result of which, story of prosecution has rendered unreliable and untrustworthy.

27. In this regard, reliance is placed on judgment rendered by the Hon'ble Apex Court in ***State of Rajasthan v. Gopal, 1998 (8) SCC 499***, relevant paras of the aforesaid judgments is reproduced herein below:

"2. In passing the order of acquittal, the High Court has noted that the seizure of the narcotic substance was doubtful because the seal on the sample sent for chemical analysis could not be compared with the seal on the seized article kept in the Police Malkhana because the seal on the sample sent to analyst could not be produced in the Court for verification. Even the seal which was put on the seized article kept in the Police Malkhana could not be ascertained excepting the word "Ajmer". It may be stated here that since the said article had been seized on the railway platform according to the prosecution case, the seal of the Stationmaster had been used, but the Stationmaster was not examined to prove whether the seal put on the sized article and kept in the Police Malkhana really contained the seal of the Stationmaster."

28. Reliance is also placed on judgment passed by our own High Court in ***Nanha v. State of H.P., Latest HLJ 2011 (HP) 1195.*** Paras No. 7 to 9 are extracted herein below:-

"7. Adverting to the points urged by learned counsel appearing for the appellant that the seal used has not been produced in court, we note that this Court in Criminal Appeal No. 308 of 1996, decided on October 21, 2009, State of H.P V. Tek Chand, reported in Latest HLJ 2010(HP)497,Holds-

"9 PW1 Hukam Chand , MHC, with whom the case property was deposited by PW 4 Ravinder Singh, also did not say that any specimen seal impression has been deposited along with parcel containing the

samples and the bulk Charas. It is only PW2 HC Raj Singh , who took over the charge of MHC from PW1 Hukam Chand, who stated that he sent one of the two samples along with sample seals to the Chemical Examiner, through Constable Mani Ram. Mani Ram who was examined as PW3, did not say that any specimen seal impressions were also carried by him along with the sample. He simply stated that he carried one sealed parcel which was handed over to him PW2 HC Raj Singh. On the docket with which the sample was sent to the Chemical Examiner i.e. Ext.PC, facsimiles of the seals used in sealing the parcels are not there. That means specimen impressions of the seals used in sealing the sample parcels, which was sent to the laboratory, were not available with the Chemical Examiner, for comparison with the seal impressions on the parcel containing sample . Therefore , the report Ext.PC cannot be said to have been sufficiently linked with the samples allegedly separated from the recovered stuff.

8. Adverting to the facts on record, we find from Ext. PW-8 /A that the facsimile of the seal not having been affixed on this document. Further we also note that PW-5 Constable Yoginder Singh states:

".....All the parcels were sealed with seal 'D' initially. The seal 'S' was made of some metal. The seal has not been brought by me today as the same has been lost. No report qua missing of the seal was lodged by me with anyone .

9. The seal was in possession of the prosecution as established form the evidence of PW-7 Constable Ramesh Kumar, who says that he had deposited this in the Kandaghat Laboratory. What happened to the seal after that is not clear neither it is clear as to why the facsimile is not affixed on the NCB form."

Though this Court is of the view that statements of prosecution witnesses cannot be easily brushed aside solely on the ground that they are official witnesses and version put forth on behalf of the PWs cannot be solely rejected on the ground that no independent witness is associated at the time of occurrence/recovery but in the present facts and circumstances, this court sees force in the contention put forth on behalf of the counsel representing the

High Court
29.

petitioners-accused that statement given by officials witnesses (PWs) could not be accepted on its face value by the courts below, especially, in view of the statement of independent witness cited by police/prosecution, who in no terms, supported the case of prosecution. In the present case as has been noticed above, PW9 independent witness has not supported the case of the prosecution at all, rather, he has stated that no recovery was effected from vehicle. While examining the entire evidence on record, this Court noticed that trial Court below blindly relied upon the depositions made by the police witnesses while rendering the judgment without ascertaining the genuineness and correctness of their statements.

30. Consequently, in view of the aforesaid discussion, present petition is allowed and the judgments passed by both the courts below are quashed and set-aside and the petitioners-accused are acquitted of the charges framed against them. Bail bonds, if any, are discharged. The petition stands disposed of, so also pending applications, if any.

25th October, 2016

manjit

**(Sandeep Sharma),
Judge.**