

Physical hearing day

Munander Gupta vs. Mehmood & Ors.

05.10.2020

PS: Hari Nagar

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

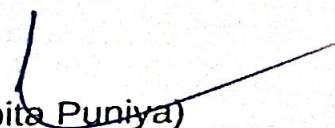
Present: Complainant in person with Ld. Counsel.

Heard. Reply and file perused.

Perusal of reply reveals that FIR No.569/20 u/s 323/341/506/34 IPC, PS Hari Nagar has been registered.

Therefore, let file be consigned to record room with direction to Ahlmad to tag the file with the charge sheet as and when the same is filed.

SHO concerned is also directed to expedite the investigation and file the challan at the earliest.


(Babita Puniya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

State vs. Beant Singh

FIR No.623/13

PS: Hari Nagar

05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

Present: Ld. APP for State.

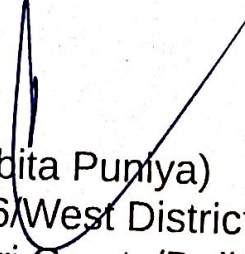
Accused in person with counsel.

Heard. File perused.

No PW is present today.

Let PW Mustafa Tyagi be summoned at his new address i.e. WZ-19, 1st Floor, Meenakshi Garden, Delhi through IO/SHO as well as DCP concerned for NDOH and his contact number be also mentioned on the process.

Put up for PE on 20.10.2020.


(Babita Puniya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

State vs. Amir Chandra

FIR No.446/15

PS: Mundka

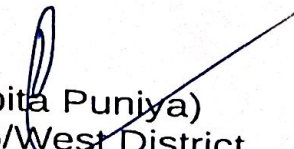
05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

Present: Ld. APP for State.
None for accused.

File perused.

Perusal of file reveals that matter is at the stage of prosecution evidence, therefore, matter stands adjourned for 09.02.2021 in view of the above mentioned office order issued by Hon'ble High Court of Delhi.


(Babita Puniya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

Present: Ld. APP for State.
None for applicant.

Court is convened through VC (CISCO Webex).

Vide this order, I shall decide the application filed on behalf of the applicant seeking release of **vehicle bearing no.DL9S-W-8008** on Superdari.

Heard. Reply perused.

As per reply, IO has no objection, if the **vehicle bearing no.DL9S-W-8008** is released to the registered owner/rightful owner.

Heard. Application perused.

Having considered all the relevant inputs and having taken note of the decision of the **Hon'ble Supreme Court in Sunderbhai Ambalal Desai V. State of Gujarat (A.I.R.2003 S.C.638)** and **Manjeet Singh Vs. State**, I am satisfied that this will be an eminently fit case where the case property i.e. **vehicle bearing no.DL9S-W-8008** can be released to the applicant/registered owner/rightful owner, subject to execution of security bonds. Accordingly, let **vehicle bearing no.DL9S-W-8008** be released to the rightful owner after preparing detailed panchnama; taking photographs of the vehicle; valuation report; a security bond etc.

The photographs of the **vehicle bearing no.DL9S-W-8008** should be attested by the IO and countersigned by the complainant, accused, if any, as well as by the person to whom the custody is handed over.

The panchnama/photographs/ valuation report etc. be filed along with the charge-sheet. IO is also directed to follow the necessary safeguards insisted in **Sunderbhai Ambalal Desai Vs. State of Gujarat & Manjeet Singh Vs. State**.

The application stand disposed of accordingly.
Copy of this order be given dasti to the applicant.

(Babita Puniya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

Present: Ld. APP for State.
Applicant in person.

Court is convened through VC (CISCO Webex).

Vide this order, I shall decide the application filed on behalf of the applicant seeking release of **vehicle bearing no.DL1L-P-6844** on Superdari.

Heard. Reply perused.

As per reply, documents have been verified and IO has no objection, if the **vehicle bearing no.DL1L-P-6844** is released to the registered owner/rightful owner.

Heard. Application perused.

Having considered all the relevant inputs and having taken note of the decision of the **Hon'ble Supreme Court in Sunderbhai Ambalal Desai V. State of Gujarat** (A.I.R.2003 S.C.638) and **Manjeet Singh Vs. State**, I am satisfied that this will be an eminently fit case where the case property i.e. **vehicle bearing no.DL1L-P-6844** can be released to the applicant/registered owner/rightful owner, subject to execution of security bonds. Accordingly, let **vehicle bearing no.DL1L-P-6844** be released to the rightful owner after preparing detailed panchnama; taking photographs of the vehicle; valuation report; a security bond etc.

The photographs of the **vehicle bearing no.DL1L-P-6844** should be attested by the IO and countersigned by the complainant, accused, if any, as well as by the person to whom the custody is handed over.

The panchnama/photographs/ valuation report etc. be filed along with the charge-sheet. IO is also directed to follow the necessary safeguards insisted in **Sunderbhai Ambalal Desai Vs. State of Gujarat & Manjeet Singh Vs. State**.

The application stand disposed of accordingly.

Copy of this order be given dasti to the applicant.

(Babita Puniya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

Physical hearing day
FIR No.12103/2020
PS: Mundka

05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

Present: Ld. APP for State.
Ld. Counsel for applicant.

Vide this order, I shall decide the application filed on behalf of the applicant seeking release of **vehicle bearing no.DL4S-BW-5154** on Superdari.

Heard. Reply perused.

As per reply, IO has no objection, if the **vehicle bearing no.DL4S-BW-5154** is released to the registered owner/rightful owner.

Heard. Application perused.

Having considered all the relevant inputs and having taken note of the decision of the **Hon'ble Supreme Court in Sunderbhai Ambalal Desai V. State of Gujarat (A.I.R.2003 S.C.638)** and **Manjeet Singh Vs. State**, I am satisfied that this will be an eminently fit case where the case property i.e. **vehicle bearing no.DL4S-BW-5154** can be released to the applicant/registered owner/rightful owner, subject to execution of security bonds. Accordingly, let **vehicle bearing no.DL4S-BW-5154** be released to the rightful owner after preparing detailed panchnama; taking photographs of the vehicle; valuation report; a security bond etc.

The photographs of the **vehicle bearing no.DL4S-BW-5154** should be attested by the IO and countersigned by the complainant, accused, if any, as well as by the person to whom the custody is handed over.

The panchnama/photographs/ valuation report etc. be filed along with the charge-sheet. IO is also directed to follow the necessary safeguards insisted in **Sunderbhai Ambalal Desai Vs. State of Gujarat & Manjeet Singh Vs. State**.

The application stand disposed of accordingly.

Copy of this order be given dasti to the applicant.

(Babita Puniya)

MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

Copy received
Spears dhan
05/10/2020
D/4052/2016

State vs. Ajay & Rohit @ Sahil

FIR No.0039298/19

PS: Mundka

05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

File received back from National Lok Adalat as unsettled.

Present: Ld. APP for State.

IO through VC.

Complainant through VC.

Accused persons through VC (whatsapp video call from their respective villages).

Sh. Sanny Garg, Remand Advocate for accused persons through VC.

Court is convened through VC (CISCO Webex).

It is stated by both the accused persons that they are on interim bail.

It is submitted by the complainant/owner of stolen property that since his motorcycle has been recovered, he does not want to pursue the case. In view of the above, he seeks permission of the Court to compound the offence punishable under Section 379/411/34 IPC.

Heard. File perused.

I have examined the complainant/owner of stolen property about his voluntariness and having examined him, I am satisfied that he is making statement voluntarily. Therefore, let his statement to this effect be recorded separately and be sent to him through whatsapp with direction to sign the same and send it back to the court through whatsapp/email. Statement sent and received back duly signed. IO has also duly identified the complainant/owner of stolen property and accused persons

through VC.

File perused. Perusal of the file reveals that accused persons are sent to face the trial for the offence punishable under sections 379/411/34 IPC which are compoundable within the scheme of Code of Criminal Procedure, 1973 by the owner of the property stolen. Therefore, in view of statement of complainant/owner of stolen property, offence stands compounded. Consequently, accused **Ajay** and **Rohit @ Sahil** stand **acquitted** of the offence punishable under Section 379/411/34 IPC.

Superdari, if any stands canceled. Case property, if not already released, be released to the rightful owner after proper acknowledgement.

Original documents, if any be given to rightful owner after proper acknowledgement.

File be consigned to record room after due compliance.

Copy of this order be sent to Jail Superintendent, Tihar Jail for information.

(Babita Punjya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

Physical hearing day

State vs. Rakesh

FIR No.104/16
PS: Hari Nagar

05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

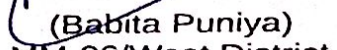
Present: Ld. APP for State.
Ld. Counsel for accused.
Complainant in person.

Vide this order, I shall decide the bail application filed on behalf of applicant/accused Rakesh.

Heard. Reply perused.

After hearing Ld. Counsel for the applicant/accused and the Ld. APP for the State and going through the contents of the reply, I am of the considered view that the applicant/accused is not entitled to the concession of regular bail at this stage. Allegations leveled against him are serious in nature. The case is at primary stage of investigation and the apprehension of the prosecution that he may influence the witness and may tamper with evidence cannot be ruled out and co-accused is yet to be arrested. Under the circumstances, keeping in view of the nature of the crime alleged and the primary stage of investigation, the bail application is dismissed.

Copy dasti to the Ld. Counsel for the applicant/accused.


(Babita Puniya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

Present: Ld. APP for State.
Sh. Sanjeev, Ld. Counsel for applicant.

Vide this order, I shall decide the application filed on behalf of the applicant seeking release of **mobile phones (J-7 Samsung next golden colour and Redmi K20 Pro Red Flame colour)** on Superdari.

Heard. Reply perused.

As per reply, IO has no objection, if the **mobile phones (J-7 Samsung next golden colour and Redmi K20 Pro Red Flame colour)** are released to the registered owner/rightful owner.

Heard. Application perused.

Having considered all the relevant inputs and having taken note of the decision of the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai V. State of Gujarat (A.I.R.2003 S.C.638)** and **Manjeet Singh Vs. State**, I am satisfied that this will be an eminently fit case where the case property i.e. **mobile phones (J-7 Samsung next golden colour and Redmi K20 Pro Red Flame colour)** can be released to the applicant/registered owner/rightful owner, subject to execution of security bonds. Accordingly, let **mobile phones (J-7 Samsung next golden colour and Redmi K20 Pro Red Flame colour)** be released to the rightful owner after preparing detailed panchnama; taking photographs of the **mobile phones**; valuation report; a security bond etc.

The photographs of the **mobile phones (J-7 Samsung next golden colour and Redmi K20 Pro Red Flame colour)** should be attested by the IO and countersigned by the complainant, accused, if any, as well as by the person to whom the custody is handed over.

The panchnama/photographs/ valuation report etc. be filed along with the charge-sheet. IO is also directed to follow the necessary safeguards insisted in **Sunderbhai Ambalal Desai Vs. State of Gujarat & Manjeet Singh Vs. State**.

The application stand disposed of accordingly.
Copy of this order be given dasti to the applicant.

(Babita Punia)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

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FIR No. 901/15
PS Hari Nagar

21.09.2020

Pursuant to the directions issued by the Hon'ble High Court of Delhi, the matters were adjourned en bloc amid Covid-19 pandemic. Further, vide office order no.26/DHC/2020 dated 30.07.2020, the District Courts have been directed to take up all the cases listed before them through VC except the cases wherein evidence is to be recorded.

Present : Ld. APP for the State through VC.

Accused Sagar not produced from JC.

Accused Sandeep is absent.

Court is convened through VC (CISCO Webex) from residence office.

File perused.

Perusal of file reveals that matter is at the stage of PE. However, since one of accused Sagar is running in JC, put up on 05.10.2020 for PE.

Notice be also issued to accused Sandeep and his counsel.

Jail Superintendent is directed to produce the accused Sagar on the said date.

(Babita Puniya)
MM-06/W/Delhi
21.09.2020

Physical hearing day

Pr Ld. APP for the State
not produced from JC
file perused.

Put-up on 05.10.2020 for
purpose of PE.

Yogesh Kumar vs. Sachin Kapoor

CT No.3766/18

PS: Hari Nagar

05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

Present: None for complainant.
Sh. Pradeep Sharma, Ld. Counsel for accused through VC.

Court is convened through VC (CISCO Webex).

Heard. File perused.

At request, put up for purpose fixed on 09.02.2021.

(Babita Puniya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

File again taken up at the request of complainant and his counsel.

Ld. Counsel for complainant has requested for early hearing.

Heard.

Let court notice be issued to the accused and his counsel for 14.10.2020.

(Babita Puniya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

Physical hearing Day

State vs. Romil & Dharmender

FIR No.99/2020
PS: Mundka

05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

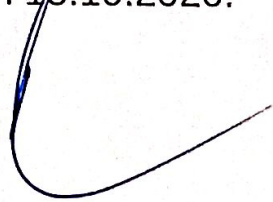
Present: Ld. APP for State.
Both accused person are stated to be in JC.
SI Ramesh in person on behalf of IO.

It is stated by SI Ramesh that three FIRs were registered against the accused persons at PS Mundka and the weapons were recovered in case FIR No.101/2020, PS Mundka. He further stated that he is the IO of FIR No.101/2020.

Heard. File perused.

I have perused the charge sheet and the documents annexed with the charge-sheet. It prima facie discloses commission of offence. I take cognizance of the offence.

I am of the considered opinion that there is prima facie sufficient material to proceed against the accused for the offences alleged in the challan. Therefore, Jail Superintendent is directed to produce both the accused persons through VC on 15.10.2020.


(Babita Puniya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

Physical hearing day
State vs. Romil & Dharmender

FIR No.101/2020

PS: Mundka

05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

Present: Ld. APP for State.
SI Ramesh in person.
Accused persons are stated to be in JC.

Court is convened through VC (CISCO Webex).

Heard. File perused.

Put up for consideration on 15.10.2020.

(Babita Puniya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

State vs. Abdul Wahid & Ors.

FIR No.005881/2020

PS: Hari Nagar

05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

Present: Ld. APP for State.

Both accused persons are stated to be in JC.

Complainant through VC.

Court is convened through VC (CISCO Webex).

Heard. File perused.

Jail Superintendent is directed to produce both the accused person through VC on 15.10.2020 failing which adverse order shall be passed against him.

Complainant is bound down for NDOH.

(Babita Puniya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

Physical hearing day
State vs. Aakash

FIR No.83/2020
PS: Mundka

05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

Fresh charge-sheet received from the court of Ld. Duty MM. It be checked and registered as per rules.

Present: Ld. APP for State.
IO in person.
Accused is stated to be in JC.

Court is convened through VC (CISCO Webex).

In view of the judgment passed by Hon'ble Supreme Court of India in the case of Nipun Sharma vs. Union of India, Ministry of Home Affairs decided on 11.12.2018, IO has filed the relevant documents in a sealed envelope. Be taken on record.

I have perused the charge sheet. It prima facie discloses commission of offence. I take cognizance of the offence.

I am of the considered opinion that there is prima facie sufficient material to proceed against the accused for the offences alleged in the challan.

Let copy of challan be supplied to accused through Jail Superintendent concerned.

Put up on 15.10.2020 for further proceedings/committal proceedings.

Jail Superintendent is directed to produce the accused on NDOH through VC.

(Babita Punjya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

State vs. Akshay Kumar

Physical hearing day
FIR No.120/2020
PS: Hari Nagar

05.10.2020

Earlier all the matters were adjourned en-bloc pursuant to the directions issued by the Hon'ble High Court of Delhi from time to time amid lock-down. Now, vide office order no.26/DHC/2020 dated 30.07.2020, District Courts have been directed to take up all the cases listed before them through videoconferencing except the cases wherein evidence is to be recorded.

Present: Ld. APP for State.
Accused on court bail alongwith counsel Sh. Tarun Sharma.

Heard. File perused.
Perusal of file reveals that vide order dated 23.09.2020, IO was specifically directed to file the documents in sealed envelope. However, the IO has not complied with the orders. Therefore, show cause notice be issued to the IO for NDOH. SHO, PS Hari Nagar is also directed to remain present in court on NDOH.

Put up on 09.10.2020 for further proceedings.

(Babita Puniya)
MM-06/West District
Tis Hazari Courts/Delhi
05.10.2020

State vs. Ram Niwas

FIR No. 294/2017
PS: Mundka
U/sec. 33 Excise Act

03.09.2020

Present: Learned APP for the State.

Accused in person.


Shri Kushal Dahiya, learned counsel for the accused through V/C (CISCO WEBEX).

Final arguments heard. File perused.

Vide separate judgment of even date, accused **Ram Niwas** is **ACQUITTED** of the crime charged.

Taking note of the current situation (COVID-19 pandemic), earlier bail bond of the accused is treated as one under section 437-A of the Code. However, he is directed to affix his latest photograph on the bail bond. Photograph affixed.

File be consigned to record room after due compliance.


(Babita Puniya)

MM-06, West District,
Tis Hazari Courts/ Delhi/03.09.2020

IN THE COURT OF MS. BABITA PUNIYA: METROPOLITAN
MAGISTRATE-06, WEST DISTRICT,
TIS HAZARI COURT, DELHI

State vs. Ram Niwas

FIR No. 294/2017
U/sec. 33 Delhi Excise Act
PS: *Mundka*

Date of institution of the case: 10.05.2018
Date on which judgment is reserved: Not reserved
Date on which judgment is delivered: 03.09.2020

Unique I. D. No. 4060/2018

J U D G M E N T

- a) Date of commission of the offence : 05.11.2017
- b) Name of the complainant : ASI *Viredner Kumar*
- c) Name of the accused and his parentage : **Ram Niwas,**
S/o *Shri Kartar Singh,*
R/o. Village Kabir Pur, Dhanak
Mohalla, PS Sadar, Sonipat,
Haryana
- d) Offence complained of or proved : Sec. 33 Delhi Excise Act
- e) Plea of the accused : Pleded not guilty
- f) Final order : **Acquitted**
- g) Date of such order : 03.09.2020
- h) Brief reasons for the just decision of the case:

It is distinctly stated, the facts of the prosecution case are that on 5 November 2017 while ASI Virender Kumar along with Constable Amit was returning after attending a PCR Call/DD Entry No. 24-A, he saw a man carrying a *katta* on his head. ASI Virender Kumar checked this *katta*. On checking, it was found containing two cartons of illicit liquor. Thereafter, he seized the liquor after separating the sample bottles vide *Ex.PW1/A* and prepared the *rukka/Ex.PW1/B*. On the basis whereof present FIR was registered against the accused *Ram Niwas* at police station *Mundka*. After registration of the FIR, investigation was marked to Head Constable *Surender Singh*. Head Constable *Suredner Singh* went to the spot and arrested the accused vide *Ex.PW2/A* and completed other formalities.

After completion of the investigation, charge-sheet under section 33 of the Act was filed before the court. Consequently, accused was summoned to face the trial. On his appearance, in the Court, the copies of documents, relied upon by the prosecution, were supplied to the accused as per norms.

Thereafter, charge under section 33 of the Act was framed against the accused to which he pleaded not guilty and claimed trial.

With a view to connect the accused with the crime, the prosecution has examined as many as seven witnesses.

PW1/ASI Virender Kumar was the complainant as well as the 1st IO of the case.

PW2/Constable Amit had accompanied the 1st IO during investigation.

PW3/Head Constable Vikarm was the 3rd IO of the case. After completion of the investigation, he had filed the *challan* in the court.

4/SI Ravidner was the Duty Officer, who had recorded the FIR Ex.PW4/B.
PW5/Constable Ramesh had accompanied the 2nd IO during investigation.
PW6/Head Constable Pradeep was the MHC (M). He has proved the relevant entries made in Register No 19 regarding deposition of the case property in the Malkhana.

PW7/Head Constable Surender was the 2nd IO of the case.

During the course of trial, accused admitted the report of Deputy Chemical Examiner under section 294 of the Code of Criminal Procedure, 1973 (herein after referred to as the Code).

Thereafter, PE was closed and statement of accused under section 313 of the Code was recorded to afford him an opportunity to explain the incriminating circumstances appearing against him in evidence. He denied the allegations and pleaded false implication.

I have heard the rival submissions of the learned APP for State and learned defence counsel and perused the material on record very carefully.

Arguments

It was argued on behalf of the State that prosecution has proved that accused was found in possession of liquor without any licence. He submitted that in view of section 52 of the Act, onus lies on the accused to rebut the presumption but he failed to rebut the presumption. He therefore, prayed that the accused may be convicted of the charge leveled against him.

Per contra, it was argued on behalf of the accused that a false case has been foisted against the accused and nothing was recovered from his possession. He submitted that as per the version of the prosecution, the complainant, who was an Assistant Sub-Inspector, along with a Constable was returning after attending a DD Entry No. 24-A when he apprehended the accused with illicit liquor, however, neither the departure entry nor the DD Entry No. 24-A was proved by the prosecution.

He further submitted that all the prosecution witnesses are interested witnesses and there is no independent corroboration to their statements.

In view of the above, he prayed that accused may be acquitted of the charge leveled against him.

Decision and brief reasons for the same

All persons are presumed to be innocent and no person can be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that a person has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial. The law does not require an accused to prove his innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the accused, unless the court is satisfied beyond a reasonable doubt of the accused's guilt after a careful and impartial consideration of all the evidence in the case.

In other words, the prosecution has the burden of proving the accused guilty and it must do so by proving each and every element of the offense beyond a reasonable doubt, and if it fails to do so, court must acquit the accused.



Now let us examine the case in hand.

Accused is charged for the offence punishable under section 33 of the Act. Section 33 of the Act provides punishment for unlawful import, export, transport, possession, sale etc of any intoxicant. It reads as under:-

Section 33 - Penalty for unlawful import, export, transport, manufacture, possession, sale, etc. Whoever, in contravention of provision of this Act or of any rule or order made or notification issued or of any licence, permit or pass, granted under this Act-

(a) manufactures, imports, exports, transports or removes any intoxicant;

(b) constructs or work; any manufactory or warehouse;

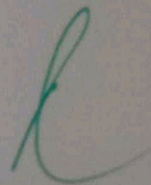
(c) bottles any liquor or purposes of sale;

(d) uses, keeps or has in his possession any material, still, utensil, implement or apparatus, whatsoever, for the purpose of manufacturing any intoxicant other than today or tan;

(e) possesses any material or film either with or without the Government logo or logo of any State or wrapper or any other thing in which liquor can be packed or any apparatus or implement or machine for the purpose of packing any liquor;

(f) sells any intoxicant, collects, possesses or buys any intoxicant beyond the prescribed quantity, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees.

It was argued on behalf of the State that since the accused was found in possession of illicit liquor without any licence, the burden rests on him to dispel the statutory presumption raised under section 52 of the Act.



Per contra, it was argued on behalf of the accused that "presumption" can be invoked against the accused only if the prosecution successfully proves the "recovery" beyond reasonable doubt.

Section 52 of the Act provides for presumption as to commission of offence in certain cases. It reads as under:-

*52. Presumption as to commission of offence in certain cases.
- (1) In prosecution under section 33, 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.*

From a bare reading of section 52 of the Act, it is evident that presumption under section 52 could be drawn only if the factum of recovery is proved beyond reasonable doubt.

Now let us see whether the recovery of illicit liquor is proved by the prosecution beyond a reasonable doubt and whether the presumption of offence alleged to have been committed by the accused would arise in this case.

As per prosecution, police officials were returning after attending a DD entry when they apprehended the accused with illicit liquor.

At this stage, it would be advantageous to refer to clause (c) of Rule 22.49 Chapter 22 Punjab Police Rules, as applicable to NCT of Delhi, which reads as under:-

(c) The hour of arrival and departure on duty at or from a police station of all enrolled police officers of whatever rank, whether posted at the police station or elsewhere, with a

statement of the nature of their duty. This entry shall be made immediately on arrival or prior to the departure of the officer concerned and shall be attested by the latter personally by signature or seal.

From the reading of the above mentioned rule, it is evident that all the police officials irrespective of their rank are bound to record their arrival and departure entry at the time of leaving their office.

The Hon'ble Delhi High Court while dealing with a similar situation in the case of Rattan Lal vs. State 32 (1987) DLT 1=1987 (2) Crimes 29 observed as under:

"If the investigating agency deliberately ignores to comply with the provisions of the Act, the courts will have to approach, their action with reservations. The matter has to be viewed with suspicion if the provisions of law are not strictly complied with and the least that can be said is that it is so done with an oblique motive."

In the present case, though both the recovery witnesses have testified that they were returning after attending a DD Entry when they apprehended the accused with illicit liquor. However, no such DD entry is proved by the prosecution to establish that they were actually present in the area at the relevant time in connection with above mentioned DD Entry.

In view of the above, I am of the considered view that the failure by the prosecution to bring on record the DD entries concerning the departure of the police official duty casts a shadow of doubt on the genuineness of prosecution version regarding recovery of illicit liquor from the possession of the accused.

Further, no independent witness was examined by the prosecution despite availability.

It is settled proposition of law that when independent public persons are available at the spot and they are not joined in the investigation by the investigating agency then unless and until any reasonable and plausible explanation comes from the prosecution as to why the independent public person was not joined, the case of prosecution should be seen with reasonable circumspection as it would be unsafe to believe the story of the prosecution in absence of the independent public witnesses.

In Ritesh Chakarvati vs. State 2006(4) RCR (Criminal) 480(SC), no effort was made to join an independent witness despite availability. The names of the persons from the public, who were present and asked to join the investigation, were not recorded in any document. Under these circumstances, it was held by the Hon'ble Supreme Court of India that the case of the prosecution was doubtful and ultimately, the accused was acquitted.

The principle of law, laid down in *Ritesh Chakarvarti's case (supra)* is fully applicable to the instant case.

PW1/ASI Virender Kumar testified that he asked 4-5 persons to join the proceedings but they refused. Similar was the testimony of PW2/Constable Amit. When IO was questioned if any written notice was served upon those public persons, he answered in negative.

From the testimony of PW1 and PW2, it is evident that public persons were available at the alleged spot of recovery. Yet no witness from the public was associated with the recovery. Thus, failure to join witnesses from the public

espécially when they are available casts shadow of doubt on the prosecution case regarding recovery of illicit liquor from the possession of accused.

Further, as per the prosecution version, seizure memo of the liquor was prepared at the spot prior to registration of the FIR. However, this document bears the number of the FIR. However, the prosecution has failed to explanation as to under what circumstances number of the FIR has appeared on the top of the seizure memo which was allegedly prepared before sending the *rukka* i.e. before registration of the FIR. Reliance may be placed on a judgment passed by the Hon'ble High Court of Delhi in the case of **Pawan Kumar vs. the Delhi Administration 1989 Crl. L.J 127** wherein it was held as under:

"In the normal circumstances, the FIR number should not find mention in the recovery memo or the sketch plan which had come into existence before the registration of the case. However, from the perusal of the recovery memo, I find that the FIR is mentioned whereas the sketch plan does not show the number of the FIR. It is not explained as to how and under what circumstances the recovery memo came to bear the FIR number which had already come into existence before the registration of the case. These are few of the circumstances which create a doubt, in my mind, about the genuineness of the weapon of offence alleged to have been recovered from the accused."

It was also contended on behalf of the accused that the vital aspects of the link evidence concerning the seal movement was not established by the prosecution.

The evidence of PW 1 indicates that the seal after use was handed over to Constable Amit. However, when the IO was questioned by the learned defence counsel if he had prepared any handing over memo of the seal, he replied in negative. In view of the above discussion, I find force in the submission of the

learned defence counsel that the seal which was allegedly used by PW1 was at his disposal and was used subsequently to fabricate evidence against the accused.

Ex. PW6/A also creates doubt about the genuineness of the prosecution case. As per Ex. PW6/A, case property was deposited in the *Malkhana* by ASI *Virender*. Contrary to this, PW1/ASI *Virender* testified that after registration of the FIR, investigation was marked to Head Constable *Surender*. He further stated that he handed over the custody of case property and the accused to Head Constable *Surender*. How and under what circumstance, ASI *Virender* deposited the case property in the *Malkhana* was not explained by the prosecution.

It was also contended by the learned defence counsel that the case property i.e. the liquor bottles were never produced before the court for the purpose of identification. In view of the same, he prayed that an adverse inference should be drawn from the failure to produce the case property which was allegedly recovered from the possession of the accused.

In reply, it is submitted by the learned APP for the State that case property could not be produced as the same has already been destroyed. He drew the attention of the court towards the order Mark X1 vide which the case property has been destroyed.

As per prosecution, the case property was confiscated by the Assistant Commissioner, Excise vide Mark X1 wherein it is stated that case property be destroyed as per Rule 132(2) of Chapter -IX of Delhi Excise Rules, 2010. Relevant part reads as under:

".....be destroyed as per Rule 132(2) of Chapter -IX of Delhi Excise Rules, 2010. However, the samples of confiscated liquor are required to be preserved by the Investigating Officer and the SHO of the police station to meet the evidentiary requirements as provided under section 60 of the Delhi Excise Act, 2009..."

Section 60 of the Act provides for destruction of the intoxicants. It reads as under:-

60. Order of confiscation and destruction not to interfere with other punishment (1) The order of confiscation under section 58 shall not prevent imposition of any other punishment to which a person is liable under this Act.

(2) Notwithstanding anything contained in any other law for the time being in force, the disposal of confiscated goods in the manner, thereby non-production of case property before the trial court, shall not affect the conviction for an offence under this Act:

PROVIDED that the samples of the intoxicants and the photographs of the confiscated property may be preserved to meet the evidentiary requirements.

The Hon'ble High Court of Delhi in the case of Manjeet Singh vs. State while dealing with liquor and narcotic drugs, held as under

"74. Prompt action should be taken in disposal of the liquor bottles/pouches and narcotic drugs after preparing a detailed panchnama containing an inventory; retaining a sample thereof; taking photographs of the entire lot of seized bottles/pouches/narcotic drugs and security bond. The sample shall be kept properly after sending it to the chemical analyst, if required.

75. The sample along with the photographs of the case property and the panchnama would be sufficient evidence at the stage of trial."

In the case in hand, neither the photographs of the entire lot of seized bottles nor the inventory as directed by the Hon'ble High Court of Delhi in the case of *Manjeet Singh (supra)* is placed on record. Though the MHC (M) had produced one photograph along with the order Mark "X" during evidence, however, nothing can be deciphered from the photograph, which is of a *katta*. Even the seal of IO is not legible.

Further, as per prosecution witnesses, 100 quarter bottles were recovered from the possession of accused. The bottles were seized after taking out two quarter bottles as sample. The sample bottles and the *katta* containing remaining bottles were sealed with the seal of IO i.e "VK". However, the sample bottle which was produced during evidence in the court was found sealed with the seal of "PK". How and when the seal got changed is a mystery shrouded with doubts which has not been explained by the prosecution.

Further, as per prosecution, 100 quarter bottles were recovered from the possession of accused. Two bottles were taken out as "sample bottles". As per PW6/MHC(M), "sample bottle" was sent to Excise Control Laboratory for examination vide RC No. 51/21/2018.

As per the report of Chemical Examiner/Ex. A-1, two samples bottles were received in the office.

Per contra, as per Mark "X", 98 Nips of *Rasbhara Masaledar Desi Srab* were directed to be destroyed vide order Mark "X".

In other words, two (2) bottles were consumed by the Excise Control Laboratory, ninety eight (98) quarter bottles were directed to be destroyed by Assistant

Commissioner, Excise while one quarter bottle was produced before the court during evidence. If we add all these bottles, then the total comes to 101 (2+98+1) whereas recovered bottles were 100 only.

All these facts taken together create doubt on the entire warp and woof of the prosecution story regarding recovery of illicit liquor from the possession of accused.

Result

On overall appreciation of the oral and documentary evidence on record, I am of the view that the recovery of alleged liquor from the possession of accused is not proved beyond reasonable doubt; therefore, there is no presumption under section 52 of the Act.

Consequently, accused **RAM NIWAS** is **ACQUITTED** of the crime charged.

File be consigned to record room after due compliance.

Announced in open
Court on 03rd day of September, 2020

(Babita Puniya)
MM-06, West District,
Tis Hazari Courts/ Delhi/03.09.2020

This judgment contains 13 pages and each page bears my signature.

(Babita Puniya)
MM-06, West District,
Tis Hazari Courts/ Delhi/03.09.2020