



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 400 of 2011
Reserved on: 28.08.2025
Date of Decision: 13.10.2025

State of H.P.	... Appellant
Versus	
Vinod Kumar @ Ghungaru	...Respondent

Coram
Hon’ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?¹ Yes

For the Appellant/State;	Mr Jitender K. Sharma, Additional Advocate General.
For the Respondent :	Mr Naresh Kumar Sharma, Advocate.

Rakesh Kainthla, Judge

The appellant has filed the present appeal against the judgment dated 16.06.2011 passed by learned Judicial Magistrate First Class, Court No. 2, Ghumarwin, District Bilaspur, H.P. (learned Trial Court) vide which respondent (accused before the learned Trial Court) was 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). (*Parties shall hereinafter be referred to*

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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 appeal are that the police presented a challan against the accused before the learned Trial Court 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 ASI Balak Ram (PW-7), HC Rakesh Kumar, and HC Rajender Singh (PW-3) were present near the State Bank of India (SBI) on 16.12.2008. They received a secret information at about 3:30 p.m. that Vinod Kumar @ Ghungaru (present accused) was selling country liquor from his home without any permit, and in case of search of his house, a huge quantity of liquor could be recovered. The police associated Ram Prakash (PW-4) and Muni Lal (PW-1), went to the house of the accused, searched it and recovered seven boxes of (Ext.P-78 to Ext.P-83) bearing the words 'Lal Killa', each box containing twelve bottles (Ext. P-1 to Ext.P-77) of country liquor. The accused could not produce any permit for possessing the country liquor. The police took out one bottle as a sample from each box, sealed each sample bottle with seal 'B', obtained a seal impression (Ext.PW-7/C) on a separate piece of cloth and handed

over the seal to Ram Prakash after its use. The police put the boxes in the gunny bags (Ext.P-84 to Ext. P-86) and seized the liquor vide seizure memo (Ext.PW-1/A). Rukka (Ext.PW-7/A) was prepared and was sent to the Police Station, where F.I.R. (Ext.PW-5/A) was registered. SI Balak Ram (PW-7) conducted the investigation. He prepared the site plan (Ext.PW-7/D) and recorded the statements of prosecution witnesses as per their version. He deposited the case property with HC Jogesh Kumar (PW-5), who made an entry in the Malkhana Register at Sl. No. 334 (Ext.PW-5/B), deposited the case property in the Malkhana and sent the sample bottles to CTL Kandaghat on 17.12.2008 through Constable Ravi Kumar (PW-2) vide RC (Ext.PW-5/C). Constable Ravi Kumar (PW-2) deposited all the bottles at CTL, Kandghat and handed over the receipt to MHC on his return. The result of the analysis (Ext. PX and Ext.PY) were issued stating that samples of country liquor contained 48.4 % proof of alcohol each. After completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. Learned Trial Court framed the charges 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.), to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined seven witnesses to prove its case. Muni Lal (PW-1) and Ram Prakash (PW-4) did not support the prosecution's case. Constable Ravi Kumar (PW-2) carried the case property to CTL Kandaghat, District Solan, H.P. HC Rajidner Singh (PW-3) is the official witness to recovery. HC Jogesh Kumar (PW-5) was working as MHC with whom the case property was deposited. HHC Piar Singh (PW-6) proved the entry in the daily diary. SI Balak Ram (PW-7) investigated the case.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. He stated that the police officials used to demand a free Cable connection from him. He did not produce any evidence in his defence.

6. Learned Trial Court held that the statements of the official witnesses contradicted each other on material aspects. Independent witnesses did not support the prosecution's version. Requirements of Section 100 of Cr.P.C. were not fulfilled. Therefore, the accused was acquitted of the charged offence.

7. Being aggrieved by the judgment passed by the learned Trial Court, the State has preferred the present appeal, asserting that the learned Trial Court discarded the testimonies of official witnesses for untenable reasons. The independent witnesses were Pardhan and Ward Panch of the Gram Panchayat. The accused was Up-Pardhan, and the independent witnesses recanted their testimonies to help the accused. Learned Trial Court doubted the prosecution's case because the Investigating Officer had not given his personal search to any independent person, which is no reason for discarding his testimony. There was no proof of the enmity between the accused and the police officials. The Investigating Officer denied in his cross-examination that he used to demand a free cable connection from the accused, and the plea taken by the accused was not proved. Therefore, it was prayed that the appeal be allowed and the judgment of the learned Trial Court be set aside.

8. I have heard Mr Jitender K. Sharma, learned Additional Advocate General, for the appellant/State and Mr Naresh Kumar Sharma, learned counsel for the respondent/accused.

9. Mr Jitender K. Sharma, learned Additional Advocate General, for the appellant/State, submitted that the learned Trial

Court erred in acquitting the accused. The official witnesses proved the prosecution's case regarding the recovery of liquor from the house of the accused. The learned Trial Court wrongly discarded the statement of official witnesses. Two independent witnesses were associated and the learned Trial Court erred in holding that Section 100 of the CrPC was not complied with. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Naresh Kuamr Sharma, learned counsel for the respondent/accused, submitted that the learned Trial Court had taken a reasonable view while acquitting the accused. The police had failed to comply with the various requirements of the Punjab Excise Act and Code of Criminal Procedure, which makes the whole prosecution case suspect. Hence, he prayed that the present appeal be dismissed. He relied upon the judgment of this Court in *State of H.P. Vs. Joginder Singh & another, Criminal Appeal No. 92 of 2011, decided on 10.01.2024* in support of his submission.

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

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Surendra Singh v. State of Uttarakhand*, 2025 SCC OnLine SC 176: (2025) 5 SCC 433 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and reached a conclusion which no reasonable person could have reached. It was observed at page 440:

“23. Recently, in the case of *Babu Sahebagouda Rudragoudar v. State of Karnataka* 2024 SCC Online SC 4035, a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:

“38. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging the acquittal of the accused recorded by the trial court.

39. This Court in *Rajesh Prasad v. State of Bihar* (2022) 3 SCC 471: (2022) 2 SCC (Cri) 31 encapsulated the legal position covering the field after considering various earlier judgments and held as below: (SCC pp. 482-83, para 29)

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (*Chandrappa v. State of*

Karnataka, (2007) 4 SCC 415:(2007) 2 SCC (Cri) 325),
SCC p. 432, para 42)

‘42. From the above decisions, in our considered view, the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973, puts no limitation, restriction or condition on the exercise of such power and an appellate court, on the evidence before it, may reach its own conclusion, both on questions of fact and law.

(3) Various expressions, such as “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc., are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with an acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in the case of acquittal, there is a double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused, having secured his acquittal, the presumption of his innocence is

further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

40. Further, in *H.D. Sundarav.State of Karnataka*, (2023) 9 SCC 581: (2023) 3 SCC (Cri) 748, this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows: (SCC p. 584, para 8)

8.....8.1. The acquittal of the accused further strengthens the presumption of innocence.

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity.

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

13. This position was reiterated in *State of M.P. v. Ramveer Singh*, 2025 SCC OnLine SC 1743, wherein it was observed:

21. We may note that the present appeal is one against acquittal. Law is well-settled by a plethora of judgments of this Court that, in an appeal against acquittal, unless the finding of acquittal is perverse on the face of the record and the only possible view based on the evidence is consistent with the guilt of the accused, only in such an event, should the appellate Court interfere with a judgment of acquittal. Where two views are possible i.e., one consistent with the acquittal and the other holding the accused guilty, the appellate Court should refuse to interfere with the judgment of acquittal. Reference in this regard may be made to the judgments of this Court in the cases of *Babu Sahebagouda Rudragoudar v. State of Karnataka* (2024) 8 SCC 149; *H.D. Sundara v. State of Karnataka* (2023) 9 SCC 581 and *Rajesh Prasad v. State of Bihar* (2022) 3 SCC 471.

14. The present appeal is required to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. S.I. Balak Ram (PW-7) stated that he received information that the accused was selling liquor from his home, and the liquor could be recovered by searching his house. The information was credible, so he involved independent witnesses and proceeded to the accused's residence. He did not state that he had reduced the information into writing and sent it to the nearest Magistrate as required under Section 165 of Cr.P.C.

16. Section 46(2) of the Punjab Excise Act (as applicable to the State of H.P.) provides that an officer empowered under the Act will exercise the same powers in respect of such investigation as an officer in-charge of a Police Station may exercise under Chapter XIV of Cr.P.C. Section 50 of the Punjab Excise Act provides that provisions of the Code of Criminal Procedure 1898 relating to arrest, detention and custody, searches, summons, warrant of arrest, search warrant, and investigation shall apply to all actions taken under the Act. Therefore, SI Balak Ram (PW-7) was required to comply with the requirements of Section 165 of the CrPC before searching the house of the accused.

17. It was laid down by the Hon'ble Supreme Court in *ITC Ltd. v. State of Karnataka, 2025 SCC OnLine SC 1971*, that every search must be preceded by a warrant, but if it is not possible to do so, the search can be conducted by complying with the requirements of Section 165 of Cr.P.C. It was observed:-

“17. Section 165Cr. P.C. deals with circumstances and prerequisites for searches without a warrant. As a general rule, every search must be preceded by a warrant, and reasons to believe must be recorded. Section 165 applies where, due to exigent circumstances, it is not possible to obtain a search warrant. In such cases, the officer may, after recording his reasons in writing and specifying, as far as possible, the thing for which the search is to be made, conduct or cause a search of the place. Section 165(4) provides that the general provisions relating to searches contained in Section 100 also apply to searches under Section 165. It is therefore clear that even under Section 165, the existence of reasons to believe that an imminent search is necessary must be recorded, with as much detail as possible. The mandate of Section 100(4) must also be satisfied even in searches under Section 165.

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19.2. In every search conducted under a special enactment without a warrant, the requirement of recording reasons to believe is mandatory. The reasons necessitating the search must be relevant and must reflect application of mind based on some information – either from a third party or personal knowledge – and cannot be based on mere presumption or extraneous considerations. Such reasons cannot rest on mere suspicion or subjective satisfaction; something more substantial is required for a prudent person to conclude that a search and/or seizure is necessary.”

18. In the present case, SI Balak Ram (PW-7) did not comply with the requirements of Section 165 of CrPC, which would vitiate the search and consequent recovery.

19. Muni Lal (PW-1) stated that he found liquor outside the house of the accused. No recovery was effected in his presence. The police seized the liquor, and he put his signature. He was permitted to be cross-examined. He denied that police searched the house of the accused in his presence and in the presence of Ram Prakash and recovered seven boxes of country liquor. He denied his previous statement recorded by the police. His statement does not prove the prosecution's case regarding the search of the house of the accused and the recovery of the liquor.

20. Ram Prakash (PW-4) stated that he remained Pradhan of Gram Panchayat Munohar. The liquor was kept outside the home, and no recovery was effected in his presence. He was permitted to be cross-examined. He denied that police searched the house of the accused in his presence and in the presence of Muni Lal (PW-1). He denied that the police recovered 84 bottles of country liquor and retained one bottle each from each box as a sample. He denied that the bottles were seized on the spot. He was contradicted with reference to his previous statement, and

he denied the same. He has also not supported the prosecution's case regarding the recovery of the liquor from the house of the accused.

20. It was submitted that the witnesses admitted their signatures on the memo, and this establishes the prosecution's case. This submission will not help the prosecution. The prosecution's case cannot be proved by the mere admission of the signatures of the witnesses, and the witnesses have to prove the contents of the memo on oath. Since the witnesses have not supported the prosecution's case regarding the recovery of the liquor, hence, their signatures cannot be used to conclude that the recovery was effected from the house of the accused.

21. Once the independent witnesses had not supported the prosecution's case, the testimonies of police officials were required to be seen with due care and caution and the learned Trial Court was justified in doing so.

22. S.I. Balam Ram (PW-7) admitted in his cross-examination that bottles were half-filled and empty. No F.I.R. number was put on the bottle. It is the specific case of the prosecution that the police had recovered filled bottles. There is no explanation for producing the half-filled and empty bottles

before the Court. SI Balak Ram (PW-7) admitted in his cross-examination that the case property was not even sealed; therefore, there is reasonable doubt regarding the identification of the case property in the Court.

23. It was submitted in the memorandum of appeal that the bottles were made of plastic, and they leaked during transportation from the Police Malkhana during the two years of trial; however, there is no evidence of this fact. No person deposed that the bottles leaked during transportation to the Court. HC Jogesh Kumar (PW-5) stated that the case property remained intact till it was in his custody. His testimony does not support the leakage of the bottles during transportation. No entry was recorded in the daily diary about the leakage of the bottles. Therefore, the submission that the bottles leaked in the process of transportation is without any basis and cannot be accepted. It was laid down by this Court in *Amandeep Singh & Ors. Vs. State of HP 2010 (3) Shim. LC 39*, that when the case property was not produced before the Court, the conviction of the accused cannot be recorded. It was observed:-

9...So far as the statement of PW1 Chaman Lal is concerned, no sample of liquor or any seal of the seized liquor has been

produced and proved in Court. The bottles from which the samples were taken have also not been proved in Court. Learned trial Court, as also the Appellate Court, had presumed as a matter of fact that what the witnesses had stated was the correct state of affairs without considering that facts were to be proved from documents which admittedly existed but were not produced in Court. There is no presumption in law that oral evidence can override documentary proof. The existence of a seal can be proved by its production. The Court cannot presume that the sample was kept in safe custody, more especially when such a fact is established by a written document, namely register (s) and certificate in Register No. 21, which is not produced. What the prosecution tried to prove remains unclear. Merely saying that liquor was seized is insufficient without establishing its quantity and safekeeping.”

24. While dealing with the case of non-production of case property in forest case, It was laid down by the Hon’ble Supreme Court in *Pawan Kumar v. State of H.P.*, (2019) 4 SCC 182: (2019) 2 SCC (Cri) 39: 2019 SCC OnLine SC 359 that when the seized wood and the vehicle were not produced, and only one sample was produced, the accused could not have been convicted of the commission of offences punishable under Section 379 of the IPC and Section 42 of the Forest Act. It was observed at page 183: -

“4. We have heard the learned counsel for the respondent in opposition to the appeal and considered the nature of the evidence available. Non-production of the seized wood and the vehicle, the primary evidence of the offence, renders the prosecution's case fragile and unsustainable. Mere production of the seizure memo does not tantamount to the production of the seized woods and the lorry. Unless the

seized wood was produced, mere production of a sample, and there is no material in support that the sample was out of the same 22 logs, we are unable to sustain the conviction of the appellants.”

25. Therefore, in these circumstances, the learned Trial Court was justified in doubting the prosecution’s case due to the non-production of the case property.

26. Thus, the learned Trial Court had taken a reasonable view while acquitting the accused, and this Court will not interfere with the reasonable view of the learned Trial Court, even if another view is possible.

27. In view of the above, the present appeal fails, and the same is dismissed, so are the pending application(s), if any.

28. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court which shall be effective for six months with a stipulation that in the event of a Special Leave Petition being filed against this judgment or on grant of the leave, the respondent/accused on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

29. Record of the learned Trial Court be sent back forthwith,
along with a copy of this judgment.

(Rakesh Kainthla)
Judge

13th October, 2025
(ravinder)

High Court of HP