

JUDGMENT

HAZIQUL KHAIRI, CHIEF JUSTICE.- In this revision petition, the petitioner Haroon Masih has called in question the judgment dated 31-5-2006 passed by learned Additional Sessions Judge, Gujar Khan whereby the conviction and sentence awarded to the petitioner by the learned Judicial Magistrate, Gujar Khan vide judgment dated 26-4-2006 was upheld. He was convicted under Article 4 of the Prohibition(Enforcement of Hadd) Order, 1979 and sentenced to undergo one year R.I. and fine of Rs.5000/-, in default to suffer two months S.I.

2. Brief facts of the case are that on 22-1-2006, M. Akram, SI of Police Station, Gujar Khan was going alongwith other police officials mentioned in complaint towards Christian colony and when he reached near phatoonwali pully in Mohallah Babu Ghulab then a person (accused Haroon Masih) was having two bags of plastic in his both hands seeing the police party tried to run away but was apprehended and from the bags in his possession about 33 bottles of wine of different kind were recovered. Some of the wine was separated from each bottle and two sample bottles were prepared and the present case was registered against the accused.

3. The grounds against judgment dated 26-4-2006 passed by learned Judicial Magistrate and judgment dated 31-5-2006 passed by learned Additional Sessions Judge were as under:-

- i) That impugned judgment of the Judicial Magistrate section 30 dated 26-4-2006 and the impugned judgment

passed by learned Additional Sessions Judge are against the facts, the law and the same is liable to be set aside.

- ii) That both the lower courts have mis-read the evidence and decided the case particularly against the petitioner/accused.
- iii) That there is violation of section 103 Cr.P.C. No private witness associated with the recovery proceedings. The recovery is fake and doubtful, the prosecution evidence is based on material contradictions but both of the lower courts have not properly applied their mind while deciding the case of the petitioner. The petitioner is bearer of valid Permit but unfortunately the same could not be placed in defence by the petitioner and his counsel.
- iv) That the petitioner is innocent, if the revision petition is not accepted, he shall meet an irreparable loss.
- v) That the Appellate Court has not applied its mind properly while disposing appeal of the petitioner/accused whereas in the similar matter of one of the accused Majeed Masih in case FIR No.31 dated 22-1-2006 of P.S. Gujar Khan, the appellate court has accepted the appeal and acquitted the said accused by giving the benefit of violation of Section 103 Cr.P.C. whereas in the case of the petitioner, the violation of Section 103 Cr.P.C. has not been similarly treated.

4. The Prohibition(Enforcement of Hadd) Order, 1979 envisages interalia under article 4 thereof prohibition in owning, possessing or

keeping in custody intoxicants and provides punishment with imprisonment of either description for a term which may extend to two years or with whipping not exceeding thirty stripes and shall also be liable to fine.

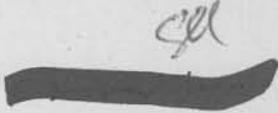
Provided that nothing contained in this Article shall apply to a non-Muslim foreigner or to a non-Muslim citizen of Pakistan who keeps in his custody at or about the time of ceremony prescribed by his religion a reasonable quantity of intoxicating liquor for the purpose of using it as part of such ceremony.

5. The petitioner is a non-Muslim and is entitled under law to purchase, possess, transport or consume intoxicating liquor provided he holds a valid permit under law. As per the impugned judgment of Judicial Magistrate, 33 bottles of confiscated liquor were not for sale nor were transported to some destination but these were found in possession of the appellant, who tried to run away on seeing the police party. It is also an admitted position that the appellant was arrested at a public place and no one from public was associated in recovery and arrest of the appellant as contemplated under section 103 Cr.P.C. Although the appellant did not put up his defence nor gave any statement under section 342(2) Cr.P.C., it is a matter of record that the petitioner is a non-Muslim and under law and rules made thereunder he was entitled to keep and consume liquor subject to obtaining a valid permit.

6. It was contended by learned counsel for the petitioner Raja Muhammad Hameed, Advocate that a valid permit was issued to the petitioner for purchase, transport or consumption as may be allowed therein under Punjab Prohibition(Enforcement of Hadd) Rules, 1979.

He produced with the permission of the Court and the consent of learned counsel for the State Mr. Shahid Mahmood Abbasi, DPG a Photostat copy of Permit issued to him by the District Excise & Taxation Officer, Rawalpindi in which the appellant was allowed six bottles of liquor per month. But he was in possession of liquor for more than the allocated quota.

7. Learned counsel for the petitioner states that the petitioner has undergone about five months of imprisonment. In view of foregoing, a case of mitigating circumstance is established without any doubt in favour of the petitioner. I, therefore, while upholding the conviction of the petitioner consider the sentence already undergone by him as sufficient sentence. He is on bail, accordingly his bail bond is hereby cancelled and sureties discharged. He is free to go anywhere.


JUSTICE HAZIQUL KHAIRI
Chief Justice

Announced on 9/5/08
at Karachi
M.Khalil

Appointed for reporting  