

FIR No.528/19  
PS Hari Nagar

03.10.2020

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.

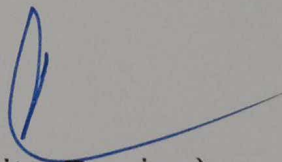
**Ld. PO has gone to Mandoli Jail for remand work.**

Present : Ld. Substitute for the State through VC.

Accused not produced from JC.

**Court is convened through VC (CISCO Webex).**

Jail Superintendent is directed to produce the accused on 09.10.2020 through VC failing which adverse order shall be passed against him.

  
(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

FIR No. 192/18  
PS Hari Nagar

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

Present : Ld. Substitute for the State through VC.

Accused Naveen Dahiya, Mandeep Nagar, and Nakul produced from jail (on bail in this case).

Rest accused persons are absent.

**Court is convened through VC (CISCO Webex).**

File perused.

Put up for further proceedings on 10.11.2020.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

FIR No. 345/19  
PS MUNDKA

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

Present : Ld. Substitute for the State through VC.

Accused Upender produced from JC.

Accused Anand not produced from J.C.

**Court is convened through VC (CISCO Webex).**

File perused.

Jail Superintendent is directed to produce the accused Anand on 09.10.2020 through VC.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

FIR No. 41409/17  
PS Hari Nagar

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

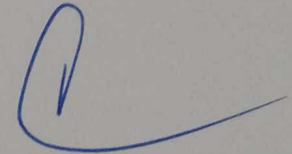
Present : Ld. Substitute for the State through VC.

Accused persons not produced from JC.

**Court is convened through VC (CISCO Webex).**

File perused.

Jail Superintendent is directed to produce the accused on 17.10.2020 through VC failing which adverse order shall be passed against him.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

FIR No. 601/18  
PS Hari Nagar

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

Present : Ld. Substitute for the State through VC.

Accused Lakshay not produced from JC (on police bail in this case).

Accused Jitender S/o Sh. Jagdish not produced from JC.

None for accused Meharban and Jitender @ Gogi.

**Court is convened through VC (CISCO Webex).**

File perused.

Perusal of file reveals that matter is at the stage of PE. Jail Superintendent is directed to produce the accused Lakshay and Jitender S/o Sh. Jagdish on 17.10.2020 through VC failing which adverse order shall be passed against him.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

C.C. No. 723/17  
PS Hari Nagar

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

Present : None for the complainant.

**Court is convened through VC (CISCO Webex).**

File perused.

Perusal of file reveals that matter is at the stage of PSE, therefore, put up for the same on 08.02.2021 in view of the above-mentioned office order issued by the Hon'ble High Court of Delhi.



(Babita Puniya)

MM-06/W/Delhi

03.10.2020

FIR No. 337/16  
PS Hari Nagar

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

Present : Ld. Substitute for the State through VC.

None for accused.

**Court is convened through VC (CISCO Webex).**

File is pending before the Ld. Sessions Court.

Put up for further proceedings on 08.02.2021.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

CC No. 1769/16  
PS MUNDKA

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

Present : None for complainant.

**Court is convened through VC (CISCO Webex).**

File perused.

Put up for arguments on summoning on 08.02.2021



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020



FIR No. 225/12  
PS Hari Nagar

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

Present : Ld. Substitute for the State through VC.

Sh. Yash Rawat Ld. Proxy counsel for accused.

**Court is convened through VC (CISCO Webex).**

File perused.

Perusal of file reveals that matter is at the stage of PE, therefore put up for the same on 08.02.2021 in view of the above-mentioned office order issued by the Hon'ble High Court of Delhi.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

FIR No. 168/17  
PS Hari Nagar

03.10.2020

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.

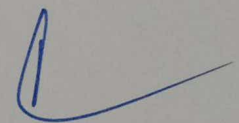
**Ld. PO has gone to Mandoli Jail for remand work.**

Present : Ld. Substitute for the State through VC.

**Court is convened through VC (CISCO Webex).**

File perused.

Put up for consideration on 08.02.2021.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

FIR No. 137/13  
PS MUNDKA

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

Present : Ld. Substitute for the State through VC.

None for accused Sonu.

**Court is convened through VC (CISCO Webex).**

File perused.

Perusal of file reveals that matter is at the stage of PE, therefore, put up for the same on 08.02.2021 in view of the above-mentioned office order issued by the Hon'ble High Court of Delhi.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

FIR No. 238/15  
PS MUNDKA

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

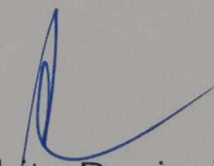
Present : Ld. Substitute for the State through VC.

None for accused.

**Court is convened through VC (CISCO Webex).**

File perused.

Perusal of file reveals that matter is at the stage of PE, therefore, put up for the same on 08.02.2021 in view of the above-mentioned office order issued by the Hon'ble High Court of Delhi.

  
(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

FIR No. 252/19  
PS MUNDKA

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

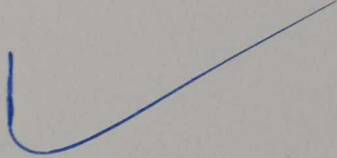
Present : Ld. Substitute for the State through VC.

None for accused.

**Court is convened through VC (CISCO Webex).**

File perused.

Put up for further proceedings on 08.02.2021.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

FIR No. 207/19  
PS Hari Nagar

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**


Present : Ld. Substitute for the State through VC.

Accused stated to be on court bail.

**Court is convened through VC (CISCO Webex).**

File perused.

Put up for the purpose fixed on 08.02.2021.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

C.C. No. 4245/16  
PS Hari Nagar

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

Present : None.

**Court is convened through VC (CISCO Webex).**

File perused.

Process not issued by the Ahlmad. He is warned to be careful in future.

Issue fresh process in terms of previous order on 26.10.2020.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

C.C. No. 2231/20  
PS Hari Nagar

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

Present : Ld. Counsel for the complainant through VC.

**Court is convened through VC (CISCO Webex).**

File perused.

Put up for the purpose fixed on 15.10.2020.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020



FIR No. 1040/14  
PS Hari Nagar

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

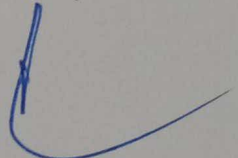
Present : Ld. Substitute for the State through VC.

Accused Sagar not produced from JC.

None for accused Sandeep Kalia.

**Court is convened through VC (CISCO Webex).**

Jail Superintendent is directed to produce the accused on 17.10.2020 through VC failing which adverse order shall be passed against him.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

FIR No. 349/19  
PS Hari Nagar

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**

Present : Ld. Substitute for the State through VC.

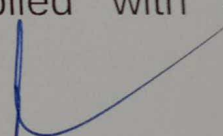
None for accused.

**Court is convened through VC (CISCO Webex).**

File perused.

Let order dated 20.02.2020 be complied with afresh for

08.02.2021.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

FIR No. 805/15  
PS Hari Nagar

03.10.2020

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.

**Ld. PO has gone to Mandoli Jail for remand work.**


Present : Ld. Substitute for the State through VC.

Accused Sagar not produced from JC.

None for accused Sandeep Kalia.

**Court is convened through VC (CISCO Webex).**

Jail Superintendent is directed to produce the accused on 17.10.2020 through VC failing which adverse order shall be passed against him.



(Babita Puniya)  
MM-06/W/Delhi  
03.10.2020

**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 : Pleaded not guilty
- f) Final order : **Acquitted**
- g) Date of such order : 03.09.2020
- h) Brief reasons for the just decision of the case:

Explicitly 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.

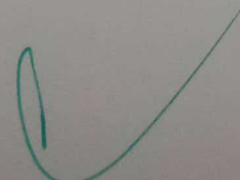
Thereafter, charge under section 33 of the Act was framed against the accused to which he pleaded not guilty and claimed trial.

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 1<sup>st</sup> IO of the case.

PW2/Constable *Amit* had accompanied the 1<sup>st</sup> IO during investigation.

PW3/Head Constable *Vikarm* was the 3<sup>rd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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.

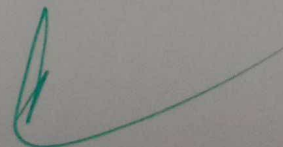
He further submitted that all the prosecution witnesses are interested witnesses and there is no independent corroboration to their statements.

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;*

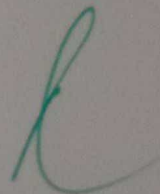
*(c) bottles any liquor or purposes of sale;*

*(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

especially 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 03<sup>rd</sup> 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