

Pawan Kumar vs State Of Hp on 14 October, 2026

2026:HHC:45119

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 4081 of 2013

Reserved on: 1.10.2026

Date of Decision: 14.10.2026.

Pawan Kumar

Versus

...Petitioner

State of HP

of

...Respondent

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

Yes.

For the Petitioners

: Mr Bimal Gupta, Senior
Advocate, with Ms Simran,
Advocate, for the petitioners.

For the Respondent/State

: Mr Pawan Kumar Nadda,
Additional Advocate General,

Rakesh Kainthla, Judge

The present revision petition is directed against the judgment dated 12.7.2013, passed by the learned Sessions Judge, Sirmaur District at Nahan (learned Appellate Court), vide which the judgment of conviction dated 20.12.2010 and order of sentence dated 23.12.2010, passed by the learned Judicial Magistrate 1st Class, Court No.1, Paonta Sahib (learned Trial Court), were upheld. (The parties shall hereinafter be referred to in 1 Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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2026:HHC:45119 the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present revision 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 Himachal Pradesh. It was asserted that ASI Tara Chand (PW-6), HC Ramesh Kumar (PW-

rt

1), Constable Sharad Kumar (PW-7), and HHG Kamal Dev were patrolling in a jungle on 28.4.2007. They saw the accused carrying a white bag on his right shoulder at about 8:15 AM. The police apprehended the accused, who identified himself as Pawan Kumar. The police opened the bag and found two rubber tubes of different sizes containing illicit liquor. 30 bottles were found in the large tube, and 20 bottles were found in the smaller tube. One sample bottle was taken out of each tube. The samples were sealed with seal 'H'. The tubes were tied, and each tube was also sealed with seal 'H'. Seal impression (Ext.PW-6/B) was taken on a separate piece of cloth, and the seal was handed over to HC Ramesh Kumar after its use. The tubes, plastic bag, and samples were seized vide memo (Ex.PW-1/A). A rukka (Ex.PW-

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2026:HHC:45119 6/A) was prepared and sent to the police station, where FIR (Ex.PW-5/A) was registered. ASI Tara Chand investigated the .

matter. He prepared the site plan (Ex. PW-6/C), recorded the statements of witnesses as per their version, arrested the accused, and brought the accused and the case property to the police station. He handed over the case property to ASI Raghubir of Singh (PW-3), who made an entry in the register of malkhana and deposited the case property in the malkhana. He handed it over the samples to Constable Anil Kumar (PW-4) on 3.5.2007 with a direction to carry them to CTL Kandaghat vide RC No. 15/7. Constable Anil Kumar deposited the samples at CTL Kandaghat and handed over the receipt to Raghubir Singh on his return. The report of analysis (Ext.PW-6/D) was issued stating that the samples of illicit liquor contained 38.2% proof alcohol each. The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of an offence punishable under ::: Downloaded on - 14/10/2026 21:47:29 :::CIS 4 2026:HHC:45119 [Section 61\(1\)\(a\)](#) of the Punjab Excise Act, as applicable to the State of Himachal Pradesh, to which he pleaded not guilty and .

claimed to be tried.

4. The prosecution examined seven witnesses to prove its case: HC Ramesh (PW-1) and Constable Sharad Kumar (PW-

7) witnessed the recoveries. HHC Rajinder Kumar (PW-2) proved of the daily diary entry. ASI Raghubir Singh (PW-3) was posted as an MHC with whom the case property was deposited. Constable rt Anil Kumar (PW-4) carried the samples to CTL Kandaghat.

Inspector Gurbax Singh (PW-5) proved the FIR. ASI Tara Chand (PW-6) investigated the matter.

5. The accused, in his statement recorded under [Section 313](#) of the Code of Criminal Procedure ([CrPC](#)), denied the prosecution case in its entirety. He claimed that he was innocent.

He did not produce any evidence in his defence.

6. The learned Trial Court held that the statements of official witnesses corroborated each other. The incident had taken place in a lonely place, and it was not possible to join any person during the investigation. There was nothing in the cross-

examination of the witnesses to show that they were making ::: Downloaded on - 14/10/2026 21:47:29 :::CIS 5 2026:HHC:45119 false statements or that they had any motive to falsely depose against the accused. The report of analysis showed that the .

bottles contained illicit liquor. Therefore, the learned Trial Court convicted and sentenced the accused as aforesaid.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which was decided by the learned Sessions Judge, Sirmaur District at Nahan (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the statements of prosecution witnesses corroborated each other on material particulars. The statements of the official witnesses could not be rejected merely because no independent witness was associated. The recovery was effected in a jungle at a lonely place, and it was not possible to join any independent witness during the investigation. The learned Trial Court had rightly convicted and sentenced the accused. Hence, the appeal was dismissed.

8. I have heard Mr Bimal Gupta, Senior Advocate, assisted by Ms Simran, learned counsel for the ::: Downloaded on - 14/10/2026 21:47:29 :::CIS 6 2026:HHC:45119 petitioner/accused, and Mr Pawan Kumar Nadda, learned Additional Advocate General, for the respondent/State.

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9. Mr Bimal Gupta, learned Senior Advocate, assisted by Ms Simran, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the material on record. The prosecution version is highly improbable, as the police had no means to procure 50 bottles to measure the liquid in the jungle. Two bottles were sent to the FSL, which are within the permissible limit, and no case is made out against the petitioner/accused. Hence, he prayed that the present revision petition be allowed and the judgments and order passed by the learned Courts below be set aside. He relied upon the judgments in [State of H.P. Vs. Vipin Kumar and Anr.](#)

2020 SCC OnLine HP 34, State of H.P. Vs. Budhi Singh 2019:[HHC:3453](#), [Sanjeev Kumar Vs. State of H.P.](#) 2016:[HHC:7839](#) and [Shashi Kumar and another Vs. State of H.P.](#) a/w connected matter 2015:HHC:6529-DB in support of his submissions.

10. Mr Pawan Kumar Nadda, learned Additional Advocate General for the respondent-State, submitted that the learned Courts below have consistently held that the testimonies ::: Downloaded on - 14/10/2026 21:47:29 :::CIS 7 2026:HHC:45119 of prosecution witnesses are reliable, and this Court should not re-appreciate the evidence while deciding the revision petition.

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Hence, he prayed that the present revision petition be dismissed.

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

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12. It was [laid down by](#) the Hon'ble Supreme Court in *Kuntegowda v. Thurubaiah*, 2026 SCC OnLine SC 1485 that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed:

"7. Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. [Section 397](#) of the Criminal Procedure Code, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:

"438. Calling for records to exercise powers of revision.--(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, ::: Downloaded on - 14/10/2026 21:47:29 ::: CIS 8 2026:HHC:45119 direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

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Explanation. --All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by sub-section of (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

rt (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in the [State of Maharashtra v. Jagmohan Singh Kuldeep Singh Anand](#), (2004) 7 SCC 659: 2004 SCC (Cri) ::: Downloaded on - 14/10/2026 21:47:29 ::: CIS 9 2026:HHC:45119 2003, observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the .

consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the of well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case, which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. In [State of Kerala v. Puttumana Illath Jathavedan Namboodiri](#), (1999) 2 SCC 452; 1999 SCC (Cri) 275, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following:

"5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the

evidence and come to its own :: Downloaded on - 14/10/2026 21:47:29 :: CIS 10 2026:HHC:45119 conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would .

otherwise tantamount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the of oral evidence. ..."

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the rt High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously. 7.4. This Court, in [Sanjabij Tari v. Kishore S. Borcar](#), 2025 INSC 1158, in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under [Section 138](#) of NI Act, while setting aside the impugned order, observed as under:

"27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in [Southern Sales & Services v. Sauermilch Design and Handels GMBH](#), :: Downloaded on - 14/10/2026 21:47:29 :: CIS 11 2026:HHC:45119 (2008) 14 SCC 457, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court."

7.5. In the facts of the present case, we find that the High of Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the rt record to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below.

Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

13. The present revision has to be decided as per the parameters [laid down by](#) the Hon'ble Supreme Court.

14. ASI Tara Chand (PW-6) stated that he and other police officials were present in the jungle on 28.4.2007. They recovered illicit liquor in two tubes. One bottle was taken as a sample from each tube. The ends of the tubes were tied, and they were also sealed. He nowhere stated that the contents of the :: Downloaded on - 14/10/2026 21:47:29 :: CIS 12 2026:HHC:45119 tubes were measured, and the large tube was found to contain 30 bottles and the small tube was found to contain 20 bottles of .

illicit liquor.

15. HC Ramesh Kumar (PW-1) stated that they found the accused carrying a white bag on his right shoulder. They apprehended the accused, opened the bag, and found two tubes of different sizes containing liquid in them. The large tube contained 30 bottles, and the small tube contained 20 bottles of rt illicit liquor.

16. Sharad Kumar (PW-7) stated that the accused was carrying a white bag on his right shoulder. The bag was opened, and it was found to contain two tubes; the large tube contained about 30 bottles, and the small tube contained 20 bottles of illicit liquor.

17. No prosecution witness has explained as to how the police were able to measure the contents of the tubes and find that the large tube contained 30 bottles and the small tube contained 20 bottles of illicit liquor. Nobody stated that the police had 82 empty bottles or a large container with them. The place of the incident was a jungle, and it was difficult to procure :: Downloaded on - 14/10/2026 21:47:29 :: CIS 13 2026:HHC:45119 such a large number of bottles or a container into which the contents of the tubes could be poured. The number of bottles in .

each tube could have been counted by pouring the contents of the tube into the bottles, into a bottle and pouring the bottle into a large container or into a large container and then counting the numbers by filling the bottles and emptying the bottle into the of tube. But for that, a large container which would have been able to hold 30 bottles of liquid was required. It was mentioned in the rt rukka (Ext.PW-6/A) that the incident had taken place in a jungle.

The site plan (Ext. PW-6/C) also shows the place of incident in a jungle. The distance between the place of incident and the Gurdwara was about 2 kilometres. Nobody stated that any person was sent towards the Gurdwara to bring bottles or containers. Hence, the prosecution has failed to provide a valid explanation for ascertaining the number of bottles in the tubes.

18. HC Ramesh (PW-1) stated in his cross-examination that the Investigating Officer had put the identification slip on the tubes and the bag. He admitted that the case property did not have any identification slip. ASI Tara Chand (PW-6) also admitted in his cross-examination that the bag and the tube did not have any identification slip on them. Constable Sharad :: Downloaded on - 14/10/2026 21:47:29 :: CIS 14 2026:HHC:45119 Kumar (PW-7) also admitted in his cross-examination that the tubes (Ext. P-1 and Ext. P-2) did not have any identification slip .

on them. It is not explained how the prosecution witnesses could have identified the bag and the tubes as the ones that were recovered from the spot. Hence, the identification of the case property in the Court is suspect. It was [laid down by](#) this Court in of [Amandeep Singh & Ors. Vs State of HP](#), 2010 (3) Shim LC 39, that when the case property was not produced before the Court, the rt 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."

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19. 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: -

rt "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 wood 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."

20. A similar view was taken in [Vipan Kumar](#) (supra).

21. Therefore, the prosecution case would become suspect that the police had recovered two tubes containing illicit liquor from the accused.

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22. ASI Raghubir (PW-3) admitted in his cross-

examination that he had not mentioned in his previous .

statement that he had also sent the sample seal to CTL Kandaghat. Constable Anil Kumar (PW-4) stated that he had carried two bottles and a sample seal to CTL Kandaghat vide RC No. 15/7. However, the prosecution has not produced the copy of the Road Certificate (RC) or the Malkhana register to prove that any sample seal was deposited with the MHC or any sample seal it was sent to CTL Kandaghat as claimed by the witness. Therefore, there is unsatisfactory evidence that the sample seal was deposited with Raghubir Singh and that he had sent the sample seal to CTL Kandaghat. In these circumstances, the learned Courts below erred in holding that the integrity of the case property was duly proved.

23. It was [laid down by](#) this Court in [Kishan Chand & Another Vs. State](#) 2009 (2) HLJ 925 that where the person carrying the case property did not say anything about the carrying of the sample seal, link evidence is missing. The endorsement made by CTL Kandaghat in these circumstances that seal impressions were compared with the sample seal will lose their significance.

It was observed:-

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2026:HHC:45119 "6. It is incumbent on the prosecution to prove that the accused were in possession of an incriminating article or an offensive material before they are convicted for keeping in possession the contraband or the offensive .

material. From its recovery and taking samples, the chain of evidence until the samples are analysed in the laboratory should be complete. In case of breach of the chain of evidence, it gives rise to a reasonable doubt that the samples were tampered with, to the benefit of which goes to the accused.

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7. In the instant case, PW-6 A.S.I. Churamani, however, did not state about the deposit of the case property in the Malkhana. But PW-5 MHC Hukam Singh stated that on 19.6.2000 A.S.I. Churamani had deposited the case rt property sealed with seal impression 'N' in the Malkhana with him. But he nowhere stated that the sample of the seal was also deposited with him in the Malkhana. Even the extract of the Malkhana Register was not placed and proved on record. Thus, it cannot be said that the sample of the seal was also deposited in the Malkhana with him along with the case property.

Even PW-2 constable Rajinder Kumar also did not say anything about handing over the sample of the seal to him when he had taken the samples for examination to C.T.L. Kandaghat. The copy of R.C. No.55/2000, vide which he took the sample for analysis, has also not been placed and proved on record. Had it been there, it could have thrown some light on this aspect of the matter, whether the sample of the seal was also entrusted to him, which was further handed over by him to the person who received the samples in the laboratory, for its comparison with the seal found on samples sent for analysis.

8. The lithographic impression on the report Ext. PW-4/A, of course, shows that seals on the samples were found intact and unbroken and tallied with the impression seal sent separately, but it loses its importance in view of the fact that no witness has stated to have either deposited the sample seal along with case property in the Malkhana :::: Downloaded on - 14/10/2026 21:47:29 ::::CIS 18 2026:HHC:45119 or sent it separately to the Laboratory when the samples were taken for analysis. Then how could the sample of the seal be available in the Laboratory for its comparison? The lithographic stamp is mechanically put on the report.

9. Further, the case of the prosecution is that the seal, after its use, was given to PW-1 Ravinder Kumar, but he did not say that the seal was ever entrusted to him. Thus, where the seal used on the samples is not known, in these circumstances a substantial doubt has arisen, and the prosecution could not exclude the possibility of tampering of with the samples.

Thus, the link evidence in the instant case is found missing. There is no evidence on record regarding the rt entrustment of seal and no entry in the R.C. and Malkhana register; therefore, reasonable doubt is cast on the probity of the prosecution case, which fact was lost sight of by the courts below. Therefore, in these circumstances, the benefit of the doubt should have been given to the petitioners."

24. This position was reiterated in [State of H.P. Vs. Rakesh Kumar](#) 2018 (1) HLJ 73 wherein it was held:-

"7. Interestingly, there is no mention, if any, regarding the handing over of the seal by this witness to CTL Kandaghat, for comparison. It has come in his statement that he had taken samples, but he has not stated that a specimen seal was also given to him for depositing in CTL Kandaghat. Samples were sent to CTL Kandaghat through Jai Singh (PW- 6), who simply deposed that he had sent samples through PW-5 DurgaDutt. Interestingly, he nowhere stated that the specimen seal impression was also sent separately for chemical analysis.

18. True it is that reports of CTL, Ext. PW-7/G to Ext. PW- 7/K show that the specimen seal impression allegedly separately sent, tallied with the seal impressions on the samples; however, link evidence is missing as to how the :::: Downloaded on - 14/10/2026 21:47:29 ::::CIS 19 2026:HHC:45119 specimen seal impression reached the chemical analyst. Similarly, it emerges from the record that there is no mention, if any, in the Challan with regard to sending of specimen seal to CTL Kandaghat. This certainly creates .

doubt with regard to the genuineness of the prosecution case.

19. This Court, in a case titled *State of H.P. vs. Pankaj Sood*, Latest HLJ 2009 (HP) 727, has held that in such a case, by no stretch of the imagination, it can be presumed that the samples were sent along with the sample seal for of comparison, and it was held that the prosecution case was doubtful on this count. It was further held by this Court in the aforesaid case that the prosecution is obliged to prove that the article recovered from the possession of the rt accused is contraband within the meaning of

the Act. For that, from the time of recovery till the examination of the samples, the link is required to be completely proved. Seals used on the samples must be intact and unbroken, and the said seals should tally with the sample of the seal taken separately at the time of sampling by the Investigating Officer to overrule every possibility of tampering with the contents of the samples."

25. Similar is the judgment in [Jagdev Singh v. State of H.P.](#), 2015 SCC OnLine HP 2520 wherein it was observed:

36. Thus, there is no link evidence establishing the factum of receipt of the sample from the doctor till such time it was handed over to the police official who got it deposited in the laboratory. Whether it was kept in safe custody and not tampered with remains unproven on record.

37. The SHO/Investigating Officer has not deposed that the sample was deposited in the police station. Where the sample was kept between the 13th and 17th June 2009 remains unexplained on record. Also, seal-H with which the alleged sample was sealed has not been produced in Court. Crucially and significantly, even the Road Certificate has not been produced on record, which would
::: Downloaded on - 14/10/2026 21:47:29 :: CIS 20 2026:HHC:45119 have only thrown light as to with whom and where the sample was kept at the police station.

38. No doubt MLC (Ext.PW-6/G) records the sample to be .

that of Jagdev (accused), but then the Doctor does not specifically state that the sample was sealed. All that he states is that the sample was handed over to the police in a sealed bag. But then who sealed the same and with which seal, he does not state, and Constable Roshan Lal (PW-5) is also silent about the same. In fact, he is silent about the seal impression. As already observed, ASI Om Prakash and of HC Nup Ram are silent with regard to the sample, much less sealing thereof. It is in this backdrop that it was necessary for the prosecution to have produced the original seal or impression thereof, with which the sample was sealed, for it cannot be said with certainty that the sample was not tampered with.

26. A similar view was taken in [Sanjeev Kumar](#) (supra) and [Sashi Kumar](#) (supra).

27. Thus, the report of analysis cannot be connected to the recovery effected by the police on the spot.

28. The learned Trial Court held that the testimony of the witnesses corroborated each other and they were sufficient to record the conviction. The learned Appellate Court held that the statements of prosecution witnesses/police officials could not be discarded merely because they happened to be official witnesses.

There can be no dispute with this proposition of law. However, the prosecution is also required to prove its case based on inherent probabilities. When it was not possible for the police to
::: Downloaded on - 14/10/2026 21:47:29 :: CIS 21 2026:HHC:45119 measure the tubes on the spot, but still the number of bottles was mentioned, it was sufficient to put the Court on guard.

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Further, the absence of the seal and the identification slip on the case property was not considered by the learned Trial Court, and the rubber tubes were not shown to have any specific identification mark to enable the witnesses to identify them.

of Therefore, in these circumstances, reliance could not have been placed upon the identification alone. Further, the absence of the rt Malkhana register and Road Certificate was also not considered by the learned Courts below, which vitiated the conclusion arrived at by them.

29. The result of the analysis showed that the sample of liquor contained 38.2% proof alcohol. [Section 3\(14\)](#) of the Punjab Excise Act defines liquor as intoxicating liquor and includes all liquids containing alcohol or any other substance which the State Government may, by notification, declare to be liquor. Therefore, it is apparent that every substance containing alcohol falls within the definition of liquor. It was [laid down by](#) the Hon'ble Supreme Court in [Mohan Meakin Ltd. v. Excise & Taxation Commr.](#), (1997) 2 SCC 193 at page 195 that [Section 3\(14\)](#) :::

It was observed:-

2. With a view to appreciating the correctness of the view taken and having heard the learned counsel for the parties, it is necessary to look into the relevant provisions of the Act and the Rules. Chapter I, [Section 3](#) of the Act defines various words and phrases in the Act. [Section 3\(1\)](#) defines "beer" to include ale, porter, stout, and all other of fermented liquors made from malt. "Liquor" has been defined under [Section 3\(14\)](#) of the Act to mean "intoxicating liquor and includes all liquid consisting of or containing alcohol; also, any substance which the State Government may by notification declare to be liquor for the purpose of this Act". "Excisable article" has been defined in [Section 3\(6\)](#) to mean any alcoholic liquor for human consumption, or any intoxicating drug. "Excise duty" and "countervailing duty" as defined in [Section 3\(6-b\)](#) would mean any such excise duty or countervailing duty, as the case may be, as is mentioned in Entry 51 of List II of the Seventh Schedule to the Constitution. "Intoxicant" under [Section 3\(12-a\)](#) means any liquor or intoxicating drug as has been defined in [Section 3\(16\)](#) to include every process, whether natural or artificial, by which any intoxicant is produced or prepared, and also re-distillation, and every process for the rectification, reduction, flavouring, blending or colouring of liquor. "Place" has been defined under [Section 3\(17\)](#) to include a building, shop, tent and closure, booth, vehicle, vessel, boat and raft. "Spirit" has been defined in [Section 3\(19\)](#) to mean any liquor containing alcohol obtained by distillation, whether denatured or not. [Section 31](#) of the Act is the charging provision which envisages that an excise duty, or a countervailing duty, as the case may be, at such rate or rates as the State Government shall direct, may be imposed, either generally or for any specified local area, on any excisable article. [Section 23](#) of the Act prescribes removal of the :: Downloaded on - 14/10/2026 21:47:29 :: CIS 23 2026:HHC:45119 excisable article from the distillery, brewery, etc. and provides that no intoxicant shall be removed from any distillery, brewery, warehouse, or other place of storage established, or licensed under the Act, unless the duty, if .

any, payable under Chapter V has been paid or a bond has been executed for the payment thereof. Chapter V deals with the levy of duties and fees; the details of which are not material for the purpose of this case. As stated earlier, in this case, the levy of excise duty was sought to be made at the stage when the manufacturing of the beer was at of the wort stage. The question is whether the levy of excise duty on beer when it was in the process of manufacture is correct. The levy of excise duty is on alcoholic liquor for human consumption, manufacture or production. At what stage beer is exigible to duty is the question. The process of manufacturing beer is described as under:

"The first stage of the brewing process is the feeding of malt and adjuncts into a vessel known as the Mash Tun. There it is mixed with hot water and maintained at a certain temperature. The objective of this process is to convert the starches of the malt into fermentable sugar.

The extract is drawn from the Mash Tun and boiled with the addition of hops for one to two hours, after which it is centrifuged, cooled and received in the receiving Vats. At this stage, it is called 'Wort' and contains only fermentable sugars and no alcohol. After this, it is transferred to the fermentation tanks where yeast is added, and primary fermentation is carried out at a controlled temperature. After attenuation (Diminution of density of 'Wort' resulting from its fermentation) is reached, the fermented wort is centrifuged and transferred to the storage vats for secondary fermentation. After secondary fermentation is over in the storage vats, it is filtered twice-first through the rough filter press and then through the fine filter press and received in the bottling tanks. It is in the bottling tanks that the loss of carbon dioxide gas is made up, and bulk :: Downloaded on - 14/10/2026 21:47:29 :: CIS 24 2026:HHC:45119 beer is drawn for bottling. It is filled into the bottles, and then the last process of pasteurisation is carried out to make it ready for packing and marketing. Till the liquor is removed from the vats and undergoes the fermentation .

process as mentioned above, the presence of alcohol is nil."

6. It is, thus, clear that the range of potable alcohol varies between country spirit, whisky and ethyl alcohol. The alcoholic strength of each excisable article and its percentage varies as per the ISI specifications, but of intoxicating liquor necessarily means only that liquor which was consumable by human beings as it was. The state of levying excise duty upon alcoholic liquor arises when an excisable article is brought to the stage of human consumption with the requisite alcoholic strength thereof. It is only the final product which is relevant."

30. Therefore, the rubber tubes containing 38.2% proof alcohol will fall within the definition of liquor.

31. [Section 61\(1\)\(a\)](#) of the Punjab Excise Act (as applicable to the State of H.P.) punishes a person who possesses any intoxicant, which, as per [Section 3\(12\)\(a\)](#), means liquor or intoxicating drug. It was [laid down by](#) this Court in *Mahajan v.*

State of Himachal Pradesh, 2002 SCC OnLine HP 88, that as per the notification issued by the State Government, the limit of transportation is two bottles of country liquor, each of capacity 7.50 ml. It was observed:-

9. In exercise of the powers conferred by Ss. 5 and 58 of the [Punjab Excise Act](#), the Governor, Himachal Pradesh, on 29-3-1985 issued an order bearing No. EXN. F(1)-4/76 :::: Downloaded on - 14/10/2026 21:47:29 ::::CIS 25 2026:HHC:45119 published in Himachal Rajpatra (Extra-ordinary) on 30-

3-1985 prescribing the limit for possession of Indian made foreign spirit (for short, IMFS) in respect of the areas/territories comprised in Himachal Pradesh .

immediately before 1st November, 1966. This order was issued by way of amendment of O. 2 of Himachal Pradesh Intoxicants Licence and Sale Orders, 1965. The relevant order reads:--

"2-A. Limit for retail possession:

The following are the maximum quantities of intoxicants of which can be sold in each transaction in retail sale under the [Punjab Excise Act, 1914](#), in the said area:--

(1) Foreign spirit	Two bottles each of the
rt	capacity of 750 ml.

(2) Beer whether imported Twelve bottles each of or made in India. the capacity of 650 ml (3) Cider (liquor Six-quart bottles.

manufactured by
fermentation of juice of
any fruit) whether

imported or made in India.

(4) Country liquor	Two bottles each of the
	capacity of 750 ml.

- | | |
|----------------------|------------------------------|
| (5) Country | fermented Six-quart bottles. |
| liquor. | |
| (6) Bhang | 100 grams. |
| (7) Rectified spirit | One Pint of 375 ml. |
| (8) Denatured spirit | One bottle of 650 ml. |

Note. -- The limit of transportation mentioned in Items Nos. (1) and (2) above shall be alternative with the limit mentioned at Item No. (4):

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2026:HHC:45119 Provided that a person may, for bona fide consumption by him, the members of his family, or his guests, purchase, transport and possess foreign spirit up to 12 bottles of the capacity of 750 ml. each inclusive of imported spirit and .

36 bottles of the capacity of 650 ml. each of Beer on the authority of a permit in Form L-50 granted by the Excise Officer, holding the charge of the District, on payment of a permit fee according to the following scale for a financial year or part thereof:--

Quantity	Permit fee
----------	------------

of

Exceeding six bottles of Fifty rupees only.

IMFS of 750 ml. each and 12 bottles of 650 ml. each of rt Beer but not exceeding 12 bottles of IMFS and 36 bottles of Beer.

Note:-- The possession limit by one family living in a separate and distinct premises will be six bottles of IMFS of 750 ml. each and 24 bottles of Beer of 650 ml. each at one time. Imported liquor will be considered as part of the stocks of IMFS, and bottles of foreign liquor, which may be of one litre or two litres, will be converted, for this purpose, to the limits prescribed for IMFS in 750 ml.

bottles:

Provided further that in case of possession and purchase of denatured spirit for industrial purposes, a permit may be obtained from the Excise Officers of the 1st Class as declared by the State Government."

32. It was [laid down by](#) this Court in Mahajan (supra) that where the prosecution had sent only three bottles for analysis, it is proved that the accused was in possession of three bottles of liquor. It was observed:

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2026:HHC:45119 "11. In the present case, as per the prosecution story, eight bottles of XXX Rum were recovered from the pos-

session of the accused. Admittedly, samples out of only three bottles were taken by the Investigation Officer and . sent for analysis. Such samples were found to be of IMFS vide report Ex. P.W. 5/E.

12. In view of such report, at the most, the prosecution has been able to prove the possession of the accused only qua three bottles of IMFS. Nothing has come on the record to show that the remaining five bottles alleged to have of been recovered from the accused also contained IMFS.

13. Before the accused could be convicted for the offence, the prosecution was obliged to prove that he was in con-

scious possession of IMFS in excess of the prescribed limit of six bottles of 750 ml each. The prosecution, as stated above, could prove the possession of the accused only qua three bottles, which possession is below the prescribed limit. The conviction and sentence imposed upon the accused by the two Courts below, on this short ground alone, cannot be sustained."

33. Similarly, it was held in [Dharampal vs. State](#) 2009 HLJ 743 that when the sample was taken out of 4 bottles, it cannot be said that more than 4 bottles were containing liquor. It was ob-

served:

10. According to the prosecution, 48 bottles were recovered from the van. The prosecution case is that samples were taken only from four bottles, which were ultimately sent for chemical examination and a report of the Chemical Examiner Ex.PW-5/F was obtained. In [Mahajan Vs. State of Himachal Pradesh](#), 2003 Cr. L.J. 1346, 8 bottles of XXX Rum were recovered, but samples were taken from three bottles and such samples were found to be of IMFS. On those facts, a learned Single Judge of this Court in para 12 has held as follows:

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2026:HHC:45119 "In view of such report, at the most, the prosecution has been able to prove the possession of the accused only qua three bottles of IMFS. Nothing has come on the record to show that the remaining five

bottles alleged to have been recovered from the accused also contained IMFS."

There is nothing on record to show that the bottles from which the samples were not taken were in fact containing liquor. In other words, there is no worth believing material on record to show that 44 bottles were containing of liquor. Therefore, the prosecution case at its best is that four bottles were containing liquor.

11. As per notification dated 29.3.1985 noticed in Mahajan case supra, two bottles each of the capacity of 750 ml. of foreign spirit and alternatively two bottles each of the ca-

capacity of 750 ml. of country liquor can be sold in each transaction. The notification dated 29.3.1985 does indicate that in that notification emphasis is on the quantity. No prosecution witness has stated what was the quantity of liquor in the four bottles from which samples were taken. Therefore, it cannot be said that the petitioners were found in possession of liquor in excess of the pre-

scribed limit mentioned in the aforesaid notification dated 29.3.1985. The benefit of doubt will go to the petitioners. The two courts below have not considered the prosecution case properly.

34. In [State Vs. Jagjit Singh](#) 2008 HLJ 919, one pouch out of 72 recovered was sent for analysis, and it was held that the case was not proved. It was observed:

6. At the very outset, I would like to say that neither the non-compliance of sub-section (6) of [Section 100](#) of the Code of Criminal Procedure will render the search illegal nor the respondent can be acquitted on this sole ground.

However, in the instant case, the regrettable feature is that as per the case of the prosecution, 72 pouches of :::
Downloaded on - 14/10/2026 21:47:29 ::CIS 29 2026:HHC:45119 country liquor of "Gulab" brand country liquor
contain- ing 180 ml each were recovered from the possession of the respondent. Admittedly, one pouch of 180 ml
out of the recovered quantity was retained as a sample, which was of .

licit origin as opined by the Chemical Analyst.

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

rt

8. In view of this, the prosecution could only prove that the respondent was in possession of one pouch of 180 ML
of country liquor in his possession, which is not an of-

fence. Therefore, in the present situation, the offence charged against the respondent cannot be said to have been
proved.

35. In Vinod Kumar Vs. State, Criminal Revision No.72 of 2009, decided on 15.05.2018, all these judgments were
noticed, and it was held: -

"From the records, it is evident that the specific case of the prosecution was that it had recovered 115
boxes of 'Lal Qila' country liquor each box containing 12 bottles, 28 boxes of Director Special
Whisky, 10 boxes of Bag Piper Whisky and 9 boxes of Hayward Beer, each box containing 12 bottles
of 750 ml each, whereas, admittedly six 'pawas' i.e. quarters of 'Lal Qila' country liquor, eight quarters
of Director Special Whisky, four quarters of Bag Piper Whisky, all 180 ml. each and six bottles of
Hayward Beer of 650 ml. each were sent for chemical analysis and even what stands proved on record
is the recovery of those bottles which in fact were sent for chemical analysis. Therefore, assuming
that the contraband was actually re-

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2026:HHC:45119 covered by the prosecution, it did not take samples from all the bottles and only
took the aforesaid 'pawas'/bottles as samples. Therefore, there is nothing on record to actu- ally prove
that the remaining bottles in the cartons that .

were recovered actually contain liquor. The bottles of each of the brands that were sent for sampling
cannot be said to be representative in character.

13. In similar circumstances, this Court in [Mahajan versus State of Himachal Pradesh](#), 2003 Cr.L.J.
1346; State of H.P.versus Ramesh Chand, Latest HLJ 2007 (2) 1017; State of of H.P.versus Jagjit
Singh, Latest HLJ 2008 (HP) 919; [Dharam Pal and another versus State of Himachal Pradesh](#), 2009
(2) Shim. LC 208; and [State of Himachal Pradesh versus Kuldeep Singh & others](#), 2010(2) Him. L.R.
825, Surender Singh ver-

rt sus State of Himachal Pradesh, Latest HLJ 2013 (HP) 865, Criminal Revision No. 37 of 2007, titled
[Jagat Ram versus State of Himachal Pradesh](#), decided on 08.05.2013, Criminal Revision No. 52 of
2009, titled [Sanjeev Kumar and others versus State of H.P.](#), decided on 25.10.2016 and Criminal Re-
vision No.4 of 2010, titled [Subhash versus State of Himachal Pradesh](#), decided on 20.03.2018, has
acquitted the accused, as the prosecution could not prove, beyond reasonable doubt, as to what
actually was there in the remaining boxes.

14. Thus, what at best can be said to have been proved on record is the recovery of six quarters of 'Lal Qila' country liquor, eight quarters of Director Special Whisky, four quarters of Bag Piper Whisky, all 180 ml. each and six bottles of Hayward Beer of 650 ml. each."

36. This question was also considered by the Hon'ble High Court in [State of H.P. Vs. Sukhdev, Criminal Appeal No.54](#) of 2007 decided on 02.01.2019, wherein it was held: -

"14. On top of everything, this court finds that after having effected recovery, the police party drew insufficient samples. As per own case of the prosecution, :: Downloaded on - 14/10/2026 21:47:29 :: CIS 31 2026:HHC:45119 police drew 12 samples from 19000 pouches of country liquor of "Gulab" make, whereas 5 samples out of 240 bottles of Indian Made Foreign Liquor were drawn, which were not sufficient to arrive at a conclusion that the entire .

bulk allegedly recovered by police was liquor/alcohol. No doubt, in the case at hand, police, with a view to prove that the liquor recovered by it contained alcohol, placed on record a report of the Composite Testing Laboratory (CTL), Kandaghat, but that is only qua 12 pouches and 5 bottles, and as such, there is no report, if any, qua the of remaining bulk allegedly recovered from the truck/van owned/driven by the accused. In the aforesaid background, learned Sessions Judge rightly held that since 12 pouches of country liquor of "Gulab" make were sent for chemical analysis, recovery, if any, from the accused could be said to be of 12 pouches only and the same is the case with Indian Made Foreign Liquor, where samples from 5 bottles out of 240 were sent.

15. It would be apt to reproduce the following paras of the judgment rendered by this court in [Rakesh Kumar](#) (supra):

25. Leaving everything aside, it is an admitted case of the prosecution that only six bottles of mark "Saroor" out of forty cartons and six bottles of mark "Bagpiper" out of six cartons were drawn as sample and sent for examination to CTL Kandaghat, as such, from the reports of CTL Kandaghat verifying therein presence of liquor, content is only proved qua twelve bottles in all as such, recovery, of twelve bottles only is proved against the accused, whereas all 480 bottles of country-made liquor mark "Saroor" and 72 bottles of foreign liquor mark "Bagpiper" allegedly recovered from the truck being driven by the accused, were required to be sent for chemical examination, but in the instant case, only twelve bottles were sent for chemical examination as such the whole of the recovery is vitiated.

26. In this regard, reliance is placed upon the :: Downloaded on - 14/10/2026 21:47:29 :: CIS 32 2026:HHC:45119 judgment passed by our own High Court in *Surender Singh. V. State of H.P.*, 2013 (2) Latest HLJ 865, which reads as under:-

"26. In the instant case, it be also noticed that there is yet another major flaw in the investigation by the police. Assuming that the contraband was actually recovered by the police party, the police did not take samples from all the boxes. Samples only from a few bottles out of some of the boxes, which they of had opened, were taken. None of these witnesses has deposed that the remaining boxes were sealed; from the outside appeared to be of the same make or brand; bearing its serial numbers; the date of manufacture; or the place and the name of the manufacturer.

All that these witnesses have deposed is that boxes of alcohol, as described above, were found in the vehicle. Inside the boxes could be anything. Police could not prove that the remaining boxes actually contained liquor. The samples cannot be said to be representative in character.

27. In similar circumstances, this Court in [Mahajan versus State of Himachal Pradesh](#), 2003 CrLJ 1346; [State of H.P. versus Ramesh Chand](#), 2007 2 Latest HLJ 1017; [Dharam Pal and another versus State of Himachal Pradesh](#), 2009 2 Shim. L.C. 208; and [State of Himachal Pradesh versus Kuldeep Singh & others](#), 2010 2 HimLR 825,

acquitted the accused, as the prosecution could not prove, beyond reasonable doubt, as to what was actually there in the remaining boxes.

28. As per the version of PW-1, outside the boxes 'Sirmour No.1' was printed, which version is denied by PW-7. In the instant case, there is nothing on record to show that :::: Downloaded on - 14/10/2026 21:47:29 ::::CIS 33 2026:HHC:45119 the remaining boxes were, in fact, containing liquor. The quantity of the remaining bottles of the boxes from which samples were drawn has also not been proved to be liquor. These .

aspects have not been considered by the Courts below. The cumulative effect is that the prosecution has failed to prove the charge against the accused, beyond reasonable doubt and as such judgments of the Courts below are not sustainable in law."

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27. Reliance is also placed on the judgment passed by this Court, State of HP v. Jagjit Singh, 2008 Latest HLJ 919, wherein this Court has observed in paras 6 and 7 as under:-

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

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

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37. A similar view was taken in Budhi Singh (supra).

These judgments are binding upon this Court.

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38. Thus, in view of the binding precedent, the prosecution could have only established by analysis of two bottles that the accused was in possession of two bottles of liquor.

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39. The prosecution proceeded on the basis that the rt liquor was illicit. The report of analysis shows that the sample of illicit liquor contained 38.2 per cent proof alcohol. It was laid down by the Punjab and Haryana High Court in [State v. Bikar Singh](#), 1965 SCC OnLine Punj 146: PLR (1965) 67 P&H 1044, that the prosecution is required to establish that the constitution of the liquor found in possession of the accused was different from that of spirits distilled in a Punjab distillery to prove that it was an illicit liquor. It was observed:

"3. In the State appeal against Garib Diss (No. ??? of 1963), the learned Sessions Judge made a reference to the Chemical examination, and he was specifically asked to state if he could say that the sample sent to him was "illicit in reference to spirits distilled in other States of India under a licence by the Government." The reply received from the Chemical Examiner was to the effect that he was not in a position to examine the sample on the footing mentioned by the learned Sessions Judge or to

::: Downloaded on - 14/10/2026 21:47:29 :::CIS 35 2026:HHC:45119 hold that the same was illicit in reference to spirits manufactured in other States. The point taken in all these appeals on behalf of the State was that once the prosecution established that the constitution of the liquor .

found in possession of the accused was different from that of spirits distilled in the Punjab distilleries, the burden shifted to the accused to establish that the same was illicit with reference to spirits legally manufactured by any distillery in India or with reference to spirits allowed to be imported from outside the country. I am of afraid there is no warrant for this. Possession of one bottle of liquor is permissible, and if it is the case for prosecution that the accused is guilty of an offence under [section 61](#) of the Punjab Excise Act, because the liquor was of unauthorised origin, the burden lies entirely on the prosecution to establish it. It is too much to ask the accused, who is in possession of one bottle of liquor, to get evidence from all over the country, and even from outside, to establish that the liquor conforms to the standards of any spirits from any authorised source. In fact, I consider it an utter waste of time for the enforcement staff, the investigating agency and the judicial courts in launching proceedings for recovery of liquor not exceeding one bottle. It would be better if the enforcement staff concentrated on illicit distillation, or the sale of illicit liquor, or its possession in large quantities.

4. In any case, I am definitely of the view that the burden lies entirely on the prosecution to establish that the liquor recovered is of illicit origin vis-à-vis the spirits manufactured by any authorised distillery in this country or of any other distillery import of which is permitted."

40. This position was reiterated in [Ram Singh v. State of Haryana](#), 1987, SCC Online P&H 368, wherein it was observed:

"8. Bladder recovered contained liquor, which was poured into 14 bottles. As per the Chemical Examiner, the liquor ::: Downloaded on - 14/10/2026 21:47:29 :::CIS 36 2026:HHC:45119 had a composition different from the one manufactured in the distilleries of Haryana in respect of the ingredients noted therein. There is no evidence that in Haryana, only liquor having a composition manufactured in the .

distilleries of Haryana, with respect to the ingredients noted, is sold. In the absence of such evidence, the possibility of the liquor seized having a composition as manufactured at a place outside Haryana cannot be ruled out. Thus, the liquor cannot be said to be of an illicit nature. Even if it were licit liquor, a conviction sentence, of of course, could be based on possession of more than the requisite quantity."

41. Even proviso 3(iii) to Section 61(1)(a) of the Punjab [Excise Act](#) provides that in case of country liquor manufactured otherwise than in a licensed distillery, the imprisonment shall not be less than six months. Therefore, the burden is upon the prosecution to prove that the liquor was manufactured otherwise than in a licensed distillery. There is no evidence of this fact. The report of the chemical examiner does not say that the constitution of the liquor found in possession of the accused was different from the liquor manufactured in the licensed distillery. Thus, the liquor is not proved to be illicit, and the prosecution version that the accused was found in possession of illicit liquor is not proved. A person can possess two bottles;

hence, the prosecution case is not proved against the accused.

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42. Therefore, the prosecution has not proved its case beyond reasonable doubt, and the learned Trial Court erred in .

convicting and sentencing the accused, and the learned Appellate Court erred in upholding the conviction and the sentence. Therefore, the judgments and orders passed by the learned Courts below cannot be sustained.

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43. In view of the above, the revision is allowed, and the judgment of conviction dated 20.12.2010 and order of sentence rt dated 23.12.2010, passed by the learned Judicial Magistrate 1st Class, Court No.1, Paonta Sahib, as affirmed by learned Sessions Judge, Sirmaur District at Nahan on 12.07.2013 in Criminal Appeal No. 02-Cr.A/10 of 2011, are ordered to be set aside. The petitioner/accused is acquitted of the charge framed against him. Fine amount, if deposited, be refunded to the petitioner/accused. Bail bonds, if any, furnished by the accused stand discharged.

44. In view of the provisions of [Section 437-A](#) of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the petitioner/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like ::: Downloaded on - 14/10/2026 21:47:29 ::CIS 38 2026:HHC:45119 amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation .

that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the petitioner/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

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45. A copy of this judgment, along with records of the learned Courts below, be transmitted forthwith.

rt (Rakesh Kainthla) Judge 14th October, 2026 (Chander) ::: Downloaded on - 14/10/2026 21:47:29 ::CIS