

**IN THE COURT OF SH. SONU AGNIHOTRI:  
ADDL. SESSIONS JUDGE-02:  
DWARKA COURTS: NEW DELHI**

**Criminal Appeal No. 20/19  
Case Registration No. 181/2019**

**MANISH KUMAR  
S/o Sh. Kailash Chand  
R/o H. No. 4/1731, Street No. 1,  
Mahavir Block, Bhola Nath Nagar,  
Shahdara, East Delhi,  
Delhi-110 032.**

**.... Appellant**

**VERSUS**

**STATE OF NCT OF DELHI**

**.... Respondent**

<b>Date of institution</b>	<b>:</b>	<b>11.04.2019</b>
<b>Date of reserving the order</b>	<b>:</b>	<b>31.05.2019</b>
<b>Date of pronouncement</b>	<b>:</b>	<b>31.05.2019</b>

**JUDGMENT:**

1. This is an appeal u/s 375 (b) of Code of Criminal Procedure, 1973 (Cr.P.C) preferred by Manish Kumar, convict/appellant against order of conviction and order on sentence dated 22.03.2019 passed by court of Sh. Himanshu

Raman Singh, Ld. MM, Dwarka Courts, New Delhi whereby appellant was sentenced to simple imprisonment for 02 days and fine to the tune of Rs. 2000/- for offence punishable u/s. 138 (3) /177 and 185, Motor Vehicle Act and in default to undergo further imprisonment for 03 days and Driving License of appellant was suspended permanently.

2. It is stated that appellant /convict has already paid fine on date of challan itself i.e. on 22.03.2019.
3. Case of prosecution is that on 22.02.2019, when vehicle of appellant was stopped, appellant was found under influence of liquor and quantity of liquor consumed was found to be 550 mg /100 ml which is much higher than permissible limit i.e. 30 mg/ 100 ml. It is stated that appellant was asked to appear before Ld. MM on 22.03.2019.
4. On 22.03.2019, when appellant appeared before Ld. Trial Court, besides appellant, several other persons had come to Ld. Trial Court for disposal of their challans imposed upon them on occasion of Holi Festival. It is stated that Ld. MM ignored the

fact that appellant was not amongst persons who were challaned on occasion of Holi and was challaned while he was returning from his office from Gurgaon one month prior to date of his appearance before the court after attending a party in his office wherein there is strict rule that one person can take liquor only up to limit of 60 ml and not more than that and appellant had consumed liquor only to the extent of 60 ml but traffic police officials intentionally and knowingly challaned appellant and implicated him for consuming liquor to the extent of 550 ml. It is stated that in the alternate, there might be some defect /fault in the machine used to check alcohol quantity as on first 3-4 occasions, alcoholic meter showed quantity of 0 ml but suddenly on fifth occasion, meter showed quantity of 550 ml.

5. It is stated that when appellant appeared before Ld. Trial Court on 22.03.2019, matter was heard in normal course without explaining right of appellant of trial.
6. It is stated that being fearful and under the impression that maximum fine may be imposed upon appellant, appellant

pleaded guilty whereupon Ld. Trial Court convicted appellant and sentenced him as mentioned above.

7. Following grounds have been taken for challenging impugned order dated 22.03.2019:

a) Because order of conviction and that on sentence is bad in law and facts.

b) Because appellant in normal course of proceedings pleaded guilty without knowing his right of trial.

c) Because, it is first offence of appellant and quantity of alcohol is not as huge as shown by concerned police officials. However, even if it is presumed that appellant was found intoxicated to the extent as mentioned in challan, the same is not so high so as to sentence appellant to two days simple imprisonment and fine to the tune of Rs. 2,000/- and DL of appellant is cancelled permanently. Appellant had already pleaded guilty and deposited fine to the tune of Rs.2,000/- on 22.03.2019 itself.

d). Because appellant is just 36 years of age, married person and belongs to reputed family. He is not only doing private job in a reputed company but also is having unblemished record in his entire service tenure and in case, appellant is sent to jail, he may have bad influence from hardcore criminals.

e). Because appellant is sole bread earner of his family and has responsibility not only of his wife and children but also of old and ailing parents. In case, appellant is sent to JC, his entire family shall suffer irreparable mental pain and financial hardship.

f). Because impugned order is palpably wrong and liable to be set aside.

8. It has been prayed to set aside impugned order dt 22.03.2019 and for passing appropriate order as this court may deem fit.

9. I have heard arguments addressed by respective counsels and perused trial court record and judgment filed on behalf of appellant.

10. Perusal of trial court record shows that appellant/convict has voluntarily pleaded guilty for offences u/s. 138 (3)/177 and section 185 of M.V Act. As per section 375(b) Cr.PC, an appeal does not lie when accused has pleaded guilty and accused has been convicted on such plea except to the extent or legality of the sentence.
11. When appellant has already pleaded guilty voluntarily as per trial court record, grounds taken by him challenging his conviction are untenable in view of provisions of section 375 Cr.PC. Appellant has only right to challenge extent or legality of sentence in terms of section 375(b) Cr.PC.
12. I will now examine as to whether there is any illegality in the impugned order of Ld. Trial court warranting interference by this court.
13. Counsel for appellant during course of arguments submitted that appellant has been convicted for offence u/s. 185 of M.V Act for the first time. It is submitted that appellant is doing private job in a Multinational Company (in support of

same, copy of I'd Card of appellant has been filed on record by counsel for appellant) and in case sentence of appellant is maintained and appellant sent to jail, he has risk of loosing his job which may effect his entire family which is dependent upon him so far as finances are concerned. It is submitted that appellant is not a previous convict and he should be dealt with leniently. It is submitted that sending appellant to jail will ruin his life. It is submitted that appellant be sentenced to fine only which he has already deposited and his DL may be ordered not to be cancelled permanently.

14. Ld. Addl. PP for State on the other hand has submitted that appellant was found driving vehicle in heavily drunk condition. It is submitted that Ld. Trial court has already taken a lenient view and no interference is warranted in the impugned order. He has requested for dismissal of present appeal.

15. It is not disputed that appellant is not a previous convict. Appellant as per his identity card is doing private job and is sole bread earner of his family. Appellant being first time offender

deserves to be dealt with leniently but at the same time balance has to be maintained keeping in view right of others to have safe passage on the road in the circumstances wherein appellant was challaned i.e. quantity of alcohol was found to be much beyond prescribed limits in present case. In these circumstances, appeal filed by appellant is allowed and impugned order dt 22.03.2019 is modified to the extent that appellant instead of being sent to simple imprisonment for two days be asked to do seva in Old Age Home, Sector -1, J.J Colony, Jankipuri, Bindapur near Talabwala Park, Shiv Mandir, New Delhi for period of two weeks from 10 a.m to 5 p.m. Appellant is directed to file daily photographs of doing seva after period of two weeks and let his presence in Old Age Home be certified by Manager of the said Old Age Home alongwith conduct report of appellant i.e. appellant performed tasks assigned to him. Order of permanent cancellation of DL of appellant also stands modified and it is ordered that DL of appellant shall remain suspended for a period of six months

from today. It is further ordered that in case of non-compliance of this order by appellant, sentence as passed in impugned order shall stand revived. Appellant is directed to report to Manager of above mentioned Old Age Home from 01.06.2019.

16. Appeal stands disposed off in above terms. A copy of this judgment be sent to Manager, Old Age Home, Sector -1, J.J Colony, Jankipuri, Bindapur near Talabwala Park, Shiv Mandir, New Delhi for information and compliance. A copy of this judgment be sent to Ld. Trial Court alongwith Trial Court Record. A copy of this judgment be also given dasti to the appellant for compliance.
17. Appeal file be consigned to Record Room after due compliance by appellant.

**Dictated and Announced  
in the open court on 31.05.2019**

**(Sonu Agnihotri)  
ASJ-02 (South- West),  
Dwarka Courts, Delhi**