

f* IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 71/2009

Decided on 07.10.2013

IN THE MATTER OF :
STATE

..... Appellant

Through: Ms. Isha Khanna, APP for State

versus

JASWANT SINGH

..... Respondent

Through: Mr. V.K. Malik, Advocate with
Mr. Rahul Raj Malik and Mr. Rajeev
Chauhan, Advocates alongwith respondent
in person.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The present appeal has been filed by the State against the judgment of acquittal dated 12.09.2003 passed by the learned ACMM in a case arising out of FIR No.264/1996, Police Station: Shalimar Bagh under Sections 61 of the Punjab Excise Act, 1914 (hereinafter referred to as 'the Act').

2. The facts of the case lie in a narrow conspectus. As per the case of the prosecution, on 05.05.1996, a report under Section 173 Cr.PC was received that the respondent was illegally carrying twenty two cartons of liquor while plying his Maruti car at about 1:30 AM on the Outer Ring Road, Q-4 Block in front of Pitampura, Delhi. The respondent was charged for commission of an offence under Section 61 of the Act, to which he had pleaded not guilty and claimed trial. The prosecution had examined five

witnesses, including PW-2 Inspector Rajinder Singh, PW-3 SI Devinder Singh and PW-4 Ct. Suresh, who happened to be the members of the raiding party and had apprehended the respondent as well as effected the recovery. The respondent was examined and his statement was recorded under Section 313 Cr.PC, wherein he had denied the allegations levelled against him and claimed that he had been falsely implicated in the case after he had entered into an altercation with the staff of a petrol pump in the area. However, the respondent did not adduce any evidence in his defence.

3. By the impugned judgment, the trial court has acquitted the respondent on the ground that Section 75 of the Act contemplates that no Judicial Magistrate shall take cognizance of an offence under Section 61 or Section 66 except on his own knowledge or suspicion or on the complaint or report of an Excise Officer and though a notification had been issued by the Delhi Administration conferring the status of an Excise Officer upon the police officers above the rank of Head Constable, but in the present case, as a report had been submitted by an Inspector Incharge of the police station under Section 173 Cr.PC, the same did not fulfill the requirement of the aforesaid provision. The learned ACMM had concluded that there was no "complaint" or a "report of an Excise Officer" for the purpose of a trial on the basis of a report that is required to be submitted under Section 173 Cr.PC and as a result, the respondent was acquitted.

4. Ms. Isha Khanna, learned APP for the State submits that the aforesaid conclusion arrived at by the trial court is contrary to the terms of the Notification dated 07.09.1966 issued by the Lieutenant Governor, Delhi, whereunder, powers of an Excise Officer have been duly conferred on the police officers and as Section 75 of the Act permits the Magistrate to take cognizance of a report of an Excise Officer, and in the present case, filing of such a report by the ASI under Section 173 Cr.PC is perfectly legal and valid. In support of her submission, learned counsel refers to the decision of a Single Judge of this Court in the case of Chattar Singh vs. State reported as **ILR (1986) I Delhi 655**.

5. *Per contra*, learned counsel for the respondent supports the impugned judgment of acquittal and relies on the decisions of the High Court of Punjab and Haryana in the cases of Basti Ram vs. State of Haryana reported as **1984(2) Recent Criminal Reports 514** and Shish Pal vs. State of Haryana reported as **2002 Lawsuit (P&H) 908** to contend that a Magistrate can take cognizance either on his own knowledge or suspicion or on a complaint or report filed by an Excise Officer and in the present case, a report submitted by the police under Section 173 Cr.PC could not have formed the basis of trial for an offence under Section 61 of the Act.

6. This Court has considered the rival submissions of the counsels for the parties. The legal issue raised in the present case is fairly limited and hinges on whether the report of an ASI under Section 173 Cr.PC could

have been treated as a "report of an Excise Officer" as contemplated under Section 75 of the Act. The provision of Section 75 is reproduced hereinbelow for ready reference:-

"75. Cognizance of offences- (1) No Judicial Magistrate shall take cognizance of an offence punishable,

(a) under Section 61 or Section 66 except on his own knowledge or suspicion or on the complaint or report of an excise officer; or

(b) under Section 62, Section 63, Section 63-A, Section 64, Section 65, Section 68, or Section 70, except on the complaint or report of the Collector or an excise officer authorized by him in that behalf."

(2) Except with the special sanction of the [State] Government no [Judicial Magistrate] shall take cognizance of any offence punishable under this Act, unless the prosecution is instituted within a year after the date on which the offence is alleged to have been committed."

7. The term "Excise Officer" has been defined under Section 3(8) of the Definition clause, which reads as below:-

"(8) Excise Officer – 'excise officer' means any officer or person appointed or invested with powers under this Act."

8. Chapter VII of the Act deals with the powers and duties of officers and Section 46 that falls under the aforesaid chapter stipulates as below:-

"46. Power of Excise Officers to investigate offences punishable under this Act.-

(1) The State Government may by notification invest any excise officer, not below the rank of Inspector with power to investigate any offence punishable under this Act, committed within the limits of the area in which the officer exercises jurisdiction.

(2) Every officer so empowered may within those limits exercise the same powers in respect of such investigation as an officer incharge of a police station may exercise in a cognizable case under the provisions of Chapter XII of the Code of Criminal Procedure 1973."

9. Further, Section 71 of the Act is pertinent and states as below:

"71: Report by investigation officer for institution of proceedings.- If on an investigation by an excise officer, empowered under section 46, sub-section (1), it appears that there is sufficient evidence to justify the prosecution of the accused, the investigation officer, unless he submits the case for the orders of the Collector under section 80, shall submit a report[(which shall be deemed to be a police report under the Code of Criminal Procedure, 1973)] to a Magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on police reports.]"

10. On a conjoint reading of the aforesaid provisions, it is apparent that the State Government is entitled to issue a notification to invest any excise officer not below the rank of an Inspector with the powers to investigate any offence punishable under the Act and committed within the limits of the area in which said officer exercises jurisdiction and upon investigation by an excise officer empowered under Section 46(1), if it appears that there is sufficient evidence to justify the prosecution of the accused, the IO shall submit a report to a Magistrate to take cognizance of the offence. The aforesaid provisions read in conjunction with Rule 3 of the Delhi Excise Powers and Appeal Orders provides for investing two classes of Officers under Section 11 of the Punjab Excise Act with the powers of an excise officer, viz, Ist class and IIIrd class respectively and it groups them in two categories, i.e., Group A & B respectively. Group 'A'

includes all Superintendents, Assistant Superintendents, Deputy Superintendents of Police, all Inspectors & Sub-Inspectors of Police, all Sergeants of Police, all Assistant Sub-Inspectors of Police and all Head Constables and they are entitled to exercise powers of an Excise Officer of the Ist class. Group 'B' includes all Field Kanungos and all police constables, who are entitled to exercise powers of an Excise Officer of the III class.

11. In view of the aforesaid provisions, this Court is inclined to accept the submission made by the learned APP for the State that the trial court had erred in acquitting the respondent on the technical ground of the maintainability of the FIR.

12. A similar view was taken by a Single Bench of this court in the case of Chattar Singh (supra) and by a Division Bench of the Punjab & Haryana High Court in the case of Darshan Singh Vs. State of Punjab reported as (1971) 73 PLR 942. In the case of Darshan Singh (supra), while dealing with a revision petition that was referred by a Single Bench to a Larger Bench, the Division Bench of the Punjab and Haryana High Court had formulated the following legal issues for consideration :

"(1) That entire proceedings are void ab initio inasmuch as before the Magistrate there was no complaint or report made by an Excise Officer within the meaning of Section 75 of the Punjab Excise Act,

1914, and as such, the Magistrate was not competent to take cognizance of the offence.

(2) That Section 20 of the Police Act, 1961, clearly prohibits the conferment or investiture of the powers of an Excise Officer under the Punjab Excise Act, 1914, or otherwise on a police officer and as such the notification No.990-E&T-56/724, dated 19th March, 1956, Revenue Department, Punjab Government so far as the said notification purports to confer or vest the powers of an Excise Officer on a Police Officer is ultra vires the powers of the Punjab Government.

(3) That the said notification is further bad in law inasmuch as under Section 46 of the Punjab Excise Act, the powers to investigate an excise offence can be invested, on an Excise Officer, not below the rank of Sub-Inspector. As such the powers under Section 46 of the Punjab Act, 1914, can be invested on a Police Officer only after appointing a Police Officer as an Excise Officer of the rank not below that of an Excise Sub-Inspector. But no such appointment has been made."

13. After examining the relevant provisions of the United Provinces Excise Act, 1910 and of the Punjab Excise Act, 1914 that have parallel provisions, the Division Bench had held that every police officer of the rank of Head Constable or above had been conferred the status of a First Class Excise Officer and was thus empowered with the powers of

investigation under Section 46 of the Excise Act. Further, while referring to the provisions of Section 46(1) and Section 71 of the Excise Act, it was observed that a police officer invested with the power of a First Class Excise Officer, who *inter alia* is empowered with the powers of investigation under Section 46 of the Excise Act, is competent to put in a complaint relating to the commission of an excise offence before a Magistrate authorized to take cognizance of such an offence under Section 75 of the Excise Act, without such a police officer being expressly empowered in so many words in that behalf and, therefore, a report submitted to the Magistrate in that regard would be a valid complaint under Section 75 of the Excise Act regarding an excise offence.

14. Even in the present case, ASI Devinder Singh, being a group 'A' officer, was invested with the powers of a First Class Excise Officer, including the powers to investigate under Section 46 of the Excise Act, and he was duty bound to submit a report to a Magistrate having jurisdiction to inquire into and try a case regarding an excise offence wherein, it appeared to him that there was sufficient evidence to justify the prosecution of the respondent accused.

15. In view of the provisions of Section 71 read with Section 75 of the Act, the aforesaid officer will have to be treated as an Excise Officer for an excise offence and as a result, a report submitted by him to the Magistrate under Section 173 of the Cr.P.C. is a valid complaint based

whereon, the latter would be competent to take cognizance of the offence in question and take the case to trial.

16. As a result of the aforesaid discussion, the present appeal is allowed and the impugned judgment of acquittal is set aside. The case is remanded back to the trial court for the parties to address arguments on the merits of the case.

17. As the matter relates to the year 1996, the learned CMM, Rohini Courts is requested to hear arguments and dispose of the present case as expeditiously as possible and preferably within a period of two months from the date the parties appear before the said Court. The parties are directed to appear before the learned CMM, Rohini Courts on 28.10.2013 for further proceedings.

18. The trial court record be released forthwith.

19. A copy of this order be forwarded to the trial court for perusal and compliance.

OCTOBER 07, 2013
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(HIMA KOHLI)
JUDGE