

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRM(M) No. 584/2021

Date of Pronouncement: 20.02.2026

Date of uploading: 24.02.2026

SHARAZ AHMED AND ANOTHER ...Petitioner/Appellant(s)

Through: Mr. P. N. Bhat, Advocate

Vs.

UNION TERRITORY OF J&K ...Respondent(s)

Through: Mr. Bhanu Jasrotia, GA

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
20.02.2026

1. By way of the present petition filed under inherent jurisdiction of this Court, the petitioners have called in question the proceedings arising out of FIR No. 87/2020 registered at Police Station Rajouri for offence under Section 48-(a) of the J&K Excise Act (hereinafter referred to as "*the Act*") and have further sought quashing of the order passed by the Court of Special Mobile Magistrate, Rajouri (hereinafter referred to as "*the Trial Court*"), whereby their plea for discharge was rejected and charge came to be framed against them.
2. Briefly stated, on 18.03.2020 a Police party comprising ASI Mohd. Bashir and Head Constable Bashir Ahmed, while on patrolling duty at Muradpur, intercepted a Maruti car bearing registration No. DL9CD-8346. Upon search, 8 boxes of liquor containing 398 bottles (180 ml

each) of special whiskey were allegedly recovered. The petitioners, who were travelling in the vehicle, were unable to account for possession of the said liquor. Consequently, FIR No. 87/2020 came to be registered for offence under Section 48-(a) of the Excise Act and after investigation, charge-sheet was laid before the Trial Court.

3. The petitioners assail the prosecution primarily on the ground that the seizure and investigation were conducted by officers not competent under the statutory scheme of the Act and that the mandatory provisions of Section 30 of the Act thereof were not complied with. The case revolves around interpretation of the Jammu and Kashmir Excise Act, 1958 “the Act” which is a special statute governing import, export, transport, manufacture, sale and possession of intoxicating liquor in the erstwhile State.
4. Section 30 of the Act provides that, an Excise and Taxation Officer or Police Officer not below the rank of Head Constable, may effect seizure and arrest in respect of offences under the Act. However, Sub-section (2) mandates that where seizure is effected by a person other than the Excise and Taxation Officer, the offender and seized articles must be produced before the nearest Excise Inspector. Sub-section (4) empowers the Government to invest a Police Officer not below the rank of Sub-Inspector with powers exercisable by an Excise Inspector.
5. Sections 36 to 45 of the Act lay down the procedure for inquiry, production before Magistrate and trial. Section 38 makes offences under Section 48 non-bailable and triable summarily so the Act thus constitutes a complete code in itself.

6. Learned counsel for the petitioners contends that though seizure was effected by an ASI and Head Constable, no material is available to demonstrate that the accused and seized property were produced before an Excise Inspector as mandated under Section 30(2) of the Act. It is further urged that investigation was not conducted by a duly empowered officer not below the rank of Sub-Inspector. Reliance is placed upon the judgment of this Court in:

- *State of J&K vs. Sham Singh* (CRAA No. 44/2007, decided 07.09.2018), and
- *Sat Pal Sharma vs. Police Station Malhar* (decided 22.02.2023), wherein proceedings under Section 48-(a) were quashed on similar grounds.

7. Per contra, learned counsel for the respondent submits that in terms of Government Order No. 52-E of 1959 dated 27.11.1959, Police Officers not below the rank of Sub-Inspector have been conferred powers of Excise Inspector and that the charge-sheet having been presented by the Officer In charge of Police Station, the requirement of law stands satisfied.

8. Having heard both counsels, the principal question which arises for consideration is whether the seizure and subsequent proceedings were conducted in conformity with the statutory mandate of Section 30 of the Act. A plain reading of Section 30 of the Act reveals that though a Police Officer not below the rank of Head Constable may effect seizure, such officer has no independent authority to proceed with enquiry unless duly empowered under Section 30(4) of the Act. The statute clearly requires that the offender and seized articles be

produced before the nearest Excise Inspector, who alone is competent to undertake enquiry in accordance with Sections 36 to 45 of the Act. The Act uses the expression “enquiry” and not “investigation”, thereby manifesting legislative intent that offences under the Act are to be processed through the machinery prescribed therein.

9. In *State of J&K vs. Sham Singh* (supra), this Court held that investigation conducted by a Head Constable without requisite empowerment is illegal and vitiates prosecution. The same principle was reiterated in *Sat Pal Sharma* (supra), wherein proceedings initiated on the basis of investigation by an Assistant Sub-Inspector were quashed.
10. Though Section 30(4) of the Act read with the relevant notification empowers a Police Officer of the rank of Sub-Inspector to act as an Excise Inspector, such empowerment cannot be construed to vest in him the authority to independently undertake and complete the investigation in derogation of the procedure prescribed under the Act. The offences under the Act are regulatory in nature and hinge upon the determination of whether possession of liquor is authorised by virtue of a valid licence or permit. Such determination necessarily requires an enquiry contemplated under the provisions of the Act, which enquiry is to be conducted by the competent Excise authority.
11. In view of Section 5 of the Code of Criminal Procedure, where a special enactment prescribes a distinct procedure, the same must prevail and the procedure under the Code would apply only in the absence of a specific provision to the contrary. The Act in question contains a complete code in itself regarding enquiry, collection of

evidence, arrest of the offender, and his production before the nearest Excise Inspector. It further provides that upon satisfaction regarding sufficiency of evidence; the offender shall be produced before the Special Magistrate for trial. Conversely, where the evidence is found deficient, Section 44 of the Act empowers the Excise and Taxation Officer to release the accused.

12. A conjoint reading of Sections 30, 36 and 37 of the Act makes it abundantly clear that officers other than the Excise and Taxation Officer are authorised merely to take charge of the offender and the property in respect of which the offence has allegedly been committed. They are not vested with independent authority to conduct investigation or to proceed further in the matter beyond such limited powers.

13. Section 61 of the Act makes only a limited application of the Code of Criminal Procedure to proceedings arising under the Act, and that too only insofar as such provisions are not inconsistent with the special procedure prescribed. Therefore, even assuming that a Police Officer had the power to seize the offending property and detain the offender in connection with an offence under Section 48 of the Act, his authority would extend only to taking charge of the accused and the seized property and producing same before the nearest Excise Inspector. The power to conduct enquiry and proceed further in accordance with law remains exclusively vested in the competent Excise authority under the Act.

14. In the present case, the record does not disclose that:

- The petitioners were produced before the nearest Excise Inspector after seizure.
- Enquiry under the Act was conducted by a duly empowered Excise Officer.
- Seizure was carried out by a Police Officer not below the rank of Sub-Inspector specifically invested with powers under Section 30(4).

15. The mere presentation of charge-sheet by the Officer In charge of Police Station does not ipso facto establish compliance with Section 30. The foundational requirement of lawful enquiry having not been satisfied, the prosecution stands vitiated.

16. The Excise Act being a special enactment and a complete code, deviation from its mandatory provisions renders the proceedings illegal. Continuation of such prosecution would amount to abuse of process of Court. For the foregoing reasons, the petition is *allowed*. FIR No. 87/2020 registered at Police Station Rajouri for offence under Section 48-(a) of the J&K Excise Act and all consequential proceedings including the order of the Trial Court framing charge against the petitioners are hereby quashed. The petitioners shall stand discharged from the said proceedings. SHO P/S concerned shall produce the seized liquor to nearest Excise Inspector who shall then proceed further in terms of the provisions of the Act. Pending applications, if any, shall also stand *disposed of*.

(SANJAY PARIHAR)
JUDGE

JAMMU:
20.02.2026
Akfil Dev

Whether the order is speaking? Yes
Whether the order is reportable? Yes