

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 373 OF 2016

Manoj Kumar Tiwari, S/o Udhav Prasad Tiwari, aged about 46 years, R/o Near Purana Bus Stand, Ward No. 20, Janjgir, District Janjgir-Champa (C.G.)

... Petitioner

Versus

State of Chhattisgarh, through District Magistrate, Janjgir, District Janjgir-Champa (C.G.)

... Respondent

For Petitioner	:	Mr. C.J.K. Rao, Advocate.
For Respondent	:	Mr. Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/12/2016

1. The present petition under Section 482 of CrPC has been preferred by the Petitioner assailing the order dated 2.2.2016 passed by the Additional Sessions Judge (F.T.C.), Janjgir, District Janjgir-Champa, in Criminal Revision No. 02 of 2016.

2. Vide impugned order dated 2.2.2016, the Revisional Court has uphold the order dated 4.11.2015 passed by the Chief Judicial Magistrate, Janjgir in Criminal Case No. 1048 of 2013 rejecting the application filed by the present Petitioner under Section 61(2) of the Chhattisgarh Excise Act ('the Act' in short).

3. Case of the prosecution in brief is that the present Petitioner is an accused for an offence under Section 34(a) and 34(2) of the Act. An investigation was conducted and a criminal case, i.e., Criminal Case No. 1048 of 2013, has been instituted against the Petitioner for the offence under Section 34(2) of the Act. The Petitioner was arrested on 17.6.2013. That as per the provisions of Section 61(2) of the Act, charge-sheet in the instant case ought to had been filed within a period of six months from the

date of arrest, however, according to the Petitioner, there is a delay of about two days in the filing of the charge-sheet beyond six months time and, therefore, the Petitioner is entitled for the benefit as is enshrined under Section 61 (2) of the Act.

4. Counsel for the Petitioner submits that six months from the date of arrest would be 16.12.2013 whereas the challan in the instant case has been filed beyond 16.12.2013, i.e., on 18.12.2013, and as such there is a delay of two days. Referring to Section 61(2) of the Act, Counsel for the Petitioner submits that the wording of the said Section clearly enumerates the fact that in case, if the charge-sheet could not be filed within a period of six months then necessary sanction has to be taken by the prosecution before the Court could take cognizance of any offence punishable under the Act. Undisputedly, the sanction in the instant case has been obtained by the prosecution on 24.6.2014, i.e., also after about a period of more than one year from the date of arrest and for which reason also the Petitioner would have been entitled for the benefits that would accrue under Section 61(2) of the Act.

5. Counsel for the Petitioner further submits that it is a case where on repeated occasions the Petitioner has been successful before the Revisional Court and each time the matter is remitted back, but the Magistrate for some reason or the other, rejected the application ignoring the said provision of law. He submits that once when there is a statutory provision prescribed under the law, it is the duty casted upon the prosecution to proceed further in accordance with the said provision of law and they cannot be permitted to flout the orders to the convenience of the prosecution. The provisions of Section 61(2) of the Act clearly stipulates that except for the special sanction of the State Government, no Court shall take cognizance. In the instant case, according to the Counsel for the

Petitioner, cognizance has been taken on 18.12.2013, i.e., the date on which the charge-sheet has been filed and, therefore, the action on the part of the Respondent is bad in law under Section 61(2) of the Act. Counsel for the Petitioner prays for an appropriate direction in this regard seeking for discharge of the Petitioner from the offence, under Section 61(2) of the Act.

6. Learned Counsel for the State, however, opposing the petition, submits that it is a case where the cognizance is yet to be taken and that mere filing of the charge-sheet itself would not amount to taking cognizance by the Court below. Once when the order reflects that the matter is fixed for the arguments before charge, itself reflects that the cognizance has not been taken by the Court below. He further submits that before the cognizance is taken, the prosecution has obtained special sanction from the State Government on 24.6.2014 and as such the requirement of law under Section 61(2) of the Act has been fully complied with and, therefore, the impugned order does not warrant any interference.

7. Having considered the rival contentions put forth on behalf of either side and on perusal of the record, what clearly reflects is certain undisputed facts, those are: (i) arrest of the Petitioner being on 17.6.2013, (ii) the Petitioner being prosecuted for the offence under Section 34(2) of the Act, (iii) the charge-sheet in the instant case being filed on 18.12.2013, (iv) the special sanction being obtained by the prosecution on 24.6.2014 and (v) the matter is now fixed for arguments before charge.

8. If we look into the dates which have been mentioned above, it would clearly reflect that the prosecution in the instant case has filed the charge-sheet on 18.12.2013 and also taken a special sanction for prosecuting the Petitioner on 24.6.2014. Now Section 61(2) of the Act clearly stipulates that

no Magistrate shall take cognizance of any offence under the Act unless the prosecution is instituted within six months and in case, if it is instituted beyond the period of six months, there has to be special sanction obtained from the State Government.

9. In the instant case, if we look into the facts of the case particularly, the submission of the State Government itself there is a delay of two days in the filing of the charge-sheet. However, undisputedly, the State Government has also granted special sanction for prosecuting the Petitioner which was granted on 24.6.2014. As such, the requirement of law under Section 61(2) of the Act has been complied with by the prosecution. The order of the Magistrate dated 4.11.2015 even reflects that the cognizance in the instant would be taken only after the arguments are completed before framing of charge and not before that. If that be so, this Court does not find any infirmity or illegality on the part of the Courts below in rejecting the revision petition as well as the application under Section 61(2) of the Act.

10. The opinion of this Court stands further fortified from the decision of the Madhya Pradesh High Court in the case of **State of Madhya Pradesh v. D.D. Karkare & Ors., 1992 MPLJ 454**, wherein dealing with the similar set of facts, to enable the court to take cognizance of offence after the expiry of the period of limitation in the interest of justice and the condition set out in Section 61(2) of the Act, the Madhya Pradesh High Court after considering the various statutory provisions and the judicial pronouncements, held as under :

“Besides the above, Section 473 of the Code itself enables a Court to take cognizance of the offence after the expiry of the period of limitation in the interest of justice or on other conditions set out in the section being fulfilled. Thus viewed, there would appear no conflict in sub-section (2) of Section 61 of the Act enabling a Court to take cognizance of an offence

under the Act after expiry of limitation with special sanction of the State Government.”

11. In view of above, the present Criminal Misc. Petition being devoid of merits the same is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/