

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 199 OF 2002

Dhanraj Navalrai Rizwani,
Age: 40 years, Occ: Business,
R/o. Behind Telephone Bhavan,
Vazirabad, Nanded.

...Applicant

versus

1. The State of Maharashtra.
2. Pradeep s/o Vasant Mishra,
Age: 51 years, Occ: Service
as Deputy Commissioner of State
Excise (presently Joint Commissioner
of State Excise, Mumbai) Old
Custom House, Fort, Mumbai.
3. Shivappa s/o Adivappa Kullur,
adult, Occ: Pensioner,
R/o. 232, Pariwar Apartment,
Near Telephone Bhawan,
Tarabai Park, Kolhapur.
4. R.H. Chavan,
adult, Occ: Service,
R/o. C/o. State Excise Office,
Flying Squad, Nanded.

...Respondents

....

Mr. A.G. Godhamgaonkar, Advocate for applicant
Ms. R.P. Gour, A.P.P. for respondent No. 1
Mr. Kshirsagar, Advocate h/f Mr. A.S. Deshpande, Advocate for
respondent Nos. 2,3 and 4

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CORAM : N.W. SAMBRE, J.

**Reserved on : 02/04/2016
Pronounced on: 11/04/2016**

ORAL JUDGMENT :

Heard Mr. A.G. Godhamgaonkar, learned Counsel for the applicant and learned A.P.P. for respondent-State and learned Counsel Mr. Kshirsagar, holding for Mr. A.S. Deshpande, learned Counsel for respondent Nos. 2,3 and 4.

2. The applicant claims that he filed Regular Criminal Case No. 625 of 1998 in the Court of Chief Judicial Magistrate, Nanded against the respondents for the offence punishable under Section 167,200, 427 read with Section 34 of the Indian Penal Code. It is alleged that, accused No.1, who was carrying grudge against him, so as to cause harm and mischief, inspected godown of 'New Sagar Wines' on 15/07/1996 and seized stock of country liquor and submitted report to the superior officer on 06/08/1997. On earlier point of time i.e. on 17/07/1996, the godown was found to be legal and authorized. After the report was submitted and certain shortfalls in the godown were noticed, CL-II licence of the applicant was cancelled. It is claimed that the act on the part of present respondents was in high handed and with criminal intention and hence sought issuance of process against the accused persons.

3. After the complaint came to be filed on 16/03/1999,

verification was recorded and learned Magistrate was pleased to issue process against the accused persons for the offence punishable under Sections 167, 200, 427 read with Section 34 of the Indian Penal Code. Since respondent-accused No.2 did not appear, on 05/02/2001 an application for issuance of non bailable warrant came to be moved and the Magistrate has issued bailable warrant on 05/02/2001, and thereafter, issued non bailable warrant on 27/06/2001.

4. The respondent-accused preferred Criminal Revision Application No. 06 of 2001 under Section 397 before learned Revisional Court and prayed that the order dated 10/01/2000 directing issuance of process be set aside.

5. An objection was raised by the applicant to the said revision on the ground that the revision was time barred, as was filed beyond limitation. Learned Revisional Court ruled in favour of the respondent vide its order dated 13/06/2001 observing that the revision was well within time. The said order passed by Sessions Judge was subject matter of challenge in Criminal Writ Petition No. 531 of 2001, which came to be partly allowed by judgment dated 09/04/2001 by remanding the matter back to the Sessions Judge quashing the order referred supra, directing the Sessions Judge to

decide the issue of limitation afresh.

6. Learned Sessions Judge, thereafter passed an order allowing the revision by order dated 31/07/2002 holding that the complaint itself is liable to be dismissed and held that the revision was filed well within time, which order is the subject matter of challenge in the present revision application.

7. Mr. Godhamgaonkar, learned Counsel for the applicant, while trying to make out the case for showing indulgence, would urge that learned Chief Judicial Magistrate ordered issuance of process on 10/01/2000 and on 29/05/2000 revision was filed questioning the order of issuance of process. According to him, since the revision was time barred, an objection was rightly raised. While inviting attention of this Court to the date of filing of the revision, he would submit that the revision was liable to be dismissed as time barred.

8. The next limb of submission of Mr. Godhamgaonkar is, while dealing with the issue of limitation, learned revisional Court has exceeded its jurisdiction by dismissing the complaint itself and as such, the order of dismissal of the complaint is not sustainable. He would then submit that the act on the part of respondent-accused was in excess of the official duty or can be termed as not within the

official limit and as such, the provisions of Section 197 of the Code of Criminal Procedure or Section 147-A of the Bombay Prohibition Act are not applicable. He would submit that the order impugned is contrary to the provisions of Section 197(1) of Code of Criminal Procedure.

9. Per contra, learned Counsel for the respondents-accused would urge that the order of issuance of process was passed on 10/01/2000. The revision was filed on 29/05/2000. While pointing out appropriate dates, particularly as reflected on Page Nos. 43 and 44 of the record, he would urge that the revision was well within limitation, as the same was filed immediately after getting knowledge by the respondent-accused as regards impugned order. He would then submit that learned Sessions Judge has rightly appreciated the contents of the complaint and there is no substance in the revision, particularly having regard to the scope in revisional jurisdiction and as such, prayed for dismissal of the revision application.

10. Having considered the rival submissions of the parties, it is required to be noted that the Chief Judicial Magistrate has issued process against the accused at the behest of present petitioner for the offence punishable under Section 167 read with Section 34 of the

Indian Penal Code by an order dated 10/01/2000.

11. It is brought on record by the respondent No.2-accused through an affidavit that for about more than six years, he was serving at Bombay as a Deputy Commissioner of State Excise and prior to five to six months, he was transferred to Nagpur as Additional Commissioner of State Excise. He has in specific terms stated that he had no knowledge of criminal case presented by present applicant and other accused Shivappa, who stood retired from service, has informed him on 23/05/2000 about passing of the order of issuance of process. He thereafter immediately applied for certified copy on 26/05/2000 and filed revision on 29/05/2000.

12. In this background, learned Court below has assessed the issue of limitation pursuant to remand order passed by this Court in Criminal Writ Petition No.531 of 2001 on 09/04/2001. Learned Sessions Judge, while considering the issue of limitation in the above referred background, has noted that the present applicant though has raised objection to the claim of the respondent that he has filed revision within limitation, there is specific averments that he came to know about passing of the order of issuance of process on 23/05/2000 from another accused Kullur. Learned Session Judge then noted that once Advocate Mr. Hake, who is Senior Member of

Nanded Bar, has filed an affidavit on record on 28/06/2002 stating that he has received instructions and authorization from respondent Mr. Mishra and prepared revision and before filing of the same, has inserted certain portion in the revision and presented revision on 29/05/2000. The Court below in its discretion accepted the said affidavit of lawyer, for which there was no issue of doubt. Learned Revisional Court then having regard to the law laid down by this Court in the matter of ***Sonalkar Chemicals, Pune vs. M/s. Eagle Flask Industries Ltd., Pune*** reported in ***2000(4) Mh.L.J. 832*** and other catena of judgments, has ruled out in favour of respondent that revision was filed within time and not suffered from any delay and latches.

13. The said findings, if tested in the light of dates narrated herein above, particularly as regards the date of knowledge of the respondent as regards the order of issuance of process, in my opinion, no fault could be noticed in the said findings.

14. While dealing with the next limb of submission of learned Counsel for the applicant that the Revisional Court has committed error by dismissing the complaint itself, if appreciated, the Revisional Court has considered the fact that all the accused persons, who are named and against whom the process is ordered, were admittedly

posted in the Excise Department on their respective posts and as such, are public servants. In this background, though learned Counsel for the applicant has invited attention of this Court to the provisions of Section 197(1) of Code of Criminal Procedure so as to canvass that the respondent-accused was not acting or purporting to act in discharge of his official duty and as such, protection as provided thereunder is not available. Learned Counsel then would submit that the nature of allegations in the F.I.R. justifies his stand, as the act as has been alleged against the respondent, cannot be termed as one in discharge of official duty.

15. If the above referred submissions of learned Counsel for the applicant are considered in the backdrop of contents of the complaint, it is required to be noted that the complainant claims to be a wholesale dealer in country liquor holding CL-II licence and having other family concerns, such as, 'M/s. New Sagar Wines', 'M/s. New Dhanraj Liquor'. All these licences are governed by the provisions of Bombay Prohibition Act and relevant rules framed thereunder. It is then required to be noted that the accused Shivappa being Superintendent of State Excise, Nanded on 15/07/1996, alleged to have grudge against the applicant has inspected godown of M/s. New Sagar Wines and seized country liquor by unauthorized and illegal means. It is claimed that the said godown was visited and

inspected by accused on earlier occasion and nothing illegal was found. It is claimed that accused Shivappa demanded bribe of Rs.15,000/-.

16. If the above referred contentions of the applicant are analysed, the visit of the officials including that of original accused No.1 to the godown of the applicant was in official capacity. So far as role attributed to the present respondent-accused No. 2 is concerned, it is to be noted that the role attributed to him is issuance of notice on the basis of report submitted by original accused No.1 in the matter of cancellation of licence of the complainant on 12/06/1997 and then issuance of notice as regards other firms of the complainant by respondent No.2. It is claimed against present respondents that respondent No. 2 with the assistance of the other accused has caused loss to the complainant by cancelling his licence of other firms, which has no concern with the issue in question. Overall reading of the allegations, particularly as against this accused, it is to be noted that the entire allegations are in the matter of discharging official duty by accused No. 2, because of which present applicant appears to be aggrieved of. In the above referred background, there is no option left but to infer that permission as is required under Section 197 of the Code of Criminal Procedure before initiation of the prosecution against respondent No.1 by present

applicant was rightly held to be mandatory. Learned Court below, while discharging accused and dismissing the complaint, has rightly relied upon the provisions of Section 146(A) of the Bombay Prohibition Act. The said provision in clear terms provides for protection to a Officer like that of respondent No. 2 in the matter of initiation of prosecution. The said Section reads thus :

146A. (1) All prosecutions of any Prohibition, Police or other Officers, or of any persons empowered to exercise powers or to perform functions under this Act, and all actions which may be lawfully brought against the Government or any of the aforesaid officers or persons, in respect of anything done or alleged to have been done in pursuance of this act, shall be instituted within four months from the date of the act complained of, and not afterwards; and any such action shall be dismissed--

(a) if the plaintiff does not prove that, previously to bringing such action, he has presented all such appeals allowed by this Act, or any other law for the time being in force, as within the aforesaid period of four months it was possible to present; or

(b) in the case of an action for damages, if tender of sufficient amends shall have been made before the action was brought, or if after the institution of the action a sufficient sum of money is paid into Court with costs, by or on behalf of the defendant.

(2) Subject to the provisions of Section 197 of the Code of Criminal Procedure. 1898, no Court shall take cognizance of an offence committed or alleged to have been committed by any prohibition, police or other officer or any persons empowered to exercise powers or to perform functions under this Act, in regard to anything done under this Act, until the sanction of the Collector having jurisdiction has been obtained.

17. Having held that the act on the part of respondent No.2, who was Prohibition Officer and attributions against him are in relation to performance and discharge of his official function, the provisions of Section 146A are very much applicable and available to the respondent and are rightly taken recourse to by learned Revisional Court.

18. In this background, the findings recorded by the Revisional Court that the revision was within limitation and the fact that the complaint preferred against present respondent No. 2 is liable to be dismissed and was accordingly dismissed, are rightly recorded.

19. In view of above, no case for interference in extraordinary jurisdiction is made out. Hence, the revision application

fails and stands dismissed. Rule is discharged.

sd/-

[N.W. SAMBRE, J.]

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