

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-1807 of 2014

Date of decision : July 12, 2016

Amit Singh

....Petitioner

versus

Union Territory, Chandigarh

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Shailender Jain, Senior Advocate with
Mr. Sanjeev Gupta, Advocate, for the petitioner

Mr. JS Toor, APP, UT, Chandigarh-respondent

Fateh Deep Singh, J. (Oral)

Petitioner Amit Singh was an accused in case got registered by way of FIR No. 115 dated 4.7.2007, under section 68 of Punjab Excise Act, 1914, (in short, the Act), Police Station Sector-3, Chandigarh. The allegations against the petitioner were that on 25.6.2008, he was found consuming liquor at a public place in front of Degchi Restaurant, Sector-8, Chandigarh and was apprehended by the SHO and was got medically examined from General Hospital, Sector 16, Chandigarh where he was found to have consumed alcohol. The accused after the investigation was put to trial before the court of law and was charge sheeted and the accused

made confession of the charges so levelled against him and thus was found guilty under section 61 of the Act and was released on probation under the Probation of Offenders Act vide judgment/order of sentence dated 27.3.2012. The petitioner challenged the same in the revision and the court of learned Additional Sessions Judge, Chandigarh vide judgment dated 4.6.2013 dismissed the revision petition. The same has been assailed before this Court by the petitioner by invoking provisions under section 482 Cr.P.C.

Heard Mr. Shailender Jain, Senior Advocate with Mr. Sanjeev Gupta, Advocate, for the petitioner and Mr. JS Toor, APP, UT, Chandigarh-respondent and perused the records.

Section 61 of the Act deals with manufacture, collection of any intoxicant or as to import, export, transport or possession of any intoxicant which is a liquor, or as to construction or working of any distillery or brewery or else uses, keeps or has in his possession any materials, still, utensil, implements or apparatus whatsoever for the purpose of manufacturing any intoxicant other than tari for which offence, imprisonment of a term extending to three years with fine upto Rs 25,000/- has been provided. Section 61(1)(iv) deals with possession of foreign liquor other than manufactured in a licensed distillery or brewery in India on which duty is leviable. It is not the allegations of the prosecution so alleged against the revisionist that he was in possession of any liquor and rather the allegations that have sought to be put forth in the report under

section 173 Cr.P.C. permeates that he was found drinking at a public place and which is so the notice of accusation served upon the accused on 1.9.2010 under section 68 of the Act which deals with the penalty for offences not otherwise provided for and has itself sweep any guilty act of intentional omission or commission in contravention of any of the provisions of the Act, rule or notification issued under the provisions to be punishable offence which provides fine which may extend to Rs 5000/- and therefore, the same prescribe only punishment of fine and not imprisonment. By virtue of section 75 of the Act lays down that no Judicial Magistrate shall take cognizance of offences punishable under sections 62, 63, 64, 65, 68 or 70 of the Act except on the complaint or report of the Collector or an Excise Officer authorized by him in that behalf. Certainly as has been conceded to at the bar neither Collector nor any Excise Officer has been authorized to file complaint for the trial of the accused on these allegations and what has come up before this Court that it was the SHO of Police Station Sector-3, Chandigarh who has apprehended the accused while consuming liquor. The learned State counsel could not controvert the submission of the counsel for the revisionist how the instant prosecution was maintainable. Though, Mr. Toor to get out of this embargo has sought to take refuge to the contentions that the accused on 7.3.2009 has confessed to the guilt does not impress this Court whether with such an inherent defect in the prosecution, can the Court over-run it merely on the grounds of confession made by the accused and convict him thereupon.

How come the accused who has been served notice of accusation under section 68 of the Act has been subsequently found guilty and sentenced under section 61 of the Act which is more heinous in nature and which prescribes punishment of imprisonment as well and is materially at variance with the allegations which are special and covered under section 68 of the Act. Without there being fresh charges being framed certainly renders the present trial to be a mis-trial. Moreover, by virtue of section 468 under Chapter XXXVI of Code of Criminal Procedure which deals with limitation for taking cognizance of certain offences. It is made sufficiently clear under sub section (2) of section 468 Cr.P.C. that the period of limitation shall be six months if the offence is punishable with fine only. It is duly acceded by the learned State counsel that the offence under section 68 of the Act under which the allegations have been covered prescribes only punishment of fine. Therefore, it is the own stand of the prosecution that the occurrence is alleged to have taken place on 25.6.2008 whereas the notice of accusation has been served upon the accused on 1.9.2010, thus clearly after the period of limitation and which bar has come into play. Learned counsel for the petitioner has placed reliance on **Mahabir Parshad Garg vs The State of Haryana, 1977 C.L.R. (Pb. & Hr.) 306** to support his contentions to this effect. No doubt by his own act of confession, the revisionist has been convicted but having regard to the fact and in view of the law laid down in the case relied upon by the petitioner's side wherein it was held by their Lordships of the Hon'ble Apex Court that the object of the Criminal

Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of the offence. It was further held by their Lordships that the very object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trials as enshrined in Article 21 of the Constitution of India and therefore, it was also held that prosecution against such a person which is barred by limitation, the conviction as well as the sentence of the person and the entire proceedings culminating in the conviction is certainly *non est* in the eyes of law.

In the totality of what has been detailed and discussed above, since the question of limitation goes to the very roots of the jurisdiction of the learned trial court an authority to pass such an order, to the mind of this Court certainly is un-called-for. Any such sort of stand of the accused by way of confession or acquiescence does not take away this statutory mandate and confer jurisdiction upon the Court which is divested of such powers and thus cannot assume conferment of jurisdiction and nothing under the law can cure this defect. Reliance placed on **Chief Engineer, Hydel Project & Ors. Vs Ravinder Nath & Ors., 2008(2) Latest Judicial Reports, 620.**

In the light of what has been detailed and discussed above, the impugned judgment of learned Magistrate dated 27.3.2012 as well as the

judgment dated 4.6.2013 of the revisional court which has merged together certainly needs to be set aside and is hereby set aside by way of acceptance of this revision.

July 12, 2016
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(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>