IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-12706-2019 (O &M)
Date of decision: 19.05.2022

JASVIR SINGH **.......Petitioner**

VERSUS

STATE OF PUNJAB **....Respondent**

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Ms. Shweta Sharma, Advocate for
Mr. Gopal Singh Nahel, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

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<u>VINOD S. BHARDWAJ. J.(Oral)</u>

1. By means of the instant petition, the petitioner has sought quashing of the FIR No. 128 dated 15.09.2014 registered under Section 61 of the Punjab Excise Act, 1914 at Police Station Dirba, District Sangrur along with all consequential proceedings arising therefrom.

2. Briefly the facts of the case are enumerated to appreciate the instant controversy to the effect that on 15.09.2014, the Head Constable was on a patrolling duty in regard to suspicious persons in his official Car when the police party reached the bridge, Dirba at 6:30 p.m., one person with shorn hair was seen coming towards the police party on a motor cycle who, on seeing the police party, tried to evade. The police however successfully apprehended the said person who informed his name to be Ajmer Singh @ Bagga son of Mukhtiar Singh. Upon his search, 36 bottles of liquor were recovered from the right side and

another 36 bottles of liquor were recovered from the left side. As Ajmer Singh was not able to produce any license or permit in regard to the liquor bottles. A total of 72 bottles of liquor were recovered. The accused Ajmer Singh could not produced any license of permit for being in possession thereof, pursuant thereto the FIR in question was registered.

3. Notice of the instant petition had been instituted whereupon reply by way of Affidavit of Prithvi Singh, PPS, Deputy Supertintendent of Police, Sub Division Dirba, District Sangrur was filed wherein it was stated that the accused Ajmer Singh disclosed in his interrogation that he used to sell liquor to earn his livelihood and that the said 72 bottles of liquor were supplied to him by the petitioner Jasvir Singh son of Randhir Singh. On the basis of the aforesaid disclosure, Jasvir Singh (present petitioner) was nominated as an accused along with his Car Icon bearing No. DL-9CC 7709. The petitioner was arrested on 10.06.2017 and was thereafter released on bail.

4. The two sample parcels each containing 180 ML country made liquor were sent for analysis to the Chemical Examiner, Kharar vide certificate No. 188 dated 22.09.2014. However, it is claimed that the chemical report was not received in time due to which the challan could not be presented. The analysis report was received from the Chemical Examiner, Kharar vide No. 3794 dated 09.08.2016 giving an opinion that “both the samples resemble country liquor”. It is further stated that upon receipt of the report from the Chemical Examiner, challan was prepared on 12.11.2016 was submitted before the prosecution Agency on 05.01.2017. However, during scrutiny of the said

challan, it was returned by the prosecution agency on 10.08.2017 with 12 objections whereafter the same was submitted afresh on 03.10.2017. Again, fresh objections were raised on 05.01.2018. The challan was got rechecked on 07.01.2018, thereafter on 24.01.2019 and then on 29.01.2019 when the prosecution agency raised an objection for getting the prosecution sanctioned.

5. It is contended by the respondent-State that as the challan had not been furnished within time, the Senior Superintendent of Police, Sangrur had ordered to issue Show Cause Notice to Head Constable Jagmail Singh for departmental enquiry. It is pointed out that the Department of Excise and Taxation, Government of Punjab had issued instructions to all Commissioners of the State regarding designation of powers to the Divisional Commissioner under Rule 13 of the Punjab Excise Act, 1914 vide memo dated 26.08.2019. The prosecution sanction was thereafter granted by the Divisional Commissioner, Patiala Division vide Endorsement dated 27.07.2020 to submit challan against accused Ajmer Singh and Jasvir Singh. It is contended that pursuant to the receipt of the prosecution sanction, the challan was presented against the petitioner-Ajmer Singh on 03.11.2020 and the charge was framed on 05.07.2021. Learned counsel appearing on behalf of the petitioner vehemently argues that as per the provisions of Section 75 of the Punjab Excise Act, 1914, a Judicial Magistrate cannot take congnizance of any offence punishable under the Act unless the prosecution is instituted within a period of 01 year except with the special sanction of the State Government. Reference is made to the provisions of Section 75 of the Punjab Excise Act, 1914 which is reproduced hereinafter below:-

Section 75 of the Punjab Excise Act, 1914, reads as follows:-

*“**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:

[Provided that no police officer or constable discharging the functions of an excise officer, shall file a complaint or make the report, set out in clause (a) in regard to the offences of collection, possession and sale of liquor, committed on the premises of a licensed vend, unless authorised to do so, by the Financial Commissioner.

(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.”

6. It is contended that the mandate of seeking a prosecution sanction for institution of the complaint and for the Judicial Magistrate to take cognizance comes into operation only once the complaint in question is instituted after expiry of a period of 01 year. It is contended that in any case, the limitation as prescribed under Section 468 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) cannot be extended and that in the event the complaint is not instituted within the outer limit of the limitation so prescribed under Section 468

Cr.P.C., the institution of the complaint even after obtaining of special sanction from the State Government would not be permissible.

7. I have heard learned counsel on behalf of the respective parties and have gone through the petition as well as the documents appended along with the same with their able assistance.

8. In order to appreciate the controversy in the instant case, reference is also made to the provisions of Section 468, 470 and 473 of the Cr.P.C. The same are reproduced as under :

> ***Section 468 in The Code Of Criminal Procedure, 1973***
> *468. Bar to taking cognizance after lapse of the period of limitation.*
> *(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.*
> *(2) The period of limitation shall be-*
> *(a) six months, if the offence is punishable with fine only*
> *(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
> *(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.*
> *(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.*
>
> ***Section 470 in The Code Of Criminal Procedure, 1973***
> ***470. Exclusion of time in certain cases.***
>
> *(1) In computing the period of limitation, the time during*

which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded: Provided that no such exclusion shall be made unless the prosecution relates to the same facts' and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. Explanation.- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender-

(a) has been absent from India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

Section 473 in The Code Of Criminal Procedure, 1973

473. Extension of period of limitation in certain cases. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

9. It is evident from a perusal of the aforesaid provisions contained in the Code of Criminal Procedure, 1973 that a bar has been imposed against taking congnizance of an offence in terms of Section 468 Cr.P.C. The period within which the proceedings must be instituted and cognizance is taken is restricted to 03 years in relation to the offences which are punishable for imprisonment of more than 01 year but not exceeding 03 years. It is not in dispute that the offence in question would fall in category prescribed under Section 468 (2) (c) Cr.P.C. Such a period of limitation can only be extended in case appropriate application is moved under Section 473 Cr.P.C. and such permission is granted by the Court after being satisfied about the existence of facts and circumstances explaining the delay that had led to the delayed institution of the proceedings. Section 75 (2) of the Punjab Excise Act, 1914 does not over ride the provisions of the limitation as prescribed under the Code of Criminal Procedure, 1973. The import of the said Section is to the effect that in the event the proceedings are instituted under the Excise Act within a period of one year from the date of offence committed there is no requirement of the sanction and that in case the cognizance of the same is to be taken after the expiry of period

of one year from the date of commission of the offence, the same cannot be taken except with special sanction of the State Government. Thus, the said provision does not over ride the limitation so prescribed under Section 468 Cr.P.C. for taking cognizance of the offences. It is relevant to make reference to the judgment of this Court passed in ***"Pritam Singh versus The State of Punjab"*** in Criminal Micellaneous No. 4732-M-/1980 decided on 05.01.1981 The relevant extract thereof reads thus :

> *"Since the period of limitation for institution of prosecution has been dealt with in the Excise Act, as also in the Criminal Procedure Code, so, if possible, a construction that would not tend to exclude the application of the provisions of either of the statutes but would harmonise the relevant provisions has to be put upon the said provisions. When these provisions are so read, the conclusion is inescapable that the prosecution for the offence dealt with under the Excise Act has to be launched within one year, as envisaged by Sub-section (2) of Section 75 of the Excise Act and if that is not done and special sanction, as envisaged by Sub-section (2) of Section 75, of the State Government is not forthcoming, then even if Clause (c) of Sub-section (2) of Section 368 of the Code envisages a period of three years for the launching of the prosecution for the kind of offences, with which the petitioners are charged herein, no prosecution can be launched after the expiry of the period of one year and the Court would stand debarred from taking cognizance of the offences in question. However where special sanction of the State Government had been sought for by the prosecuting agency and the sanction had been given by the State Government and the period envisaged by Section 468 of the Code for launching of the prosecution had not run out, then the Court could still take cognizance of the offence. But if the limitation period envisaged by the provisions of Section 468 had expired before the special sanction of the kind had*

been granted by the State Government, then the Court would be debarred from taking cognizance of the offence unless the provisions of Sub-section (3) of Section 470 of the Code are attracted, for where the provisions of Section 470(3) are attracted, then the period spent in securing sanction of the State Government, while computing the period of limitation, shall have to be excluded and if after so doing period of limitation was still available.

5. To the case in hand, the provisions of Sub-section (3) of Section 470 of the Code are not attracted in that this provision, while referring to the previous consent or sanction of the Government or any other authority, has in view that consent or sanction of the given authority, which is necessary for launching the prosecution and not for extending the period of limitation given in the statute. The special sanction envisaged in Sub-section (2) of Section 75 of the Excise Act is a sanction for permitting prosecution beyond the period of limitation envisaged by the said Sub-section. That is a kind of sanction that is needed not for launching the prosecution which could be done without any prior consent or sanction of the Government, but for permitting the launching of prosecution after the expiry of the period of limitation envisaged in the statute in question.

6. Provisions of Sub-section (3) of Section 470 of the Code thus not being applicable to the present case and the challan having been put in after a period of six years, well beyond the period of three years envisaged by Clause (c) of Sub-section (2) of Section 468 of the Code, the Court was not competent to take cognizance of the offence, unless it availed itself of the powers under Section 473 of the 'Code which is in the following terms:

> *473. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been*

> *properly explained or that it is necessary so to do in the interests of justice.*
>
> *In the present case, one looks in vain for the existence of any order indicative of the satisfaction of the trial Court as admittedly no such order had been passed by the Court concerned.*
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> *7. For the reasons aforementioned, this petition is allowed and the proceedings against the petitioners pending in the Court of the Judicial Magistrate First Class, Kharar, are quashed."*

10. It is not disputed that the recovery in question had taken place on 15.09.2014 and that the challan was filed before the Court on 03.11.2020 which after a lapse of nearly 06 years of the commission of the offence. The period prescribed under Section 468 Cr. P.C. was 03 years from the date of commission of offence.

11. On a plain consideration of the said facts in the light of the precedent judgment as well as the statutory provisions contained therein, the proceedings are hit by the mandate of Section 468 Cr.P.C. and would not be revalidated by a sanction so granted in terms of Section 75 (2) of the Excise Act. The present petition is accordingly allowed and FIR No. 128 dated 15.09.2014 registered under Section 61 of the Punjab Excise Act, 1914 at Police Station Dirba, District Sangrur along with all consequential proceedings arising therefrom is hereby quashed.

(VINOD S. BHARDWAJ)
MAY 19, 2022 **JUDGE**
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No