**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

201

CRM-M-10712-2020 (O&M)
Date of decision: 24.03.2023

KARAMJIT SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rohan Garg, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

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AMAN CHAUDHARY. J.

Present petition has been filed for quashing of FIR No.60 dated 25.08.2016, Annexure P-1 registered under Sections 61,1 and 14 of the Punjab Excise Act, 1914 registered at Police Station Sadar Rampura, District Bathinda and all consequential proceedings arising therefrom.

Briefly put, a complaint had been made by ASI Balwant Singh s/o Karnail Singh, stating that during routine check for intoxicating substances and suspected vehicles, he along with other police personnels arrived in the area of village Chauke on 25.08.2016 and saw a silver car coming at a high speed. After an attempt to speed away from the police personnel, the car of the petitioner being driven by him was stopped, from which 15 boxes of country made liquor, containing 180 bottles of make 'Khasa Mota Santra' were recovered.

Learned counsel would submit that there being a bar under Section 75(2) of the Punjab Excise Act of taking cognizance by the Magistrate unless prosecution is instituted within a year from the date on which the offence is alleged to have been committed, except with special sanction of the State Government, the Magistrate erred in that regard as the FIR was registered on 25.08.2016, whereas the challan was presented about 5 years on 23.02.2021.

He would next contend that the cognizance taken by the Court in the present case was barred as per the provision of Section 468 CrPC, as the maximum period of punishment for offence under Section 61 of the Act is upto three years.

To buttress his submissions, he relies on the judgments of this Court in the cases of **Pritam Singh and others vs. State of Punjab,** 1981 CriLJ 545 decided on 05.01.1981; **Ranjit Singh @ Jeet Singh vs. State of Punjab and others,** CRM-M-5549 of 2016 decided on 25.10.2016; **Jagminder Singh @ Pappu vs. State of Punjab and another,** CRM-M-36005 of 2014 decided on 23.09.2016; **Kiran Kumar and another vs. State of Punjab,** CRM-M-7965-2020 decided on 26.02.2020 and **Jasvir Singh vs. State of Punjab,** CRM-M-12706-2019 decided on 19.05.2022.

In the reply by way of affidavit of Aaswant Singh, PPS, Deputy Superintendent of Police, District Bathinda, it has been stated that the final report in the case was submitted before the trial Court on 23.02.2021, whereafter, the charges have been framed on 26.08.2021. Learned State counsel submits that when the police was unable to submit the challan within the prescribed period, a letter was written to the Commissioner, Faridkot Range, Faridkot on 28.07.2020, for granting some more time for the same, which was granted vide letter dated 18.02.2021, thus, the said period ought to have been excluded from computation of period of limitation.

Heard.

It is apposite to refer to the relevant provisions, which read thus:

Section 75 of the Punjab Excise Act, 1914 -:

> **“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.”

Section 468 Cr.PC:

> **“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 CrPC:

470. Exclusion of time in certain cases.

(1) & (2) xx xx

(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.

Section 473 CrPC.:

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.

Indubitably, in the present case, the prosecution as contemplated by Section 75(2) of the Act was not launched within a period of one year. Even the period of three years within which cognizance could have been taken as per 468 CrPC, the punishment of offence under Section 61 of the Act being for maximum of 3 years, had expired by the time, the application to grant time to submit the final report was filed on 20.08.2020, which though was granted vide letter dated 18.02.2021. The plea of exclusion of the period taken by the Government for granting special sanction as per Section 470(3) Cr.PC. is not tenable, inasmuch as, the special sanction envisaged under Section 75(2) of the Act was for permitting the initiation of prosecution after expiry of the period of one year and not for launching the prosecution. Still further, even the learned Magistrate has not recorded any satisfaction with regard to explanation of delay or that it was necessary so to do in the interest of justice, as envisaged under Section 473 CrPC for taking cognizance after expiry of period of limitation as the challan was presented in the Court after about 5 years. Thus, the prosecution in the present case is bound to fall. The view of this Court finds strength from the judgment in the case of **Pritam Singh** (supra), wherein it was held that, "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 only 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 468 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."

In the case of **Jasvir Singh (supra)**, the FIR was quashed as the challan was presented on 03.11.2020 in the FIR dated 15.09.2014 registered under Section 61 of the Punjab Excise Act after the period for taking cognizance under Section 468 CrPC had expired. Likewise, in the cases of **Ranjit Singh @ Jeet Singh** and **Jasminder Singh @ Pappu** (supra), the FIR and the proceedings under the Excise Act were quashed on the ground that the cognizance beyond the period of limitation of one year as envisaged in Section 75(2) of the Act could not be taken.

This Court finds merits in the present petition and as such, the same is allowed. FIR No.60 dated 25.08.2016, Annexure P-1 and the consequential proceedings arising therefrom are quashed.

(AMAN CHAUDHARY)
JUDGE

March 24, 2023
S.Sharma(syr)

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No