

CRM-M-23553-2019 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 20.03.2023

Manish Kumar @ Mani and ors.

..... Petitioners

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

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

Ms. Navreet Kaur Barnala, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of FIR No.58 dated 17.07.2015 under Section 61 of the Punjab Excise Act, 1914, registered at Police Station Sadar Sangrur, District Sangrur and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that while the police party was on patrolling duty, a car was seen coming from the front side and on seeing the police party, suddenly, tried to turn around. It was stopped and three persons sitting in the car were apprehended. They disclosed their names as Inderjit Singh @ Rinku (petitioner No.2), Munish Kumar @ Manish Kumar @ manii (petitioner No.1) and Gopal Dass son of Gurdev Dass (petitioner No.3). The recovery of 19 boxes of country-made liquor totalling 228 bottles came to be effected from the vehicle.

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Based on the said recovery, the instant FIR came to be registered. A copy of the FIR is attached as Annexure P-1 to the present petition.

3. Subsequently, a report under Section 173 Cr.P.C. was submitted on 21.12.2020, after the filing of the instant petition and charges had been framed on 08.11.2021.

4. The learned counsel for the petitioner contends that the FIR was registered on 17.07.2015. An application was moved for grant of sanction in terms of Section 75 of the Excise Act, 1914 on 30.07.2018. The sanction was received on 24.11.2020 and the challan came to be presented on 21.12.2020. He contends that a reading of Sections 61 and 75 of the Punjab Excise Act alongwith Section 468 Cr.P.C., would reveal that the proceedings are liable to be quashed as the report under Section 173 Cr.P.C. was presented beyond the period of limitation. Reliance is placed on the judgments passed in the cases of '*Pritam Singh versus The State of Punjab (Criminal Misc. No.4732-M/1980 decided on 05.01.1981)*' and '*Jasvir Singh versus State of Punjab (CRM-M-12706-2019 decided on 19.05.2022)*'.

5. The learned counsel for the State has admitted the sequence of events as narrated by the petitioner. She, however, states that the offence is well-established against the petitioners, and therefore, the proceedings were not liable to be quashed as even charges have now been framed.

6. I have heard the learned counsel for the parties.

7. Before proceeding further, it would be apposite to examine Sections 61 and 75 of the Punjab Excise Act, 1914 and Sections 468 and 470

Section 61 of the Punjab Excise Act, 1914:

[61. Penalty for unlawful import, export, transport, manufacture and possession etc. - (1) Whoever, in contravention of any section of this Act or any rule, notification issued thereunder or any order passed or of any license, permit or pass granted under this Act, -

(a) imports, exports, transports, manufactures, collects or possesses any intoxicant; or

(b) constructs or works any distillery or brewery; or

(c) uses, keeps or has in his possession any material, still, utensil, implement or apparatus, whatsoever, for the purpose of manufacturing any intoxicant;

shall be punished for every such offence with imprisonment for a term which may extend to three years and with fine which may extend to ten lakh rupees:

Provided that in the case of an offence relating to the possession of, -

(i) a working still for the manufacture of any intoxicant, such imprisonment which shall not be less than two years and such fine which shall not be less than two lakh rupees. In case the fine is not paid, he shall have to undergo further imprisonment;

(ii) lahan, such imprisonment which shall not be less than one year and such fine which shall not be less than one lakh rupees. In case the fine is not paid, he shall have to undergo further imprisonment;

(iii) country liquor manufactured otherwise than in a licensed distillery in Haryana, in a quantity not exceeding twelve bottles, each bottle containing 750 millilitres, such imprisonment which shall not be less than six months and such fine which shall not be less than fifty thousand rupees and in a quantity exceeding twelve bottles of the aforesaid capacity, such imprisonment which shall not be less than two years and

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such fine which shall not be less than two lakh rupees. In case the fine is not paid, he shall have to undergo further imprisonment;

(iv) foreign liquor other than -

(a) manufactured in a licensed distillery or brewery or bottling plant in India; or

(b) imported into India on which custom duty is leviable under the Indian Tariff Act, 1934 (Central Act 32 of 1934), or the Customs Act, 1962 (Central Act 52 of 1962);

such imprisonment shall not be less than two years and such fine shall not be less than two lakh rupees. In case the fine is not paid, he shall have to undergo further imprisonment;

(v) foreign liquor manufactured in a distillery or brewery or bottling plant in India or imported into India on which custom duty is leviable under the Indian Tariff Act, 1934 (Central Act 32 of 1934) or the Customs Act, 1962 (Central Act 52 of 1962), in a quantity exceeding ten cases i.e. ninety bulk litres, on which the excise duty or any other levy payable under this Act, has not been paid, such imprisonment which shall not be less than two years and such fine which shall not be less than two lakh rupees. In case the fine is not paid, he shall have to undergo further imprisonment;

(vi) country liquor manufactured in a licensed distillery in Haryana, beyond the prescribed limit for private possession, such imprisonment shall not be less than six months and such fine shall not be less than fifty thousand rupees. In case the fine is not paid, he shall have to undergo further imprisonment;

(vii) foreign liquor manufactured in a licensed distillery or brewery or bottling plant in India or imported into India on which custom duty is leviable under the Indian Tariff Act, 1934 (Central Act 32 of 1934) or the Customs Act, 1962 (Central Act 52 of 1962), on which excise duty and all other levies payable under this Act, has been paid beyond the prescribed limit for private possession, such imprisonment which shall not be less

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than six months and such fine which shall not be less than one lakh rupees. In case the fine is not paid, he shall have to undergo further imprisonment; and

(viii) foreign liquor manufactured in a licensed distillery or brewery or bottling plant in India or imported into India on which custom duty is leviable under the Indian Tariff Act, 1934 (Central Act 32 of 1934) or the Customs Act, 1962 (Central Act 52 of 1962) in a quantity not exceeding ten cases i.e. 90 bulk litres on which excise duty or any other levy payable under this Act, has not been paid, such imprisonment which shall not be less than one year and such fine which shall not be less than one lakh rupees. In case the fine is not paid, he shall have to undergo further imprisonment.

(2) A penalty imposed under clauses (vi) to (viii) of sub-section (1), shall be recoverable by an Excise Officer in the manner, as may be prescribed.

(3) Whoever, in contravention of any section other than sections 29 and 30 of this Act or of any rule, notification issued thereunder or order made or of any license, permit or pass granted under this Act -

(a) sells any intoxicant; or

(b) cultivates the hemp plant; or

(c) removes any intoxicant from any distillery, brewery or warehouse established or licensed under this Act; or

(d) bottles any liquor for the purposes of sale; or

(e) taps or draws tari from any tari-producing tree, shall be punishable with imprisonment not less than one year which may extend to two years and such fine shall not be less than two lakh rupees. In case the fine is not paid, he shall have to undergo further imprisonment.]

Section 75 of the Punjab Excise Act, 1914:

75. Cognizance of offences. - (1) No Judicial Magistrate shall take cognizance of an offence punishable.

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(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 function 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 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.P.C.:

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 subsection (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 Cr.P.C.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.

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(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.

8. This Court has examined the issue in hand and in ***‘Pritam Singh versus The State of Punjab (Criminal Msc. No.4732-M/1980 decided on 05.01.1981’***, has held as under:-

“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 offence 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 provisions of section 470(3) are attracted, then the period spent in securing sanction of the State Government, while computing the period as limitation, shall have to be excluded and if after so doing period of limitation was still available.

5. To the case in hand, the provision 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 interest of justice."

In the present cases, one looks in vain for the existence of any order indicative of the satisfaction the trial Court, as admittedly no such order had been passed by the Court concerned.

7. For the reasons aforementioned, this petition is allowed and the proceedings pending against the petitioners in the Court of the judicial Magistrate First Class, Kharar are quashed".

This Court in the case of ‘ **Jasvir Singh versus State of Punjab (CRM-M-12706-2019) decided on 19.05.2022**’, has held as under:-

“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 cognizance 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.

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

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Act, 1914 at Police Station Dirba, District Sangrur along with all consequential proceedings arising therefrom is hereby quashed”.

9. Coming back to the facts of the present case, in terms of Section 75 of the Punjab Excise Act, 1914, the report under Section 173 Cr.P.C. could have been presented within one year or beyond the period of one year after seeking special sanction. However, in no case, could the report under Section 173 Cr.P.C. have been submitted beyond the period of 03 years as is envisaged under Section 468 Cr.P.C, since the maximum sentence prescribed under Section 61 of the Punjab Excise Act, is three years.

10. In the instant case, the FIR is dated 17.07.2015. The application for the grant of sanction itself was moved on 30.07.2018 which is beyond the period of limitation of 03 years. The sanction was received on 24.11.2020 and the report under Section 173 Cr.P.C. was presented on 21.12.2020. Thus, from the date of the FIR till the presentation of the report under Section 173 Cr.P.C., 05 years and 05 months had elapsed. Therefore, it is apparent that the taking of a cognizance itself is barred.

11. In view of the above, I find merit in the present petition, and therefore, the FIR No.58 dated 17.07.2015 under Section 61 of the Punjab Excise Act, 1914 registered at Police Station Sadar Sangrur, District Sangrur (Annexure P-1), the report under Section 173 Cr.P.C. and all subsequent proceedings arising therefrom are hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

March 20, 2023
sukhpreet