

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

CRM-M-59231-2022 (O&M)

Date of decision: 11.09.2023

Gursewak Singh and Another

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. RVS Chugh, Advocate for the petitioners

Mr. H.S. Sullar, Sr. DAG Punjab

AMAN CHAUDHARY, J.

1. Present petition has been filed for quashing of FIR No.12 dated 25.01.2016, registered under Sections 61, 1 and 14 of the Punjab Excise Act, 1914 (for brevity, 'the Act') registered at Police Station Raman, District Bathinda and all consequential proceedings arising therefrom.

2. The facts in a nutshell, as per the FIR are that on 25.01.2016, the police party received secret information, that the petitioners brought liquor for a low price from outside and sold the same at higher rates in City Raman and nearby places in a white-coloured car, Mahindra Xylo, bearing no. PB-11-BA-6682. A naka was laid down, where they were allegedly caught with 25 boxes of country liquor "Mota Khasa Santra" and 10 boxes of "Punjab Special XXX-Rum".

3. The first leg of contentions raised by the learned counsel for the petitioners would be that a bar under Section 75(2) of the Act exists, whereby the Magistrate cannot take cognizance of any offence under the Act, without

the special sanction of the State Government, unless the prosecution is instituted within a year from the date of occurrence. In the instant matter, FIR was registered under Section 61 of the Act on 25.01.2016, and the challan came to be presented before the trial Court on 03.10.2020, thus is liable to be quashed. The second submission would be that even otherwise, as per Section 468 CrPC, the period of limitation for taking cognizance of an offence under Section 61 of the Act is 3 years, thus, the present proceedings would still be barred. In support of his arguments, reliance has been placed on **Pritam Singh and others vs. State of Punjab**, 1981 CriLJ 545; **Jagminder Singh @ Pappu vs. State of Punjab and another**, CRM-M-36005 of 2014 decided on 23.09.2016; **Ranjit Singh @ Jeet Singh vs. State of Punjab and others**, CRM-M-5549 of 2016 decided on 25.10.2016 and **Jasvir Singh vs. State of Punjab**, CRM-M-12706-2019 decided on 19.05.2022.

4. Per contra, learned State counsel would submit, that as per the affidavit dated 17.05.2023 filed by Buta Singh, PPS, Deputy Superintendent of Police, Sub Division Talwandi Sabo, District Bathinda, despite having sent the samples on 29.02.2016, it was only on 04.07.2017 that the report of analysis was received, whereafter permission under Section 75 of the Act was sought from the Commissioner, Faridkot Division on 06.02.2020, which was received vide letter dated 24.09.2020, and thereafter the challan was presented on 03.10.2020, thus the delay caused is purely procedural. Furthermore, petitioner No.1 is also involved in 4 more cases under Excise Act, 2 NDPS and 1 IPC.

5. Heard learned Counsel on either side.

6. Before proceeding further, it is apposite to refer to the relevant provisions involved in the present case, 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.”

7. Reverting to the facts in hand, the challan having been presented on 03.10.2020 in the FIR lodged on 25.01.2016, the prosecution as contemplated by Section 75(2) of the Act cannot said to have been launched within a period of one year of commission of the offence. Considering the provision of Section 468 CrPC also, the period of three years for taking cognizance by the Court relating to an offence punishable under Section 61 of the Act, had expired even prior to 06.02.2020, the date on which the application under Section 75 of the Act was filed by the investigating agency, which however was granted on 24.09.2020. Thus, any which way, the proceedings in the present case are required to be dropped here and now. This Court is fortified in its view from the judgment in the case of **Pritam Singh** (supra), wherein, the date of incident being 23.06.1973, the challan was presented on 28.09.1979, after grant of the sanction under Section 75 of the Act on 29.08.1979, on an application filed on 20.08.1979, the proceedings against the petitioners therein were quashed by observing and holding 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.”

8. This Court in the case of **Jasvir Singh** (supra), quashed the FIR, 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 **Jagminder 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.

9. Hon'ble The Supreme Court in the case of **Ramesh Chandra vs. State of U.P.**, 2022 SCC OnLine SC 1634, as regards the wholesome power with the High Court under Section 482 CrPC had held thus:

“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar v. State of Uttar Pradesh** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in **State of Karnataka vs. L. Muniswamy**, (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated:

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object

behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

10. As a sequel to the aforesaid discussion, the present petition deserves to be and is hereby allowed. FIR No.12 dated 25.01.2016, registered under Sections 61, 1 and 14 of the Act and all consequential proceedings arising therefrom are quashed.

(AMAN CHAUDHARY)
JUDGE

September 11, 2023
M.Kamra

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