

204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6058-2023
Date of decision: 28.02.2024

Gurdarshan Singh

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Om Malhan, Advocate and
Mr. Arshbir Bhatti, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. AG Punjab.

HARPREET SINGH BRAR J. (ORAL)

1. Present petition has been filed under Section 482 of Cr.P.C. filed by the petitioner for quashing of the FIR bearing no. 155 dated 10.10.2014 under Section 61 of The Punjab Excise Act, 1914 (hereinafter 'the Act') titled '*State Vs. Gurdarshan Singh @ Shammi*' as well as all the consequential proceedings arising therefrom.
2. Brief facts of the case are that the FIR was registered on the basis of the statement of ASI Vijay Kumar, according to which, 144 bottles of country liquor were recovered from the car of the appellant-accused. Thereafter, from one can, a sample of 250 ml was drawn to be sent to the Chemical Examiner. The sample was sent for analysis on 13.10.2014. The report of the Chemical Examiner bearing number 879 dated 12.01.2017 was received on 12.01.2017. Upon obtaining the report of the Chemical Examiner, prosecution presented the Challan under Section 173 of Cr.P.C, dated 05.11.2020 before the learned Trial Court, on the basis cognizance was taken vide order dated 10.11.2020.
3. Learned counsel for the petitioner has taken a specific ground that

provided under Section 468 Cr.P.C. In the instant case, the incident occurred on 10.10.2014 and the Challan was filed on 10.11.2020, therefore, as per the provisions contained in Section 468 of Cr.P.C, learned trial Court cannot take cognizance of the same. While the special sanction of the State Government as per Section 75 of the Act was granted in the present case, yet Section 468 of the Cr.P.C. would bar the learned Trial Court from taking cognizance, as the offence provided under Section 61 of the Act prescribes a maximum sentence of 3 years and Section 468 of Cr.P.C. categorically provides that the period within which the proceedings must be instituted and cognizance is taken is restricted to 3 years with respect to offences which are punishable with imprisonment of more than 1 year but less than 3 years.

4. Learned counsel for the petitioner further contends that admittedly, Section 75(2) of the Act provides that the cognizance of any offence punishable under this Act can be taken by the learned Trial Court even after the expiry of the period of limitation i.e., 1 year, if a special sanction, with regard to the same, has been taken from the State Government. However, from a harmonious construction of the provisions of Section 75 of the Act and Section 468 of the Cr.P.C., it is lucid that even after obtaining the special sanction from the State Government after a period of 1 year, the proceedings would be hit by the mandate of Section 468 Cr.P.C. and would not be exempted from its rigor merely because a special sanction has been granted. In order to buttress this argument, reliance was placed on ***Pritam Singh and Ors. v. State of Punjab 1981 CriLJ 545*** and ***Jasvir Singh v. State of Punjab CRM-M-12706 of 2019 (O &M)***. As such the criminal proceedings are liable to be set aside.

5. Per contra, learned State counsel opposes the prayer made by learned counsel for the petitioner on the ground that despite having sent the

samples on 13.10.2014, it was only on 12.01.2017 that the analysis report with

respect to the same was received. On the basis of the report, permission under Section 75 of the Act was sought from the Commissioner, Patiala Mandal, Patiala, which was received vide letter dated 17.07.2020. Thereafter, challan was presented before the Trial Court on 10.11.2020, resulting in the Trial Court taking cognizance, vide order dated 10.11.2020. Thus, the delay is purely procedural in nature and the averment of the counsel for the petitioner that the delay reflects the careless, negligent and lackadaisical attitude of the investigating team, is completely unjustified.

6. Having heard the learned counsel for the parties and after perusing the record, it would be apposite to first reproduce the relevant provisions under consideration in the instant case:

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 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 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 a 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. It transpires that the sample in the present case was drawn on 10.10.2014. The report of the Chemical Examiner, Kharar was received on 12.01.2017. Upon obtaining the special sanction from the Commissioner, Patiala Mandal, Patiala, in compliance with Section 75 of the Act, challan under Section 173, Cr.P.C. was presented on 10.11.2020. Section 468 of Cr.P.C. provides limitation period for taking cognizance of offences and bars taking cognizance beyond the period of limitation.

8. The offence under Section 61 of the Act is punishable with 03 years of imprisonment, therefore, as per Section 468(2)(c) of Cr.P.C., the period of limitation for taking cognizance of the same would be three years, regardless of whether a special sanction was obtained or not. Clearly then, the learned Trial Court erred in taking cognizance of the offence. Reliance in this regard can be placed upon the case of **Pritam Singh** (supra), wherein it was held as follows:

“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.”

9. Likewise, this Court in **Jasvir Singh** (supra) and **Gursevak Singh and Anr. v. State of Punjab** CRM-M-59231-2022 (O&M) decided on 11.09.2023 had set aside the proceedings arising out of FIRs under the Act, as the cognizance was taken by the concerned Court after the expiration of the period of limitation as prescribed in Section 468 of Cr.P.C.

10. No doubt, the Court has the power to extend the period of limitation in certain cases under Section 473 Cr.P.C. i.e., if the Court is satisfied that given the facts and circumstances of the case, the delay has been properly explained or that the taking of cognizance is necessary to do so in the interest of justice, however, this provision is not relevant for consideration since no such order has been passed by the learned Trial Court, condoning the delay and recording its reasons for doing so.

11. Lastly, a three Judge bench of the Hon'ble Supreme Court in **Prabhu Chawla v. State of Rajasthan (2016) 16 SCC 30** has held that

availability of a remedy before the Revisional Court under Section 397 Cr.P.C does not restrict the High Court from exercising its inherent powers under section 482 Cr.P.C. Speaking through Justice Shiva Kirti Singh, the following was observed:

“6.In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Section 482 Cr.P.C. is unwarranted. We would simply reiterate that Section 482 begins with a non-obstante clause to state: "Nothing in this Code shall be deemed to limit or affect the inherent powers 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." A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. "abuse of the process of the Court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more." We venture to add a further reason in support. Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable.”

12. In view of the above discussion, the instant petition is allowed and the FIR, bearing no. 155, dated 10.10.2014 (Annexure P-1) registered under Section 61 of Punjab Excise Act at Police Station Dhuri, District Sangrur and all subsequent proceedings arising therefrom are quashed.

(HARPREET SINGH BRAR)
JUDGE

28.02.2024
Ajay Goswami

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