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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.1488 of 2018 (O&M)
Date of Decision : 10.05.2024

Jagsir Singh @ Jagg .....Petitioner

Versus

State of Punjab .....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Narinder Sharma, Advocate for the petitioner.

Mr. Jaswinder Singh Arora, DAG, Punjab.

PANKAJ JAIN, J. (Oral)

Present revision petition is directed against judgment dated 7th of April, 2018 passed by Additional Sessions Judge, Sangrur whereby the appeal preferred by the petitioner against the judgment dated 9th of October, 2017 passed by Sub Divisional Judicial Magistrate, Malerkotla in FIR No.22 dated 17th of March, 2014, registered at Police Station Sandaur has been dismissed affirming the conviction of the petitioner for offence punishable under Section 61(1)(a) of the Punjab Excise Act, 1914 (hereinafter referred to as 'the 1914 Act') and the order of sentence whereby the petitioner has been sentenced to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.2.00 lacs.

2. As per the prosecution on 22nd of September, 2013 at about 7.00 PM an Indica Car was spotted and was signalled to stop. Driver tried to turn

the car backward but was apprehended. The petitioner was found driving the same. On checking, he was found to be in possession of 96 bottles of countrymade liquor without any licence.

3. Petitioner was tried. Trial Court held the petitioner guilty of offence punishable under Section 61(1)(a) of the 1914 Act which stands affirmed in the appeal.

4. Counsel for the petitioner while assailing impugned order has raised two legal submissions. It has been contended that registration of the FIR as well as the investigation is at the hands of the police officials who were not competent to investigate the matter. Reliance is being placed upon Section 46 to submit that it is only the Excise Officers who can investigate the offence punishable under the 1914 Act. Counsel for the petitioner further relies upon Section 75 of the 1914 Act and alleges violation thereof. He submits that as per Section 75(2) of the Act, Court ought not have taken cognizance of offence under the Act as prosecution was instituted beyond one year from the date on which the offence is alleged to have been committed in the absence of special sanction of the State Government. In the present case, the offence alleged against the petitioner is stated to have been committed on 17th of March, 2014 and the Challan was presented on 5th of June, 2015 without any sanction. Reliance is being placed upon judgments passed by this Court in the case of **Pritam Singh vs. State of Punjab, 1981 PLR 634** and **CRM-M No.12706 of 2019** titled as **Jasvir Singh vs. State of Punjab** *decide on* 19th of May, 2022.

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5. Affidavit of Kuldeep Singh, PPS, Deputy Superintendent of Police, Sub Division Malerkotla, District Malerkotla was filed on behalf of the respondent/State wherein apart from reiterating the allegations against the petitioner, it has been contended that Section 75(2) of the 1914 Act does not have overriding effect over the provisions as contained under Section 468 of the Cr.P.C. Section 468 Cr.P.C. provides period of limitation to be three years. Where the offence is punishable with imprisonment for term exceeding one year but not exceeding three years. Thus, the Challan was presented well within the time period prescribed by the law.

6. I have heard counsel for the parties and have gone through records of the case.

7. In order to appreciate the contentions raised by counsel for the petitioner, it will be apposite the peruse the following bare provisions of law :

Section 46 of the Punjab Excise Act, 1914

> "46. **Power of Excise Officers to investigate offences punishable under this Act.**(1) The State Government may by notification invest any excise officer, not below the rank of sub-inspector with power to investigate any offence punishable under this Act, committed within the limits of the area in which the officer exercises jurisdiction.
> 2) Every officer so empowered may within those limits exercise the same powers in respect of such investigation as an officer in charge of a police Station may exercise in a cognizable case under the provisions of [Chapter XII of the Code of Criminal Procedure, I973."

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
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> (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:
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> [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.
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> (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."

8. So far as the first plea raised by counsel representing the petitioner w.r.t. competence of the police officer in the light of the powers conferred under Section 46 is concerned, the precise issue came up for consideration before Division Bench of this Court in the case of **Darshan Singh vs. State of Punjab, 1971 PLR 942** wherein Division Bench observed as under :

> "2. The petitioner challenged his conviction and sentence on many

grounds but the admitting Bench admitted this revision petition only on grounds Nos. 1, 2 and 3 which run as under :-

> "(1) That entire proceedings are void ab initio inasmuch as before the Magistrate there was no complaint or report made by an Excise Officer within the meaning of section 75 of the Punjab Excise Act, 1914, and as such the Magistrate was not competent to take cognizance of the offence.
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> (2) That Section 20 of the Police Act, 1961, clearly prohibits the conferment or investitual of the powers of an Excise Officer under the Punjab Excise Act, 1914, or otherwise on a police officer and as such the notification No. 990-E&T-56/724, dated 19th March, 1956, Revenue Department, Punjab Government so far as the said notification purports to confer or vest the powers of an Excise Officer on a Police Officer is ultra vires the powers of the Punjab Government.
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> (3) That the said notification is further bad in law inasmuch as under section 46 of the Punjab Excise Act, the powers to investigate an excise offence can be invested on an Excise Officer, not below the rank of Sub-Inspector. As such the powers under section 46 of the Punjab Excise Act, 1914, can be invested on a Police Officer only after appointing a Police Officer as an Excise Officer of the rank not below that of an Excise Sub-Inspector. But no such appointment has been made."

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5. At this stage, the provisions of the Punjab Excise act may also be noticed. Section 3(8) of the Punjab Excise Act defines 'Excise Officer' as under :

> "3. In this Act, and the rules made under it, unless there is something repugnant in the subject or context, -
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> * * * * * * *
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> (8) 'Excise Officer' means any officer or person appointed,

or invested with powers, under this Act;

* * * * * * *

Section 10 of the Excise Act deals with the powers of the State Government to create certain classes of excise officers, to appoint any number of persons to be excise officers of such classes, to declare the powers that will be exerciseable by the excise officers of each class, and, finally, the mode of conferring powers on them and it reads as under -

> "10. (a) There shall be such other classes of excise officers as the State Government may be notification declare, and State Government may appoint as many persons as it deems fit to be excise officers of these classes.
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> (b) The State Government shall by notification declare what powers under this Act shall be exercised by excise officers of each class.
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> (c) In conferring powers under this Act the State Government may empower persons by name or in virtue of their office or classes of officials generally by their official titles."

Section 11 of the Excise Act deals with the powers of the State Government to invest persons with special powers under this Act and it reads thus :

> "11. The State Government may by notification invest any person, not being an excise officer, with power to perform all or any of the functions of an excise officer under this Act, and such person shall in the exercise of these functions be deemed to be an excise officer."

A perusal of the above extracted provisions of the Excise Act would show that like the parallel provisions in the U.P. Excise Act, under the Punjab Excise Act also a person other than an excise officer invested with the powers of an excise officer can exercise only such powers of an excise officer, with which he is specifically invested by a notification issued by the State Government in that behalf.

6. The competency of the State Government to invest under section 11 of the Excise Act any person including a police officer with the powers of an excise officer not being in dispute, so to determine the extent and ambit of the powers conferred upon such police officers in this behalf, we shall have to take resort to the consideration of the provisions of the relevant notification which, in the present case, is notification No. 990-E&T-56/724, dated 19th March, 1956, because once we come to the conclusion that the power to submit a complaint, as required by section 75 of the Excise Act, is not conferred on the police office in question, then there is no escape from the conclusion that for the purposes of this section he is not an excise officer.

7. The aforesaid notification is known as the Punjab Excise Powers and Appeal Orders, 1956. Order 5 therein mentions three classes of excise officers and designates them as first class, second class and third class. This order further states that the persons mentioned in Groups A, B and C shall be the excise officers of the first class, second class and third class respectively. Then further therein the personnel of the Excise Department falling in the said three Groups i.e. A, B and C are enumerated and in this enumeration, inter ali, the excise sub-inspectors are also placed in Group A, which fact places them in the category of the excise officers of the first class. The personnel of the departments other than the Excise Department mentioned under Group A of Order 6 are expressly invested with the powers of an excise officer of the first class under section 11 of the Excise Act and such personnel, inter alia, include all police officers of the rank of Head Constable and any rank superior thereto. Clause C of Order 8 therein enumerates the powers of the excise officer of the first class which, inter alia, include the power to investigate under section 46 of the Excise Act.

8. A perusal of the above clearly shows that every police

officer of the rank of Head Constable or above has been conferred upon the status of a first class excise officer and has thus been empowered with the powers of investigation under section 46 of the Excise Act.

9. Having found from the consideration of the relevant provisions of the notification in question that every police officer of the rank of Head Constable or above (Sub-Inspector Darshan Singh in the present case is a police officer decidedly above the rank of Head Constable) is invested with the powers of first class excise officer which, inter alia, include powers to investigate under section 46 of the Excise Act. So now we may move on to the consideration of the question that stares us in the face as to whether a police officer invested with the powers of a first class excise officer who, inter alia, is empowered with the powers of investigation under section 46 of the Excise act, is competent to put in a complaint relating to the commission of an excise offence under section 60 of the Excise Act before a Magistrate (who is authorised to take cognizance of such an offence under section 75 of the Excise Act) without such a police officer being expressly empowered in so many words in that behalf. For facility of reference, the provisions of section 75 of the Excise act are given below :

> "75. (1) No 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 ..
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> (b) under section 62, section 63, section 64, section 65, section 68 or section 70, except on the complaint or report of the Collector or an excise officer authorised by him in that behalf.
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> (2) * * * * * *."

In our opinion, nothing more is required to have been done in that

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respect to enable the police officer in question to file a valid complaint under section 75 of the Excise Act regarding the excise offence in question. In this connection, reference to the provisions of sections 46(1) and 71 of the Excise Act is pertinent which are as follows :

> "46(1) The State Government may by notification invest any excise officer, not below the rank of sub-inspector with power to investigate any offence punishable under this Act, committed within the limits of the area in which the officer exercises jurisdiction.
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> 71. If on an investigation by an excise office empowered under section 46, sub-section (1), it appears that there is sufficient evidence to justify the prosecution of the accused, the investigating officer, unless he submits the case for the orders of the Collector under section 80, shall submit a report (which shall for the purposes of section 190 of the Code of Criminal Procedure, 1898 (V of 1893), be deemed to be a police report) to a magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on police reports."

We have, in the earlier part of this judgment, already found that in view of the above-noted provisions of the aforesaid notification, the police officer in question will be competent to exercise the powers of a first class excise officer falling in Group A of Order 5 of the aforesaid notification which, inter alia, also includes an excise sub-inspector. To put it differently, the police officer in question, inter alia, has been expressly designated an excise officer of the requisite status for the purposes of the provision of section 46(1) of the Excise Act. And a perusal of the aforesaid provisions of section 71 of the Excise Act would show that an investigating

> officer, empowered under section 46(1) of the Excise Act, is duty-bound to submit a report to a Magistrate having jurisdiction to enquire into or try the case regarding an excise offence in which it appears to such an excise officer that there is sufficient evidence to justify the prosecution of the accused. That being the position, then in view of the said provisions of section 71 of the Excise Act any express mention in the notification of the fact that the police officer in question would have the authority to file a complaint under section 75 of the Excise Act would have been unnecessary and superfluous. So for the purposes of section 75 of the Excise Act, the police officer in question will have to be considered an excise Officer and consequently on his report the Magistrate will be competent, under section 75 of the Excise Act, to take cognizance of offence in question."

9. The same view has been reiterated by Division Bench of this Court in the case of **Court on its own motion vs. Charan Singh and another, 1986(2) R.C.R.(Criminal) 327** holding as under:

> "6. A Division Bench of the Punjab Chief Court as far back as 1900 in ***Queen Empress v. Sunder Singh 8 Pun. Re. Cr. 901***. had the occasion to consider the very question and it was held that a Magistrate can take cognizance of an offence of working an illicit still on the report of chalan of a Deputy Inspector of Police, who is an Excise Officer under Punjab Government Notification No. 735 dated 26th March, 1885, which notification under section 2(2) of the Excise Act of 1896 is still in force, the police chalan being under section 190(6) of the Code of Criminal Procedure, 1973 a police report of facts constituting an offence. The Chief Court in coming to that decision relied on three earlier decisions in ***Empress of India v. Chet Singh 22 Pun. Re. Cr. 1900 Chatra v. The Empress 15 Pun. Re. Cr. 1887*** and ***Dewa Singh v. Queen Empress 4 Pun. Re. Cr. 1893***. Thereafter Dulat, J. in ***Mukhtiar Singh v. State, Cr. Rev. 1163/61 decided on 25th January, 1962***

in a judgment rendered in and also in a later judgment in ***Jagga Singh v. State Cr. Rev. 1500/61 decided on 7th May, 1962*** repelled the contention to the contrary advanced on behalf of the accused. The very question again came to be posed before a Division Bench of this Court in ***State v. Amar Singh 1963(1) CriLJ 271***. Dua J. who delivered the opinion for the Bench held that under section 75, cognizance of an offence under section 61 can be taken by a Magistrate, inter alia, on the report of an excise officer. Every police officer in the State of Punjab is an excise officer. A report of an offence under section 61 made by a Police Officer, who is also invested with the powers of an excise officer under section 71 falls with the purview of sections 75 and entitles the Magistrate to take cognizance of the offence. It was also held that the report mentioned in section 75 cannot be held to be different from the report contemplated under section 71. The language of section 71 is clear and unambiguous and a strained construction cannot be placed on section 71 merely because on a police report, the trial is to be held following the procedure specified in section 251-A and in other case, the procedure specified in the other provisions of the Chapter XXI of the Criminal Procedure Code.

7. The very question cropped up before another Division Bench of this Court in ***Darshan Singh v. The State of Punjab 1971 P.L.R. 942.*** The Division-Bench after an exhaustive review of the relevant provision of the Act held that under the provision of Punjab Excise Powers and Appeal Order every police officer of the rank of Head Constable or above was invested with the powers of first class excise officer, which, inter alia, included powers to investigate under section 46 of the Excise Act. A perusal of the provisions of section 71 of the Excise Act showed that an investigating Officer, empowered under section 46 of the Act, was duty bound to submit a report to a Magistrate having jurisdiction to enquire into or try the case regarding an excise offence in which it appeared to such an excise officer that there was sufficient evidence to justify the prosecution of the accused. So far the

> purposes of section 75 of the Act, a police officer would be considered an Excise Officer and consequently on his report the Magistrate would be competent to take cognizance of an offence under the Excise Act.
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> 8. In Darshan Singh's case (supra) yet another material contention was raised that Section 20 of the Police Act, 1861, clearly prohibited the conferment or investitual of the powers of an Excise Officer under the Punjab Excise Act, 1914, or otherwise on a police officer and as such the notification No. 990 E&T - 56/724, dated 19th March, 1956. Revenue Department Punjab Government so far as the said notification purported to confer or vest the powers of an Excise officer on a Police Officer was ultra vires the powers of the Punjab Government. Repelling this contention the Bench held that the provisions of Section 20 of the Police Act restricted the conferment of those powers or functions of an excise officer or a Police Officer which were qualitatively different from the powers and functions which a Police Officer under the Police Act was entitled to exercise, this provision additionally might also be envisaged to put restriction regarding conferment of power or authority which was wider in amplitude and scope than the power and authority conferred on him by the Police Act. The section could not be held to have debarred a Police Officer from being designated as an Excise Officer, so long as the Excise Act did not require him to perform such functions and exercise such authority which he could not do under the Police Act and which was not in consonance with the functions and authority exercisable by him under the Police Act."

10. In view of the aforesaid settled proposition of law, this Court finds that the first contention raised by counsel for the petitioner sans merit and the same deserves to be rejected in the light of law laid down by Division Bench in *Darshan Singh's* case (supra).

11. Coming on to the second contention the two dates that need to

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be taken note of are: (i) Offence alleged was committed on 17th of March, 2014 and (ii) Challan was presented on 5th of June, 2015.

12. Section 75(2) of the 1914 Act uses the expression 'instituted'. In the present case, if filing of report under Section 173 Cr.P.C. is taken to be the date when the criminal proceedings have been instituted, the same is beyond 1 year.

13. The State has pressed into service provision as contained under the Criminal Procedure Code to claim that the limitation would be 3 years and would be governed by Section 468 of Cr.P.C. and not Section 75(2) of the 1914 Act. The plea raised by the State counsel cannot be accepted. The two provisions regulate different fields. Section 75(2) talks of "institution of the prosecution", whereas Section 468 Cr.P.C. deals with "limitation for taking cognizance of offence by the Court". Apart from that the plea raised is against settled law that 'Special Law shall prevail over the General Law'. Once the Excise Act, 1914 specifically provides for the mode in which the delay in institution of criminal proceedings can be condoned i.e. by getting special sanction of the State Government, the prosecution was required to act accordingly to seek condonation of delay.

14. Admittedly, in the present case no such sanction was sought from the State Government. Thus, the Court at the first instance ought not have taken cognizance of the offence on the prosecution instituted for offence punishable under the Excise Act beyond one year from the date of alleged offence. Section 75(2) creates a valuable right in the accused not to

be prosecuted after expiry of the period of limitation prescribed and puts an embargo on the authority of the Court to take cognizance of the offence alleged. There being violation of the statutory mandate, this Court finds that the present revision petition deserves acceptance on the said issue. The defect in taking cognizance is incurable.

15. In view of above, the instant revision petition is allowed. Impugned judgment dated 7th of April, 2018 passed by Additional Sessions Judge, Sangrur and that dated 9th of October, 2017 passed by Sub Divisional Judicial Magistrate, Malerkotla are hereby set aside.

May 10, 2024 **(Pankaj Jain)**
Dpr **Judge**

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