

CRM-M-38496-2024

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**293 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-38496-2024

Date of decision: 29.01.2025

Harpal Singh

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pranav Chamoli, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR J. (ORAL)

1. Present petition has been filed under Section 528 of BNSS filed by the petitioner for quashing of the FIR bearing no. 11 dated 31.03.2013 under Section 61 of The Punjab Excise Act, 1914 (hereinafter 'the Act'), registered at Police Station Khem Karan, District Tarn Taran as well as all the consequential proceedings arising therefrom.

2. The facts leading to the registration of FIR(supra) are that a patrolling police party received secret information regarding an alleged attempt to illegally transport liquor. Acting on this information, the police set up barricades at Khem Karan bus stand. As a result, a Bolero Camper vehicle bearing registration number PB-29-0E-9993 was intercepted. Upon inspection, the vehicle was found to be carrying 44 crates of English liquor, with each crate containing 12 bottles of 750 ml each. According to the FIR, the driver of the vehicle initially attempted to flee but was subsequently identified by the police as the petitioner.

3. Learned counsel for the petitioner has taken a specific ground that no Court can take cognizance of an offence beyond the period of

limitation provided under Section 468 Cr.P.C. In the instant case, the incident occurred on 31.03.2013 and till date the challan has not been filed, therefore, as per the provisions contained in Section 468 of Cr.P.C, learned trial Court cannot take cognizance of the same. 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, no special sanction of the State Government as per Section 75 of the Act has been obtained in the present case.

4. Per contra, learned State counsel opposes the prayer made by learned counsel for the petitioner on the ground that 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.

5. Having heard the learned counsel for the parties and after perusing the record it transpires that undisputedly the FIR was lodged on 31.03.2013 (Annexure P-1). With regard to the invocation of Section 468 of Cr.P.C. the argument advanced by the learned counsel for the petitioner is liable to be rejected. The Constitution Bench of the Hon'ble Supreme Court in ***Sarah Mathew Vs. Institute of Cardio Vascular Disease and Others 2014(14) RCR Criminal 10***, has categorically held that for the purpose of calculating the period of limitation under Section 468 of Cr.P.C. the relevant date would be the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance or the

date of issuance of process by the Court. Since the FIR (*supra*) was registered on the same day as the date of the occurrence, Section 468 of Cr.P.C. cannot come to the aid of the petitioner.

6. Gainful reference in this regard can also be made on the judgment rendered by a two Judge Bench of the Hon'ble Supreme Court in ***Amritlal vs. Shantilal Soni and Others, (2022) 13 SCC 128***, wherein, speaking through Justice Dinesh Maheshwari, the following was opined:

*“9. In **Sarah Mathew**, the Constitution Bench of this Court examined two questions thus: -*

3. No specific questions have been referred to us. But, in our opinion, the following questions arise for our consideration:

3.1. (i) Whether for the purposes of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

*3.2. (ii) Which of the two cases i.e. **Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121]** or **Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559]** (which is followed in **Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394]**), lays down the correct law?*

10. The Constitution Bench answered the aforesaid questions as follows: -

*51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that **Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559]** which is followed in **Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394]** lays down the correct law. **Krishna Pillai [Krishna Pillai v. T.A. Rajendran, 1990 Supp SCC 121 : 1990 SCC (Cri) 646]** will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section [468](#) CrPC.*

(emphasis supplied)

11. Therefore, the enunciations and declaration of law by the Constitution Bench do not admit of any doubt that for the purpose of computing the period of limitation under Section 468 CrPC, the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence. The High Court has made a fundamental error in assuming that the date of taking cognizance i.e., 04.12.2012 is decisive of the matter, while ignoring the fact that the written complaint was indeed filed by the appellant on 10.07.2012, well within the period of limitation of 3 years with reference to the date of commission of offence i.e., 04.10.2009.

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13. A decision of the Constitution Bench of this Court cannot be questioned on certain suggestions about different interpretation of the provisions under consideration. It remains trite that the binding effect of a decision of this Court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is advanced, was actually decided therein [*Somawanti & Ors. v. The State of Punjab & Ors.: AIR 1963 SC 151* (para 22)]. This is apart from the fact that a bare reading of the decision in *Sarah Mathew* (supra) would make it clear that every relevant aspect concerning Chapter XXXVI CrPC has been dilated upon by the Constitution Bench in necessary details. As a necessary corollary, the submissions made with reference to other decision of this Court, which proceeded on its own facts, are of no avail to the respondents. Thus, the submissions made on behalf of the contesting respondents stand rejected in absolute terms.”

7. It is no longer res integra that the fundamental concept of the criminal jurisprudence is to ensure speedy trial. The Hon’ble Supreme Court has repeatedly reiterated that the right to speedy trial is enshrined in Article 21 of the Constitution of India. The speedy trial would cover in its sweep investigation, trial, appeal etc. i.e. everything starting with the accusation and expiring with the final verdict of the last Court. No citizen can be deprived of his liberty under a procedure which is not reasonable, fair or just, such deprivation would be violative of Article 21 of the Constitution of India. The Seven Judges Bench of Hon’ble Supreme Court in *Maneka Gandhi Vs.*

Union of India and Another 1978(1) SCC 248 has articulated the protection enshrined under Article 21 of the Constitution of India and has held that Article 21 confers a fundamental right on every citizen and not to be deprived of his life or liberty except according to the procedure established by law and such procedure is not merely some semblance of procedure but such procedure must be reasonable, fair. The right to speedy trial undoubtedly flow from this concept of fairness. It was observed that any procedure which does not ensure a reasonably quick trial, it would fall foul of Article 21 and the right to speedy trial is an integral and essential part of fundamental right to life and liberty enshrined in Article 21 of the Constitution of India. Reference can also be made in this regard to the landmark judgments of the Hon'ble Supreme Court in ***P. Ramachandra Rao Vs. State of Karnataka 2002(4) SCC 578, Hussainara Khatoon Vs. Home Secretary, State of Bihar 1980 (1) SCC 81, Abdul Rehman Antulay Vs. R.S. Nayak 1992 (2) RCR (Criminal) 419, Common Cause A Registered Society Vs. Union of India 1996 (6) SCC 775***. Relevant paragraph from ***P. Ramachandra Rao (supra)*** is reproduced in this regard:-

“No person shall be deprived of his life or his personal liberty except according to procedure established by law declares Article 21 of the Constitution. Life and liberty, the words employed in shaping Article 21, by the Founding Fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully. Embarking upon the interpretation thereof, feeling the heart-throb of the Preamble, deriving strength from the Directive Principles of State Policy and alive to their constitutional obligation, the Courts have allowed Article 21 to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional

courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and re-trial in short everything commencing with an accusation and expiring with the final verdict the two being respectively the terminus a quo and terminus ad quem- of the journey which an accused must necessarily undertake once faced with an implication.”

8. Hon’ble Supreme Court in ***Abdul Rehman Antuley (supra)*** has observed that the determination of the guilt or innocence of the accused must be arrived at with reasonable dispatch. Relevant paragraph from the aforesaid judgment is reproduced hereinbelow: -

“Now, can it be said that a law which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case is fair, just and reasonable? It is both in the interest of the accused as well as the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declare so. Societal interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable dispatch-reasonable in all the circumstances of the case. Since it is the accused who is charged with the offence and is also the person whose life and/or liberty is at peril, it is but fair to say that he has a right to be tried speedily. Correspondingly, it is the obligation of the State to respect and ensure this right. It needs no emphasis to say, the very fact of being accused of a crime is cause for concern. It affects the reputation and the standing of the person among his colleagues and in the society. It is a cause for worry and expense

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82. The provisions of the Code of Criminal Procedure re consistent with and indeed illustrate this principle. They provide for an early investigation and for a speedy and fair trial. The learned Attorney General is right in saying that if only the provisions of the Code are followed in their letter and spirit, there would be little room for any grievance. The fact however, remains- unpleasant as it is-that in many cases, these provisions are honoured more in breach. Be that as it may, it is sufficient to say that the Constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in the provisions of the Code.”

9. The Hon'ble Supreme Court has considered the impact of inordinate delay in conclusion of the investigation on the fundamental rights of the accused in ***State of Andhra Pradesh Vs. P.V. Pavithran AIR 1990 Supreme Court 1266*** and it was concluded that the investigation into a criminal offence must be concluded expeditiously. Relevant paragraph is reproduced hereinbelow: -

“There is no denying the fact that a lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceeding to live every moment under extreme emotional and mental stress and strain and to remain always under a fear psychosis. Therefore, it is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the Court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation.”

10. The facts of the present case are considered in the light of the aforesaid authoritative pronouncements on the right of the accused to speedy trial. The FIR was lodged on 31.03.2013. Till date, the investigation is still pending and the Final Report has not been presented. The petitioner is subjected to unduly prolonged investigation. Fairness implicit in Article 21 confers a right on the petitioner to be tried speedily. The right to speedy trial under Article 21 encompasses all the stages of investigation, inquiry, trial. There is no justification for subjecting a citizen to an indefinite period of investigation. The inaction on part of the Investigating Agencies and the concerned Court in the present case cannot be accepted and it cannot be allowed to continue indefinitely. The State is under obligation to ensure speedy justice to its citizens. The inherent fairness embedded in Article 14, 19

and 21 makes it obligatory for the State to provide a procedure which is fair, reasonable and just.

11. The present case is not a case of grave magnitude and diabolic in nature which shocks the conscience of the society to prevent this Court from exercising its inherent jurisdiction under Section 482 of Cr.P.C. The Investigating Agency cannot be allowed to perpetuate illegal inaction and inflict more misery on the petitioner in violation of his right to life and liberty under Article 21 of the Constitution of India. Therefore, this Court is of the considered opinion that this is a fit case to exercise its powers under Section 482 of Cr.P.C. to put an end to indefinite and protracted investigation pending for more than 11 years.

12. In view of the above, the present petition is allowed and the impugned FIR bearing no. 11 dated 31.03.2013 under Section 61 of The Punjab Excise Act, 1914, registered at Police Station Khem Karan, Tarn Taran along with all consequential proceedings arising therefrom are hereby quashed.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

29.01.2025
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No