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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2476/2013**

STATE NCT OF DELHI

.....Petitioner

Through: **Mr. Ajay Vikram Singh, APP.**
SI Gunjan, P.S. Seelampur.

versus

HRIDYA NATH PRADHAN & ORS.

.....Respondents

Through: **Mr. Shiv Kumar Pandey and Mr.**
Ranjan Parmar, Advocates for R-1.
Ms. Astha (DHCLSC) and Ms.
Megha Singh, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **05.08.2025**

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973¹ is directed against order dated 8th January, 2013 passed by the Sessions Court in Crl. Rev. No. 56/2012. By the said order, the Sessions Court allowed the revision preferred by the Respondent against order dated 4th June, 2012, wherein the Trial Court had framed charges against them under Sections 409/272/34 of the Indian Penal Code, 1860,² and Section 61 of the Punjab Excise Act, 1914.³ Consequently, the Respondents were discharged of the aforesaid offences by the Revisional Court.

2. Briefly stated, the factual background of the case, leading to the filing of the present petition, is as follows:

2.1 A raid was conducted by a team of Excise Officers at the Retail L-2

¹ "Cr.P.C."

² "IPC"

³ "Excise Act"



Vend operated by DSCSC at Brahampuri, during which it was found that the crowns of one case of Bagpiper Whiskey, consisting of 12 bottles of 750 ml each, dated 25th November, 1997 and bottled by M/s Herbertsons Limited, had been tampered with. One of the bottles was found to contain less than 750 ml. The entire carton was seized, sealed with the seal of OS, and taken into possession for analysis at the Excise Control Laboratory. Thereafter, it was reported that all the bottles had tampered crowns and five out of the twelve bottles were diluted in respect of Ethyl Alcohol content.

2.2 Based on these findings, a complaint was filed alleging that the Respondents, along with the co-accused, had entered into a criminal conspiracy and adulterated the liquor bottles by cracking open the seals, and therefore, they should be prosecuted under Sections 420 and 120-B of the IPC, as well as Sections 61/1/14 of the Excise Act. Accordingly, the complaint was registered and the accused persons, including the Respondents, were charge-sheeted.

2.3 The Trial Court, by an order dated 3rd August, 2011, directed that the accused persons (including the Respondents) be charged under the aforementioned offences. However, this order was challenged by the accused in Criminal Revision No. 35/2011, which was decided in their favour, resulting in the setting aside of the said order and remanding the matter for fresh consideration.

2.4 Subsequently, the Trial Court, by order dated 5th June, 2012, charged the accused (including the Respondents) under Sections 409, 272, and 34 of the IPC, and Section 61 of the Excise Act. Aggrieved, the Respondents filed a revision petition, which was allowed through the impugned order dated 8th January, 2013, resulting in their discharge. At the same time, the other two



accused persons [Vijender and Rakesh] filed a separate revision petition [Crl. Revision Petition 36/2012], which was also allowed by order dated 9th January, 2012.

2.5 Dissatisfied, the State has now filed the present revision petition, specifically challenging the impugned order dated 8th January, 2013, discharging the Respondents.

3. Mr. Ajay Vikram Singh, APP for the State, challenges the impugned order on the following grounds:

3.1 The impugned order is based on conjecture and surmise, and is therefore not sustainable in the eyes of law.

3.2 The Sessions Court erred in granting the Respondents protection under Section 197 Cr.P.C. It is a settled position of law that, in order to invoke the protection under Section 197, the accused must demonstrate a reasonable nexus between the alleged act and the discharge of their official duty. An act not done in the discharge of official duty, or in dereliction thereof, does not attract such protection. In the present case, the official duty of the Respondents was to sell liquor bottles. However, the acts alleged against them, *i.e.*, tampering with bottles and diluting Ethyl Alcohol, clearly fall outside the scope of their official functions. Such acts are covered under Section 409 IPC, and as such, no sanction under Section 197 Cr.P.C. is warranted.

3.3 The Respondents, being employees at a government shop, committed criminal breach of trust as defined under Section 406 IPC. At the stage of framing of charge, there was sufficient material on record to raise a strong suspicion against the Respondents. The Sessions Court thus erred in discharging them prematurely.



3.4 As regards the issue of limitation, the Sessions Court failed to appreciate the scope of Section 473 Cr.P.C., which empowers the Court to take cognizance of an offence even after the period of limitation, provided the delay is either properly explained or condonation is necessary in the interest of justice. Reliance is placed on the judgement of this Court in ***Shrikant Kaushika v. State***.⁴

4. The Court has duly considered the contentions advanced on behalf of the parties. It is pertinent to note that, apart from the present Respondents, two other co-accused, namely Vijender and Rakesh, had similarly challenged the order framing charge by filing a separate petition [Crl. Revision Petition No. 36/2012]. The said petition was allowed in their favour by order dated 9th November, 2012. Notably, the State has not preferred any challenge against that order.

5. Be that as it may, this Court has carefully considered the submissions advanced, as well as perused the material on record. A reading of the impugned order reveals that the Revisional Court has comprehensively dealt with the rival contentions advanced by the parties. The relevant observations of the Revisional Court are extracted below:

8. *Learned Addl.PP for the State also submitted that the cognizance as per section 75(2) of the Punjab Excise Act for the alleged offence could not have been taken by the learned MM as the same was barred under the said section. Learned Addl PP has also invited my attention to the order dated 19.3.2012 passed by Sh.RPS Teji, learned ASJ (Fast Track Court) wherein the then impugned order dated 3.8.2011 passed by the learned predecessor of learned Trial Court for framing charge for the offence under section 61 Excise Act and 420/120-B IPC was set aside and the matter was remanded back with the direction to pass a fresh order in the light of observations made therein but the impugned order is*

⁴ Crl. M.C. No.



silent even about those observations and has been passed without discussing the relevant issues.

9. *A perusal of the charge sheet shows that a raid was allegedly conducted by a team of Excise officers in the presence of Mr.HN Pradhan - Shop Incharge, Mr.Vijender Kumar Assistant Grade-3, Mr.Chanderpaul -Assistant Grade - 3 and Mr.Ramesh Kumar - Helper, at Retail L-2 Vend run by DSCSC at Brahampuri and it was noticed and found that crowns of one case of Bagpiper Whiskey containing 12 bottle of 750 ml capacity of batch No.318 dated 25.11.1997 and bolloom by M/s Herbertsons Limited were tampered. In one of the bottle the contents were less than 750 ml. The carton containing all the 12 bottles was seized and sealed with the seal of OS and taken into possession for analysis in the Excise Control Laboratory and after the examination, it was reported that all the bottles were having tampered crowns and five out of 12 bottles were diluted in respect of Ethyl Alcohol. In the complaint, it was alleged that the accused persons had entered into a criminal conspiracy and adulterated the contents of the liquor bottles by cracking open the seals and therefore a complaint was made against the accused persons under section 420/120-B IPC as well as under section 61/1/14 Excise Act. The case was accordingly registered and accused persons were charge sheeted.*
10. *The learned predecessor of the trial Court after hearing arguments on charge, vide order dated 3.8.2011, directed that accused persons should be charged for the offences under section 420/120-B IPC as well as under section 61/1/14 Excise Act. The said order was assailed by the accused persons through Crl Revision 35/2011 which was decided in their favour and the impugned order dated 3.8.2011 was set aside whereby the case was remanded back for passing fresh order, in terms of the observations made therein which are reproduced hereunder –*

The impugned order has been assailed on the following three counts:

- i. *no sanction u/s 197 Cr.P.C. has been obtained by the prosecution*
 - ii. *challan is barred by limitation as the same has been filed after 12 years from the date of alleged offence*
 - iii. *Revisionists have been exonerated in the departmental proceedings initiated against them*
11. *The impugned order is totally silent on the observations contained in the order dated 19.3.2012 passed in Crl*



Revision No.35/2011 except a brief mention of section 197 Cr.PC. In the impugned order, the learned Trial Court has mentioned that the learned defence counsel has conceded that sanction under section 197 Cr.PC for the accused persons was not required but this fact has been denied by the learned counsel for the revisionists who has submitted that he had never conceded that sanction was not required and he raised this objection even in the present revision petition.

12. *When the learned counsel had taken the objection of sanction 197 Cr.PC even in the earlier revision, it can not be believed that he would have conceded that no sanction was required and there is force in the submission made by the learned counsel for the revisionists because such observation made was in para 5 of the order dated 19.3.2012 passed by the learned ASJ in Crl. Revision No.35/2011. It seems that the counsel for other accused and not the revisionist herein, might have conceded in this regard.*

13. *Learned trial Court has further recorded that even otherwise to claim immunity under section 197 Cr.PC there must be a reasonable nexus between the act alleged and the official duties of the accused persons, relying on authority reported in PK Pradhan versus State of Sikkim 2001 Cr.LJ 3505 (SC). It was further observed that requirement of sanction under section 197 Cr.PC comes into picture only when the offender can not be removed from his service except by sanction of Government. Learned Trial Court has gone to add that it was squarely admitted by the learned counsel that accused persons can be removed from their position even without sanction and therefore they can not claim immunity Learned counsel for the revisionists has denied that he had ever conceded so before the learned Trial Court, therefore, the observation that learned counsel for the revisionists had conceded before the learned Trial Court that no sanction was required under section 197 Cr.PC or that accused persons could be removed from their post without sanction can not be believed qua the counsel for the revisionists. There is no denial that accused persons were government employees and they have been discharged in the departmental enquiry. A copy of the order No. Vig. 10 (27)/97-DSCSC/779 dated 4.2.2002 has been placed on record whereby the Disciplinary Authority Sh.Rakesh Bhatnagar has exonerated the accused persons of the charges leveled against them. The accused persons were employees of Delhi State Civil Supplies Corporation Limited. At the time of alleged raid they were on duty at the Retail L-2 Vend, run by DSCSC*



when the five bottles were diluted in respect of Ethyl Alcohol and they were supposed to perform their duty e.g. to sell those liquor bottles and therefore they were performing public duty.

14. *As per section 197 Cr.PC, a sanction of the Government is mandatory for removal of a public servant but no such sanction is claimed to have been taken by the prosecution and therefore there is force in the argument raised by the learned counsel for the revisionists.*
15. *The impugned order shows that the learned Addl.PP as well as learned defence counsel before the Trial Court have conceded that the issue of limitation depends upon the moot question of law as to whether an offence under section 409 IPC is also attracted in the present case but this contention has also been denied by the learned counsel for the revisionists that he ever conceded so before the learned Trial Court and a defence counsel in my view will never concede a point which goes against the accused in his defence.*
16. *The impugned order reveals that the learned Trial Court by referring to rule 33(28) of Delhi Liquor License Rules has observed that prima facie, offence under section 409/272 IPC read with section 34 IPC besides section 61 of Punjab Excise Act was made out.*
17. *A perusal of the complaint and charge sheet shows that as per the laboratory report out of the 12 seized bottles, only five bottles were diluted in respect of Ethyl Alcohol. There is no mention of use of any adulterant substance. The word dilution means that the product has been diluted which obviously can be diluted with addition of water because as per the laboratory report, there is no evidence of addition of any other material such as spirit or kerosene.*
18. *Section 272 IPC is defined as under:*
272. Adulteration of food or drink intended for sale –
Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.
19. *In the present case, the complaint shows that the bottles were diluted in respect of Ethyl Alcohol which suggests that the dilution was done by adding water which can not be said to be adulterant and therefore in my considered view section 272 IPC was not attracted nor the charge sheet was filed for*



- the said offence.*
20. *Section 409 IPC is defined as under:*
409 Criminal breach of trust by public servant or by banker, merchant or agent *whoever, being in any manner entrusted with property, or with any dominion over property in is capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with (imprisonment for life) or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.*
21. *The word "criminal breach of trust" is defined as under:*
405. Criminal breach of trust – *Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied which he has made touching the discharge of such trust or willfully suffers any other person so to do, commits "criminal breach of trust"*
22. *In the present case, the accused persons even though were entrusted with the property and were also having dominion over the property but there is no allegation or evidence that they dishonestly misappropriated or converted to their own use or dishonestly used or disposed of the property. In fact, the property was seized during a raid and was not recovered from any other person. The accused persons were present at the vend on duty, and therefore, in my considered view the offence under section 409 IPC was also not prima facie made out against the accused/(revisionists).*
23. *In an authority reported as Crl (Misc) 4308/2009 titled JP Singh & Another versus Vinay Kanodia dated 1.3.2011, passed by Hon'ble Mr.Justice S.N.Dhingra of Hon'ble High Court of Delhi, it was held that learned ACMM had acted illegally in entertaining a complaint under the provisions of IPC and instead he should have taken action only under section 20 of the Central Excise Act in view of section 40 of the Central Excise Act and in any case, if he had to take cognizance of the offences, under IPC, sanction under section 197 Cr.PC was must. The Punjab Excise Act 1940 which was applicable to the State of NCT of Delhi as per section 75(2), provides a bar against the judicial magistrate from taking cognizance of an offence punishable under section 61, 62, 63, 64, 65, 66, 68 or 70 of the Act after expiry*



- of period of one year unless special sanction of the State Government was taken.*
24. *In the present case, no sanction of the State Government was taken to prosecute the accused persons for the alleged offence under section 61 of the Punjab Excise Act. The said Act is complete code in itself and prosecution of any person for violation of provisions of the said Act under IPC is not at all justified without prior sanction of the State Government. Moreover, in the present case, the accused persons were employees of DSCSC and no sanction to prosecute them was taken and as per section 75 (2) of the Punjab Excise Act, no cognizance could have been taken by the learned MM after the expiry of a period of one year from the date of commission of the alleged offence. In the present case, the charge sheet itself was filed on 10.9.2009, therefore, the cognizance being barred, the impugned order, in my considered view, is illegal and is liable to be set aside*
25. *The revision petition is, therefore, accepted. The order on charge of the Distt. & Basslo aside. The Karkaracosm passed by the learned Trial Court dated 4.6.2012, is set aside. The accused persons(revisionists herein) are discharged. The revisionists are directed to furnish bail bonds in the sum of Rs. 10,000/- as per provisions of section 437 (A) Cr.PC within a week*
26. *Copy of order be sent to Ld. Trial Court for compliance and information. TCR be sent back. Revision file be consigned to Record Room."*

6. A perusal of the aforesaid reveals that the Revisional Court correctly delineated the essential ingredients of all the offences alleged against the Respondents and examined whether the same were satisfied in the present case. Specifically, in relation to Section 272 of the IPC, which pertains to the adulteration of food or drink intended for sale, the Revisional Court concluded that the alleged act of dilution of Ethyl Alcohol by the accused persons did not amount to rendering a food or drink article "noxious," which is a necessary element of the said offence. Consequently, the charge under Section 272 IPC was held to be not attracted.

7. As regards the allegation under Section 409 IPC, relating to criminal



breach of trust by a public servant, the Revisional Court rightly noted that the offence requires: (i) entrustment with property or dominion over property; and (ii) dishonest misappropriation or conversion to one's own use, or dishonest use/disposal of such property. While it was observed that the accused were indeed entrusted with the relevant property and had dominion over it, there was no material on record indicating dishonest misappropriation or conversion for personal use, or dishonest disposal of the same. Therefore, the offence under Section 409 IPC was also, *prima facie*, not made out.

8. Further, with regard to the alleged offence under Section 61 of the Excise Act (which provides for penalties related to unlawful import, export, transport, manufacture, possession, etc.), the Revisional Court correctly observed that cognizance of such an offence was barred under Section 75(2) of the Act, which prohibits the Magistrate from taking cognizance of an offence punishable under, *inter alia*, Section 61 after the lapse of one year, unless special sanction of the State Government is obtained. In the present case, no such sanction was obtained. Furthermore, the chargesheet was filed on 10th September, 2009, almost twelve years after the alleged incident, thereby, clearly contravening the statutory bar. Consequently, cognizance could not have been validly taken for the offence under Section 61 of the Punjab Excise Act.

9. The State has contended that sanction under Section 197 of the Cr.P.C. was not required in the present case, as the Respondents were engaged in acts of tampering with liquor bottles and diluting Ethyl Alcohol, which were not part of their official functions as government employees. However, the Revisional Court rightly observed that the Respondents were



employees of the Delhi State Civil Supplies Corporation Limited and were, at the relevant time, posted and discharging duties at the Retail R-2 Vend. The alleged tampered and diluted liquor bottles were discovered during a raid conducted while the Respondents were on official duty. As such, the acts attributed to the Respondents were in connection with their official functions, and thus, the absence of prior sanction under Section 197 Cr.P.C. rendered the prosecution unsustainable.

10. The Revisional Court also took into account that a departmental inquiry had been initiated against the Respondents based on the same set of facts and allegations as those contained in the FIR. Pursuant to the inquiry, the Inquiry Officer submitted a report dated 4th December, 2001 to the Disciplinary Authority, concluding that the charges against the Respondents were not proved. This report was subsequently accepted by the Disciplinary Authority by order dated 4th February, 2002, which reads as under:

WHEREAS the following officials were charge-sheeted for major penalty on account of irregularities noticed by the Excise team at L-2 vend Brahmpuri on 11.12.1997 when an inspection was carried out by them:-

1. *Shri H.N. Pradhan, Asstt. Grade-II (Emp. Code No. 0340)*
2. *Shri Vijender Kumar, Asstt. Grade-III (Emp. Code No.0459)*
3. *Shri Chander Pal, Asstt. Grade-III (Emp. Code No.0519)*
4. *Shri Rakesh Kumar, Helper (Emp. Code No.0526)*

AND WHEREAS al the above officials denied the charges leveled against them and Shri A.K. Mendiratta, Asstt. Manager (Personnel) was appointed as Inquiry Officer to inquire in to the charges in common proceedings of this case;

AND WHEREAS the Inquiry Officer submitted his report on 4.12.2001 to the Disciplinary Authority on the basis of documentary and oral evidences adduced before him, opined that the charges leveled against all the above officials are not proved;

NOW THEREFORE, I, Rakesh Bhatnagar, being the Disciplinary Authority, having carefully considered the report of the Inquiry Officer, documents available on records and the prevailing



circumstances, agree with the report of I.O. and exonerate of the charges leveled against all the above officials. This order is without any prejudice to the outcome of the investigations/ trial pending against all the officials in the Police/ in the Court of Law. Their period of suspension shall be treated as period spent on duty for all purposes. They shall also be paid the full pay and allowances to which they would have been entitled, had they not been suspended.

11. A perusal of the inquiry report annexed with the aforesaid order reveals that the decision to exonerate the accused, including the present Respondents, was based on both oral and documentary evidence produced before the Inquiry Officer. Relying on the said material, the Inquiry Officer recorded the following reasons for exonerating the Respondents:

- “1. No Instrument used for tampering could be seized by the Excise team.*
- 2. Excise Supdt. and Excise Sub-Inspector who were members of raiding team offering no comments/not known regarding possibility of tempering during transit from L-1 bond to L-2 bond where In private labour/private trucks are used.*
- 3. The cash proceeds not counted by the Excise team as in case of dilutions/tempering sales proceeds should have been in excess.*
- 4. The charged officials have produced some correspondence with the excise department regarding loose caps of other companies alongwith not of M/s Herbertsons Ltd. and ignorance of any correspondence made by Excise officials in this regard.*
- 5. The Excise Supdt./S-I not knowing the procedure for supply of goods from L-1 Bond to L-2 Vend and not finding any empty bottle/water/chemical/instrument during the raid.”*

12. In light of the foregoing discussion, it is evident that the Revisional Court undertook a comprehensive examination of the appropriateness of the charges framed against the Respondents. It duly considered the absence of sanction under Section 197 Cr.P.C., the bar of limitation under Section 75(2) of the Punjab Excise Act (as applicable to the NCT of Delhi), as well as the outcome of the departmental inquiry which had exonerated the Respondents on the same set of allegations. Upon an overall assessment of the facts and



circumstances, the Revisional Court rightly concluded that the ingredients of the alleged offences were *prima facie*, not made out and, accordingly, directed the discharge of the Respondents.

13. This Court finds no infirmity in the conclusion arrived at by the Revisional Court. Consequently, the present petition is found to be devoid of merit and is, accordingly, dismissed.

SANJEEV NARULA, J

AUGUST 5, 2025

as