In the Court of Meenakshi Gupta, PCS Sub Divisional Judicial Magistrate, Phul (UID No. PB0369)

Crl. Case No.41/26.05.2022
CIS No.CHA/76/2022.
Date of instt: 26.05.2022
Date of decision:07.01.2023

S t a t e
Vs.

Lachman Singh son of Lal Singh, resident of Village Phullewala, District Bathinda.

…........*Accused.*

FIR No. 47 dated 02.08.2014
U/s 61 of Excise Act
Police Station Phul

Present: Sh. Chand Kumar, Ld. APP for the State.
Accused Lachman Singh on bail with Sh. DK Garg, Advocate.

O R D E R

1. Heard on the application for condonation of delay under Section 473 of Criminal Procedure Code (hereinafter referred to as Cr.P.C.). It is pleaded in the application under Section 473 Cr.P.C. that analysis report of Chemical Examiner, Kharar was received on **03.09.2016**. Thereafter, on completion of investigation, the challan of the case was prepared on **10.09.2016.** As the report of Chemical Examiner was received after the period of one year of registration of the FIR, so, necessary permission under Section 75 (2) as per the provisions of Excise Act, 1914 was to be obtained from the State Government. But due to law and order duties, the necessary permission from the State Government could not be obtained. The delay in filing the present challan has occurred due to official process as discussed above. There was no malafide on the part of prosecution to cause delay in

filing the present challan. There are sufficient ground for extension of period of limitation. Hence, this application under Section 473 Cr. P.C.

2. Reply to the application under Section 473 Cr.P.C. was filed by the accused wherein the averments of the application under Section 473 Cr.P.C. were denied submitting that the accused is liable to be discharged as the challan has been presented in the court after an inordinate delay beyond the period of limitation. At last, it is prayed that application under Section 473 Cr.P.C. be dismissed.

4. After hearing learned APP for the State and learned defence counsel and from perusal of the material on record, this court is of the considerded opinion that present application under Section 473 Cr.P.C. deserves to be dismissed. The present case is hopelessly time barred and has not been filed within the prescribed period of limitation as per law. The prosecution did not comply with the provisions of Section 75 (2) of the Excise Act, 1914, wherein it is prescribed that, *"No Judicial Magistrate except with the special sanction of the State Government shall take cognizance of any offence punishable under this Act, unless the proscution is instituted within a year after the date on which the offence is alleged to have been committed"* .

5. So, in view of the provisions of Excise Act, the challan has to be presented in the court within one year of the date when the offence was alleged to have been committed. But in the present case, the **FIR was lodged on 02.08.2014, Cheminal Examiner Report was received on 03.09.2016, challan was prepared on 10.09.2016 but the application**

under Section 75(2) of the Excise Act was filed before the Commissioner, Faridkot Mandal, Faridkot on 22.10.2021 i.e after more than seven years of the date of the commission of the alleged offence.

In view of the settled law by Hon'ble High Court or Supreme Court in various judgments that each day of delay should be explained properly and in view of section 473 of Cr.PC if sufficient reasons given and delay has been properly explained only then limitation period be extended but same is totally missing in the present application and hence same is liable to be dismissed being abuse process of law.

4. The relevenat provision under **Section 468 of Cr.PC** is reproduced as under:

Section 468:- Bar to taking cognizanc 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---

(d) Six months, if the offences is punishable with fine;

(e) One year, if the offence is punishable with imprisonment for a term no exceeding one year;

(f) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purpose of this section, the period of limitation, in relation to offence 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.

Section 469 : Commencement of the period of limitation :

(1) The period of limitation, in relation to an offence, shall commence -

(a) On the date of the offence; or

(b) Where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) Where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be executed.

5. Hon'ble Punjab & Haryana High Court in case titled **Pritam Singh and Others Vs. State of Punjab 1981 CriLJ 545** has held that,

> *4. 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, which computing the period of limitation, shall have to be excluded and if after so doing period of limitation was still available.

5. *To the case in hand, the provisions of Sub-section (3) of Section 470 of the Code are not attracted in that this provision, while referring to the previous consent or sanction of the Government or any* *other authority, has in view the consent or sanction of the givn authority, which is necessary for launching the prosecution and not for extending the period of limitation, given in the statute. The special sanction envisaged in Sub-Section (2) of Section 75 of the Excise Act is a sanction for permitting prosecution beyond the period of limitation envisaged by the said sub-section. That is a kind of sanction that is needed not for launching the prosecution which could be done without any prior consent or sanction of the Government, but for permitting the launching of prosecution after the expiry of the period of limitation envisgaged in the statute in question's.*

6. Provisions of Sub-section (3) of Section 470 of the Code thus not being application to the present case and the challan having been put in after a period of six years, well beyond the period of three years envisaged by Clause (c) of Sub-section (2) of Section 468 of the Code, the court was not competent to take cognizance of the offence, unles it availed itself of the powers under Section 473 of the Code."

6. The present challan has been filed beyond the period of three years from the date of commission of the alleged offence. The report of Chemical Examiner was received on **03.09.2016** as pleaded by the prosecution and an application seeking extention of time was filed on **22.10.2021** whereas the FIR was registered on **02.08.2014** and the present challan was presented in the court on **26.05.2022** which is beyond the period of limitation. Also, the prosecution has not explained properly as to why

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there was delay in filing the challan in this case or as to why sanction was not applied for earlier. The maintenance of law and order or deploying force is not a valid reason to get the delay condoned. So, present application under Section 473 Cr.P.C. stands dismissed. Accused **Lachman Singh** stands discharged. His bail bonds, if any, and surety bonds are also discharged. File be consigned to the Judicial Record Room, Phul after due compliance.

Pronounced in Open Court
07.01.2023
Vandana / Stenographer Grade-II
Direct Dictation

Meenakshi Gupta, PCS
Sub Divisional Judicial Magistrate,
Phul. UID No. PB0369

Meenakshi Gupta, PCS
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