IN THE COURT OF NIRBHOW SINGH GILL,
SESSIONS JUDGE, FATEHGARH SAHIB.

CASE No: CRR-59-2023
CNR No:PBFG010024072023
Date of Institution: 13.06.2023/
RBT dt. 24.07.2023
Decided on: **10.07.2026**

1. Jaswinder Singh aged about 46 years, son of Sh. Daljit Singh;
2. Amandeep Singh alias Aman, aged about 40 years, son of Sh.Inderjit Singh;

Both residents of village Samspur Singha, Police Station Khamanon, District Fatehgarh Sahib.

….Revisionists/petitioners.

Versus

State of Punjab

...Respondent.

(Revision petition against the order dated 29.03.2023 passed by the Court of Ms. Dipti Goyal, PCS, Additional Chief Judicial Magistrate, Fatehgarh Sahib in a case titled as "State of Punjab Vs. Jaswinder Singh and another (CHA-4/2021" in FIR No.100 dated 02.08.2016 registered under Sections 61/1/14 of Excise Act, at Police Station Sirhind, District Fatehgarh Sahib whereby learned trial Court has dismissed the application of the revisionists for discharging them in the above-mentioned FIR)

Present: Sh. Vivek Sharma Advocate, counsel for the revisionists/petitioners.
Sh. K.S.Bajwa, Public Prosecutor for the State/respondent.

JUDGMENT:

1. Present revision petition has been filed by the revisionists against order dated 29.03.2023 passed by the Court of Ms. Dipti Goyal,

PCS, Additional Chief Judicial Magistrate, Fatehgarh Sahib vide which the application filed by the petitioners under Sections 75 of Excise Act and 468 of Cr.P.C for discharging the petitioners/accused in the case was dismissed by the learned trial Court.

2. In brief the facts of the case are that the FIR was registered on the basis of secret information received by the Investigating Officer. It was stated in the FIR that ASI Gurmeet Singh No.478/FGS along with HC Baldev Singh No.423/FGS, HC Harpinder Singh No.223/FGS, Ct. Sachin Kumar No.937/FGS and Ct. Mohan Lal No.119/FGS were on patrolling on private vehicle and in search of suspicious persons and vehicles and they were present at T-point Tarkhan Majra, Service Road, GT Road, Sirhind. At about 7:30 PM, ASI Gurmeet Singh received secret information that Jaswinder Singh alias Jaggi son of Daljit Singh and Amandeep Singh alias Aman son of Inderjit Singh used to bring alcohol from outside at cheap rates and thereafter, sell the same in District Fatehgarh Sahib at higher rates and are indulging in business of sale of alcohol. Today also, they are coming in Indica car bearing No.CH03-Y-9946 of black colour and have brought huge quantity of alcohol and they are coming from Bhadson side towards Sirhind. In case the said persons along with vehicle are apprehended and checked then they will be arrested along with huge quantity of illicit alcohol. This information being reliable and as such, offence under section 61/1/14 of Excise Act is made out and ruqa was sent for registration of FIR against Jaswinder Singh alias Jaggi son of Daljit Singh and Amandeep Singh alias Aman son of Inderjit Singh.

It is the case of the prosecution that thereafter checking was started and one Indica car bearing No.CH03-Y-9946 of black colour was stopped with a signal of torch light. The said vehicle was being driven by a clean shaven person and another clean shaven person was sitting beside him. On the backseat of car, boxes of liquor were kept. The persons were apprehended and the driver of car disclosed his name as Jaswinder Singh alias Jaggi whereas the person sitting behind disclosed his name as Amandeep Singh alias Aman. Thereafter, search was conducted and 10 boxes of theka desi alcohol marka Malwa No.1 for sale in Punjab only were recovered and in each box, 12 bottles were kept and total 120 bottles (each having 750 ml of alcohol) were recovered. Thereafter, challan was presented.

3. Thereafter, application under Sections 75 of Excise Act and 468 of Cr.P.C was filed by Jaswinder Singh alias Jaggi and Amandeep Singh alias Aman for discharging them in this case. It was stated in the application that above said FIR was registered on 22.08.2016 under Section 61-1-14 of Excise Act punishable with imprisonment for a term which may extend upto three years and fine. The challan of the case was presented in the court on 12.01.2021 and same is barred by limitation, because as per Section 468 of Cr.P.C. and Section 75 of Excise Act, no court shall take cognizance of an offence after the expiry of period of limitation i.e. three years if the offence is punishable with imprisonment for a term exceeding three years. It is further averred in the application that since the challan of this case has been presented after about 4 ½ years after registration of the FIR and as such, cognizance of the case cannot be legally taken by this court and the applicants are liable to be discharged in this case. Hence, this application.

4. Reply was filed by the prosecution and it was stated therein that challan was presented in this case on 12.01.2021 and sanction was sought by prosecuting agency on 29.03.2018 and intimation was sent to the office of SSP, FGS vide letter no.14306/5-3 dated 31.03.2018. As per Section 470(3) Cr.P.C, the time period spent in securing sanction while computing the period of limitation has to be excluded. The sanction was received on 25.11.2020 and hence, the time period of 2 years, 7 months and 27 days from 29.03.2018 till 25.11.2020 has to be excluded. The challan has been filed well within the limitation period and the accused persons are not liable to be discharged. Thus the application is liable to be dismissed.

5. Vide order dated 29.03.2023, the learned trial Court had dismissed the above-said application filed by the accused persons/revisionists. Feeling aggrieved against the said order, revisionists filed the present revision petition.

6. Learned counsel for the petitioners submitted that the application filed under Sections 75 of Excise Act and 468 of Cr.P.C for discharging the accused in the case has been dismissed on totally untenable grounds. The offence in the present case is punishable with imprisonment for a term which may extend upto three years and fine. The FIR was registered on 22.08.2016 and the challan was presented on 12.01.2021 and thus, same was barred by limitation, because as per Section 468 of Cr.P.C. and Section 75 of Excise Act, no court can take cognizance of an offence after the expiry of period of limitation i.e. three years if the offence is punishable with imprisonment for a period term exceeding three years. In the present case, the challan has been presented

after about 4½ years after registration of the FIR and thus, the Court could not take cognizance in the present case. He relied upon judgments of the Hon'ble Punjab and Haryana High Court in cases titled as "Pritam Singh and others Vs. The State of Punjab", "Karamjit Singh Vs. State of Punjab (reported in Law Finder Doc Id #2222041)", "Jasvir Singh Vs. State of Punjab" in CRM-12706-2019(O&M), "Gurdarshan Singh Vs. State of Punjab" in CRM-M-6058-2023 and judgments passed by Allahabad High Court in case titled as "Ravi Dutt Sharma Vs. State of UP (reported in Law Finder Doc Id #93799)" and judgment passed by Madhya Pradesh High Court in case titled as "Krishna Sanghi and others Vs. The State of M.P. (reported in Law Finder Doc Id #290250)". Thus, the impugned order is liable to the set-aside.

7. On the other hand, learned Public Prosecutor for the State submitted that in the present case, sanction was sought under Section 75(2) of Excise Act by prosecuting agency on 29.03.2018 and same was received on 25.11.2020 and accordingly, the challan was filed on 12.01.2021. He submitted that the time period spent on taking sanction has to be excluded and thus, the present revision is liable to be dismissed.

8. I have heard learned counsel for the petitioners, learned Public Prosecutor for the State and have also gone through the record of the case. In the present case, application was filed under Section 75 of Excise Act and Section 468 of Cr.P.C. for discharging the accused on the ground that challan was filed after the expiry of period of limitation and no Court can take cognizance of an offence after the expiry of period of limitation i.e. three years if the offence is punishable with imprisonment for a period term exceeding three years. The FIR was registered on

22.08.2016 and the challan was filed on 12.01.2021. It is categorically submitted that the sanction under Section 75 of Excise Act was sought on 29.03.2018 and the same was received on 25.11.2020 and accordingly, the challan was filed on 12.01.2021.

Section 468 of the Code is reproduced herein under for reference: -

> *"468 (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."*

Similarly, Section 470(3) of Cr.P.C is reproduced herein under for reference:

> *470(3) : Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then in computing the period of limitation, the period of such*

notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation:- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded."

Section 75 of the Punjab Excise Act reproduced herein under for reference:

"Section 75.

(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 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.

(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."

Similarly, Section 473 of Cr.P.C. is reproduced herein under for reference:

Section 473 of Cr.P.C.: Extension of period of limitation in certain cases:

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> *Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.*

In the present case, challan was not filed within one year of registration of FIR. Perusal of the record shows that no application was filed under Section 473 of Cr.P.C. for condoning delay before taking cognizance in the matter. The main point of the arguments of learned Public Prosecutor for the State is that they had sought sanction on 29.03.2018 and as per Section 470(3) Cr.P.C., the time period spent in securing sanction while computing the period of limitation is required to be excluded. It was further submitted that sanction was received on 25.11.2020 and hence, the time period of 2 years, 7 months and 27 days from 29.03.2018 to 25.11.2020 has to be excluded. However, in the present case the provisions of Section 75(2) of Excise Act could not have been invoked. As per section 75(2) of Excise Act, no Judicial Magistrate can take cognizance of any offence punishable under the Excise Act except with the special sanction with the State Government unless the prosecution is instituted within a year after the date on which the offence is alleged to have been committed.

The Hon’ble High Court in case titled as “Pritam Singh and others Vs. The State of Punjab reported as Law Finder Doc Id #291876”, held in Paras No.4, 5 and 6 as under:

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"4. Before embarking upon an enquiry into the rival contentions, the relevant provisions of the Excise Act and the Criminal Procedure Code deserve notice. Section 468 of the Code reads: -

> *"468(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.*

Section 470(3) of the Code is in these terms:

"470, (3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation:- In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

** * * **

Section 75 of the Punjab Excise Act is in the following terms:

"75. (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 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.

(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 alter the date on which the offence is alleged to have been committed."

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, while 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 given authority, which is necessary for launching the prosecution and not for*

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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 envisaged in the statute in question's.

6. *Provisions of Sub-section (3) of Section 470 of the Code thus not being applicable 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, unless it availed itself of the powers under Section 473 of the 'Code which is in the following terms:*

> *"473. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."*

In the present case, one looks in vain for the existence of any order indicative of the satisfaction of the trial Court as admittedly no such order had been passed by the Court concerned.

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Similarly, in case titled as "Karamjit Singh Vs. State of Punjab (reported in Law Finder DocId #222204)" the Hon'ble High Court has held in Para No.10 as under:

> *10. Indubitably, in the present case, the prosecution as contemplated by Section 75(2) of the Act was not launched within a period of one year. Even the period of three years within which cognizance could have been taken as per 468 CrPC, the punishment of offence under Section 61 of the Act being for maximum of 3 years, had expired by the time, the application to grant time to submit the final report was filed on 20.08.2020, which though was granted vide letter dated 18.02.2021. The plea of exclusion of the period taken by the Government for granting special sanction as per Section 470(3) Cr.PC. is not tenable, inasmuch as, the special sanction envisaged under Section 75(2) of the Act was for permitting the initiation of prosecution after expiry of the period of one year and not for launching the prosecution. Still further, even the learned Magistrate has not recorded any satisfaction with regard to explanation of delay or that it was necessary so to do in the interest of justice, as envisaged under Section 473 CrPC for taking cognizance after expiry of period of limitation as the challan was presented in the Court after about 5 years. Thus, the prosecution in the present case is bound to fall. The view of this Court finds strength from the judgment in the case of Pritam Singh (supra), wherein it was held that, "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, while computing the period of limitation, shall have to be excluded and if after so doing period of limitation was still available."

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Taking the case in hand admittedly the prosecution as contemplated under Section 75(2) of the Punjab Excise Act, was not launched within a period of one year and in fact, the FIR was registered on 22.08.2016 whereas the challan was presented in the Court on 12.01.2021. As per the above-said judgments, the prosecution for the offence dealt with under Excise Act has to be launched within one year as envisaged under Sub-section (2) of Section 75 of Excise Act. The Hon'ble High Court further held that no prosecution can be launched after the expiry of period of one year and Court would be debarred from taking cognizance of the offence in question. The High Court further held that provisions of Section 470(3) Cr.P.C. are not applicable where prosecution is not launched within one year and in the present no application was filed under Section 473 of Cr.P.C. for condoning the delay for taking the cognizance. Thus, in the considered opinion of this Court, the trial Court could not have taken cognizance of the offence in the present case.

9. As a sequel of my above-discussion, the present revision petition is allowed and the petitioners are discharged in case FIR No.100 dated 02.08.2016 registered under Sections 61/1/14 of Excise Act, at Police Station Sirhind, District Fatehgarh Sahib. Trial Court record be returned along with copy of the judgment. File be consigned to Record Room.

Pronounced in open court.

(Nirbhow Singh Gill)
Sessions Judge,
Fatehgarh Sahib
(UID No.PB-0056)

Dated: 10.07.2026.
*Ankita**

(Nirbhow Singh Gill)
Sessions Judge,
Fatehgarh Sahib.
(UID No.PB00056)