
(1983) 11 RAJ CK 0018
In the Rajasthan High Court

Case No : Criminal Miscellaneous Application No's. 181 and 182/83

Bhagwandass and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 18-11-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 482, 67

Citation : (1983) WLN 324

Hon'ble Judges : Shyam Sunder Byas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Vyas, J.—By these applications u/s 482, Cr. P.C., the three accused persons have invoked the inherent jurisdiction of this court to quash the proceedings in the criminal cases pending against them in the Court of the learned Judicial Magistrate (1), Jodhpur for offence u/s 4(2) of the Rajasthan Prohibition Act, 1969 (here in after to be referred as the Act).

2. Since the revision applications of the accused persons were disposed of by a common judgment by the learned Additional Sessions Judge (2), Jodhpur, the applications were heard together and are disposed of by a common judgment. It may also to mentioned that the points involved in these cases are identical.

3. The prosecution case is that illicit liquor was found in possession of the accused petitioners and cases were consequently registered against them u/s 4(2) of the Act. Accused Bhawan Das was arrested on 6-10- 1979 while the remaining two were arrested on 2-2-80. A challan was submitted against accused Bhawan Das on 17-9-80 and against the remaining two on 29 8-80 i.e. after the expiry of six months in both the cases. The accused petitioners took objection that since the challans were submitted after the expiry of six months from their arrest and no order to continue the investigation was passed by the Magistrate, their prosecution was unwarranted and bad in law u/s 167(5), Cr. PC.

The objections were repelled by the learned Additional Sessions Judge (2), Jodhpur heard the revision and dismissed it. Hence these applications u/s 482, Cr. P.C.

4. Learned Counsel appearing for the accused petitioners contended vehemently that in view of the mandatory provisions of Section 167(5), Cr. P.C. the investigation in a summons case came to an end on the expiry of six months from their arrest. No order to continue the investigation after the expiry of six months was passed by the Magistrate. As such the investigation, having come to an end, no challan could be submitted against them and consequently they could not be tried. Reliance in support of the contention was placed on Section 67(5), Cr. P. C. and Prabhu v. The State of Rajasthan RLW1983 272. In reply, the prosecution made every attempt to justify the impugned orders and the actions of the Courts below.

5. I have taken the respective contentions into consideration.

6. Admittedly, the challans were submitted after the expiry of six months of the arrest of the accused petitioners. No orders u/s 167(5), Cr. P.C. were passed by the Magistrate to continue the investigation after the expiry of the aforesaid period of six months. The provisions of Sub-section () came for judicial review in Prabhu's case. All the arguments, which have been raised before me, were advanced in the aforesaid case. The arguments were dealt with in paras No. 9 and 10 of the judgment and are reproduced below:

I have carefully considered the rival contentions mentioned above. It has not been disputed before me that the charge sheet was filed against the petitioner in the court of Additional Munsiff and Judicial Magistrate, Tonk after the expiry of the period of six months from the date of arrest of the petitioner i.e. 17-2-1981. Further, there is no dispute about the fact that the learned Magistrate did not pass an order that he was satisfied for special reasons and in the interest of justice that the continuation of the investigation beyond the period of six months was necessary. It is no doubt true that the officer making the investigation in this case applied many a times for grant of time to file the challan against the petitioner, but no orders for continuation of the investigation beyond the period of six months, were passed either by the Chief Judicial Magistrate or by the learned Judicial Magistrate on such applications. The contention of the learned Public Prosecutor that the petitioner ought to have raised this objection immediately on the expiry of the period of six months is not tenable, because it was the duty of the Magistrate to stop further investigation beyond the period of six months, unless he was satisfied that for special reasons and in the interest of justice, the continuation of the investigation beyond the period of six months, was necessary. Under the Jaw it was not obligatory on the petitioner to raise any such objection immediately on the expiry of the period of six months. The provisions contained in Sub-section (5) of Section 167 Cr. P.C. are of mandatory nature and the delay or failure on the part of the petitioner to raise such objection, in my view, could not cure the illegality that had crept in the

proceedings on account of failure of the Magistrate passing an order for stopping further investigation into the offence beyond the period of six months.

10. Like wise, the other contention of the learned Public Prosecutor that the subsequent proceedings taken in this case by the learned Judicial Magistrate, are not without jurisdiction on account of the investigation carried on after expiry of the period of six months, is also not acceptable being without substance, because in view of the clear provisions contained in Section 167(5) Cr. P.C. the continuation of the investigation in this case after the expiry of the period of six months, was without jurisdiction and the learned Magistrate could not legally take cognizance on the police report based upon such investigation.

7. In view of the law laid-down in the aforesaid authority, criminal proceedings cannot be launched against the accused petitioners after the expiry of the period of six months of their arrest. The case against Prabhu was also u/s 4(2) of the Act.

8. Since the challans were submitted against the accused petitioners after the expiry of six months of their arrest without any order to continue the investigation beyond the period of six months, the accused petitioners cannot be prosecuted.

9. In the result the applications are allowed. The criminal proceedings pending against the accused-petitioners in the Court of the learned Judicial Magistrate (1), Jodhpur in criminal cases No. 1982-80 and 2272/80 are quashed.