
(2000) 12 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 5994 of 2000

P.K. Jaiswal and Co. and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 13-12-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 482
General Clauses Act, 1897 — Section 9
Madhya Pradesh Excise Act, 1915 — Section 34, 39, 61(1), 61(2)
Madhya Pradesh General Clauses Act, 1957 — Section 2, 2(23), 6

Citation : (2001) 2 JLJ 33 : (2001) 5 MPHT 382

Hon'ble Judges : S.C. Pandey, J

Bench : Single Bench

Advocate : H.S. Dubey and Abhay Gupta, for the Appellant; P. Gupta, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.—This petition u/s 482 of the Code of Criminal Procedure is directed against the order dated 29th June, 2000 passed by 1st Addl. Sessions Judge, East Nimar, Khandwa in Criminal Revision No. 212/99 arising out of order dated 2-8-99 passed by Judicial Magistrate 1st Class, Khandwa in Criminal Case No. 73/99.

The applicants were found to have committed offence under Sections 34 and 39 of the M.P. Excise Act. 1915 (for short "the Act") on 2-8-95. The prosecution was instituted by filing a complaint on 2-2-96.

2. The applicants objected that under the provisions of Section 61 of the Act, the Trial Magistrate was not competent to take cognizance of the offence under Sections 34 and 39 of the Act. The learned Trial Magistrate rejected that objection.

3. In revision, the learned 1st Addl. Sessions Judge accepted the contention of

the applicants that the Trial Magistrate was not competent to take cognizance of the offence u/s 39 of the Act for the reason there was no sanction of the Collector in accordance with Section 61 (1)(a) of the Act. However, the objection that the complaint u/s 34 of the Act is barred by limitation was not accepted. The revision was partly allowed. The applicants are aggrieved by that part of order whereby the learned Addl. Sessions Judge maintained the order of Trial Magistrate regarding Section 34 of the Act.

4. In this petition, learned counsel for the applicants argued that any complaint for an offence punishable under the Act cannot be instituted beyond six months from the date of commission of an offence until and unless State Government had granted special sanction for the prosecution. In this case no sanction was given and six months had already expired on 1-2-1996 from the alleged date of commission of offence on 2-8-95. The Trial Magistrate was incompetent to take cognizance of the offence as the complaint was not filed within six months from 2-8-95. It was further urged that provisions of Section 468 of the Code of Criminal Procedure were not attracted.

5. Learned counsel for the State, on the other hand, opposed this petition on the ground that the complaint was filed within six months from the date of the commission of offence.

6. Section 61 (2) of the Act reads as under:

"Except with the special sanction of the State Government no Judicial Magistrate shall take cognizance of any offence punishable under this Act, or any rule or order thereunder, unless the prosecution is instituted within six months from the date on which the offence is alleged to have been committed."

It provides that the Judicial Magistrate cannot take cognizance without special sanction of the State Government if the prosecution is not instituted within six months of the date of commission of the offence. A complaint can be filed without sanction of the State Government within six months of the date of the incident.

7. Section 2 of the M.P. General Clauses Act, 1957 which is applicable to the interpretation of a statute framed by the M.P. Government, inter alia provides as follows:

Section 2 : General definitions :-- In this Act and in all Madhya Pradesh, unless there is anything repugnant in the subject or context. Sub-section (23) of Section 2 reads as under : "month" means a month reckoned according to the British calendar."

It is obvious that "month" has to be calculated in accordance with the British calendar. There is nothing repugnant in subject or context, that is to say in Section 61 (2) of the Act.

8. What precisely is meant by a British Calendar month? The months of the

British Calendar are not uniform. January, March, May, July, August, October and December are of thirty one days". April, June, September and November are of thirty days". February is of 28 days" and of 29 days" in the leap year. Therefore, only way to interpret further six months would be to count six months in accordance with the British Calendar for reckoning the month from the month of offence. Thus, the offence was committed in the month of August. Then first month would expire in September. The second month would expire in October. The third month would expire in November. The fourth month would expire in December. The fifth month would expire in January and six month would expire in the month of February. This reckoning or calculation regarding the months would be irrespective of the date on which the offence was allegedly committed. In other words six months have to be calculated by finding the month and by counting six months from the month of commission of the offence forgetting for a moment the date of offence.

9. This conclusion may sound to some as obvious but law should be stated for those persons too who may not conceive it to be obvious. Having found the six months, we have to further find the precise date in this case on which the case should be instituted. It is to be instituted within six months from the date on which the offence is committed. It was not disputed that date of commission of offence is 2-8-95. The further question is if this date be included in six months within which the case is to be instituted. In this connection Section 6 of the M.P. General Clauses Act, 1957 has to be seen. It reads as under :--

6. Commencement and termination of time :-- "In any Madhya Pradesh Act, it shall be sufficient for the purpose of excluding the first of series of days or any other period of time ; to use the word "from" and, for the purpose of including the last in a series of days or any other period of time, to use the word "to"."

10. It would be clear that the user of word "from" shall result in exclusion of that day on which the alleged offence u/s 34 of the Act was committed that is 2-8-95, because it is first day in the series of days that follow in the month of August for reckoning six months from the date on which the offence was committed for judging if the case was instituted within six months on 2-2-96. If 2-8-95 is excluded as per Section 6 of M.P. General Clauses Act, counting the running of the time from 3-8-95, the complaint is within six months, that is 2nd February, 1996.

11. In AIR 1924 Mad 257 in re-Court Fees COUTTS. TROTTER, J. explained the two conflicting situations arising for interpretation and stated the common law rule in the following words :--

"I think the rule that emerges is this. Where a statute fixed only the terminus a quo of a state of things which is envisaged as to last indefinitely, the common law rule obtains that you ought to neglect fractions of a day and the statute or regulation or order takes effect from the first moment of the day on which it is enacted or passed that is to say from midnight of the day preceding the day on

which it is promulgated : where on the other hand a statute delimits a period marked both by a terminus a quo and a terminus ad quern the former is to be excluded and the latter to be included in the reckoning."

In other words the second principle is where the statute indicates a day of beginning and fixed the last day of performance the first day is to be excluded. This principle has been recognized by the statute in framing Section 6 of M.P. General Clauses Act. 1957. Similar provision is enacted in Section 9 of the General Clauses Act. 1897 which is applicable to interpretation of the Acts of Parliament.

12. The conclusion of this Court is supported by the High Authority of the Supreme Court in the matter of Haru Das Gupta Vs. The State of West Bengal, . In that case the petitioner was arrested and detained on February 5, 1971. After receiving the report of the Advisory Board, the State of West Bengal made the decision confirming the detention of the petitioner on May 5, 1971. The statutory requirement was that State should pass an order or decision of confirmation within three months of arrest. It was contended that the last day of the third month expired on May 4, 1971 and therefore, the detention was liable to be quashed. The Supreme Court, without referring to Section 9 of the General Clauses Act, 1897 turned down the plea of the petitioner upon the cases decided by the British Courts on the principles of common law. In Paragraph 5 it was observed that:--

"These decisions show that Courts have drawn a distinction between a term created within which an act may be done and a time limited for the doing of an act. The rule is well established that where a particular time is given from a certain date within which an act is to be done the day on that is to be excluded."

13. Thus, this Court comes to the conclusion on the foundation of the statute and the precedents that institution of prosecution on 2-2-96 against the applicants for commission of offence u/s 34 of the Act on 2-8-95 was within six months. The learned Trial Magistrate can take its cognizance without special sanction from the State Government.

14. Consequently, I do not find any force in this petition filed u/s 482 Cr.P.C. It is accordingly dismissed. As a consequence thereof M.Cr.P. No. 902/2000 is also dismissed as it has become infructuous.