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**(1981) 01 P&H CK 0053**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Miscellaneous No. 4732-M of 1980**

Pritam Singh and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision : 05-01-1981**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 468, 468(2), 470(3), 473  
Punjab Excise Act, 1914 — Section 61, 62, 63, 64, 65

**Citation : (1981) 2 ILR (P&H) 307**

**Hon'ble Judges : D.S. Teruatia, J**

**Bench : Single Bench**

**Advocate : Ajmer Singh, for the Appellant; K.L. Sachdeva, for A.G., for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

D.S. Tewatia, J.—On 23rd June, 1973, the Punjab Excise staff checked Car No. HRA 8772 in Mohali when it transpired that it had 95 illicit bottles of country liquor in it. One of the occupants of the car, besides the Petitioners, was one Jagdish Chand who has since died. They were arrested and later on bailed out. The police put in challan u/s 61 of the Punjab Excise Act for the prosecution of the Petitioners on 28th September, 1979.

2. The Petitioners have sought the quashing of the proceedings on the ground that the challan having been put in beyond the period of limitation as envisaged u/s 75 of the Punjab Excise Act, 1914, and Section 468 of the Code of Criminal Procedure the Magistrate concerned had no power to take cognizance of the offence against the Petitioners.

3. In the written statement, the aforesaid facts are not disputed. However, it is pleaded that the Excise Department had approached the State Government under Sub-section (2) of Section 75 of the Excise Act for special sanction to launch prosecution after the expiry of the period of one year and since the sanction of the State Government was given on 20th August, 1979, which was

received by the investigating officer on 29th August, 1979, the challan could not be put in earlier than 28th September, 1979. It is further mentioned that when the period taken by the State Government for granting special sanction is taken into consideration in terms of Sub-section (3) of Section 470, Code of Criminal Procedure then the challan put in by the police is well within the time envisaged by Clause (c) of Sub-section (2) of Section 468, Code of Criminal Procedure.

4. Before embarking upon an enquiry into the rival contentions, the relevant provisions of the Excise Act and the Code of Criminal Procedure 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 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.

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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) u/s 61 or Section 66 except on his own knowledge or suspicion or on the

complaint or report of an excise officer; or

(b) u/s 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 after 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 Code of Criminal Procedure. 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 477 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 that consent or sanction of the given 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 envisaged in the statute in question.

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 u/s 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.

7. For the reasons aforementioned, this petition is allowed and the proceedings against the Petitioners pending in the Court of the Judicial Magistrate First Class, Kharar, are quashed.