
(1990) 09 MP CK 0029

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 201 of 1989

Shankarlal and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 17-09-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468(2), 468(3)
Madhya Pradesh Excise Act, 1915 — Section 37, 38, 39, 61, 61(1)

Citation : (1990) JLJ 782 : (1991) 36 MPLJ 445 : (1991) MPLJ 445

Hon'ble Judges : K.L. Shrivastava, J

Bench : Single Bench

Advocate : Jaisingh, for the Appellant; S.S. Swami, for the Respondent

Final Decision : Allowed

Judgement

K.L. Shrivastava, J.

This revision petition is directed against the order dated 7-9-1989 passed by the Judicial Magistrate First Class, Thandla in Criminal Case No. 339/89 where by the application filed by the petitioners on 3-9-1989 objecting to the jurisdiction of the Court to try the case has been rejected.

Circumstances giving rise to the revision petition are these : - Police Thandla on 9-8-1989 prosecuted the petitioners in respect of offences Under Sections 37 and 39 of the M. P. Excise Act, 1915 (for short "the Act") allegedly committed on 29-4-1988. The petitioners put in appearance and filed the aforesaid application stating that cognizance of the aforesaid offences which are non-cognizable could not be taken on police charge-sheet and further that the prosecution is time barred.

The learned Magistrate held that as the excise commissioner has specially permitted the police in the matter, no exception can be taken to the prosecution. Regarding limitation it has been held that in view of the special permission dated 4-7-1989 by the Excise Commissioner, cognizance of the offence could be taken

even after six months from the date on which the offences are alleged to have been committed.

The contention of the learned counsel for the petitioners in this Court is that bare reading of Section 61 of the Act reveals that the view taken by the learned Magistrate is unwarranted.

The contention of the learned counsel for the State is that the impugned order is proper and no interference in revision is called for.

The contentions canvassed by the learned counsel for the petitioners are based on Section 61 of the Act. It may usefully be reproduced. It runs thus : -

"61. Limitation of prosecutions. - (1) No Court shall take cognizance of an offence punishable :-

(a) u/s 37, Section 38, Section 38-A, Section 39 except on a complaint or report of the Collector or an excise officer not below the rank of District, excise officer as may be authorised by the Collector in this behalf;

(b) Under any other section of this Act other than Section 49 except on the complaint or report of an excise officer or police officer;

(c) 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."

In the instant case the prosecution in respect of offence Under Sections 37 and 38 of the Act case has been initiated at the instance of the police and, therefore, the learned Magistrate could not have taken cognizance of the offence in view of the provision embodied in Section 61(1)(a) of the Act.

It may further be pointed out that the present prosecution is also barred by time as provided u/s 468 of the Code of Criminal Procedure, 1973 (for short "the Code").

Section 2(n) of the Code defines offence as under : -

"Offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made u/s 20 of the Cattle Trespass Act, 1871 (1 of 1871);

Section 468 of the Code is in these terms : -

Bar to taking cognizance 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 -

- (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 purpose 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.

Regarding interpretation of negative language the decision in A. K. Roy's case, 1987 (1) MPWN 67, is pertinent.

Out of the two offences involved in the present prosecution, Section 37 with reference to which the period of limitation has to be determined as provided under Sub-section (3) of Section 468 of the Code is punishable with imprisonment for a term which may extend to 6 months and, therefore, u/s 468(2)(b) the period of limitation for the prosecution was one year and in the instant case the prosecution has been launched beyond the period of one year.

The word limitation in Section 61 in the context means restriction on prosecution. Section 61 of the Act does not provide for limitation as does Section 468 of the Code (vide Babubhai B. P.'s case, 1990 (2) E.P.R. 360). In the instant case the sanctions for the prosecution of the petitioners are only in respect of offence u/s 37 of the Act. In the sanctions it has been stated that by notification dated 4-7-1959 published in the M. P. Gazette dated 31-7-1959 the Government of M. P. has authorised the excise commissioner to exercise its power u/s 61(2) of the Act (vide Section 7(e) of the Act) by virtue of the sanctions the prosecution for offence u/s 37 of the Act could be lodged by competent person beyond 6 months but within one year which is the period of limitation prescribed under the Code. Thus apart from not being by a competent person, the prosecution was also barred by time and for this reason too the learned Magistrate could not take cognizance of the said offences.

It may be stated here that the sanctions do not at all relate to the offence u/s 39 of the Act.

As a result of the foregoing discussion I find that the revision petition deserves to be allowed, and is allowed. The prosecution of the petitioners is quashed and their bail bonds shall stand discharged.