

(1986) 01 SHI CK 0006
In the High Court Of Himachal Pradesh

State of Himachal Pradesh

APPELLANT

Vs

Parkash Shankar Verma

RESPONDENT

Date of Decision : 08-01-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 470(1)

Penal Code, 1860 (IPC) — Section 212, 418, 420

Punjab Excise Act, 1914 — Section 61

Citation : (1986) CriLJ 2013 : (1986) 2 RCR(Criminal) 607 : (1987) 1 RCR(Criminal) 169 : (1986) ShimLC 161

Hon'ble Judges : H.S. Thakur, J

Bench : Single Bench

Judgement

H.S. Thakur, J.—This appeal is directed against the judgment of the learned Additional Sessions Judge, Kangra at Dharamsala, dt. 26th Aug., 1980, whereby the respondent has been acquitted on the short ground that the cognizance of the offences alleged against the respondent could not be taken as the period of limitation as prescribed u/s 468, Cr. P.C., had expired.

2. A few facts relevant to decide this appeal may be stated. Originally, the respondent was challaned along with four others on 15/17-104970 for the offences alleged under Sections 212, 420, I.P.C. read with Section 61 of the Punjab Excise Act, as applicable to Himachal Pradesh. The proceedings against the respondent were, however, ultimately ordered to be dropped in Criminal Revision No. 3 of 1973 on 11-9-1975, by a learned single Judge of this Court for want of sanction to prosecute the respondent, u/s 197 of the Criminal P.C.

3. The prosecution had moved an application for obtaining the necessary sanction to prosecute the respondent on 25-2-1975. The sanction was accorded by the competent authority on May 30, 1975. After the sanction was obtained by the prosecution, a fresh challan was filed against the respondent in the Court of Magistrate 1st Class at Kangra on 31-8-1976. This challan was filed only against the respondent and offences under Sections 212 and 418, I.P.C. were alleged

against him. The learned Magistrate found the respondent guilty for the offence u/s 418.

I.P.C. and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-. The respondent preferred an appeal before the learned Sessions Judge and the Additional Sessions Judge, after hearing the parties, set aside the judgment of the trial Court and acquitted the respondent on the solitary ground that the Court could not take cognizance of the case as the same was beyond the period of limitation, as prescribed u/s 468, Cr. P.C.

4. It is contended by Mr. M. R. Chaudhary Assistant Advocate General, that the learned Additional Sessions Judge has not considered the impact of Section 470, Cr. P.C. while arriving at the aforesaid conclusion. It is contended by him that in computing the period of limitation the time during which the case was being prosecuted by the prosecution with due diligence had to be excluded. It is further asserted that the prosecution relates to the same facts. It is illustrated that in the original challan in which four other accused persons besides the respondent were involved, also pertained to similar offences, committed on Oct. 19, 1969. It is asserted that the time spent in prosecuting the respondent along with others till the decision of the High Court resulting into dropping the proceedings against the respondent has to be excluded. Ultimately, it is contended that computing the period of limitation from the date of decision of the High Court in the revision petition decided on Sept. 11, 1975, the cognizance was taken by the trial Court within the prescribed period.

5. It is not necessary to elaborate the chequered history of the case and the decisions arrived at by different Courts, as the same have been elaborately mentioned by the Additional Sessions Judge. In order to decide the point of limitation, the relevant points of time may be indicated : (See table below)

6. It is contended by Mrs. P. Malhotra, learned Counsel for the respondent, that the cognizance of the subsequent challan against the respondent for the offences alleged under Sections 212 and 418, I.P.C., could not be taken as the same was barred by lapse of the period of limitation u/s 468, Cr. P.C. It is asserted by the learned Counsel that the offences under Sections 212 and 418, I.P.C., do not exceed the punishment of either description beyond three years or with fine or with both. On this basis, it is contended that u/s 468(ii)(c) the period of limitation for taking cognizance of such offences was three years. It is also pointed out that u/s 469, Cr. P.C. the period of limitation in relation to an offender is to commence on the date of the commission of the offence. On the aforesaid facts, it is ultimately asserted that since the offences are alleged to have been committed by the respondent on 19-10-1969 and the cognizance was taken on 31-8-1976, the same was apparently barred by limitation and the prosecution against the respondent could not be launched. Reliance has been placed on a decision of the Supreme Court in State of Punjab Vs. Sarwan Singh, The relevant observations may be extracted:

...The object of the Criminal P.C. in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which (contd. on col. 2) material evidence may disappear and also to prevent abuse of the process of the Court by filing vexatious and belated prosecutions long after the date of the offence. The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution. It is, therefore, of the utmost importance that any prosecution whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. The prosecution against the respondent being barred by limitation the conviction as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent is non est...

7. It may be noticed that no doubt the respondent was originally challaned along with four other persons for the offences alleged under Sections 212 and 420, I.P.C., read with Section 61 of the Punjab Excise Act as applicable to the State of Himachal Pradesh, but subsequently the second challan exclusively filed against the respondent was under Sections 212 and 418, I.P.C. The respondent was found guilty by the trial Court only u/s 418 I.P.C. While adverting to the proviso to Sub-section (1) of Section 470, Cr. P.C. it may be observed that the subsequent challan cannot be said to be related to same facts. In the subsequent challan filed only against the respondent the facts are not the same and also cannot be said to be the same as the other four accused persons who were prosecuted in the original challan are not included in the array of accused persons. In fact, independent offences are alleged against the respondent only under Sections 212 and 418 I.P.C. Keeping in view these facts, the benefit of the proviso to Sub-section (1) of Section 470 Cr. P.C. cannot be given to the prosecution.

- (i) The date of occurrence : 19-10-1969
- (ii) The date of filing of the original challan (the first challan) : 17-10-1970
- (iii) The date of filing of the revision petition in the High Court: 15-1-1973
- (iv) The date of decision of the revision petition by the High Court: 11-9-1975
- (v) The date of filing an application for obtaining sanction to prosecute the respondent: 25-2-1975
- (vi) The date of according sanction by the competent authority : 30-5-1975
- (vii) The date of filing of the second challan against the respondent: 31-8-1976

8. It may also be noticed that the offences alleged to have been committed by the respondent pertain to the year 1969 and a period of more than 16 years has elapsed till to-day. This fact is not only relevant but also material to decide this appeal. The respondent is, stated to have been compulsorily retired from service some years back. Keeping in view these facts, I am not inclined to interfere with

the view taken by the learned Additional Sessions Judge.

9. The result of the above discussion is that the appeal is dismissed.