

(1992) 01 MP CK 0006

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 107 of 1984

State of Madhya Pradesh

APPELLANT

Vs

D.D. Karkare and Others

RESPONDENT

Date of Decision : 09-01-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 395(1), 4(1), 4(2), 468(1), 469
Madhya Pradesh Excise Act, 1915 — Section 34, 4, 468(1), 61(2)

Citation : (1992) 37 MPLJ 454 : (1992) MPLJ 454

Hon'ble Judges : S.D. Jha, J

Bench : Single Bench

Advocate : S.K. Pawnekar, for the Appellant; A.J. Bhojwani, for the Respondent

Judgement

S.D. Jha, J.

The Tenth Additional Judge to the Court of Sessions Judge, Indore acting u/s 395 of the Code of Criminal Procedure, 1973 (hereinafter called "the Code") has made this reference under the following circumstances :

On 16-10-1976, the City Excise Officer, Indore raided the shop and godown of accused No. 1 Kantilal and found in all 25 drums containing spirituous preparations. Kantilal did not possess a licence for the purpose. In that connection for storing, selling, exporting, complaint u/s 34 of the M.P. Excise Act, 1915 (hereinafter called as "the Act") was presented in the Court of the Judicial Magistrate First Class, Indore against accused Kantilal and five others. After the particulars of offence had been explained, accused Nos. 2 to 6 raised objection that as complaint against them was presented beyond a period of six months prescribed u/s 61(2) of the Act and without special sanction of State Government, the Court was prohibited from taking cognizance of the alleged offence against them and complaint against them should be dismissed. The State Government had accorded sanction for prosecution after the period of six months only against the accused Kantilal on 28-6-1977. The Trial Court, after hearing arguments of the parties, held that while limitation under the Act as to taking of

cognizance would apply, its computation would be done in the manner provided under Sections 469 to 473 of the Code and the complaint was within time and, therefore, sanction of the Government in the case of these accused was not necessary.

In three criminal revision petitions presented by accused Nos. 2 to 6 the learned Addl. Sessions Judge who heard the revisions felt that there was conflict in limitation spelt out in chapter of the code and in sub-section (2) of Section 61 of the Act. She also seems to have felt that whereas Section 468(1) of the Code prohibited a Court from taking cognizance of an offence after expiry of the period of limitation, under sub-section (2) of Section 61 of the Act, the Court could take cognizance with the special sanction of the State Government. The learned Addl. Sessions Judge seems to have seen repugnancy in the two provisions as aforesaid. The Additional Sessions Judge further felt that the two provisions in sub-section (2) of Section 61 of the Act and chapter XXXVI of the Code which is a Central enactment and later in point of time are contrary to one another and the provisions of the code should prevail over the provisions of the Act. As the provisions of Section 61(2) of the Act had not been declared invalid or inoperative, by the High Court or the Supreme Court, the Addl. Sessions Judge made this reference acting u/s 395(1) of the Code.

At the hearing of the reference while Shri G. Desai, Advocate representing the State had no particular comments to make on the reference and left the matter entirely to the discretion and judgment of the Court, Shri A. J. Bhojwani learned Advocate representing the accused submitted that the reference suffered from a serious mistake and was incompetent.

After the matter had been heard and closed for orders, it was felt that sub-section (2) of Section 4 of the code which would appear directly relevant for disposal of the point in controversy had not been noticed by the Court below or by the parties. Further sanction had been accorded by the State Government for prosecution of the accused Kantilal, what would be the effect of the sanction as respect other co-accused because the Magistrate takes cognizance of the offence and not of the accused and whether in this view of the matter sanction accorded in respect of accused Kantilal would enure in respect of other co-accused had not been considered and argued whether this could be considered in this reference. For all these things the hearing was reopened.

Shri A. J. Bhojwani, then submitted that sub-section (2) of Section 4 of the Code completely answers the point raised in the reference and that it was not at all necessary to strike down sub-section (2) of Section 61 of the Act. About sanction accorded against accused Kantilal enuring against other accused, Shri Bhojwani submitted that there was no legal bar in according sanction for prosecution against only one accused and, therefore, the sanction against accused Kantilal could not be used against other co-accused. Besides the point could not be a matter for consideration in this reference. In support of his contentions Shri Bhojwani relied on the following decisions :-

- (1) 5. Ramchandra Reddy v. P. N. Ravindra Reddy and Anr. 1991 (2) Crimes 230,
- (2) Ajmer Singh etc. v. Union of India, 1987 Criminal Appeals reported 236,
- (3) Matajog Dobey Vs. H.C. Bhari, and
- (4) Food Inspector, Berhampur Municipality Vs. P. Mohan Rao and Others,

It is not proposed to deal in this order with the question whether the sanction accorded by the State Government in respect of prosecution of accused No. 1 Kantilal after expiry of period of six months stipulated in sub-section (2) of Section 61 of the Act could be considered against other, co-accused because the point cannot be said to be arising from the reference u/s 395(1) made by the Addl. Sessions Judge to this Court.

Before dealing with the merits of the reference, certain relevant provisions may be noticed. Sub-section (1) of Section 61 of the Act prohibits a Court from taking cognizance of offence under the Act upon complaint or report of an officer set out under the sub-section and in- the manner stated therein, Sub-section 2 (ibid) which is material for the present reference stipulates : -

"61. Limitation of prosecution. - (1)...

(2) Except with the special sanction of the State Government 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."

-X- -X- -X-

Section 467 of the Code, Chapter XXXVI defines period of limitation. Section 468(1) enacts a bar to taking cognizance of an offence after lapse of the period of limitation. Sub-section (2) provides for limitation of six months, one year or three years depending on the quantum of punishment for the offence. Section 469 of the code provides how the limitation is to commence and is to be computed. Section 470 provides for exclusion of time in certain cases as set out in the section. Section 471 provides for exclusion of date on which Court is closed. Section 472 provides for a fresh period of limitation to begin in case of a continuing offence. Section 473 enables any Court to 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 delay has been properly explained or that it is necessary so to do in the interest of justice.

The Additional Sessions Judge while referring to conflict between the provisions contained in sub-section (1) of Section 61 of the Act and Chapter XXXVI of the code as to period of limitation had in mind Article 254(1) of the Constitution of India which deals with repugnancy between the Central Law and the State Law and a subject falling in Concurrent List and consequences thereof and presumably entries 1 and 2 of list third Concurrent List of Constitution of India. Article 254(1) of the Constitution of India and the two entries are reproduced

below : -

"254(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnance, be void :"

"1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified. In List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power."

"2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution."

-X- -X- -X- -X-

In the above connection, it is well to remember that there is no repugnancy unless the two Acts are wholly incompatible with each other and the two together would lead to absurd rules, *Omprakash v. State* 1957 SCR 423. "When a question of repugnancy arises under Article 254 every effort should be made to reconcile the two enactments and to construe them so as to avoid their being repugnant to each other and care should be taken to see whether the two really operate in different fields without encroachment." *State of Assam v. Horizon Union* AIR 1972 SC 442 , *Meenakshisundaram Chettiar Vs. Venkatachalam Chettiar*,

Again if the Union law itself permits or recognises other law restricting or qualifying the general provisions made in it, the special provision of such State Local Law cannot be said to be repugnant to the Union Law. *The State of Vindhya Pradesh (Now Madhya Pradesh) Vs. Moradhwaj Singh and Others*, and *State of Haryana and Another Vs. Chanan Mal and Others*, Considering the present matter in the light of the foregoing sub-section (2) of Section 4 of the Code which is reproduced below :

"4(1).....

4(2) - All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating inquiring into, trying or otherwise dealing with such offences."

-X- -X- -X-

Itself permits or recognises restricting or qualifying the general provisions made in sub-section (1) of Section 4 and the same would also be true of "saving"

contained in Section 5 of the Code.

The above view would find support from the decision of a Single Judge of Andhra Pradesh High Court in 5. Ramchandra Reddy v. P. N. Ravindra Reddy and Anr., 1991 (2) Crimes 230, where dealing with limitation of 12 months from filing complaint under Andhra Pradesh Gram Panchayat Act and six months u/s 468 of the Code the Court held that "the period is only carying in nature, but not contrary". In Narcotics Control Bureau Vs. Kishan Lal and others, though a case relating to two Central Enactments the code Section 439 and Section 37 of Narcotic Durgs and Psychotropic Substances Act, Hon"ble the Supreme Court in para 6 of the judgment after setting out Section 4 of the Code observed :

"It can thus, be seen that when there is a Special enactment in force relating to the manner of investigation, inquiry or otherwise dealing with such offences, the other powers under the Code of Criminal Procedure should be subject to such special enactment."

-X- -X- -X- -X-

In Ajmer Singh v. Union of India and Ors., 1987 CAR 236 (SO dealing with Section 5 of the Code and Army Act" and applicability of Section 428 of the Code (both Central enactments) relating to set off of the period of detention the Supreme Court with reference to conviction by court matrial under Army Act a Central enactment and Section 5 of the Code held that:-

"The effect of Section 5 of the Code of Criminal Procedure is to render the provisions of the Code of Criminal Procedure inapplicable in respect of all matters covered by such law."

-X- -X- -X- -X-

Besides the above, Section 473 of the code itself enables a Court to take cognizance of the offence after the expiry of the period of limitation in the interest of justice or on other conditions set out in the section being fulfilled. Thus viewed, there would appear no conflict in sub-section (2) of Section 61 of the Act enabling a Court to take cognizance of an offence under the Act after expiry of limitation with special sanction of the State Government.

Considering the foregoing, there would appear no repugnancy between the provisions of Chapter XXXVI of the Code and sub-section (2) of Section 61 of the Act. The reference is answered accordingly. The matter shall now go back to the learned Additional Sessions Judge for disposal of the revision petitions in accordance with law and in the light of the observations made in this order. Parties are directed to appear before the Additional Sessions Judge on 31-1-1992.