(2009) 08 JH CK 0073

In the Jharkhand High Court

Case No : Criminal M.P. No. 935 of 2005

Vinod Kumar Khindaria and Sushil Kumar Agrawal APPELLANT

Vs

The State of Jharkhand RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 47, 78(4), 96

Citation : (2009) 08 JH CK 0073

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : N. Pasari, for the Appellant; P.K. Prasad, A.G. and V.S. Sahay, APP, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—In this application petitioners prayed for quashing the order dated 31.5.2005 passed by Sri U.K. Singh, Judicial Magistrate, Jamshedpur in C/3 Case No. 147 of 2002 u/s 47(a) of Bihar Excise Act whereby and whereunder the discharge petition of petitioners dated 24.8.2004 has been rejected.

2. It is submitted by learned Counsel for the petitioners that as per Section 96 of the Bihar Excise Act it is incumbent upon the magistrate to take cognizance of the offence within six months from the date of detection of crime. It is then submitted that in the instant case inspection was made on 18.10.2002 and cognizance was taken on 19.4.2003 i.e. after six months. Hence the order taking cognizance is bad in law as the same has been passed beyond the period of limitation as stipulated u/s 96 of the Bihar Excise Act. Accordingly, it is submitted that the entire prosecution is bad; hence petitioners are entitled to be discharged by the learned court below.

3. On the other hand, learned Advocate General submits that Section 96 of the Bihar Excise Act have no application in the instant case because the same is applicable in cases of prosecution of any Excise Officer or any person invested

with the power of Excise Officer under Bihar Excise Act. It is submitted that Section 96 of the Bihar Excise Act protect the Excise Officer against frivolous and vexatious prosecutions for act done in discharge of their duties assigned under the said Act. It is submitted that Section 96 of Bihar Excise Act gives double protection to the Excise Officers or any other person acting under the said Act. It is submitted that firstly said section prohibits any magistrate from taking cognizance of any offence against the Excise Officer or any other person discharging duty under the said Act without previous sanction of the State Government and secondly it provides that the prosecution against them must be instituted within six months from the date of the act complained of. It is submitted that the petitioners are not the Excise Officers or any other person discharging the duties under the Excise Act; therefore, Sections 96 have no application in their case. Learned Advocate General further submitted that even assuming, for the sake of argument, that Section 96 will apply in the case of petitioner then also in the instant case the prosecution has been instituted on the date of inspection itself, because on that date itself the complaint filed in the court of CJM, Jamshedpur. It is submitted that Section 96 of the Bihar Excise Act does not provide that the cognizance be taken within six months of the act complained of, rather it provides that the prosecution be instituted within aforesaid period. It is submitted that a Division Bench of Hon''ble Patna High Court in R.P. Sharma and Ors. v. State of Bihar and Anr. reported in 1999(1) ECC 140 has held that the word ''instituted'' has been used in Section 96 to mean only filing of report or the complaint before the court. It is submitted that as in the instant case the complaint has been filed on 12.10.2002 vide annexure-3 therefore, the prosecution has been instituted on the date of detection of crime itself. It is submitted that Section 96 of Bihar Excise Act does not prescribe period of limitation for passing the order of cognizance. Accordingly, it is submitted that there is no illegality in the order of cognizance; therefore the learned court below had rightly rejected the application of discharge filed by the petitioners.

4. Having heard the submission of the parties, I have gone through the record of the case. Section 96 of the Bihar Excise Act runs as follows:

96. Limitation of suits and prosecutions.- No Civil Court shall try any suit against the Government in respect of anything done, or alleged to have been done, in pursuance of this Act,

and, except with the previous sanction of the State Government, no Magistrate shall take cognizance of any charge made against any Excise Officer under this Act or any other law relating to the excise-revenue or made against any other person under this Act.

Unless the suit or prosecution is instituted within six months after the date of the act complained of.

From perusal of aforesaid provision, it is clear that Section 96 provides that prosecution be instituted within six months after the date of the act complained of. In R.P. Sharma''s case (supra) it has been held by a Division Bench of Hon''ble Patna High Court that Section 96 of the Act does not provide that the cognizance is to be taken within six months of the act complained of. It provides that the prosecution has to be instituted within the aforesaid period. In the said judgment it has further been held that the word ''Institute'' means that when the information is laid or complaint is made. It is further stated in the said judgment that the word ''instituted'' has been used in Section 96 to mean only filing of the report or the complaint before the court. It is also held that once the prosecution is instituted within six months from the date of detection of offence then it is not necessary that the cognizance should also be taken within the said period of six months. It has been specifically held at paragraph 18 that the cognizance may be taken even beyond the period of six months.

5. It appears that in the instant case the godown of the petitioners was inspected on 12.10.2002 and from the said godown two drum of illicit sprit (200 Ltr) and 5 jerkins illicit sprit (20 Ltr each) seized. It further appears from annexure-3 that on 12.10.2002 itself the matter was reported to the CJM, Jamshedpur regarding the said search and seizure and on the basis of aforesaid report case bearing No. C/3 147 of 2003 has been instituted. It then appeared from paragraph No. 8 of this application that the report u/s 78(4) has been filed in the court of CJM on 10.4.2003 (Annexure-1). Thus the aforesaid report is also filed within 5 month 28 days from the date of detection of offence. It appears that on the basis of said report, cognizance was taken on 19.4.2003. Under the said circumstance since both annexure- 3 as well as annexure- 1 has been filed within six months from the date of detection of offence, therefore, in view of R.P. Sharma''s case the prosecution has been instituted within six months from the date of detection of crime. Thus, there is no illegality in the order of cognizance though the same has been passed beyond the period of six months from the date of detection of crime. In that view of the matter, I find that there is no illegality in the order of court below.

6. Since, I have already come to the conclusion that there is no illegality in the order taking cognizance, therefore the first question raised by learned Advocate General with regard to scope and applicability of Section 96 of Bihar Excise Act in the case of petitioner is not decided in this case, as the same has no bearing on the result of this case. Thus, I kept open the said question to be decided in future.

7. In view of discussion made above, I find no merit in this application and the same is dismissed.

