

(1983) 11 BOM CK 0042

In the Bombay High Court

Case No : Special Civil Application No. 50 of 1977

Wasanta and others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 09-11-1983

Acts Referred:

Bombay Prohibition Act, 1949 — Section 65, 66(1)
Criminal Procedure Code, 1973 (CrPC) — Section 173, 468, 468(2), 484, 484(1)

Citation : (1984) MhLj 696

Hon'ble Judges : Paunikar, J

Bench : Single Bench

Judgement

1. The instant petition has been filed by the petitioners (accused) in Criminal Case No. 2096 of 1976 pending in the Court of the Judicial Magistrate, First Class, 11th Court, Nagpur, for their prosecution under Sections 65(f) and 66(1) (b) of the Bombay Prohibition Act. On 16-8-1976, an order was passed by the trial Court rejecting the application filed by these accused for the discharge claimed by them under S. 468(2) read with S. 484 of the Cr.P.C. The petitioners in this petition seek to quash the proceedings before the trial Magistrate.

2. The prosecution story as revealed from the charge-sheet dated 17-11-1971 filed on 8-3-1976 is that Head Constable Chintaman, B. No. 2183, of Police Station Lakadganj received an information on 2-6-1968 at about 3.30 hrs., that the applicants-accused were running a still in their residential house in Pardi for illicit distillation of country liquor. So the Head Constable Chintaman, B. No. 2183, is said to have collected two panchas and raided the house of the applicants-accused and there he found a running still and also the accused persons present. The Head Constable is then said to have extinguished the still and seized the articles as per seizure-memo. He is said to have taken out two bottles of 16 oz., each full of wine and one bottle of Mohwa-wash, and sealed them and sent to the Chemical Analyser for analysis. He then said to have arrested the applicants-accused and brought them to the Police Station Lakadganj and then he registered an offence against them as Crime No. 266 of

1968 under Sections 65(f) and 66(1)(b) of the Bombay Prohibition Act. The samples were then sent to the Chemical Analyser on 3-8-1969 for analysis and the Chemical Analyser's report was received on 13-4-1970. Then the charge-sheet No. 947 was prepared on 17-11-1971 and the same was filed in the Court of the Judicial Magistrate, First Class, 11th Court, Nagpur, vide Criminal Case No. 2096 of 1976.

3. The applicants-accused filed an application at Exh. 22 under S. 468 of the Criminal P.C., 1973, on 19-7-1976 for quashing the proceedings on the ground that they are time barred. The learned Magistrate rejected the said application vide order dated 16-8-1976. It is this order, which is challenged in this writ petition.

4. The learned Magistrate held that the disposal of investigation results into filing of charge-sheet. As there is no bar in the old Code to file charge-sheet, the Court is competent to take cognizance of the offence as the case will be governed under the old Code and hence the application was rejected. He held that the investigation, which was pending before 1-4-1974, will have to be disposed of as per the old Code. He relied upon the decision of the single Bench of this Court reported in 1976 Mah LJ 77 State v. Madhukar Hedau and held that the right of filing of the charge-sheet is also saved.

5. The learned counsel for the petitioners-accused in this petition contended that the offence was alleged to have been committed by the petitioners on 2-6-1968. Investigation was completed on 17-11-1971. No investigation was pending on 1-4-1974, even then the charge-sheet having been filed on 8-3-1976, was barred by limitation as provided u/s 468(2)(b) of the Cr.P.C., 1973 as the trial would be governed by the provisions of the new Cr.P.C., 1973, which came into force on 1-4-1974. Consequently the proceedings are liable to be quashed. He further submitted that in the interest of justice no charge-sheet should have been entertained, as the investigation in this case was completed on 17-11-1977, while the charge-sheet was factually filed on 8-3-1976 without explaining any reason why there was so long a delay.

6. It is a fact apparent on the face of record that the investigation by the Police Officer was completed and charge-sheet was also prepared on 17-11-1971. It is, therefore, obvious that no investigation was pending before the Police Authorities on 1-4-1974. No explanation for this delay has been given by the prosecuting agency as to why the charge-sheet was actually filed on 8-5-1976. On this ground alone for want of proper explanation for this unreasonable and inordinate delay, the proceedings in my opinion are liable to be quashed in the interest of justice.

7. Even otherwise in view of S. 173 of the new Cr.P.C., which is analogous to S. 173 of the old Cr.P.C., every investigation has to be completed without unnecessary delay and as soon as, it is completed, the officer in charge of the police station has to forward to a Magistrate empowered to take cognizance of

the offence on a police report, a report in the form prescribed by the State Government. As soon as the investigation is completed in this case on 17-11-1971, the police officer should have filed the challan immediately. It is obvious that investigation was not pending on or before 1-4-1974 but was completed on 17-11-1971. Consequently this case will not be governed by the procedure laid down in the old Cr.P.C. It will be governed by the procedure laid down under the Criminal P.C., 1973. Under the Criminal P.C., 1973, the prosecuting agency is under an obligation, which is newly put upon them to file the charge-sheet within the period prescribed in S. 468(2). The right of the prosecution, therefore, in cases where the investigation was not pending to launch the prosecution will not be saved by S. 484. The ruling relied upon by the Magistrate aforesaid is based on the facts that on 1-4-1974 the investigation was pending, and hence it was held that right of prosecution to prepare a charge-sheet is saved. Here in this case the investigation was long completed on 17-11-1971 and hence the said ruling will not apply to the facts in this case.

8. Section 484 sub-sec. (1) provides repeal of the Code of 1898. Sub-sec. (2)(a) with which we are concerned runs as follows :-

If, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Criminal P.C. 1898 (5 of 1898), as in force immediately before such commencement, (hereinafter referred to as the old Code), as if this Code had not come into force :

Provided that every inquiry under Chapter XVIII of the old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code.

A reading of sub-sec. (2)(a) would show that an appeal, application, trial, inquiry or investigation pending at the time of commencement, of the new Code are to be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the old Code.

9. I have already held that the investigation in this case was not pending on 1-4-1974 and was completed on 17-11-1971, the charge-sheet in question would be governed by the provisions of S. 468. According to S. 468(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.

and hence the period of limitation will be three years from the date of the

offence. In this case the offences are said to have been committed on 2-6-1968. Consequently the prosecution of petitioner's (accused is barred by limitation.

10. In view of my observations and the view I have taken, the contentions of the learned counsel for the petitioners have to be accepted. In the result this petition is allowed. The impugned order dated 16-8-1976 is quashed and set aside and also the prosecution proceedings are quashed. The rule is thus made absolute with no order as to costs.

11. Petition allowed.