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High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 2065-M of 1983

Dharam Nath	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision: Aug. 19, 1983

Hon'ble Judges: B.S.Yadav, J

Advocate: Mohinder Gupta, H.S. Mattewal, Advocates for appearing Parties

Judgement

B.S. Yadav, J.

1. The petitioners are partners of Firm M/s. Dharam Nath Ravinder Kumar, dealing in Fertilizer at Khem Karan, tehsil Patti, District Amritsar. A case about the contravention of the provisions of Fertilizer Control JUDGMENT 1957 was registered against them and others vide First Information Report No. 263 dated 27.8.1980 in Police Station Valtoha. According to the allegations, in the First information Report a sample of fertilizer was taken for analysis from the sealed bags from the shop of the petitioners by the fertilizer Inspector. That Fertilizer was manufactured by M/s. Davindra Agro Chemicals (India), Ludhiana whose managing partner was Nohar Chand Gupta. On analysis by the Government Quality Control Laboratory, Ludhiana it was found that the variation in water solution phosphate was 3.51%. Thus the fertilizer was substandard. After investigation of the case, chargesheet was presented against the present petitioners, and other in the Court of the Judicial Magistrate I Class, Patti who framed charges against them on 6.1.1983.

2. The petitioners filed this petition under section 482 of the Code of Criminal Procedure, 1973 (for short the Code) for quashing the First Information Report, as well as charges framed by the learned trial Court. Many grounds were taken in the petition, but before me only two grounds were pressed and therefore, it is not necessary to give all the allegations contained in the petition. The first ground pressed was that learned trial Court could not have taken cognizance of the offence in view of Section 482(2) of the Code and secondly, the case ought to have been tried summarily in view of section 12A of the

Essential Commodities Act (the present Section 12A was substituted by new sections, by section 11 of Central Act 18 of 1981, but the substituted sections have not been enforced so far) and charges could not have been framed against them. I will take the above grounds in seriatim.

3. The learned counsel for the petitioners argued that admittedly, the Central government, has issued Notification in exercise of the powers conferred upon it by section 12A of the Essential Commodities Act, 1955, specifying the Fertilizer Control JUDGMENT 1957 issued under section 3 of the Act to be special order for purposes of summary trial under the said section (i.e. section 12A). He also drew my attention to proviso to section 12A of the Act which provides that in case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year. He further argued that section 468 of the Code places a bar to the taking of cognizance by a Court in respect of certain offences after lapse of the period of limitation and as in the present case, only one years'' sentence could be awarded, as noticed earlier therefore, the period of limitation would be governed by clause (b) of subsection (2) of the section 468 of the code. For appreciating this argument, it becomes relevant to reproduce the relevant provisions of section 468 of the Act :

"468. (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in subsection (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 exceedings three years.

"

The learned counsel for the petitioners further argued that in the present case, the case was registered on 27.8.1980. The challan was presented in Court on 20.12.1982, i.e. after the expiry of one year and therefore, the Court could not have taken cognizance of the offence. I have considered the above argument of the learned counsel for the petitioners and I am of the opinion that it has no force. Section 468(2)(b) of the Code provides a limitation if the offence is punishable with imprisonment for a term not exceeding one year. Section 12A of the Act does not provide any punishment for the offence. It only talks of summary trial. The punishment for the violation of the provisions of the Act or any order issued under the provisions of the Act, has been provided in section 7 of the Act. It is not in dispute that the offence alleged to have been committed by the

petitioner is punishable with imprisonment which may extend to seven years. Therefore, from the fact that in summary trial, the Court has not been authorised to award imprisonment for more than one year, it does not mean that the offence is punishable with imprisonment for a term not exceeding one year. Section 468 of the Code speaks about the punishment which could be awarded if the offence is committed by an accused and has relevance to the competence of a Court in awarding punishment. If the argument of the learned counsel is accepted, then in means that all offences which are triable by a Court of Magistrate of the II Class, who can impose a sentence of imprisonment for a term not exceeding one year and by the Court of a Magistrate of the I Class who can impose a sentence of imprisonment for a term not exceeding three years, shall be governed by section 468 of the Act. The First Schedule appended to the Code, in column No. 6, specifies the Court which can try the offences mentioned in column No. 2 thereof. Offence falling under section 206 of the Indian Penal Code is punishable with imprisonment which may extend to two years and is triable by any Magistrate. Thus, if such an offence is tried by a Magistrate of the II Class, then according to the argument of the learned counsel for the petitioners, the period of limitation for such an offence would be governed by section 468(2)(b) of the Code. Taking other examples, offences falling under sections 216 and 219 of the Indian Panel Code which are punishable with imprisonment which may extend to seven years, are triable by Magistrate of the I Class. As the Magistrate I Class is competent to award punishment upto three years only, therefore, according to the above argument, such Magistrate would be debarred from taking cognizance of those offences in view of section 468(2)(c) of the Code, after the expiry of three years from the date of commission of the offence. Section 469 of the Code provides about the commence of the period of limitation in relation to an offender and it is not necessary to quote the various contingencies given is that section. Suffice it to say that one of the contingencies given is that the period of limitation commences from the date of the commission of the offence and for the purpose of argument, I am taking that contingency. That could not be the intention of Legislature while enacting section 468 of the Code.

4. In the above view of mine that case about the contravention of Fertilizer Control JUDGMENT does not fall within the ambit of the section 468 of the Act, I am supported by a judgment given by this Court in Cr. Misc. No. 235M of 1982, (Vinod Kumar v. State of Punjab), decided on September 6, 1982. That case also related to the contravention of the Fertilizer Control JUDGMENTC.S. Tiwana, J., who decided that case remarked :

"The offence which is alleged to have been committed by the petitioner is one under section 7 of the Essential Commodities Act and that offences being punishable upto imprisonment for seven years, it is outside the ambit of section 468 of the Code of Criminal Procedure by which limitation for taking cognizance of offence is provided."

5. For the foregoing reasons, it is held that section 468 of the code does not debar the taking of cognizance of the offence in question by the learned Magistrate.

6. The second ground taken by the learned counsel for the petitioner was that in view of section 12A of the Act, the case has to be tried summarily. However, proviso second appended to that section reads as under :

"Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter the parties, recall any witnesses who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code."

Thus, the Magistrate was competent to try the case as a warrant case.

7. The learned counsel for the petitioners argued that the Magistrate can resort to the said proviso only after recording an order to that effect and before recording that order, he has to hear the parties. In the petition, there is no allegation that the trial Court did not hear the parties before proceeding to try the case as a warrant case. Therefore, for want of that necessary allegation, this argument of the learned counsel for the petitioner will have to be repelled.

8. In view of the above discussion, the present petition fails and the same is hereby dismissed.