

(2014) 07 JH CK 0096

Jharkhand High Court

Case No: Cr. M.P. No. 1040 of 2013

Sanjeev Kumar Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: July 15, 2014

Acts Referred:

- Bihar and Orissa Excise Act, 1915 - Section 47(a), 48, 55, 78(4), 96

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: Sanjeev Thakur, Advocate for the Appellant

Final Decision: Allowed

Judgement

Harish Chandra Mishra, J.

Heard learned counsel for the petitioners and learned counsel for the State.

2. Petitioners are aggrieved by order dated 18.10.2012 passed in CE No. 18 of 2012, by Sri Arbind Kumar-II, learned Judicial Magistrate, Bokaro, whereby cognizance has been taken against the petitioners for the offences under Sections 47(a), 48, 55 and 66A of the Excise Act.

3. Petitioners have been made accused in CE Case No. 18 of 2012 as one Maruti van was intercepted by the Excise Officials on 7.3.2012, in which 196.200 liters of foreign liquor were recovered and the petitioners were apprehended. Subsequently, the prosecution report was submitted on 18.10.2012, on the basis of which cognizance has been taken by the learned Magistrate by order dated 18.10.2012.

4. Learned counsel for the petitioners has taken a short point challenging the order taking cognizance and for quashing the entire criminal proceeding against the petitioners. It has been submitted that admittedly in this case, the offence was allegedly committed on 7.3.2012, whereas the prosecution report was submitted on 18.10.2012, i.e., beyond the period of six months. It is accordingly, submitted that

the cognizance taken is absolutely barred u/s 96 of the Bihar Excise Act and as such criminal proceeding also stands vitiated. Learned counsel accordingly, submitted that it is a fit case, in which the order taking cognizance dated 18.10.2012 passed by the Court below, as also the entire criminal proceeding against the petitioners, be quashed. In support of his contention, learned counsel for the petitioners has placed reliance upon the decision of Division Bench of Patna High Court in [R.P. Sharma and Others Vs. The State of Bihar and Another,](#) wherein where, the prosecution report was submitted after six months after the offence, it has been held that the requirement of Section 96 of the Excise Act is that the prosecution is to be instituted, meaning thereby the report or the complaint is to be filed in terms of Section 78(4) of the Act, within six months of the act complained of and if the report is filed beyond the period of six months, the cognizance taken on the basis of said report is vitiated in law and in breach of provisions contained in Section 96 of the Bihar Excise Act. It has been submitted that similar view has been taken by this Court also, in [Dinesh Rai Vs. State of Jharkhand,](#) . Placing reliance on these decisions, learned counsel submitted that the impugned order cannot be sustained in the eyes of law.

5. Learned counsel for the State on the other hand has opposed the prayer and has submitted that there is no illegality in the impugned order and upon due enquiry, the prosecution report has been submitted against the petitioners, on the basis of which, cognizance has been rightly taken against them.

6. Section 96 of the Bihar Excise Act reads 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.

Thus from a plain reading of this Section, it is apparent that the cognizance is absolutely barred unless the prosecution is instituted within six months after the date of the act complained of.

7. In the present case, recovery of illegal liquor was made on 7.3.2012 and the prosecution report has been submitted on 18.10.2012, which is clearly beyond the period of six months of the date of the act complained of. In that view of the matter, I am of the considered view that the case of the petitioners is fully covered by the decisions of the Patna High Court in R.P. Sharma's case (supra), as also of this Court in Dinesh Rai's Case (supra). Consequently, the entire criminal proceeding, as well as the order taking cognizance, are vitiated and the same cannot be sustained in the

eyes of law.

8. In view of the aforementioned discussions, the impugned order dated 18.10.2012 passed in CE No. 18 of 2012, by Sri Arbind Kumar-II, learned Judicial Magistrate, Bokaro, as also the entire criminal proceeding against the petitioners in the said case, are hereby, quashed. This application is accordingly, allowed.