

**D. Kumar Vs. State of Karnataka**

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**Court :** Karnataka

**Decided On :** Feb-26-1985

**Reported in :** ILR1985KAR1450; 1985(1)KarLJ313

**Judge :** R.G. Desai, J.

**Acts :** [Karnataka Excise Act, 1965](#) - Sections 13(1) and 32; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 167(5)

**Appeal No. :** Criminal Revn. Petn. No. 537 of 1982 in C.C. No. 765 of 1981

**Appellant :** D. Kumar

**Respondent :** State of Karnataka

**Advocate for Def. :** S.S. Koti, Govt. Pleader

**Advocate for Pet/Ap. :** Karpagam Kamath, Adv.

**Judgement :**

ORDER

1. The petitioner is the accused in C.C. No. 765/81 on the file of the J.M.F.C. Nelamangala. On 8-3-1981 the Sub-Inspector of Excise, visited Madhu Wine Stores, situated at Bylappanapalya, Tumkur Road, Nelamangala, belonging to the accused and conducted a surprise raid. He found that the accused was in unlawful possession of 28.395 litres of un-accounted liquor contrary to S. 13(1) and

punishable under S. 32 of the Karnataka Excise Act 1965. He seized the said quantity and arrested the accused on the same day. He filed the charge-sheet against the accused in the court below on 24-11-1981 for an offence punishable under S. 32 of the Karnataka Excise Act. The learned Magistrate issued summons to the accused. Hence, this revision petition by the accused.

2. The only point urged by Smt. Karpagam Kamath, learned counsel for the petitioner is that the charge-sheet has been filed in this case after six months of the arrest of the accused contrary to the mandatory provision of S. 167(5) of the Cr.P.C. 1973 and so the learned Magistrate ought not to have taken cognizance of the offence. In support of her contention, she brought to my notice the decision of the Calcutta High Court in Jay Shankar Jha v. State 1982 Cri LJ 744. No doubt, in the said case, it has been held that where in a summons case the investigation of the case was not concluded within a period of six months from the date of the arrest of the accused and no attempt was made by the investigating officer to satisfy the Magistrate as required by S. 167(5), the Magistrate was bound to make an order stopping further investigation into the offence and the continuation of the investigation beyond the period of six months in contravention of law, was illegal and the cognizance taken by the Magistrate was bad in law and the subsequent proceeding was without jurisdiction. But, the bar under S. 167(5) is for the investigation and not for the Court taking cognizance of the case. Therefore, at best, it can be said that the filing of the charge-sheet by the I.O. beyond the period of six months from the date of the arrest of the accused was illegal and the evidence collected by the I.O. after the period of six months has to be excluded from consideration. But, it is well settled in view of the decision of the Supreme Court in H. N. Rishbud v. State of Delhi : 1955 CriLJ526 that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. Therefore, with utmost respect I beg to differ from the view taken by the Calcutta High Court in Jay Shankar Jha v. State 1982 Cri LJ 744. Hence, I see no force in the said contention of Smt. Karpagam Kamath.

3. In the result, the revision petition is dismissed.

4. Revision dismissed.

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