

Madan Mohan Sharma and anr. Vs. State of M.P. and anr.

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Court : Madhya Pradesh

Decided On : Oct-26-1989

Reported in : 1990CriLJ1046

Judge : R.C. Lahoti, J.

Acts : Madhya Pradesh Entertainment Duty and Advertisement Tax Act, 1936 - Sections 5 and 25; ;Madhya Pradesh Entertainment Duty and Advertisement Tax Rules, 1936 - Rules 3, 8, and 13; ;Code of Criminal Procedure (CrPC) , 1974 - Sections 408, 468, 469 to 472, 473 and 482; ;Criminal Law

Appeal No. : Criminal Misc. Case No. 306 of 1985

Appellant : Madan Mohan Sharma and anr.

Respondent : State of M.P. and anr.

Disposition : Petition dismissed

Judgement :

ORDER

R.C. Lahoti, J.

1. This is a petition under Section 482 Cr. P.C. seeking quashing of the prosecution proceedings against the accused/petitioners under Sections 5 and 25 of the M.P. Entertainment Duty & Advertisement Tax Act, 1936, read with Rules

8(a), 3(a) & (b) and 13 of the Rules framed thereunder.

2. It appears that the accused/petitioners own Mahalaxmi Cinema at Ambah. On 30-10-74 the record relating to sale of cinema tickets and collection of entertainment tax was checked by officials of the Excise Department. It was found that accounts were not correctly maintained; that duplicate tickets were sold; and that several documents forming part of accounts did not cross-tally. The entertainment duty to the tune of Rs. 38,000/- and odd, and additional tax to the tune of Rs. 10,000/- and odd was found to have been evaded. On 5-12-74, the petitioners were served with a notice to explain their conduct. They replied to the notice on 26-12-74. The investigation having been completed, the prosecution was launched on 2-5-75.

3. Cognizance having been taken, the accused/petitioners were summoned and they appeared before the Court. Particulars of the offence were explained to them. When the trial was at its fag end, on the date of final arguments, the accused petitioners moved an application under Section 408 Cr. P.C. inviting attention of the Court to the fact that the offence being one punishable with fine only, the Court was debarred from taking cognizance on the expiry of a period of 6 months from the date of the offence and as such the prosecution was liable to be dropped. The trial Court overruled the objection by resorting sub-s. (3) of Section 470 of the Criminal PC. holding that the accused/petitioners having been served with 7 days notice of prosecution, that period was liable to be excluded from counting period of limitation, which if done, the prosecution was not barred by time. The petitioners preferred a revision. The learned Sessions Judge did not agree with the reasoning of the trial Court and held that the notice issued by the Excise Department calling for explanation from the accused/petitioners could not be called a notice of prosecution. Nevertheless, the order of the trial court was upheld placing reliance on Section 473 of the Criminal P.C. which contemplates limitation prescribed by Section 468 of the Code being extended in certain cases. The accused/petitioners have come up to this Court invoking its inherent jurisdiction under Section 482 of the Criminal P.C. 1973.

4. The learned counsel for the petitioners has placed implicit reliance on a single Bench decision of this Court in *Shri Krishna Sanghi v. State of M. P.*, 1976 Jab LJ 613 : (1977 Cri LJ 90), wherein this Court has held that the provisions of Section 468, Cr. P.C. are mandatory and that a criminal Court is bound to apply its mind to the provisions contained in Chapter XXXVI of the Code at or before taking cognizance of the offence and if that was not done, a criminal Court could not justify its jurisdiction in taking cognizance having been validly exercised by subsequently recording a satisfaction for the purpose of extending the period of limitation. The learned counsel for the state has submitted that since *Shri Krishna Sanghi's* case much water has flown under the bridge and the contention deserves to be construed in the light of law laid down by the Apex Court in *Bhagirath Kanoriya's* case, AIR 1984 SC 1688.

5. Chapter XXXVI 'Limitation for taking cognizance of certain offences' is a new addition to the Criminal Law as enacted in the Criminal P.C. 1973. Earlier a delay in launching prosecution had the only effect of entertaining a doubt in the mind of the court relating to truth of the prosecution story. Prescribing limitation was considered advisable for several reasons. Lapse of time has the effect of obliterating memory of the witnesses and sometimes the evidence itself. Larger interest of peace and repose in society requires even an offender to be left at rest after lapse of time. Deterrent and retributory effects of punishment lose their efficacy by the lapse of time. At the same time introduction of period of limitation would have the laudable effect of pressuring the detectors and prosecutors of crime in expedition. Still it appears that the provision being new the Parliament was not inclined to make special period of limitation prescribed by Section 468, Cr. P.C. to be indefeasible because it hastened to add exceptions incorporated in Sections 469 to 472 of the Code. Still not satisfied the Parliament enacted; Section 473 giving it an overriding effect over all earlier sections and vesting a discretionary jurisdiction in the criminal Court empowering it to take cognizance of an offence despite expiry of period of limitation if it was satisfied in the peculiar facts and circumstances of that case that the delay was properly explained and even if not explained, if it was satisfied that interests of justice warranted taking cognizance of the offence. The Parliament in its wisdom did not choose to enumerate the instances or lay down the guidelines in which the Court would or

would not exercise its jurisdiction under Section 473, Cr. P. C. It appears that having prescribed a period of limitation the Parliament still felt that the interests of justice and wider interests of the society or the citizens may justify cognizance being taken despite expiry of period of limitation.

6. In the present case there was a delay of only 3 days in filing the prosecution. It is an economic offence. The officials of the Excise Department did not bounce upon prosecution merely because a fault was detected. They moved safely and fairly by affording an opportunity to the accused/petitioners to explain their assumed culpable conduct. Only upon considering the explanation furnished by them, a decision was taken to prosecute them. Thus some time was lost in this process. Looking to the quantum of evasion involved in the offence and the marginal delay in launching prosecution, in the opinion of this Court, the learned Sessions Judge did not err in holding that the provisions of Section 473 of the Criminal P.C. were attracted to the facts of the case, lifting away the bar of limitation to the prosecution.

7. Examining the nature, scope and effect of Section 473 of the Code, their Lordships of the Supreme Court in Bhagirath Kanoria, (AIR 1984 SC 1688 at p. 1692) (supra) said :--

'That section is in the nature of an overriding provision according to which, notwithstanding anything contained in the provisions of Chapter XXXVI of the Code, any Court may take 'Cognizance of an offence after the expiry of the period of limitation, if, inter alia, it is satisfied that it is necessary to do so in the interest of justice. The hair-splitting argument as to whether the offence alleged against the appellants is of a continuing or non-continuing nature, could have been averted by holding that, considering the object and purpose of the Act, the learned Magistrate ought to take cognizance of the offence after the expiry of the period of limitation if any such period is applicable, because the interest of justice so requires. We believe that in cases of this nature, Courts which are confronted with provisions which lay down a rule of limitation governing prosecutions will give due weight and consideration to the provisions contained in Section 473 of the Code.'

Chapter XXXVI does not prescribe the stage at which the power under Section 473, Cr. P.C. is to be exercised. It has a simple overriding effect on all earlier sections of Chapter XXXVI. Power under Section 473 in suitable cases may be exercised not only by the original Court but also by a superior Court. The provision does not contemplate any application by the prosecutor or even a prayer being made to the Court. It is for the Court to exercise that jurisdiction which the Court may do even suo motu and without being asked for. It is for the Court to see whether the delay has been properly explained or whether the interests of justice warrant extension of limitation. Any other interpretation would render the provisions of Section 473 partially nugatory.

8. In the opinion of this Court there is no occasion calling for an interference with the order of the learned Sessions Judge, Bhind. Certainly not in the exercise of inherent jurisdiction of this Court under Section 482, Cr. P.C. which has to be exercised to secure not to thwart the ends of justice.

9. The petition is dismissed accordingly. Petition dismissed.