Subh Karan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-21-1985

Reported in : 1986(1)WLN279

Judge : Mahendra Bhushan Sharma, J.

Appeal No. : S.B. Cr. Misc. Petition No. 633 of 1985

Appellant : Subh Karan

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Mahendra Bhushan Sharma, J.

1. I have heard learned counsel for the petitioner in this application under Section 482 Cr. PC. The facts necessary for the disposal of this application are briefly stated. They are these. A pitcher containing formented wash is said to have been recovered from the possession of the accused. A charge-sheet was filed against the accused after the expiry of six months from his arrest which is said to have taken place on November 27,1979. An application under Section 300(5) read with Section 167(5) of the Code of Criminal Procedure was filed on behalf of the accused petitioner in the court of learned Magistrate. That application was

dismissed. Thereafter, he filed a revision petition before the Sessions Judge, Jhunjhunu and the same was also dismissed by the Sessions Judge under his judgment dated September 16, 1985.

2. The contention of the learned counsel for the petitioner is that no case under Section 4(1) of the Rajasthan Prohibition Act, 1969 (for short, the Act) was registered against him and a charge-sheet for the said offence was not submitted before the learned Magistrate. According to him, subsections (5) and (6) of Section 167 Cr.PC were attracted and no cognizance of the offence could have been taken.

3. The learned Sessions Judge has observed that the Magistrate on the material on record has held that because formented wash has been recovered from the possession of the petitioner an offence under Section 4(1) of the Act has been made out against the accused and that offence is triable as a warrant case and therefore Section 167(5) Cr. PC does not apply. The contention of the learned counsel for the petitioner is that when the charge-sheet has been filed under Section 4(2) of the Act it is no longer possible for the Magistrate to say that offence under Section 4(1) of the Act was made out. That being so, the provisions of Section 167(5) Cr. PC will apply. It is not for me to say at this stage whether an offence under Section 4(1) or Section 4(2) of the Act is made out, as any opinion expressed on the merits of the case is likely to prejudice the case, but at the same time I see no reason to record my disagreement with the learned Sessions Judge in these proceedings under Section 482 Cr. PC and hold that no case under Section 4(1) of the Act is made out. It will only be after the trial that the court will be able to say as to what offence is made out. Be that as it may, a bare reading of Section 167(5) Cr. PC will make it clear that if in any case triable by a Magistrate at a summons case the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary. It has no relevance with regard to the power of Magistrate to take cognizance of the offence. All that may be said is that if in a case triable by a

Magistrate as summons case any investigation takes place after six months from the date the accused was arrested, then any evidence collected during that investigation may have to be excluded, but it cannot be said that the Magistrate has no power to take cognizance under Section 4(2) of the Act after expiry of six months as aforesaid. An offence under Section 4(2) of the Act is punishable with imprisonment which may extend to two years or with fine which may extend to two thousand rupees, and under Section 468(1)(c) Cr. PC if the offence is punishable with imprisonment for a term exceeding one year and not exceeding three years, the period of limitation is three years. Therefore, the offence under Section 4(2) of the Act being punishable with two years' imprisonment, the limitation for taking cognizance of the offence will be three years and merely because investigation was not completed within 6 months, it cannot be said that after six months the Magistrate could not have taken cognizance. In D. Kumar v. State of Karnataka 1985 Cr. LJ 1347 the learned Judge of Karnataka High Court has held that the bar under Section 167(5) Cr. PC is for investigation and not for the court taking cognizance of the case. Therefore, at best, it can be held that the filing of the charge-sheet by the Investigating Officer beyond the period of six months from the date of the arrest of the accused was not illegal and the evidence collected by the Investigating Officer 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.M. Rishbud v. State of Delhi AIR 1955 SC 116 that a defect or illegality in investigation, however, serious, has no direct bearing on the competence or the procedure relating to cognizance or trial.

4. It will therefore be clear that viewed from any angle, it cannot be said that the learned Magistrate could not have taken cognizance of the offence. No case for interference is made out. The application is dismissed is limine.