

Sunil Kumar, and ors. Vs. State of Bihar.

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Court : Patna

Decided On : Sep-23-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; [Excise Act,1915](#) - Sections 47(A), 55, 96, 57

Appeal No. : CRIMINAL MISCELLANEOUS No.27667 OF 2002

Appellant : Sunil Kumar, and ors.

Respondent : State of Bihar.

Judgement :

1. The sole petitioner, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 21.8.2002 passed by Shri Raj Kishore Rai, Judicial Magistrate, Ist Class, Patna in G.R. No.1111 of 1996 arising out of S.K. Puri P.S. Case No.31 of 1996. By the said order, the learned Magistrate has rejected the petition for discharge filed on behalf of the petitioner, which was filed in compliance with the order dated 2.7.2002 passed in Cr. Misc. No.16740 of 2001.

2. Short fact of the case is that the petitioner was a licensee of retail liquor shop and on 6.7.1995, the shop of petitioner was inspected by Sub Inspector of Excise, Sadar, West, and Patna and during that search, some irregularities or illegalities were found in the shop of the petitioner. On the written report of Excise

Department, an F.I.R. vide S.K. Puri P.S. Case No.31 of 1996 was registered on 30.3.1996 for offences under Sections 47(A) and 55 of the [Excise Act, 1915](#). After registering F.I.R., police investigated the case and thereafter, charge sheet was submitted. At the stage of charge, petitioner filed a petition for his discharge, which was earlier rejected and thereafter, the petitioner approached this Court by filing a quashing application vide Cr. Misc. No.16740 of 2001. Before this Court, it was asserted by on behalf of the petitioner that before the court below a pure legal question was raised at the time of discharge that prosecution of the petitioner was barred under Section 96 of the Excise Act. It was further argued that in view of a Division Bench judgment of this Court reported in 1998(3) PLJR 733 (R.P. Sharma & others vrs. State of Bihar), the learned Magistrate was required to examine and pass order, but contrary to the provisions contained in Section 96 as well as law laid down by this Court, the learned magistrate, in a mechanical manner, had rejected the petition for discharge. After hearing the parties, by an order dated 2.7.2002, this Court allowed the petition. However, this Court directed the learned Magistrate to give proper opportunity of hearing to the applicant and decide the question relating to limitation also. In view of order dated 2.7.2002, the petitioner again filed a petition for his discharge on the grounds, which were taken earlier as well as taken before this Court in Cr.Misc. No.16740 of 2001. The learned Magistrate, by its order dated 21.8.2002, rejected the petition for discharge, which was filed on behalf of the petitioner. The learned Magistrate was of the view that specific case under Sections 47(A), 55 and 57 of the Bihar Excise Act was made out.

3. Aggrieved with the order dated 21.8.2002; the petitioner again approached this Court by filing the present petition, which was admitted on 16.7.2004. While admitting, it was directed that during the pendency of this application, further proceeding in G.R. Case No.1111 of 1996 arising out of S.K. Puri P.S. Case No.31 of 1996 pending before Shri Raj Kishore Rai, Judicial Magistrate, Patna shall remain stayed. The order of stay is still continuing.

4. While challenging the impugned order, Shri Jitendra Prasad Singh, learned counsel appearing on behalf of the petitioner, submits that the learned Magistrate has not appreciated the direction of this Court given in its order dated 2.7.2002

passed in Cr. Misc. No.16740 of 2001` as well as the learned Magistrate had not examined the provisions in its right perspective and contrary of the provisions and law, the learned Magistrate, only on the ground that since prima facie case was made out, has rejected the petition for discharge. Of course, it was submitted that the learned Magistrate had tried to distinguish the provision contained in Section 96 of the Act. According to the learned counsel for the petitioner, the learned Magistrate has not correctly appreciated the provision and the order impugned suffers with legal infirmities and requires to be set aside.

5. Since in the present case, only question involved is as to whether prosecution was validly initiated against the petitioner after the expiry of statutory period or not, there is no need to give the detail of the prosecution case. It would be appropriate to quote the provision contained in Section 96 of the Bihar [Excise Act, 1915](#), which is 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."

6. From the aforesaid provision, it is evident that after the date of occurrence relating to commission of any offence under the Excise Act, if prosecution instituted beyond the period of six months from the date of the occurrence, no court shall take cognizance of the offence. In the present case, it is not in dispute that even F.I.R. was lodged much after the expiry of period of six months as prescribed under Section 96 of the Act. Whether registration of an F.I.R. or complaint will amount to prosecution or not, it was examined in detail by a Division Bench of this Court in a case reported in 1998(3) PLJR 733 (R.P. Sharma and Ors. v. The State of Bihar & Anr.). This Court had categorically examined Section 96 of the Act in paragraphs 11 and 12 in R.P. Sharma's case (Supra), which is as follows:

"11. Section 96 of the Act does not provide that the cognizance is to be taken within six months of the act complained of. It provides that the prosecution has to be instituted within the aforesaid period. The question for consideration is as to when the prosecution is instituted. The meaning of the word has to be gathered with due regard to the background and context in which it is used. It has different meaning in different context. The word prosecution means criminal proceeding in general as it includes institution, continuance and culmination of proceeding in final judgment. In section 96 of the Act, the word prosecution is followed by the word instituted and as such this word has been used in the context of institution of the criminal prosecution. The word institute means when the information is laid or complaint is made (See Thorpe vs. Priestnall (1897) 1 Q.B. 159), printed at Page 1314 Strouds Judicial Dictionary, 5th Edition(3). The said word when applied to judicial proceeding means commencement of the same (see Baugh vs. Little- 282, P.-459, printed at Page-665 of Words and Phrases, Permanent Publication).

12. In my view, the word instituted has been used in section 96 to mean only filing of the report or the complaint before the court. It does not mean taking of cognizance of the offence. It is specifically provided in the section that the cognizance is to be taken only if the prosecution is instituted within six months after the date of the act complained of. If the legislature intended that the cognizance is to be taken within six months, then it would have been provided that the cognizance is to be taken within six months from the date of the act complained of and there was no need to use the words prosecution is instituted in the section within the aforesaid period. Thus, the institution of the prosecution within the meaning of the said section cannot be treated to mean taking of cognizance of the offence in terms of section 190 of the Code."

7. In view of the law settled by this Court as well as provision contained in Section 96 of the Act, there is no option before this Court except to quash the impugned order as well as entire criminal proceeding so far petitioner is concerned.

8. Accordingly, the order dated 21.8.2002 passed in G.R. No.1111 of 1996 arising out S.K. Puri P.S. Case No.31 of 1996 by Shri Raj Kishore Rai, Judicial Magistrate, 1st Class as well as entire criminal proceeding in the present case are

hereby set aside and petition stands allowed.

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