

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: March 08, 2011

+ **CRL.M.C.NO.3363/2010**

**M/S. BARISTA COFFEE COMPANY LIMITED
& ANR.**

....PETITIONERS

Through:Mr.D.C.Mathur, Senior Advocate with
Mr.Shashank Sudhir, Advocate.

Versus

GOVT. OF NCT OF DELHI

.....RESPONDENT

Through: Ms.Fizani Husain, APP.

WITH

CRL.M.C. NO. 3365/2010

C.RAMANATHAN SITARAMAN & ORS. PETITIONERS

Through:Mr.Sidharth Luthra, Senior Advocate with
Mr.Trideep Pais, Advocate

Versus

STATE

.....RESPONDENT

Through: Ms.Fizani Husain, APP.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. Short point for determination in the above referred petitions under Section 482 Cr.P.C. is whether a revision court can set aside the

order of the lower court outside of a party to the proceedings without serving the party with a notice and giving the party an opportunity of being heard?

2. Briefly stated, facts relevant for the disposal of the above petitions are that a complaint was filed against the petitioners and others by the Food Inspector, Directorate of PFA for commission of offence punishable under Section 7/16 of Prevention of Food Adulteration Act, 1954.

3. From the complaint filed against the petitioners and others, it transpires that Food Inspector Baljit Singh on 27.12.2006 purchased sample of tomato ketchup (3 x 1200 gms) from petitioner Amit Kumar who was found conducting business of M/s. Barista Espresso Bar 18, Community Centre, New Friends Colony, New Delhi for the purpose of analysis. One such sample was analysed by public analyst on 11.01.2007 and as per the opinion of public analyst, the sample was misbranded as the size of level on the sample was only 17.58% of size of the packet which amounted to violation of Rule 36(2) of PFA Rules, 1955.

4. Learned ACMM declined to take cognizance of the complaint filed by Food Inspector Baljit Singh on the ground that the complaint was time barred. The view taken by the learned ACMM was that Section 16A of PFA Act, 1954 provides that all the offences under Section 16(1) of PFA Act shall be tried in a summary manner and it shall be lawful for

the Magistrate to pass a sentence of imprisonment for a period not exceeding one year. Thus, he took the view that since the offence under complaint was not punishable for imprisonment for a period not exceeding one year from the date of offence i.e. the date of receiving report of the public analyst as such the complaint was time barred.

5. Feeling aggrieved by the aforesaid order of learned ACMM, respondent filed a revision petition and learned Additional Sessions Judge without serving a notice of revision petition on the petitioners and giving them an opportunity of being heard vide orders dated 18.08.2010 set aside the order dated 19.11.2009 passed by the learned ACMM and directed the trial court to proceed with the trial of the case in accordance with law.

6. Feeling aggrieved by the aforesaid orders, the petitioners have filed instant petitions under Section 482 Cr.P.C. seeking quashing of the order of learned Additional Sessions Judge dated 18.08.2010.

7. Learned Shri Dinesh Mathur, Sr. Advocate appearing for the petitioners M/s. Barista Coffee Company Limited and Amit Kumar as well as learned Shri Sidharth Luthra, Sr. Advocate appearing for the petitioners C. Ramanathan Sitaraman and others have contended that the impugned order of learned Additional Sessions Judge is liable to be quashed firstly on the ground that the revision petition was filed after a delay of 140 days and application for condonation of delay was filed, but the learned Additional Sessions Judge without deciding the

application of condonation of delay went on to decide the revision petition that too without serving the petitioners with the notice of revision petition and affording them an opportunity of being heard. In support of this contention, the petitioners have relied upon the judgment in the matter of **State of Maharashtra Vs. Sharadchandra Vinayak Dongre and Ors.**, AIR 1995 SC 231.

8. In **State of Maharashtra** (Supra), the Supreme Court while dealing with a similar situation, inter alia, observed thus:

“4. The High Court found that the Chief Judicial Magistrate, on 21.11.1986, had allowed the application for condonation of delay in filing the charge-sheet, without recording any reasons and without hearing the respondents and behind their back. The High Court further found that the Chief Judicial Magistrate was aware from the application filed by the prosecution that the charge-sheet was "incomplete" and as such, it could not have taken cognizance of the offence and it had no jurisdiction to issue the process against the respondents. The proceedings, including the issuance of process, were accordingly quashed.

5. In our view, the High Court was perfectly justified in holding that the delay, if any, for launching the prosecution, could not have been condoned without notice to the respondents and behind their back and without recording any reasons for condonation of the delay. However, having come to that conclusion, it would have been appropriate for the High Court, without going into the merits of the case to have remitted the case to the Trial Court, with a direction to decide the application for condonation of delay afresh after hearing both sides. The High Court however, did not adopt that course and proceeded further to hold that the Trial Court could not have taken cognizance of the offence in view of the application filed by the prosecution seeking permission of the Court to file a "supplementary charge-sheet" on the basis of an "incomplete charge-sheet" and quashed the order of the CJM dated 21.11.1986 on this ground also. This view of the High Court, in the facts and circumstances of the case is patently erroneous.

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9. Since the Chief Judicial Magistrate condoned the delay for launching the prosecution, without notice to the respondents and without affording any opportunity to the respondents to have their say, the case deserves to be remitted to the Chief Judicial Magistrate for deciding the application filed by the prosecution seeking condonation of delay, if any, afresh in accordance with law after hearing both the parties. It is after the decision of the application for condonation of delay that the Chief Judicial Magistrate shall proceed further in the matter. The finding of the High Court that the CJM could not take cognizance of the offence on the basis of 'incomplete' police report, for the reasons already recorded, is, however, set aside. The Chief Judicial Magistrate shall proceed further in accordance with law after deciding the application seeking condonation of delay. Nothing said herein above, shall, however, be construed as any expression of opinion on the merits of the case.”

9. In **P. Sundarrajan Vs. R. Vidhya Sekar**, (2004) 13 SCC 472, the Supreme Court took the view that the order passed by the High Court without issuing notice to the appellant(respondent) was ex facie unsustainable in law being violative of the principles of natural justice as also the requirement of law to hear a party before passing an adverse order against him.

10. From the above pronouncements of Supreme Court, it is obvious that a superior court sitting in appellate or revision jurisdiction is under legal obligation to put a party on notice and give him/her an opportunity of being heard before passing an adverse order against said party. In the instant case, the order dated 19.11.2009 of the learned ACMM dismissing the complaint was in favour of the petitioners. The learned Additional Sessions Judge vide the impugned order has reversed that order to the detriment of the petitioners that too without serving the petitioners with notice of revision petition and

giving them opportunity of being heard. Not only this, perusal of the record of revision court reveals that an application under Section 5 of the Limitation Act for condonation of delay in filing of the revision petition was also moved, but the learned Additional Sessions Judge without deciding the issue of condonation of delay has gone on to decide the revision petition without putting the petitioners on notice. The aforesaid order, in my considered view, is against the principles of natural justice and is not sustainable under law.

11. The impugned order of the learned Additional Sessions Judge dated 18.08.2010 is accordingly set aside. Matters are remanded back to the court of concerned Additional Sessions Judge with the direction that he shall decide the application for condonation of delay in filing as also the revision petitions after giving due opportunity of being heard to the petitioners.

12. Parties are directed to appear before the learned Additional Sessions Judge on 21.03.2011.

13. Revision petitions are disposed of accordingly.

14. The record of trial court as also the revision court be sent back to the concerned courts immediately.

(AJIT BHARIHOKE)
JUDGE

MARCH 08, 2011/_{pst}