

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

% Order delivered on: 10th March, 2015

+ **CRL.M.C. No.3479/2011**

JAYJEET SINGH Petitioner
Through Mr.Dayan Krishnan, Sr. Adv. with Mr.
Pramod Kumar, Mr. Shiv Chopra and
Ms. Swati Goswami, Advocates

versus

STATE Respondent
Through Mr.M.N. Dudeja, APP

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner *inter alia*, seeking quashing of the Kalandra dated 6th April, 2009 under Section 28 read with Section 110 Delhi Police Act, 1978 (hereinafter referred to as the "Act") and also the entire proceedings emanating from the order of cognizance dated 11th September, 2009, passed by Metropolitan Magistrate and all the subsequent proceedings initiated thereto who also seeks quashing of the order 23rd May, 2011 passed by Additional Sessions Judge-02 (South), Saket Courts/ New Delhi whereby the Revision Petition No.12/2011 of the petitioner was dismissed on the ground of limitation.

2. It is argued by Mr. Dayan Krishnan, learned Senior counsel for the petitioner that the trial court has dismissed the revision petition on grounds of limitation when it is a settled position in law that a revision under Section 397 Cr.PC should not have been dismissed on grounds of limitation when a clear illegality can be demonstrated.

3. It is argued by him that in the present case there are several illegalities which show that the prosecution case is wholly illegal. Such details are given as under:-

- i) The challenge in the present case is to a kalandra dated 6th April, 2009 for running a bar till late at night under Section 28 and Section 110 of the Act. Section 28 of the Act provides for the power to make regulations and the relevant provision concerning the present kalandra is regulation (za) and (zb). It is submitted that a violation of any regulation under Section 28(za) and Section 28(zb) do not attract a penalty in terms of Section 110 of the Act. A plain reading of Section 110 of the Act would show that there is no penalty stipulated for violation of Section 28(za). The initiation of prosecution in respect of a regulation which does not attract penalty/ liability is per se illegal and ab-initio void.
- ii) The second ground of illegality is that the licence/certificate is granted to a company. The licence/certificate in the present case makes reference to a company referred to as JSM Restaurants Pvt. Ltd. and one Ghan Shyam Dutt S/o Kavi Dutt. Mr. Jayjeet Singh, the petitioner name is not mentioned in the

licence. Further, the company has not been made a party. It is therefore submitted that in terms of the judgment of the Supreme Court in ***Aneeta Hada vs. Godfather Travels and Tours Private Ltd.*** (2012) 5 SCC 661 (para 59) the prosecution against the accused only without making company a party is rendered per se illegal. The relevant notification has not been mentioned in the kalandra.

- iii) The other ground is in respect of an application filed by the petitioner under Section 253 Cr.PC. It is submitted that where a company or a person has taken a wrong plea of guilt, the revision against the same is maintainable in law. He relied upon the judgment of High Court of Karnataka in ***Aslam Ikbal Wali Mohammed vs. The State of Karnataka***, 1976 CriLJ 317 where the Court in para 8 has held that:

“It is no doubt true that the accused pleaded guilt to the accusation. But, when the facts alleged themselves do not constitute an offence, the plea of guilty cannot be made the basis of conviction. A person can be convicted on a plea of guilty only if the ingredients of the offence are made out”

Learned senior counsel has also referred the judgment passed by High Court of Calcutta in ***Niranjan Lall Arya vs. State***, AIR 1954 Cal 82 where the Court in paras 4 and 5 has held as under -

“4. It appears that the petitioner has before the trial court pleaded guilty. That must have been done under an erroneous view of law, and we do not think that would

stand in the way of his acquittal, if he cannot be convicted in law for violating an order of the Director of Textile in question.”

“5. The result, therefore is that the rule is made absolute. The petitioner is acquitted and any fine if paid must be refunded.”

4. Mr. Dayan Krishnan argues that the other ground of illegality is that there was a finality in the order dated 7th April, 2010 and thus the Court became *Functus Officio* on that day, and could not have further proceeded with the matter. It is submitted by him that an application dated 6th April, 2010 was moved by the petitioner under Section 253 Cr.P.C. on the basis of which, the Metropolitan Magistrate vide order dated 7th April, 2010 sentenced the accused to pay a fine of Rs. 200/-, for the offence under Section 28/110 of the Act. Thus by order dated 7th April, 2010, the offence for which the petitioner was prosecuted vide kalandra dated 6th April, 2010 had attained finality and the court could not have passed subsequent orders in the matter. The subsequent direction to the S.H.O to file the closure report of Indo Chine Bar Lado Sarai and the proceedings held on 16th April, 2010, 17th April, 2010, 21st October, 2010 and 2nd March, 2011 pursuant to 7th April, 2010, was beyond the jurisdiction of the court.

5. It is a matter of fact that the criminal revision petition was filed by the petitioner against the impugned orders dated 11th September, 2009 and 17th September, 2009, passed by Metropolitan Magistrate, Patiala House Court in Kalandra dated 6th April, 2008 under Section 28/110 of the Act and orders dated 7th April, 2010, 17th April, 2010 and

21st October, 2010, passed by the Metropolitan Magistrate in the said matter. The Additional Sessions Judge vide order dated 23rd May, 2011 dismissed the Revision Petition No.12/11 of the petitioner solely on the ground of limitation. The relevant excerpts from the judgments are reproduced hereunder:-

"I consider that this is a case which certainly falls within the negligence or inaction of the petitioner. It is also pertinent to mention here that the courts are already overburdened and such type of litigations must be put to an end".

6. The Additional Sessions Judge had overlooked the fact that the closure report was received on 17th April, 2010, however, the matter was not closed by the Metropolitan Magistrate and the matter was again put up for hearing on 21st October, 2010. Therefore the date for limitation for filing the revision petition started from 21st October, 2010.

7. The revision petition against the said order was filed on 11th February, 2011 along with an application for condonation of delay. The reason for delay was given in the application dated 31st January, 2011 and the same is reproduced hereunder:

"Para 3:- That subsequent to the last hearing before the Ld. Trial Court on 21.10.2013, the applicant consulted the present counsels in the first week of January 2011 and after perusal of the entire case record, the applicant was advised that entire prosecution is bad in law and hence the plea is also illegal. Immediately after such consultation, the applicant is moving the present petition."

8. Having gone through the application for condonation of delay, it appeared to the Court that the petitioner had a "sufficient" ground for

condonation of delay. In catena of Supreme Court Judgments, it has been observed by the Supreme Court that Limitation Act is not meant to destroy the right of the parties.

i) In ***N. Balakrishnan vs. M. Krishnamurthy***, AIR 1998 SC 3222, it was held as under:

"11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but see their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest republicae up sit finis Mum* (it is for the general welfare that a period be put to litigation). *Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.* The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain vs. Kuntal Kumari*, AIR 1969 SC 575 and *State of West Bengal v. The Administrator, Howrah Municipality*, AIR 1972 SC 749."

ii) In ***State of U.P vs. Gauri Shanker and Others***, 1992 AILLJ 606 the Court had observed that:-

"6. The revisional jurisdiction under Section 397/401 of the code is a sort of special jurisdiction somewhat similar to the inherent jurisdiction of the Court. That power can be exercised suo motu also. This court, therefore, gets the power to condone the delay so as to enable it to exercise the revisional jurisdiction.

As the revision is the power of the court and not of a litigant, the strict rules of limitation need not apply. In other words, it is for the High Court or Court of Session to decide as to whether to exercise jurisdiction or not. This revisionary power is discretionary and unfettered by limitation.

"12. In such matter of considerable magnitude, court need not be technical"

"13. The expression "sufficient cause" under Section 5 Limitation Act has to be scrutinised in a justice oriented manner and narrow pedantic approach need not be made. Explanation of each day's delay is not a correct formula in every case."

iii) Also in ***Municipal Corporation of Delhi vs. Girdharilal Sapru and Others***, (1981) 2 SCC 758 it was held that revision petition should not be dismissed on technical grounds:-

"5. It, however, appears that the respondents contended that the revision petition was barred by limitation. Even this contention is founded on a very technical ground that even though the revision petition was filed very much in time the requisite power of attorney of the learned advocate on behalf of the petition was not legally complete and when it was re-submitted the limitation had expired. Without going into the nicety of this too technical

contention, we may notice that Section 397 of the CrPC enables the High Court to exercise power of revision suo motu and when the attention of the High Court was drawn to a clear illegality the High Court could not have rejected the petition as time barred thereby perpetuating the illegality and miscarriage of justice. The question whether a discharge order is interlocutory or otherwise need not detain us because it is settled by a decision of this Court that the discharge order terminates the proceedings and, therefore it is revisable under Section 397(1), Cr. PC and Section 397 (1) in terms confers power of suo motu revision on the High Court, and if the High Court exercises suo motu revision power the same cannot be denied on the ground that there is some limitation prescribed for the exercise of the power because none such is prescribed. If in such a situation the suo motu power is not exercised what a glaring illegality goes unnoticed can be demonstrably established by this case itself. We however, do not propose to say a single word on the merits of the cause because there should not be even a whimper of prejudice to the accused who in view of this judgment would have to face the trial before the learned Magistrate.”

9. In view of the above, it is clear that the impugned order passed by Additional Sessions Judge was passed without considering the facts and well established law. The revision petition was dismissed on the sole ground of limitation which ought not to have been dismissed as there are sufficient grounds on merit.

10. Learned APP after hearing has no objection if the delay in filing of revision petition be allowed and the same be decided on merit by remanding the case. Counsel for the petitioner is agreeable to the suggestion made. Accordingly, the petition is allowed by quashing the impugned order. Let the revision be decided by the Additional

Sessions Judge on merit. Pending applications are also disposed of accordingly.

**(MANMOHAN SINGH)
JUDGE**

MARCH 10, 2015