

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4046 OF 2017

Satish Balaram Jadhav & Ors.Petitioners

v/s.

The State of Maharashtra and anr.Respondents

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Mr. Kuldeep Patil, Advocate for the petitioners.

Mr. S.S. Pednekar, APP for the State.

CORAM :- RANJIT MORE, &
SANDEEP K. SHINDE, JJ.
JUDG. RESD ON :- 7TH DECEMBER, 2017.
JUDG. PRON ON :- 19TH DECEMBER, 2017.

JUDGMENT (Per :- Sandeep K. Shinde, J)

1. Rule. Rule, returnable forthwith.
2. That vide order dated 28th June, 2017 the petitioners were externed by respondent no.2 in exercise of powers under Section 55 of the Maharashtra Police Act,

1951. Appeal against the order of externment was preferred alongwith the application for condonation of delay. Respondent no.3, the Appellate Authority rejected the delay condonation application for want of powers on 15th September, 2017.

3. The order dated 15th September, 2017 is challenged in this writ petition.

4. Heard Mr. Patil Learned Counsel for the petitioner and Mr. Pednekar, Learned APP for the State.

5. The only question that falls for consideration is, whether the provision of Section 5 of The Limitation Act, 1963 is applicable to the Appeal proceedings under Section 60 of the Maharashtra Police Act.

6. Indisputably, Section 60 of the Maharashtra Police Act, (hereinafter called as “the said Act”) provides for a statutory appeal, against an order made under Section 55 within 30 days from the date of such order. Sub-section 4 provides for exclusion of the time period for granting the certified copy of the order. The said Act, does not provide

and/or empowers the Appellate Authority to condone the delay caused in preferring the Appeal beyond the period of 30 days.

7. Mr. Patil, the Learned Counsel appearing for the petitioner would submit that, Section 29 sub-section 2 of The Limitation Act, 1963, makes Sections 4 to 24 of it, applicable when computing limitation under the special or local law exactly in the same manner, as they would be applicable when computing limitation under the Limitation Act, 1963. He would further submit, the Maharashtra Police Act is special/local law, but since a complete Code in the matter of limitation, provisions of Section 29(2) of the Limitation Act are applicable to appeal proceedings under Section 60 of the said Act. Mr. Patil, would also submit that, the said local Act does not expressly exclude the provisions of the Limitation Act to the proceedings under the said Act and as such the provisions of Section 4 to 24 of the Limitation Act are applicable in view of the provisions of Section 29(2) of the Limitation Act. He would therefore contend, provisions of

Section 5 of the Limitation Act are applicable to the Appeal proceedings under Section 60 of the Maharashtra Police Act.

8. Mr. Patil, in support of his submission, has relied on (i) **Mukri Gopalan Versus. Cheppilat Puthanpurayil Aboob Acker** reported in (1995) 5 Supreme Court Cases page 5, and (ii) **Sahkari Ganna Vikas Samiti Ltd. Versus. Mahabir Sugar Mills (P) Ltd.**, reported in (1981) 4 Supreme Court Cases page 158.

9. Mr. Pednekar, the Learned APP, however, relied on the judgment of this Court in the case of **Suraj s/o. Balbhim Shelke Vs. The State of Maharashtra and Others**, reported in 2016 All MR (Cri) 4453.

10. We have gone through the cited judgments. In the case of *Suraj Shelke* (supra), the Division Bench of this Court has held that the order of externment is founded on the subjective satisfaction of the statutory authority and as such, the duty to act judicially would be clearly excluded and the decision would be an administrative decision as opposed to quasi judicial decision. We are in complete agreement with

this proposition in law and as such it is to be held that, decision under Section 55 of the Maharashtra Police Act, is administrative decision and the powers exercised by the authority under Section 55 of the said Act resulting into an externment order is not in the exercise of judicial or quasi-judicial powers. We therefore hold, neither the Commissioner nor the District Magistrate or the Special Officer, empowered to hear the Appeal under Section 60 is not a 'Court'.

11. It is settled law that, the object of Section 29(2) is to ensure that the principles contained in Sections 4 to 24 of the Limitation Act applies to suits, appeals and applications filed in a Court under a special or a local law, even if it prescribes the period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application or of those provisions.

. In the case of **Consolidated Engineering Enterprises V/s. Principal Secretary, Irrigation Department and Others**, reported in **(2008) 7 Supreme Court Cases page 169**, the Apex Court in para-

44 has observed thus :-

“44. It may be noticed at this juncture that the Schedule to the Limitation Act prescribes the period of limitation only to proceedings in courts and not to any proceeding before a Tribunal or quasi-judicial authority. Consequently section 3 and section 29(2) of Limitation Act will not apply to proceedings before Tribunal. This means that the Limitation Act will not apply to appeals or applications before Tribunals, unless expressly provided.” (emphasis supplied).

12. The Apex Court in **Officer on Special Duty (Land Acquisition) and Another v. Shah Manilal Chandulal and others**, reported in 1996 (1) Mh.L.J. **page 609**, and in particular, paras 13 to 15 of the report, the Apex Court has discussed and specifically dealt with section 29(2) of the Limitation Act and has finally come to the conclusion that the authority, such as the Collector or Land Acquisition Officer, is not a Court when he acts as a Statutory Authority under section 18(1) of the Land Acquisition Act,

and hence provision of section 5 of the Limitation Act would not apply, to condone the delay. Similarly, we find, the Apex Court in **Sakuru v. Tanaji reported in AIR 1985 SC page 1279**, had taken a identical view and in para 3 of the report, held that the provisions of the Limitation Act, 1963 apply only to the proceedings in "Courts" and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Codes of Civil or Criminal Procedure.

13. Indisputably, the Maharashtra Police Act does not provide for or empowers the Appellate Authority under Section 60 thereof to condone the delay. Though the said Act is a local or a special Act and even though it expressly does not exclude the application of Limitation Act but since the Appellate Authority is not a Court, the provision of Section 5 of the Limitation Act cannot be applied to the appeal proceedings under Section 60 of the Maharashtra Police Act.

14. That as such, the Appellate Authority has not committed any error in dismissing the application for condonation of delay preferred by the petitioners. In the result, the Writ Petition is dismissed and the Rule is discharged.

(SANDEEP K. SHINDE, J)

(RANJIT MORE, J)