

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 544 of 2019**

- Ganesh Jaiswal S/o Mr. Ramu Jaiswal Aged About 32 Years R/o Village Pendra Road, P. S. Pendra Road, Tehsil Pendra, District Bilaspur Chhattisgarh

---- Petitioner

Versus

- State of Chhattisgarh Through District Magistrate, Bilaspur District Bilaspur Chhattisgarh

---- Respondent

For Petitioner : Shri Achyut Tiwari, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

05/03/2019

1. Heard.
2. The present petition is against the order dated 24.12.2018, whereby a revision application preferred by the petitioner was dismissed on the ground of delay by dismissing the application under Section 5 of the Indian Limitation Act.
3. Learned counsel for the petitioner would submit that the charges were framed against the petitioner on 18.06.2018 under Sections 34 (2) & 59 (a) of the Chhattisgarh Excise Act, 1915. It is stated that after framing of the charges he had instructed his counsel to prefer the revision as he could not personally present. It is stated that the petitioner has a very strong case as one of the co-accused, who was a juvenile from his possession the alleged liquor was said to have been seized and not from this applicant. He further submits that the

petitioner was admitted in the hospital at the time of the alleged incident at the government Primary Health Centre. It is stated that all these facts could have been considered by the Court below but by dismissing the application under Section 5 of the Indian Limitation Act his right to raise all the grounds and merits has been suppressed. He further submits that the instructions were given to the counsel by the petitioner to file a revision challenging the charges and if such instructions have not been followed then the petitioner cannot be allowed to suffer for the default of his counsel, therefore, one opportunity may be granted to allow the petitioner to advance his cause on merits.

4. Per contra, learned State counsel opposes the same.
5. Perused the order dated 24.12.2018. Perusal of the order would show that the petitioner's revision against the charges was dismissed only on the ground of limitation. The order purports that the charges were framed on 18.06.2018 and the application to get the certified copy of the said order was filed on 22.10.2018 and after copy was obtained in the month of December on 14.12.2018 the revision was filed. Be that as it may, it appears that the delay has been caused though there are certain reasons have been assigned but the fact remains that all the allegations have been attributed to the counsel and it is stated that he has failed to file the revision. Otherwise too it appears that no exorbitant or considerable delay has been caused as the charges were framed on 18.06.2018 and eventually the application was filed to get the certified copy on 22.10.2018 i.e. after the period of 90 days. It is a settled preposition that the parties cannot be allowed to suffer for the fault of their counsel. Therefore, taking into the totality of the facts in the opinion of this Court one opportunity of hearing may be granted to the petitioner as it would not cause any prejudice to

the either of the parties, therefore, the order dated 24.12.2018 is set aside and the application filed under Section 5 of the Limitation Act is allowed. The revision is restored to its original number and the revisional Court shall be obliged to decide the case on merits. It is further directed that the trial Court shall not proceed in respect of the case till the revision is decided on merits.

6. Accordingly, the petition is allowed.

Sd/-

Goutam Bhaduri
Judge

Ashu