

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.1457 of 2019

Rajendra Singh Parihar, S/o Balle Singh Parihar, aged about 58 years, R/o Dixit Gali, Nandi Chowk, Lalpur, P.S. Tikrapara, Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Collector, District Raipur (C.G.) 492001

2. Divisional Commissioner Excise, District Raipur (C.G.) 492001

---- Respondents

For Petitioner: Mr. Akhilesh Mishra, Advocate.

For Respondents / State:

Mr. Ravi Kumar Bhagat, Deputy Government Advocate
and Mr. Sanjeev Kumar Agrawal, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

17/10/2019

1. With the consent of parties, the matter is heard finally since pure question of law is involved.
2. The petitioner is owner of vehicle bearing registration No.CG-04/HB-3999. That vehicle was seized under the provisions of Section 47-A of the Chhattisgarh Excise Act, 1915 (for short, 'the Act of 1915') on 3-8-2016 on the allegation that the petitioner was found unauthorizedly carrying liquor and ultimately, in a proceeding initiated under Section 47-A of the Act of 1915, the vehicle was directed to be confiscated by the Collector on 24-8-2017 and the appeal preferred before the Excise Commissioner under Section 47-B of the Act of 1915 was also dismissed on 16-5-2018 against

which the petitioner sought to prefer a revision before the Court of Sessions under Section 47-C of the Act of 1915 on 26-3-2019 with an application for condonation of delay under Section 5 of the Limitation Act, 1963, on the ground that against the order of the appellate authority, he preferred a petition under Section 482 of the CrPC before this Court which was eventually dismissed as not maintainable on 8-2-2019, but that revision was dismissed by the learned 2nd Additional Judge to the Court of 1st Additional Sessions Judge, Raipur holding that in Section 47-C of the Act of 1915, no power to condone the delay has been conferred by the Legislature while enacting Section 47-C, as Section 5 of the Limitation Act, 1963, is not applicable to revision(s). Feeling aggrieved against that order, this petition under Section 482 of the CrPC has been preferred.

3. Mr. Akhilesh Mishra, learned counsel for the petitioner, would submit that the Additional Sessions Judge is absolutely unjustified in rejecting the application holding that Section 5 of the Limitation Act, 1963, is not applicable to revisions, as the power of revision has been conferred expressly under Section 47-C of the Act of 1915 against the order of the appellate authority passed under Section 47-B(3) of the Act of 1915 within 30 days of such order which provides revision against the order of the appellate authority and as such, power to condone the delay in preferring revision has not been expressly excluded, therefore, the impugned order is liable to be set aside.
4. On the other hand, Mr. Ravi Kumar Bhagat, learned State counsel, would support the impugned order and would submit that in

absence of express provision under Section 47-C of the Act of 1915 conferring the power to condone the delay, the order passed by the learned Additional Sessions Judge is absolutely justified and no exception can be taken to the said order and the petition deserves to be dismissed.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. Section 29(2) of the Limitation Act, 1963, provides as under:-

“29. (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”

The aforesaid provision would clearly mandate that the provisions contained in Sections 4 to 24 (inclusive) of the Limitation Act, 1963, shall apply only if they are not expressly excluded by such special or local law.

7. The Supreme Court in the matter of **B.S. Sheshagiri Setty and others v. State of Karnataka and others**¹ dealing with the Karnataka Cooperative Societies Act, 1959 (for short, 'the KCS Act') held that since the KCS Act is a special legislation and power of revision has been conferred by the said Act on the State Government *suo motu* at any time, therefore, by virtue of Section 29(2) of the Limitation Act, 1963 the power to condone delay is

¹ (2016) 2 SCC 123

available with the revising authority. It was observed as under:-

“35. Further, Section 108 of the KCS Act confers the power of revision on the State Government suo motu at any time, or on application by an applicant within 6 months of the passing of an order. The KCS Act is a special legislation. Thus, by virtue of Section 29(2) of the Limitation Act, 1963, the power to condone delay is available with the State Government. The contention of the auction-purchaser that no such application for condonation of delay of the belated revision petition has been filed by the appellants is a hypertechnical one and cannot be sustained. Where the State Government has exercised its statutory power under Section 108 of the KCS Act after satisfying itself that the sale of the mortgaged immoveable property of the appellants in the public auction is illegal, it is not open for the respondents to contest the same by urging technical grounds, especially in light of the fact that the power conferred upon the State Government under Section 108 of the KCS Act is “suo motu” and the same can be exercised “at any time”. Therefore, having regard to the facts of the case, in the absence of an application for condonation of delay, we hold that the exercise of the power by the Minister for Cooperation, the State Government of Karnataka must be taken as a suo motu exercise of power by him.”

8. Reverting to the facts of the present case, it appears that though by virtue of Section 47-C of the Act of 1915, 30 days period has been provided for filing revision against the order of the appellate authority, but Section 5 of the Limitation Act, 1963, has neither been expressly made applicable nor the applicability of Section 5 has been expressly excluded for condoning the delay in preferring revision. Consequently, following the principle of law enunciated in **B.S. Sheshagiri Setty** (supra), it is held that the provisions contained in Section 5 of the Limitation Act, 1963, would be applicable by virtue of Section 29(2) of the Limitation Act and power to condone delay is available with the learned Additional Sessions Judge being the judicial authority while hearing revision under Section 47-C of the Act of 1915 and as such, the learned Additional

Sessions Judge is absolutely unjustified in holding that Section 5 of the Limitation Act, 1963, would not be applicable and delay cannot be condoned.

9. Resultantly, the impugned order is set-aside and the matter is remitted back to the learned Additional Sessions Judge for hearing the application under Section 5 of the Limitation Act, 1963, on its own merit, in accordance with law.
10. The petition is allowed to the extent indicated herein-above.

Sd/-
(Sanjay K. Agrawal)
Judge

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