



\$~82

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9284/2024, CM APPL. 38087/2024 & CM APPL. 38088/2024**

SHRI JONI @ JONA AND ORS

.....Petitioners

Through: **Mr. Gaurav Kumar, Mr. Naman Sherstra, Advocates.**

versus

UNION OF INDIA THROUGH MINISTRY OF FINANCE AND ORS

.....Respondents

Through: **Mr. Amit Tiwari, CGSC with Mr. Hussain Taqui, GP along with Mr. Aman Ranjan, Ms. Nisha Puri, Mr. Sarthak Chaturvedi, Advocate for UOI/R-1 & R-2.**

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
10.07.2024

%

1. The Petitioners have invoked Article 226 of the Constitution of India, 1950, seeking quashing of the order dated 14th December, 2023,¹ passed by the Appellate Tribunal under The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976,² whereby the Petitioners' appeal was dismissed on the ground of being barred by limitation under Section 68-O(1) of the Narcotic Drugs & Psychotropic Substances Act, 1985.³ In the alternative, they have prayed that the delay of 160 days

¹ "impugned order"

² "SAFEMA"

³ "NDPS Act"



incurred in preferring the appeal before the Appellate Tribunal against the confirmation order dated 30th January, 2023, passed by the Respondent No. 2/Competent Authority and Administrator under SAFEMA and NDPS Act be condoned.⁴

2. The brief facts of the case are as follows:

2.1. On 12th December, 2019, an FIR bearing No. 169/2019 was registered against Petitioner No.1 by the SHO Damtal Police Station, Kangra District, Himachal Pradesh/ Respondent No. 3, who recovered 6.27 grams of Heroin from the possession of Petitioner No. 1. In pursuance to the registration of FIR, the Petitioners were arrested on the ground that they were allegedly involved in drug trafficking. Thereafter, Respondent No. 3 conducted an inquiry, all properties held by the Petitioners were seized and a seizure/freezing order dated 02nd January, 2023 was passed by the said Respondent under Section 68F of the NDPS Act.

2.2. Thereafter, notices were issued to the Petitioners giving them an opportunity of hearing before Respondent No. 2. Petitioners then furnished a reply to the said notices and, subsequently, through order dated 30th January, 2023, Respondent No. 2 confirmed the seizure/freezing order dated 02nd January, 2023 passed by Respondent No. 3.

2.3. Being aggrieved by the said order, the Petitioners availed their remedy of filing an appeal to the Appellate Tribunal under SAFEMA. However, there was a delay of 154 days in preferring the said appeal. The relevant list of dates for determining the number of days of delay is as follows:

a) Petitioners received a copy of the said order on 05th February, 2023.

⁴ Although the Petitioner has made a prayer of condoning the delay of 160 days the delay is computed to be of 154 days as per the impugned order.



- b) The period of 45 days expired on 22nd March, 2023.
- c) The period of 60 days from 05th February, 2023 expired on 06th April, 2023.
- d) The appeal was preferred by the Petitioners on 23rd August, 2023 and, hence, there was a delay of 154 days in filing the appeal from the date of expiry of the 45th day from the date of receipt of the order.

2.4. Since the appeal was preferred beyond the period of limitation specified in Section 68-O of the NDPS Act, the same was dismissed as the Appellate Tribunal admittedly did not have jurisdiction to condone the delay in view of the said provision.

3. Counsel for the Petitioners contends that this Court can exercise jurisdiction under Article 226 of the Constitution by not giving strict interpretation to Section 68-O of the NDPS Act and condone the delay. He further argues that the Appellate Tribunal had not considered sufficient and *bona fide* grounds preferred by the Petitioners in condoning the delay. In exercise of the writ jurisdiction, this Court can take a liberal view and interpret the said provision in light of the circumstances narrated in the petition, justifying the delay.

4. The Court has noted the facts and contentions of the Petitioners, however, remains unconvinced.

5. Section 68-O of the NDPS Act, stipulates that the Appellate Tribunal has no jurisdiction to entertain an appeal which is filed beyond a period of 60 days from the date on which the order passed by the Competent Authority is served on the Appellant. An appeal under Sub-Section 1 of Section 68-O of the NDPS Act can be filed only within a period of 45 days from the date on which the order is served. The Appellate Tribunal can entertain an appeal even beyond the said period of 45 days if it is satisfied



that the Appellant was prevented by sufficient cause from filing the appeal in time. However, this power is to condone the delay cannot be exercised beyond the period of 60 days.

6. It is well settled that an appeal is a creature of a statute and there is no inherent right of appeal. This principle has been reiterated by the Supreme Court in ***Durga Shankar Mehta v. Thakur Raghuraj Singh and Ors.***⁵ wherein the Supreme Court held that “*It is well known that an appeal is a creature of statute and there can be no inherent right of appeal from any judgment or determination unless an appeal is expressly provided for by the law itself.*”

7. The Appellate Tribunal under SAFEMA is a creation of statute and is vested with the power to condone delay which falls within the permissible limit of 15 days beyond the period of 45 days from the date of receipt of the order by the appellant. This can be done on the ground that the appellant was prevented by sufficient cause from filing the appeal in time. Therefore, in light of the clear stipulation laid down by the legislation, this Court finds no error in the view taken by the Appellate Tribunal in the impugned order.

8. As regards the question whether this Court would have power to condone the delay in case of Special Acts which provide for a period of limitation, has been dealt by the Supreme Court in several judgments. In the context of Section 125 of the Electricity Act, 2003, the Supreme Court in ***Chattisgarh SEB v. Central Electricity Regulatory Commission***,⁶ expressly held that in absence of any clause condoning the delay in the special law, the language used in the said provision, which prescribes the period of limitation, has to be taken into account. Where the clause in the statute does

⁵ (1954) 2 SCC 20.

⁶ (2010) 5 SCC 23.



not allow condonation of delay beyond the period provided, the High Court would not be justified in condoning the delay after the expiry of the prescribed period.

9. In view of the above discussion, the Court is not persuaded to accept the Petitioners' contentions that the statutory limitation provided under Section 68-O of the NDPS Act can be subjugated through the Court's power under Article 226 of the Constitution. The remedy under Article 226 of the Constitution is available to enforce a legal right. Since the Petitioners statutory right to file an appeal is no longer available in view of the above-mentioned provision under the NDPS Act, there is no question of condoning the delay by this Court under Article 226 of the Constitution.

10. Therefore, in the opinion of the Court, no relief can be granted to the Petitioners.

11. Accordingly, the present petition is disposed of along with pending applications.⁷

SANJEEV NARULA, J

JULY 10, 2024/ab

⁷ See also: *Suman Kumar Rana v. Competent Authority and Administrator & Anr.*, 2023: DHC: 7790; *Omaxe Buildhome Limited v. Union of India & Anr.*, 2019: DHC: 1159.