
(2016) 03 CAL CK 0003

In the Calcutta High Court

Case No : C.R.A.N. No. 1123 of 2015 in C.R.R. No. 1177 of 2015

M/s Dhansri Abasan Pvt. Ltd.

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Limitation Act, 1963 — Section 5

Citation : (2016) 3 CalCriLR 466

Hon'ble Judges : Sudip Ahluwalia, J.

Bench : Single Bench

Advocate : Mr. Arindam Banerjee, Mr. Anirban Dutta and Mr. Rohit Chowdhury, Advocates, for the Appellant; Mr. A. Sanyal, Mr. Rana Mukherjee, Mr. Suman Dey and Mr. Parvez Alam, Advocates, Mr. Manjit Singh (Ld. P.P.), Mr. Ayan Basu, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sudip Ahluwalia, J.—This is an application U/S. 5 of the Limitation Act praying for condonation of the delay of 28 days in filing the Revisional Application.

2. The impugned Order, which is the subject matter of the revision was passed by the Ld. Chief Metropolitan Magistrate, Calcutta, in CRR Case No. 2522 of 2014 on the 24th of November, 2014. The FIR No. 632 of 2014 was drawn up U/Ss. 466/ 467/ 468/ 471/ 474/ 420/ 406/ 409/120B of the IPC in the Hare Street PS on 15.11.2014 on the basis of a petition of complaint filed before the Ld. CMM earlier U/S. 156(3) of 2003 of the Cr.P.C by the respondent Nos. 2 and 3. It was put up for the first time before the Ld. Magistrate on the very date of passing of the impugned order. By virtue of that Order, the Ld. CMM was pleased to allow the IO's prayer for directing the Registrar of Assurance, Kolkata-1, to not allow any registration/transfer/sale in respect of the certain immovable properties which were the subject matter of the complaint. The petitioner, which happens to be a Registered Company interested in the disputed property, subsequently filed

the revisional application on 16.04.2015 along with the present application U/S. 5.

3. It has been submitted that the petitioner was not aware of the impugned order passed by the Ld. CMM as it had no notice of the proceedings. It learnt about the same only in the month of December, from the Registrar's Office where the impugned order had been conveyed at the instance of the I.O. The petitioner thereafter applied for Certified Copy of the same, which was delivered on 20.12.2012. It is the also petitioner's contention that the erstwhile Director of the Company had been suffering from Jaundice for a long time and that Mr. Ratan Lal Shyamsukha, who ultimately filed the revision along with the application was given the responsibility of handling the matter by a resolution of the Company on the 31st March, 2015. He could contact his Advocate only in the beginning of April. The petitioner has therefore prayed for condonation of a delay of 28 days in filing the same.

4. The contention of the Respondents is that the grounds disclosed for justifying the delay are not tenable, and that Mr. Ratan Lal Shyamsukha, who filed the proceedings in his capacity as a Director in the petitioner Company, was never a Director on the relevant date. In this regard the private respondents filed a separate application U/S. 340 of Cr.P.C. (CRAN No. 3400 of 2015), seeking prosecution of the said Mr. Ratan Lal Shyamsukha on the allegation of having sworn false affidavits in the proceedings. However, just a day after filing of the said application, Brother RK Bag, J., on 24.09.2015 directed that it would be taken up only after disposal of the present application U/S. 5 of the Limitation Act.

5. The petitioners' side has urged that although the present application had been filed by way of abundant caution, still the revisional application is not barred by limitation considering that the provisions of Section 482 of the Code of Criminal Procedure have also been invoked along with Sections 397/401. It is submitted that in the circumstances the revision is not barred as there is no specific period of limitation in relation to Section 482. It has been further submitted that the subject matter of the main revision is an order passed by the Ld. CMM exceeding his jurisdiction and competence, and is beyond the prescribed provisions of the Criminal Procedure Code. The same is therefore asserted as being "non-est", which therefore cannot be allowed to stand simply on account of any apparent delay in approaching the Court.

6. In "Madhu Limaye v. State of Maharashtra" reported in AIR 1978 SC 47, the Supreme Court had considered the propriety of invoking Section 482 in a revisional application, and observed inter alia -

"10. As pointed out in Amar Nath's case (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of the cases finally, More often than not, the revisional power of the High Court was

resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2), in section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of section 482, however, it would follow that nothing in the Code, which would include subsection (2) of section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at nought one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in subsection (2) of section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code. The High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of, a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction. Then the trial of the accused will be without jurisdiction and even after his acquittal a second trial after proper sanction will not be barred on the doctrine of *Autrefois Acquit*. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure, the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with section 482 of the 1973 Code. even assuming. although not accepting, that invoking the revisional power of the High Court is impermissible."

7. The aforesaid decision was also adopted in "Raj Kapoor and Others v. State and Others" (1980)1 SCC 43), wherein it was held -

"10. The first question is as to whether the inherent power of the High Court under section 482 stands repelled when the revisional power under section 397 overlaps. The opening words of section 482 contradict this contention because nothing in the Code, not even section 397 can affect the amplitude of the inherent power preserved in so many terms by the language of section 482. Even so, a general principle pervades this branch of law when a specific provision is made; easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In Madhu Limaye's case this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in section 397(2). Apparent conflict may arise in some situations between the two provisions and

"...a happy solution would be to say that the bar provided in sub-section (2) of section 397 operates only in exercise of the revisional power of the High Court meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principle enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then if the assailed is purely on an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction."

(2) In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extra-ordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a tertium quid, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the courts

process. Can we state that in this third category the inherent power can be exercised ? In the words of Untwalia. J.:

"The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."

I am, therefore, clear in my mind that the inherent power is not rebuffed in the case situation before us..."

8. From their side, the respondents have placed certain decisions to stress that delay in approaching the Court cannot be dealt with leniently, and also that ordinarily Section 482 cannot be invoked when there exist any specific provisions in the statute. In "Sujit Chatterjee v. Rita Chatterjee" reported in (2002) 3 Cal LT 260 (HC), a Single Judge of this Court in disallowing a revision preferred against an order of the Magistrate's Court rejecting an application filed on behalf of the revisionist husband to set aside an ex-parte order of maintenance passed against him 15 months earlier had observed -

"11. It is well-settled principle of law that a party who is not vigilant about his right must explain every day's delay. In this context reference can be made to the case of Bikram Dass v. Financial Commissioner and Others, reported in AIR 1977 SC 2221 at page 2225 (para 21) wherein it has been clearly laid down by the Hon'ble Apex Court that section 5 of the Limitation Act is hard task-master and judicial interpretation has encased it within a narrow compass. It has been further held that a large measure of case laws has grown around section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore, a litigant who is not vigilant about his rights must explain every day's delay. It is thus quite clear that where a case for condonation of delay has not been satisfactory made out, the application for condonation of delay under section 5 of the Limitation Act is liable to be dismissed. Mr. Ray, learned advocate for the O.P./wife has pertinently cited the case of Madan Gopal v. Lt. Governor of Delhi and Another, reported in 1973 Cr LJ 131 on this score."

9. In "Chandana Garain v. Madhusudan Garain" reported in 2002 WBLR (Cal) 559, another Single Judge of this Court had rejected an application under Section 5 for condonation of a delay of 49 days in filing the second appeal against a civil decree, where the appellant had sought to explain the delay on account of her alleged illness, by observing -

"8. From the case laws cited by both the parties it is candid that in order to determine "sufficient cause" for the delay, the Court must be pragmatic and not pedantic and will take some lenient view only if there is no negligence or inaction

is there on the part of the appellant. In the instant case the appellant/petitioner has simply stated in the application under Section 5 of the Limitation Act that she could not "completely instruct her Advocate on record to file the instant appeal" "because she was suffering from severe ailment". Even without being pedantic and scrutinising it irresistibly comes as to what prevented the petitioner from mentioning the period of her such "severe ailment". And I also fail to satisfy myself as to what action prevented the appellant from filing any scrap of paper to justify her such "severe ailment". I also fail to understand what the applicant wanted to mean by the terms that she could not "completely instruct" her Advocate-on-record. Does it mean that she gave some instruction in the matter in part but not completely: From the facts and circumstances of the case I do not find any answer to this. It is not the quantum of delay that matters but, whether the cause of such delay was genuine, just and reasonable for which the appellant was prevented from filing the appeal on time which the appellant/applicant has miserably failed to establish."

10. In "Jamuna and others v. S. Panja @ Samaresh Panja reported in 1986 C CR LR (Cal) 269, there was a delay of 18 months in challenging an order of substitution passed by the Trial Magistrate. The revisional application was dismissed with the following observations inter alia -

"2.... From the facts of this case it appears that the petitioners allowed the proceedings to continue for more than 18 months. They did not take any steps. Thereafter they suddenly woke up and filed this application for quashing. Relied section 482 being a discretionary relief should not be granted to a person who has deliberately delayed in coming to the court and has also failed to file an application under section 397 of the Cr.P.C. Accordingly I hold that this is application should not be entertained.

3. On merit I also do not find much substance in this application. In criminal Revision case No. 875 of 1983 Amiya Kumar Nandi and 7 others v. Baghuraj Bahadur and Anr. under similar circumstances, it was held that since the original complainant did not file the complaint in his personal capacity but only represented company allowing another person to act as complainant is not an order which can be called, improper or illegal. On the facts of this case it also appears that the complainant Dilip Kumar Chatterjee filed the complainant on behalf of the company and O.P. No. 1 only sought for the permission of the court to be treated as complainant for the purpose of the carriage of the proceedings only. In fact complainant in this case was Fort William Co. Ltd. Therefore there was no illegality or impropriety in the order passed."

11. In "Jagir Singh v. Ranbir Singh" reported in AIR 1979 SC 381, a revisional application under Section 397(3) against an order of the Magistrate's Court was preferred before the Sessions Judge. It was however dismissed. The revisionist thereafter approached the High Court under Section 482. But the High Court refused to grant any relief since in its opinion this was only an attempt to avoid the order of the Magistrate's Court, and not of the Sessions Judge. The relevant

observations of the Supreme Court in this regard were -

"4. ...The object of Section 397(3) is to prevent a multiple exercise of revisional powers and to secure early finality to orders. Any person aggrieved by an order of an inferior Criminal Court is given the option to approach either the Sessions Judge or the High Court and once he exercises the option he is precluded from invoking the revisional jurisdiction of other authority. The language of Section 397(3) is clear and peremptory and it does not admit of any other interpretation....

5. In order to cross the hurdle imposed by Section 397(3) it was suggested that the revision application before the High Court could be treated as an application directed against the order of the Sessions Judge instead of an one directed against the order of the Magistrate. We do not think that it is permissible to do so. What may not be done directly cannot be allowed to be done indirectly, that would be an evasion of the statute. It is a "well-known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance" (per Abbott C.J. in *Fox v. Bishop of Chester* (1824) 2 B & C 635 "To carry out effectually the object of a Statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined" (Maxwell, 11th edition, page 109). When the Sessions Judge refused to interfere with the order of the Magistrate, the High Court's jurisdiction was invoked to avoid the order of the Magistrate and not that of the Sessions Judge. The bar of Section 397(3) was, therefore, effectively attracted and the bar could not be circumvented by the subterfuge of treating the revision application as directed against the Session Judge's order."

12. In "*Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee and Another*" reported in 1990 SCC (Cri) 327, the High Court had initially dismissed an application under Section 482. But it was again approached by the revisionist under Section 482, who pointed out certain mistake on the record in passing the earlier decision. This time the High Court decided in favour of the revisionist. This decision was however set aside by the Supreme Court with the following observations -

"5. Section 362 of the Code expressly provides that no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error save as otherwise provided by the Code. Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction."

13. In "*Satya Narayan Sharma v. State of Rajasthan*" (2002 SCC (Cri) 39), the

trial in a case under the Prevention of Corruption Act had been delayed on account of the stay order(s) passed by the High Court in entertaining the accused's application under Section 482. The question before the Supreme Court was limited only as to whether or not trials under the Prevention of Corruption Act could be stayed. It was held -

"15. There is another reason also why the submission that, Section 19 of the Prevention of Corruption would not apply to the inherent jurisdiction of the High Court, cannot be accepted. Section 482 of the Criminal Procedure Code starts with the words Notwithstanding anything contained in the Code. Thus the inherent power can be exercised even if there was a contrary provision in the Criminal Procedure Code. Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. As has been pointed out in the cases of *Madhu Limaye v. The State of Maharashtra* reported in 1977 (4) S.C.C. 551, *Janata Deal v. H.S. Chowdhary & others*, reported in 1992 (4) S.C.C. 305 and *Indra Sawhney v. Union of India and others* reported in 2000 (1) S.C.C. 168, the inherent jurisdiction cannot be resorted to if there was a specific provision or there is an express bar of law."

14. The decisions in "*Sujit Chatterjee v. Rita Chatterjee (supra)*" and "*Jamuna & Ors. v. S. Panja @ Samaresh Panja (supra)*" cited relied upon by the respondents would not be comparable with the present case since the delay on the part of the concerned applicants in those cases was to the tune of 15 months and 18 months respectively, which was held to be inordinate. Nevertheless, even in the case of "*Jamuna & Ors. v. S. Panja @ Samaresh Panja (supra)*", this Court, in spite of holding that the discretionary relief U/S. 482 should not be granted to the petitioner who had been guilty of delay to the extent of 18 months, still chose to also consider the merits of the revisional application, and only thereafter dismissed the same after it found no substance therein. In "*Chandana Garain v. Madhusudan Garain (supra)*" the delay in filing the second appeal against the civil decree was of 49 days, but the Court refused to condone the same as it found absolutely no credibility in the version of the appellant regarding her "severe ailment" and inability to "completely instruct" her Advocate on record.

15. In "*State of Bihar v. Kameshwar Prasad Singh*" (AIR 2000 SC 2306) however, the Supreme Court in allowing an application for condemnation of a delay of 679 days in filing the SLP revisited some of its earlier decisions observing inter alia -

"11. Power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in *Collector, Land Acquisition, Anantnag v. Mst. Katiji*, (1987) 2 SCR 387 : (AIR 1987 SC 1353) held that the expression "sufficient cause" employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life purpose for the existence of the

institution of Courts. It was further observed that a liberal approach is adopted on principal as it is realised that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

13. In *Nand Kishore v. State of Punjab*, (1995) 6 SCC 614 : (1995 SCW 4650 : 1996 Lab IC 610) this Court under the peculiar circumstances of the case condone the delay in approaching this Court off about 31 years. In *N. Balakrishnan v. M. Krishnamurthy*, (1998) 7 SCC 123 : (1998 AIR SCW 3139 : AIR 1998 SC 3222) this Court held that the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the Court in different situations is not because on the expiry of such a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack mala fides or is not shown to have been put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor. In this context, it was observed (para 9 AIR 1998 SC 3222) :

"It is an axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is to no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condones as

the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court."

16. Admittedly the petitioner Company had no occasion to be aware of the impugned order passed on 24.11.2014 which was passed by the Ld. CMM on the very date the FIR was first placed before him. So, there cannot be any reason to doubt that the petitioner came to know about it only from the Registrar's Office after the registration in relation to the disputed properties was refused on the strength of the order, in the very following month i.e., December, 2014. Certified copy of the impugned order was admittedly delivered to the petitioner on 20.12.2014. The limitation period in the circumstances would have lapsed sometime in the month of 3rd week of the March, 2015, on or about the 20th March, 2015. The revision and the application for condonation of delay were filed on 16.04.2015 i.e., almost 27 days later. It may be mentioned that the last four days immediately preceding the date of filing were admittedly Court Holidays. So, the delay in the given circumstances does not appear to be exceptional or inordinate, particularly considering the fact that the petitioner had no means of knowing about the impugned order when it was originally passed by the Ld. Court below.

17. In the other three decisions cited on behalf of the respondents, the emphasis is on the proposition that a new provision in the exercise of inherent jurisdiction cannot be invented if there is a specific bar against the invocation of such inherent jurisdiction. However none of these decisions deal with the aspect of invoking such power for the purpose of condonation of delay alone. Furthermore the impugned decisions challenged in these citations relied upon the respondents do not relate to the lack of jurisdiction on the part of the concerned Courts in passing the relevant orders, except in "Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee and Another" (supra) wherein the High Court had virtually reviewed and modified its own original order U/S. 482 on the next application under the very same Section, which was not accepted by the Supreme Court.

18. But in the present case the petitioner seeks essentially to assail the very jurisdiction and competence of the Learned Magistrate in passing the impugned Order, which, according to it was beyond the powers available under the Code of Criminal Procedure. Denying an opportunity to it to assail such order on the on the technical grounds of delay by a few weeks would surely not be in the spirit of the Supreme Court Judgment in "State of Bihar v. Kameshwar Prasad Singh" (supra).

19. It is also verified that the revision was filed U/Ss. 397/401 read with Section

482 (emphasis added) of the Code of Criminal Procedure and so, in the given fact and circumstance the decision of the Apex Court in "Madhu Limaye v. State of Maharashtra", which was also relied upon in "Raj Kapoor v. State" (supra) would appear to be applicable to the facts and circumstances of the present case in which essentially the petitioner seeks to assail the very jurisdiction and competence of the Ld. Magistrate in passing the impugned order, which according to it was beyond the powers available under the Code of Criminal Procedure.

(Emphasis added).

20. Needless to mention, the narrow confines of limitation bar do not restrain the exercise of the High Court's inherent power U/S 482 of the Cr.P.C in deserving cases. Whether or not any false affidavit was sworn on behalf of the petitioner is not the subject matter in the present application U/S. 5 of the Limitation Act, as Brother R.K. Bag, J., in His Lordship's Order passed on 24.09.2015, had rightly directed that the application U/S. 340 Cr.P.C filed on behalf of the Private Respondent would be taken up only after disposal of the present application. Likewise, whether or not the impugned Order was actually beyond the competence and jurisdiction of the Ld. CMM can be ascertained only after examining the same on merits, for which purpose it would be necessary to consider the submissions of the parties by entertaining the revisional application.

21. For the above reasons this clearly appears to be a fit case to condone the delay of about 4 weeks in filing the Revisional application, since in any case the same cannot be treated as an "inordinate delay" by any standards. The application is therefore allowed and the delay in filing the original revision is condoned.

22. Before concluding however, this Court must record its anguish at the conduct of certain Counsel, which was not in keeping with the Bar's highest traditions, during the course of hearing. It is a matter of record that the revision had first come up before Brother S.S. Sadhu, J., and then before Brother R.K. Bag, J., who detected that the instant application was yet to be dealt with. So His Lordship directed it to be listed at the top, but on 17. 11. 2015 released the matter on "personal ground." It was then assigned to this Court. On 21.01.16 the team of petitioner's Advocates started with their submissions directly on the revisional matter till it was pointed out that the present application was to be heard first. This Court also observed that in view of the sensitive background of the case, a routine approach vis-a-vis the pending application was not desirable. On the subsequent date however, after completing their submissions, the petitioner's side needlessly interrupted and countered the submissions of the respondents' Advocate(s) midway. Such unusual and impatient attitude was uncalled for, since the right to reply was always on. Due to such conduct, this Court, like Brother R.K. Bag, J., also felt inclined to release the matter. However that course was avoided to prevent needless harassment and delay to the parties, as submissions from the petitioner's side had already been completed earlier. Its Counsel were instead requested to observe restraint and patience on the resumed date(s), but

the request had only a limited effect. Hopefully, better sense shall prevail in future.

23. Later :

24. On submission of the Ld. Advocate appearing for the opposite parties, urgent Photostat certified copy of this order, if applied for, be given to the Ld. Advocate for the parties on compliance of usual formalities.