

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 365 of 2015**

1. Ram Charan S/o Budhram Suryawanshi Aged About 32 years
2. Budhram S/o Mohar Sai Suryawanshi Aged About 50 Years

Both are resident of Village Sewai, Police Station Pamgarh,
District Janjgir Champa Chhattisgarh

---- Applicants**Versus**

1. Priti Khare W/o Gopal Goswami, Aged About 30 Years, R/o
LIG-234, Shivaji Nagar, Korba, P.S. Tahsil & District Korba
(C.G.)
2. State Of Chhattisgarh Through The Police Station Kotwali,
Korba (C.G.)

---- Respondents

For Applicants:	Shri Somnath Verma, Advocate.
For Respondent No.1:	Shri Anil Gulati, Advocate.
For Respondent No.2/State:	Shri Om P. Sahu, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****30/07/2015**

(1) Applicants were acquitted of the offence punishable under Section 498-A IPC by the Judicial Magistrate, First Class, Korba by its order 9th August, 2011 passed in Criminal Case No.1504/2010. Responent No.1 herein/victim preferred petition under Section 482 of the Code of Criminal Procedure (henceforth 'CrPC') there-against before this Court being Cr.M.P. No.915/2013 (Priti Khare Vs. Ramcharan & others) challenging the order of acquittal.

(2) Later on, finding that petition under Section 482 is not

maintainable, respondent No.1 herein withdrawn the aforesaid petition under Section 482 CrPC on 21.11.2013 with liberty to file acquittal appeal and ultimately acquittal appeal was filed on 19.12.2013 before the Special Judge (SC/ST Act), Korba along with application for condonation of delay.

(3) Learned Special Judge (SC/ST Act), Korba, by its impugned order dated 10.4.2015, entertained the appeal and condoned the delay holding that respondent No.1 herein was granted liberty by the High Court to prefer acquittal appeal, as such, it is a fit case for deciding the acquittal appeal on merits. Against the order of condoning delay, instant revision has been filed by applicants/accused.

(4) Counsel for the applicant would submit that learned Special Judge has not considered the application for condonation of delay on merits and has casually condoned the delay based on the order of the High Court permitting the respondent No.1 to withdraw the petition under Section 482 of the CrPC, which deserves to be set aside.

(5) Shri Anil Gulati, counsel for the respondent No.1 would submit that in-fact, the Special Judge, taking care of the delay occurred in prosecuting the petition under Section 482 CrPC bonafidely before this Court, entertained the application for condonation of delay holding it to be sufficient cause for delay in filing the appeal, which does not call for any interference by this Court.

(6) I have heard learned counsel appearing for the parties and perused the record available with utmost circumspection.

(7) It is trite law that the approach of court should be liberal while dealing with application for condonation of delay.

(8) The Supreme Court in case of N. Balakrishnan v. M. Krishnamurthy, reported in (1998) 7 SCC 123, has held in para 13 to 15 as under :

“13. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the remedy vested time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

14. A court knows that refusal of condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This court has held that the words “sufficient cause” under Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shankuntala Devi Jain v. Kuntal Kumari and State of West*

Bengal v. The Administrator, Howrah Municipality.

15. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

(9) It is not in dispute that petition under Section 482 Cr.P.C. filed by respondent No.1/wife remained pending before this Court from 25.9.2013 to 25.11.2013 and she was permitted to withdraw the petition under Section 482 Cr.P.C. on 21.11.2013 with liberty to file acquittal appeal and, thereafter, she preferred appeal on 29.12.2013 and the Special Judge finding that time spent before this Court is sufficient to condone the delay in filing the acquittal appeal.

(10) After hearing learned counsel appearing for the parties and taking into consideration the grounds mentioned for condoning the delay; and the respondent No.1 is victim and was not party before the

Judicial Magistrate, First Class, Korba; and on the mistaken advice, respondent No.1 filed petition under Section 482 Cr.P.C., later on she withdrawn the aforesaid petition and preferred acquittal appeal, which, in the considered opinion of this Court, appears to be sufficient cause for delay in filing the appeal; and the learned Special Judge has not committed any illegality in the order impugned condoning the delay in filing the appeal.

(11) As a fall out and the consequence of the aforesaid discussion, the petition is held to be devoid of merit and is, therefore, dismissed. No order as to cost (s).

Sd/-
(Sanjay K. Agrawal)
Judge

D/-