

HIGH COURT OF CHHATTISGARH, BILASPUR
Order Sheet

CRMP No. 128 OF 2015

Deepak Ijardar **Versus** Ashok Kumar Patel

6-8-2015	Mr. Raghvendra Verma, Adv. under instruction of Ms. Hamida Siddiqui, Adv. for the applicant. Mr. H.S. Patel, Adv. for respondent. Instant Cr.M.P. followed by acquittal appeal is filed against the judgment of acquittal dated 6-5-2014 passed by the Judicial Magistrate First Class, Distt. Raigarh in Case No. 298 of 2012. Against the judgment of acquittal, the applicant preferred a criminal appeal under Section 372 of the Cr.P.C. before the 2nd Additional Sessions Judge, Raigarh. Learned Additional Sessions Judge, vide judgment dated 5-12-2014 passed in Cr.A. No. 202000003322014 held that the instant criminal appeal is not maintainable as the complainant is not victim for the purpose to file appeal under the provisions of Section 372 of the Cr.P.C. Learned appellate court further held that the appellant has to file appeal under Section 378(4) of the Cr.P.C. for leave to appeal and dismissed the appeal preferred under Section 372 of the Cr.P.C. being not maintainable. After the impugned judgment, the complainant /appellant filed instant Cr.M.P. under Sub-section (4) of Section 378 of the Cr.P.C. followed by acquittal appeal against the respondent on 3-2-2015. Though office calculated period of limitation from the date of judgment passed by the Sessions Judge and treated the appeal to be within limitation, but as per settled law, limitation has to be calculated from the date of judgment passed in criminal case on 6-5-2014 and for	

Pathak	condonation, the appellant has also filed an application I.A. No. 1/15 explaining the reasons for delay. Learned counsel for the respondent also filed reply to the application regarding condonation of delay and opposed the application. He vehemently argued that the appellant knowingly filed the appeal under Section 372 of the Cr.P.C. before the Sessions Court and contested the said appeal. It cannot be said that he was not aware of law. It is further submitted that delay is not satisfactorily explained as required, hence the leave to appeal may be dismissed. On due consideration, for the reasons mentioned in I.A. No. 1/15, this court is of the view that due to improper assessment regarding definition of the victim, the complainant was pursuing his remedy before wrong forum. On due consideration, the delay in filing the Cr.M.P. followed by acquittal appeal is hereby allowed. Delay in filing the Cr.M.P. is hereby condoned. Also heard on leave to appeal. For the purpose, impugned judgment of acquittal is perused. In the opinion of this Court, it is a fit case where leave to appeal is to be granted. Consequently, the instant Cr.M.P. is allowed. Registry is directed to register the matter under the head of acquittal appeal. As prayed by the respondent, list the matter for hearing on motion of acquittal appeal after 4 weeks. Sd/- Chandra Bhushan Bajpai Judge.	
--------	---	--