

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 966 of 2015**

- Kannu Pasi S/o Shri R.P. Pasi Aged About 41 Years R/o Lal Khadan, Near Primary School, P.S. Torwa, District Bilaspur Chhattisgarh.

---- **Petitioner****Versus**

1. Rajesh Chandra Bhattacharji S/o Late B.C. Bhattacharji Aged About 45 Years R/o Ramdas Nagar, Tikarapara, P.S. City Kotwali, Distt. Bilaspur (CG)
2. State Of Chhattisgarh through P.S. Aadim Jati Kalyan, Bilaspur (CG)

---- **Respondents**

For Petitioner	:	Mr. Ajay Dwivedi, Advocate.
For Respondent No. 2	:	Mr. Aditya Sharma, Panel Lawyer.
For Respondent No. 1	:	Not noticed.

Order On Board**03/11/2015**

1. As prayed by learned counsel for the applicant, the matter is heard finally with consent of learned counsel for respondent No. 2.
2. Facts of the case in brief are that on 15-9-2015, acquittal appeal No. 106/2015 was dismissed as barred by limitation vide judgment passed by this court, against which, the applicant filed instant CRMP praying that acquittal appeal No. 106/2015 be restored to its original number.
3. Learned counsel for the applicant submitted that there was no application for condonation of delay filed along with acquittal appeal. While hearing of that appeal, on 10-8-2015, though appellant was represented but there was no direction to the present applicant to file an application for condonation of delay in filing of such acquittal appeal. Registry also never informed for any requirement to file the application for condonation of delay. He further submitted that the matter ought not to have been dismissed on 15-9-2015 and it would have been appropriate to grant an opportunity to the appellant instead of dismissing the appeal as barred by 15 days even after the judgment passed by Hon'ble Full Bench of this Court in acquittal Appeal No. 121/2012. The applicant was in jail. Hence the appeal was filed with delay.
4. Reliance is placed in the matter of **K.G. Keralakumaran Nair -v- State of Kerala and another¹** wherein Hon'ble Apex Court held that the High Court has power to dismiss appeal for default or non-prosecution and also to

¹ 1995 CR.L.J. 2319

restore such proceeding. Such power of dismissal and of restoration can be exercised only by High Court and not by any of court subordinate to it.

5. Learned counsel further placed reliance in a decision of Hon'ble Apex Court in the matter of **State of Bihar and ors. Versus Kameshwar Prasad Singh and anr.**² in which it is held that :

“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 merit. This Court in Collector, Land Acquisition, Anantnag & Anr. vs. Mst. Katiji & Ors [1987(2) SCR 387] 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 principle 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 days' 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 restoring to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its

2 Date of judgment 27-4-2000 bench Hon. Mr. Justice S. Saghir Ahmad & Hon'ble Mr. Justice R.P. Sethi, JJ

power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

It is further held that :-

“In Nand Kishore v. State of Punjab [1995(6)SCC 614] this court under the peculiar circumstances of the case condoned the delay in approaching this Court of about 31 years. In N. Balakrishnan v. M.Krishnamurthy [1998(7)SCC 123] 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 time 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 malafides or is not shown to have been put forth as a part of dilatory strategy, the court must show utmost consideration to the suitor.”

6. Learned counsel submitted that the court has to take lenient view in the matter. It is submitted that instant MCC be allowed and the order passed by this Court dated 15-9-2015 be recalled. The acquittal appeal be restored to its original number, be heard and disposed of as per provisions of law.
7. Learned Panel Lawyer appearing for the respondent No. 2/State opposed the petition.
8. For appreciation of facts of the case, perused the instant CRMP and also record of Acquittal Appeal No. 106/2015. A perusal of the order dated 10-8-2015 indicates that this court directed the Registry to make a note whether the instant appeal is preferred within stipulated time as given in Article 115(b) of the Limitation Act, 1963 or not. If the instant appeal is filed after the limitation prescribed then the appellant is required to file an application for its condonation in the light of above referred judgment. Thereafter the matter was listed on 24-8-2015 but the appellant was not represented when the case was taken up for hearing even in second round. On 24-8-2015 this court observed that Appellant is required to file appropriate application for delay for which two weeks' time was granted. The case was then listed on 15-9-2015. Since the appellant was again not represented on 15-9-2015, and since the direction for filing application was not complied with by the

appellant, this court passed judgment as per the law laid down by Hon'ble Full Bench in Acquittal Appeal No. 121/15 (Smt. Ahilya Bai Satnami -v- State of CG and others) and dismissed the acquittal appeal as barred by limitation. Despite the opportunity given, no application was filed for condonation of delay by the appellant.

9. Upon considering entire facts, in the considered opinion of this Court, the arguments advanced by learned counsel for the applicant have no force. The case law cited by him are also of no help to him. In these circumstances, I am not inclined to allow instant CR.M.P. invoking the inherent powers of this Court for restoration of acquittal appeal.
10. The instant CR.M.P. is accordingly dismissed.

Sd/-
(Chandra Bhushan Bajpai)
Judge