

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 718 of 2008

1. State of Chhattisgarh through the Station House Officer, P.S. Saraipali, District - Mahasamund (C.G.)

---- Appellant

Versus

1. Dilip Kumar Patel, S/o Malikram, aged 31 years, R/o Village Kedula, P.S.Saraipali, Distt. Mahasamund (Chhattisgarh)

---- Respondent

For Appellant – Shri S.C.Khakhariya, Deputy Advocate General.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

01/02/2016

1. Heard on I.A.No.2/2008, application for condonation of delay as the instant criminal appeal has been preferred after 122 days of its limitation.
2. Also heard on maintainability of the instant criminal appeal under Section 378 of the Code of Criminal Procedure, 1973 (in brevity 'the Code').
3. On behalf of the appellant, the application for condonation of delay has been preferred stating therein that on account of administrative formalities, the instant criminal appeal has been preferred after 122 days of its limitation.
4. Also heard on maintainability as to why the instant criminal appeal preferred under Section 378 of the Code as the judgment of conviction and sentence passed by the Special Judge (Electricity Act, 2003) , Mahasamund, C.G. in Special Sessions Case No.12/2007 whereby and whereunder the accused /respondent has been convicted under Section 379 of the Indian Penal Code along with Section 135(A) of the Electricity Act, 2003 and sentenced to pay fine of Rs.1,30,000/-, in default of payment of fine, to undergo rigorous imprisonment for four months.

5. Learned counsel for the appellant prayed that as there was bonafide delay in filing the instant appeal and the same is maintainable under the procedural part of Section 378 of the Code. The Court below has not considered the provisions of Section 152 of the Electricity Act, 2003 whereby and whereunder the Appropriate Government compounded the offence with the respondent and as per Section 152(3) of the Electricity Act, 2003 the acceptance of the sum of money for compounding the offence in accordance with sub-section (1) by the Appropriate Government or the Officer empowered in this behalf shall be deemed to amount to acquittal within the meaning of Section 300 of the Code. Hence, it is prayed that the appeal may be admitted for hearing and after hearing, the judgment of conviction and sentence passed by the Court below vide order dated 02-11-2007 be set aside.

6. For the purposes of appreciation regarding argument advanced for condonation of delay and regarding the maintainability of the instant criminal appeal, the memorandum of appeal, judgment of the trial Court and I.A.No.2/2008 are perused.

7. The appellant has not satisfactorily explained the delay caused in filing of the instant criminal appeal. Simply on account of procedural formalities the delay is bonafide may not be accepted thereby the appellant failed to satisfactorily explain the delay. Hence, the delay in filing the appeal has not been satisfactorily explained or the same cannot be held bonafide.

8. So far as maintainability of the instant criminal appeal is concerned, Section 378(1) of the Code reads as under –

378. Appeal in case of acquittal – (1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), –

- (a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
- (b) the State Government may, in any case, direct the Public Prosecutor

to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]”

9. The instant criminal appeal is not against the order of acquittal passed by the trial Court, there is no any provision in the entire Section 378 of the Code wherein and whereunder the appellant, i.e., the State may file criminal appeal despite judgment of conviction and sentence awarded by the Court below.

10. As the present appeal is not maintainable under Section 378(1) of the Code, it would not be appropriate for this Court to appreciate the provisions of Section 152 of the Electricity Act, 2003 regarding compounding of the offence. The present appellant/State has no locus to file the appeal against the judgment of conviction and sentence thereby the grounds taken in the appeal is not worth of appreciation as the appellant/State has no locus to file appeal in the matter.

11. On due consideration, as the delay of 122 days in filing the appeal has not been satisfactorily explained by the appellant and also as this appeal is not maintainable, the instant criminal appeal is dismissed.

12. The appeal dismissed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE