

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.441 of 2009**

1. Shobharam, S/o. Unknown, aged about 65 years, R/o. Village Kedar, PS Sarangarh, District Raigarh (CG)
2. Suhavan Bai D/o Awadhram Sahu, aged about 52 years, R/o Village Khamariya, P.S. Sarsiva, Distt.-Raipur (C.G.)
3. Lilabai Wd/o Awadhram, Aged about 70 years, R/o Village Khamariya, P.S. Sarsive, Distt.-Raipur, (C.G.)

---- Applicants**Versus**

Meena Kumari, W/o. Ganpatlal Sahu, Aged about 43 years, R/o. Village Khamariya, At present Village Sarsiva, PS Sarsiva, Tahsil Bilaigarh, District Raipug (CG)

---- Respondent

Shri Vikram Dixit, counsel for the applicants.
 Shri Varun Mishra, Advocate on behalf of Shri Aman Kesharwani, counsel for the respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****13.4.2016.**

Heard on IA No.01/09, application for condonation of delay in filing the revision as the instant revision has been preferred after 1400 days of its limitation.

2. Brief facts required for the disposal of the instant criminal revisions are that a complaint case has been filed on behalf of the present respondent against 11 non applicants for taking cognizance and the trial for the offence under Sections 494, 497, 109 of the Indian Penal Code. The said complaint was registered as Criminal Case No.234/2003. After recording the evidence before the charge, the trial Court vide order dated 31.12.04 held that prima facie offence against for the non applicant Ganpat

exists under Section 494 of the IPC, the Court below discharged the other non applicants, framed charges only against non applicant No.1 Ganpat and proceeded further. The impugned order was challenged by filing two Criminal Revisions No.50/05 & 69/05. The First Additional Sessions Judge, Baloda Bazar disposed of the both the criminal revisions vide common order dated 10.8.2005 and dismissed the criminal revision 50/05 and affirmed the order passed by the trial Court. So far as it relates to revisioner Ganpat Lal is concerned, the appellate Court partly allowed the Criminal Revision No.69/05 and held that Shobharam, Ramin Bai, Suhavan and Leela Bai be charged for the offence under Section 494 read with Section 109 of the IPC and affirmed the order passed by the trial Court so far as it relates to other non applicants/respondents. Against the said order all four respondents have filed MCRC No.2227/05 against the complainant Meena Kumari invoking the jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The said MCRC was dismissed for non prosecution vide order dated 23.8.2006. The aforementioned applicants/accused have not filed any MCC for restoration of the same. Thereafter the present applicants Shobharam, Suhavan and Libabai preferred Cr.M.P. 273/07 again invoking the jurisdiction under section 482 of the Code. The present applicants had sought permission to withdraw the said CrMP with liberty to avail appropriate remedy available to the applicants and as prayed vide order dated 18.8.2009, the petition filed on behalf of the present

applicants was dismissed as withdrawn with liberty. Thereafter the applicants filed the instant criminal revision which is as per the office note 1400 days barred by limitation.

3. Heard counsel for the petitioners.

4. It is submitted on behalf of the applicants that MCRC No.2227/2005 had been filed invoking the jurisdiction under Section 482 of the Code well within the time though on 23.8.2006 the petition was dismissed for want of prosecution as there was no representation on behalf of the petitioners. As they had an opportunity under the law to file a subsequent petition under Section 482 of the Code and the same was maintainable, they filed another Cr.M.P. 273/07 instead of filing MCC for the revival of the MCRC No.2227/05 and on 18.8.2009, on behalf of the applicants permission was sought to withdraw the petition with liberty to avail appropriate remedy available to the petitioners. It is submitted that the revision would lie only against the order passed in Criminal Revision No.69/05 dated 10.8.05 that is why they have preferred the instant criminal revision under Section 397 read with Section 401 of the Code. It is further prayed that looking to the above facts and circumstances there is no any delay in filing the instant criminal revision hence delay, if any, as pointed out be condoned in the interest of justice.

5. Learned counsel for the respondents opposed the IA No.01/09.

6. Learned counsel for the applicants duly supported the grounds taken in the IA No.01/09 and prayed that delay may be condoned.

7. A close scrutiny of the facts it appears that the applicants filed MCRC 2227/05 seeking remedy under Section 482 of the Code and the same was dismissed for want of prosecution but thereafter no any MCC has been filed for restoration of the same. On the other hand, it is submitted that as the repeated CRMP under Section 482 of the Code is permitted, they have filed CRMP 273/07. The petitioners failed to demonstrate that despite the order of dismissal dated 23.8.2006 of M.Cr.C No. 2227/05 for non prosecution whether the CRMP 273/07 is filed within its limitation. As submitted the said Cr.MP is filed on 25.01.2007. The applicants failed to demonstrate that the repeat CRMP is within its limitation when the M.Cr.C. No.2227/05 was dismissal on 23.8.2006. Also on perusal of the order dated 18.8.09 it appears that the applicants were permitted to withdraw the Cr.M.P with liberty to avail appropriate remedy available to the applicants.

8. On due consideration, it appears that non filing of any MCC against the order dated 23.8.2006 is not explained. Also the repeat CrMP was for the prayer available by invoking the jurisdiction of Section 482 of the Code as the first MCRC has been filed invoking the same jurisdiction. They prayed for permission to withdraw the said CrMP with liberty to avail appropriate remedy available to them. On perusal of the above

facts goes to show that the applicants failed to demonstrate reasonable cause for filing the instant criminal revision after the lapse of 1400 days. In the considered view of this Court, looking to the entire facts, there is no any satisfactory explanation in IA No.01/09 for condonation of delay. The said application is without any substance and the same is hereby dismissed. So also the instant criminal revision as the same is barred by limitation of 1400 days.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE