

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 432 of 2014

Kailash Agrawal S/o Fattechand Agrawal Aged About 45 Years R/o Main Road, Saraipali, Tahsil & P.S. Saraipali, Civil & Revenue Distt.- Mahasamund, C.G.

---- Applicant

Versus

1. Ramesh Sharma S/o Raghuveer Sharma Aged About 47 Years
2. Mahesh Sharma S/o Raghuveer Sharma Aged About 35 Years
3. Naresh Sharma S/o Raghuveer Sharma Aged About 37 Years
4. Preetpal Singh Chhabda S/o Dayal Singh Chhabada Aged About 39 Years

All R/o Ward No. 4, Main Road Saraipali, P.S. & Tahsil Saraipali, Civil & Revenue Distt.- Mahasamund, C.G.

5. State Of Chhattisgarh Through The Distt. Magistrate, Mahasamund, Distt. Mahasamund C.G.

---- Respondents

For applicant - Shri Shikhar Sharma, Advocate.

For Respondent/State – Shri Sangarsh Pandey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

11/08/2017

1. Heard.
2. Instant petition is against the order dated 22.04.2014 wherein the appeal preferred by the applicant against the judgment and conviction dated 19.07.2012 in Criminal Case No. 77/2012 State Vs. Ramesh Sharma and others was dismissed.
3. Brief facts of this case are that a charge sheet was filed u/s 452, 294, 506-B, 323 read with 34 of I.P.C. In said trial JMFC by an order dated 19.07.2012 has passed the judgment of conviction u/s 323 & 451 of I.P.C. and acquitted the respondents under the other charges. The sentence was made U/s 323 I.P.C. and fine of Rs.500/- was imposed and further sentence was awarded till rising of the Court. Likewise U/s 451 of I.P.C.

fine of Rs. 1000/- was imposed and the sentence was for till rising of the court with usual default clause.

4. Learned counsel for the applicant submits that the order dated 22.04.2014 is bad. It is contended that the appellant has good case on merits, therefore appeal should have been allowed.

5. Perusal of the order of the Trial Court would show that initial judgment of conviction and sentence was passed on 19.07.2012 by the JMFC in Criminal Case No. 209 of 2010. Against such order, appeal was preferred admittedly after 30 days. Even after deducting the time spent in obtaining copy of the order, an appeal was preferred under Section 378 Cr.PC belatedly on 18.09.2012. During course of hearing on 21.04.2014 an application was filed by the applicant that the appeal memo be treated as U/s 372 of Cr.PC instead of 378 Cr.PC on which objection was raised by the respondent that the appeal is barred by time. Even after raising such objection, appellant chose not to file any application for condonation of delay stating reasons thereof instead straightaway asked for deciding the same on merits. Consequently, the appellate Court dismissed the appeal on the ground that U/s 115 (b) of Limitation Act the time prescribed to file appeal is 30 days and no application has been filed to condone such delay as such no reason has been stated for the delay caused. It was held under the circumstances the delay has not been explained and eventually dismissed the appeal.

6. The section 372 of Cr.PC gives power to the victim to file an appeal against any order of conviction if according to him it is not adequate. However, said appeal is to be governed by section 115 (b) (ii) of the Limitation Act which contemplates that 30 days is the time to file an appeal from the date of sentence or order. Since in this case despite opportunity given, which was available to the applicant, he chose not to file an

application explaining delay to condone the same and to his own wisdom decided not to file any application to condone the delay. The court can always condone the delay if proper reasons are assigned. The benefit cannot be extended on assumption specially in the case on deliberate act of applicant. In such eventuality, no fault can be attributed to the order of the appellate court and I do not find it to be without any jurisdiction and or to fault it as the court has passed the order out of it's jurisdiction which was not vested in it.

7. Consequently, revision has no merit and it is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE