

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1186 of 2018

Pramod Kumar Sahu, S/o. Bisahu Ram Sahu, Aged About 22 Years, R/o. Village- Mandroud, Post Office & Police Station- Kurud, District- Dhamtari, Chhattisgarh.

---- **Petitioner**

Versus

State Of Chhattisgarh, Through the District Magistrate, Dhamtari, District- Dhamtari, Chhattisgarh.

---- **Respondent**

For Petitioner : Mr. Shivendu Pandya, Advocate
For State/Respondent : Mr. Ashish Shukla, Dy. A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

04.07.2018

Heard

1. The present petition is against the order dated 04.06.2018 whereby the appeal preferred by the petitioner was dismissed on the ground that the appeal was barred by 10 days.
2. The documents filed in this petition would show that on 13.04.2018 the petitioner was convicted under Section 279 of I.P.C. and was sentenced to pay a fine of Rs.1000/- and in absence thereof 10 days S.I. was ordered. Further under Section 304-A of I.P.C. the petitioner was sentenced 6 months R.I. and fine of Rs.5000/- and in absence of payment of fine 30 days S.I. Likewise under Section 146/196 of Motor Vehicle Act a fine amount of Rs.1000/- was directed to be paid and in absence of payment of fine 10 days S.I. was ordered and under Section 3/181 of Motor Vehicle Act, fine amount of Rs.500/- was imposed and in

absence of payment of fine 5 days S.I. was ordered. The said order of conviction was subject of appeal before the Additional Sessions Judge Kurud. The appeal was filed on 23.05.2018, thereby as has been held that the appeal was filed after 10 days the reason in condonation of delay was stated that after the conviction order was passed, the petitioner himself got married on 18.04.2018 and thereafter he was not keeping well and eventually with the medical certificate the appeal was filed on 23.05.2018. The Court below has observed that despite the fact he has applied for bail but the appeal was filed with delay. Consequently, the application to condone the delay of 10 days was dismissed and the appeal was also dismissed.

3. After going through the order and perusal of the documents, it appears that the appellate Court has considered the cause in too technical sense and failed to appreciate the fact from which the appeal was filed. The order sheet also reflects that the petitioner was present there, however, he was not taken into custody instead he was allowed to go set free. The appellate Court therefore failed to exercise its jurisdiction vested in it.
4. Considering the totality of the fact, in the opinion of this Court, the petitioner should have been given an opportunity for hearing on the merits of this case when he is suffering with conviction of jail sentence. Under the circumstances, the order dated 04.06.2018 is set aside. The application filed by the petitioner under Section 5 of the Limitation Act to condone the delay of 10 days in filing the appeal is allowed and the delay is condoned. The appellate Court is further directed to hear the case on merits according to its own convenience. It is further directed that the petitioner shall

surrender before the Court below on 16.07.2018 and thereafter the appellate Court shall adjudicate the appeal according to its own merits as per convenient of the Court.

5. With such observation, the petition stands disposed off.

Ashok

Sd/-
(Goutam Bhaduri)
Judge