

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 256 of 2008

Mohan Rao, S/o Radhakrishna Rao, aged about 30 years, Caste –
Telga, R/o Hot Kachora, Jagdalpur (CG) --- **Applicant**

Versus

State of Chhattisgarh, through P.S. Bodhghat, District Bastar (CG)
--- **Respondent**

For Applicant	:	Smt. Nirupama Bajpai, Advocate
For Respondent	:	Shri Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

06/05/2019

By judgment dated 25.08.2007 passed in Criminal Case No.211/2006 learned Judicial Magistrate First Class, Jagdalpur had convicted the accused/applicant under Section 325 IPC and sentenced him to undergo RI for one year with fine of Rs.200/- with default stipulation. Against the said order the applicant preferred an appeal along with an application under Section 5 of the Limitation Act but the learned lower Appellate Court by order impugned dated 12.03.2008 dismissed the appeal on the ground that the accused/applicant failed to explain the delay occurred in filing the appeal without any proper reason.

2. Counsel for the accused/applicant submits that as the lower Appellate Court has not considered merits and demerits of the case and has dismissed the appeal solely on the ground of limitation, the case needs to be remanded to the lower Appellate Court for being considered afresh on its own merits.

3. State counsel however supports the order impugned by making a submission that as the accused/applicant was not in a position to explain the inordinate delay occurred in filing the appeal, the lower Appellate Court was fully justified in not delving into the merit aspect of the case.

4. Be that as it may, one thing is clear from the judgment impugned that the lower Appellate Court did not touch the merit aspect of the matter and has simply dismissed the appeal of the applicant on account of being barred by limitation. Obviously, the approach of the lower Appellate Court is not based on the legal touch-stone, and simplicitor a technical issue has been made a basis for dismissing the appeal of the accused. The lower Appellate Court was duty-bound to take into account the merit aspect of the matter also apart from confining himself to the mere technicality.

5. In these circumstances this Court thinks it proper to remand the case to the lower Appellate Court with a direction to consider and decide the appeal of the applicant on its own merits. Let this be done as early as possible preferably within a period of 3 months from the date receipt of copy of this order. Parties are expected to render their fullest cooperation enabling the concerned court to observe promptitude in disposing of the appeal.

6. Needless to say that the bail granted to the accused/applicant by this Court will continue till disposal of the appeal by the Court below within the time frame stipulated above.

7. Resultantly the order impugned is hereby set aside and the revision stands allowed.

Sd/-
(Vimla Singh Kapoor)

Judge