

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 412 of 2008**

- Shiv Kumar S/o Mohit Ram, aged about 35 years, R/o village - Jamgala, Police Station Lakhanpur, District - Surguja (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through : Police Station Lakhanpur, District Ambikapur (C.G.)

---- Respondent

For Applicant : Shri Jitendra Shrivastava, Adv.
For Respondent/State : Shri Anurag Verma, P.L.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****04/09/2019**

01. This revision is directed against the order dated 24.05.2008 passed by Sessions Judge, Surguja at Ambikapur, in Criminal Appeal No.14/2008, whereby the learned Sessions Judge dismissed the criminal appeal preferred by the applicant on the ground of limitation.

02. Facts of the case, in short, are that vide judgment dated 05.01.2000 passed in Criminal Case No.10/98 by Judicial Magistrate First Class, Ambikapur, District Surguja, convicted the applicant for the offence punishable under Section 325

read with section 34 IPC and sentenced to undergo R.I. for 3 months with fine of Rs.300/-, plus default stipulation. Being aggrieved by the said judgment, the applicant preferred an appeal before the learned Sessions Court, Surguja at Ambikapur. On 24.05.2008, the case was fixed for hearing on application for condonation of delay in filing the appeal. The appeal is stated to have filed after eight years. The learned Sessions Judge dismissed the appeal of the applicant saying that the applicant failed to explain any satisfactory cause in filing the appeal after eight years.

03. Learned counsel for the applicant submits that the learned trial Court has failed to consider the fact that the applicant is poor and rustic villager having no knowledge of law as to when the appeal is being filed. He further submits that the appeal has to be heard on merit and it could not be dismissed on limitation ground. In support of his argument, he placed reliance on the decision of Supreme Court in the matter of **Bani Singh V. State of U.P.**¹

04. On the other hand, learned State counsel supports the impugned order.

05. I have heard learned counsel for the parties and perused the record.

06. In this case, the applicant stated in his application filed under Section 5 of the Limitation Act before the appellate Court that after imposition of conviction by the trial

¹ (1996) 3 CRI 54 SC

Magistrate, he deposited the fine amount and supplied the copy of judgment to his counsel for filing appeal and he was under impression that the appeal has been filed and his case was disposed of, but later he came to know that the appeal has not been filed. The applicant is a rustic villager and he has also filed affidavit with application filed under Section 5 of the Limitation Act., but the learned appellate Court rejected his application on limitation ground, which is technical one.

07. In the matter of **Bani (supra)**, the Hon'ble Supreme Court has held that once the Appellate Court has admitted an appeal for hearing on merit, it cannot be dismissed the appeal for non-appearance of the applicant. The appeal must be disposed of on merits after examining the record of the case and after giving an opportunity of hearing to the applicant or his counsel, if he is present and to the public prosecution.

08. So far as limitation ground is concerned, the Hon'ble Supreme Court, in the matter of **N. Balakrishnan V. M Krishnamurthy**², has held as under:-

“That rules of limitation are not mean to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered.”

09. Furthermore, appeal as a matter of right in criminal

² (1998) 7 SCC 123

cases should be a guaranteed element of procedural due process simply because two heads, or three, or more, are better than one. Or as the American Bar Association Section on Judicial Administration stated : “The principal reason for having appellate courts is to provide an opportunity for several minds to check the trial decisions made by one mind.” In addition, the trial judge's perception of a criminal trial is a very different from the perspective of an appellate Court.

10. In view of the judicial pronouncement by the Supreme Court in **Bani** (Supra) and **N. Balakrishnan** (supra), it is evident that right to appeal cannot be rejected or denied, rather the appeal has to be heard on merit. Thus, this Court is of the considered opinion that the appellate Court erred in dismissing the criminal appeal preferred by the applicant on the ground of limitation.

11. Resultantly, the impugned order dated 24.05.2008 passed by the Sessions Judge, Surguja at Ambikapur, in Criminal Appeal No.14/2008 is set aside. The application of applicant filed under Section 5 of the Limitation Act is allowed and the matter is remanded to the Sessions Judge for fresh adjudication of the appeal on merit. The appellate Court is directed to decide the appeal on merit after giving an opportunity of hearing to the applicant. The appellate Court shall decide the appeal as early as possible preferably within a period of six months from the date of receipt of copy of this order. The applicant is directed to appear before the

Appellate Court concerned on 21.10.2019.

12. The revision is thus allowed in terms of above.

**Sd/-
(Rajani Dubey)
JUDGE**