

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 360 of 2009

Order reserved on 12.11.2018

Order delivered on 22.01.2019

Anish Sah S/o. Premji Sah, Aged about 34 years, R/o. C-304,
Jailaxmi Complex, Bilaspur Raod, Fafadih, Raipur, Tahsil and
District Raipur (C.G.)

---- Applicant

Versus

1. Girish Patil, S/o. Kalakant Patil, R/o. L-3 Farishta Complex,
Rajbhandha Maidan, GE Raod, Raipur Distric Raipur (C.G.)
2. State of Chhattisgarh, Through District Magistrate District
Raipur (C.G.)

---- Respondent

For Applicant : Ms. Somya Sharma, Advocate.
For Respondent : Mr. Gary Mukhopadhyaya, Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Order

This revision is against the order dated 23.06.2009 passed by the Sessions Judge, Raipur in Criminal Appeal No. 6436 of 2009 filed with an attack to the judgment dated 25.3.2009 passed by the JMFC, Raipur convicting the accused/application under Section 138 of the Negotiable Instrument Act and sentencing him to undergo RI for six months and fine of Rs. 1000/- plus default stipulations.

2. The facts of the case are that a complaint was filed by the respondent No.1 to the effect that the two cheques issued by the accused/applicant towards the payment to be made in relation to some business transaction were, on presentation for being encashed, were returned back with an endorsement of insufficiency of fund.
3. On the basis of material available on record, the trial Court convicted and sentenced the accused/applicant as mentioned above. The accused/applicant challenged the order of the trial Court in appeal but without assessing the merits and demerits of the case, the lower appellate Court has dismissed the appeal of the accused/applicant merely on the ground of limitation.
4. Counsel for the applicant submits that though the delay has been properly explained by the applicant, yet the lower appellate Court instead of condoning the same and then proceeding to deal with and decide the matter on merit, has abruptly turned down the appeal merely on the ground of it being hit under the Limitation Act. He further submits that the order impugned being contrary to the provisions of law is required to be quashed and the case needs to be remanded back for being decided on its own merits.
5. Counsel for the respondent No.1, however, supports the order impugned and submits that since the applicant did not prefer the appeal well within the period of limitation prescribed under the Indian Limitation Act nor did he assign any sufficient reason

which prevented him from putting in appeal within the time frame so provided, the lower Appellate Court has not committed any illegality in passing the order impugned dismissing the appeal on the ground of limitation. State counsel too assisted the Court.

6. Heard counsel for the parties and perused the documents on record.
7. It is manifest that the accused/applicant had applied for the certified copy of the order impugned on 2.4.2009 and thereafter he was called upon to collect the same on various dates, the last being 3.6.2009. However, he has tried to explain the delay saying that on account of some problem in his spinal cord, he could not appear for collecting the certified copy. Though, no medical certificate in support of his stand has been produced by the accused/applicant yet the lower Appellate Court should have condoned the delay in filing the appeal and then decided the same on its own merit. This abrupt act of the lower Appellate Court in deciding the appeal merely on the ground of limitation is detrimental to the interest of accused/applicant.
8. In this view of the matter, the order impugned being bad in law is here by set aside. The case is remanded back to the lower Appellate Court for being decided on its own merit within a period of three months from the first date of listing of the case before the said Court.

9. The parties are expected to extend their fullest co-operation for the expeditious disposal of the appeal. Revision thus allowed.

Sd/-
(Vimla Singh Kapoor)
JUDGE

Jyotishi/santosh