

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1329 of 2018

Gajanand Rajak, S/o. Chandu Lal Rajak, Aged About 49 Years, R/o. Nayapara, Bajrang Chowk, Dhamtari, Gajanand Show Maker, Behind Jain Automobile, Bombay Garage Area, Dhamtari, Post Office & Police Station Dhamtari, Tahsil & District Dhamtari, Chhattisgarh

---- Petitioner

Versus

Kanhaiya Lal Kasturiya, S/o. Late Lalchand Kasturiya, Aged About 53 Years, R/o. Aamapara, Near Gauri Gauri, Dhamtari, Post Office & Police Station Dhamtari, Tahsil & District Dhamtari, Chhattisgarh

---- Respondent

For Petitioner : Mr. Shivendu Pandya, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

24.01.2019

Heard

1. The present petition is against the dismissal of an unregistered criminal appeal vide order dated 29.06.2018 by the Additional Sessions Judge, Dhamtari, which arose out of an order of conviction dated 05.05.2018 passed in Criminal Revision No.89/2014 under Section 138 of Negotiable Instrument Act.
2. The learned Court below has convicted the petitioner/accused for six months of jail sentence and fine of Rs.2,50,000/-. Against the said conviction order, appeal was preferred on 26.06.2018 along-with an application under Section 5 of the Limitation Act to condone the delay caused. The appellate Court by an order dated 29.06.2018 dismissed the application under Section 5 of the Limitation Act and dismissed the entire appeal. Therefore, the instant petition.

3. Despite notice, no representation is made on behalf of the Respondent.
4. Perused the order dated 29.06.2018 as also the copy of the application filed under Section 5 of the Limitation Act before the appellate Court to condone the delay. In the application under Section 5 of the Limitation Act, it is stated that after receipt of the order, the petitioner has to go out to the city for some work and could not contact his counsel immediately and he did not have the knowledge that within 30 days the appeal had to be filed. Therefore, immediately after knowing the fact, the appeal is preferred. After perusal of the order dated 29.06.2018, it appears that the appellate Court at the threshold has dismissed the appeal by holding that the appeal is barred by time.
5. In any case, considering the delay, which is about 22 days, it do not reflect that enormous delay has been caused. Therefore, in the opinion of this Court, one opportunity should have been granted to the petitioner to contest the appeal on merit. Accordingly, the order dated 29.06.2018 is set aside. The application under Section 5 of the Limitation Act is allowed. The appeal preferred by the petitioner is restored. Since the appeal has already been condoned, the appellate Court shall be obliged to decide the same on merit. Registry is directed to send back the record of the Court below forthwith.

Sd/-
(Goutam Bhaduri)
Judge