

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1024 of 2018**

- Vijay Gayakwad S/o Tatkuram Aged About 50 Years Through-Agent- Sahara India Office Akashdeep Complex Aakasganga, Supela, Bhilai, P.S. Supela, Tahsil And District- Durg, Chhattisgarh. Resident Of Quarter No. 4-D, Street No. 11, Sector-11, Khursipar, P.S. Khursipar, Bhilai, Tahsil And District- Durg, Chhattisgarh.

---- Applicant**Versus**

- Uttam Kumar Tandon S/o Rewaram Aged About 44 Years R/o- Bazar Chowk, Utai, P.S. Utai, Tahsil And District- Durg, Chhattisgarh.
- State Of Chhattisgarh Through- Collector, District- Durg, Chhattisgarh.

---- Respondents

For Applicant	: Shri B.L.Bhardwaj, Advocate
For Respondent No.1	: None present though served.

Hon'ble Smt. Justice Rajani Dubey
Order On Board

01/10/2019

Heard on admission.

2. Present revision is directed against the order dated 09.08.2018 passed by the Second Additional Sessions Judge, Durg in Cr.A. No.194/2018 whereby the application filed by the applicant under Section 5 of the Limitation Act has been dismissed.

3. Facts of the case in brief, are that vide judgment dated 8.06.18, in Cr. Case No. 6177/2014, the Judicial Magistrate First Class, Durg has convicted the accused/applicant for the offence punishable under

Section 138 of the Negotiable Instruments Act and sentenced him to pay compensation of Rs. 75,000/- within a period of one month with default stipulation. Being aggrieved by the said order the applicant preferred appeal before the learned Sessions Court, Durg on 09.08.2018. Learned Sessions Judge dismissed the appeal of the applicant stating that the applicant failed to explain any satisfactory cause in filing the appeal after 23 days.

4. Counsel for the applicant submits that the trial court has failed to consider the fact that the appeal is only barred by 23 days and the application under Section 5 of the Limitation Act is supported by the medical certificate therefore the impugned order is illegal, erroneous and contrary to law. Reliance has been placed in the matter of **N.Balakrishnan Vs. M.Krishnamurthy (1998 7 SCC 123); Shakuntala Devi Jain Vs. Kuntal Kumari (AIR 1969 SC 575) and State of West Bengal Vs. The Administrator, Howrah Municipality (AIR 1972 SC 749).**

5. On the other hand, State counsel supports the impugned order.

6. Heard counsel for the parties and perused the material available on record.

7. In the matter of **N. Balakrishnan Vs. M.Krishnamurthy**, Hon'ble Apex Court has held that "Rules of Limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

8. This Court also in Cr. Rev. No. 453 of 2008 observed in para 8 which is as follows:

“In view of the judicial pronouncement by the Supreme Court in N. Balakrishnan (supra), it is evident that right to appeal cannot be rejected or denied rather the appeal has to be heard on merit irrespective of the fact that it is admitted or not. 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.”

9. Resultantly, the impugned order dated 09.08.2018 passed by the Additional Sessions Judge, Durg in Cr.A. No. 194/2018 is set aside. Application of the applicant filed under Section 5 of the Limitation Act is allowed and the matter is remanded to the trial court for fresh adjudication of the appeal on merit. Appellate court is directed to decide the appeal on merits 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 06.12.2019. Accordingly, the revision is allowed in the above terms.

Sd/-

(Rajani Dubey)
Judge