

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 1188 of 2018**Order reserved on : 08.08.2019Order Delivered on : 24.10.2019

- Kishore Kumar Sahu S/o late Punaram Sahu, Caste Teli, Aged about 56 years, resident of village Kongni, Police Station – Arjunda, District Balod (C.G.)

----Applicant**Versus**

1. Hitesh Kumar Sahu son of Prabhuram Sahu, aged about 32 years. (C.G.)
2. Prabhuram Sahu son of Palturam Sahu, aged about 58 years.

Both are by caste Teli, resident of village Kongni, Police Station – Arjunda, District Balod (C.G.)

3. State of Chhattisgarh, through the Station House Officer, Police Station, Arjunda, District Balod (C.G.)

---- Respondents

For Applicant	:	Shri B.P. Singh, Advocate
For Respondent	:	Shri Amiyakant Tiwari, Advocate for respondent Nos. 1 and 2.
For Respondent/State :		Ms. Reena Singh, P.L.

Hon'ble Smt. Justice Rajani Dubey**C A V Order****24/10/2019**

01. This revision is directed against the order dated 19.09.2018 passed by 1st Additional Sessions Judge, Balod, in Criminal Appeal No.1732/18, whereby the learned appellate Court dismissed the criminal appeal preferred by the

applicant/complainant on the ground of limitation.

02. Facts of the case, in short, are that accused/respondents 1 and 2 fraudulently obtained Rs.4,50,000/- and Rs.5,40,000/- (total Rs.9,90,000/-) from the applicant/complainant on the pretext that he would provide job to his son Rakashhashi Sahu in Collectorate Office, Durg and his daughter Ku. Vandana Sahu in District Hospital, Rajnandgaon, and also issue appointment letter to that effect, which was later found to be forged. Further case is that on 29.05.2016, an agreement was also executed admitting the aforesaid fact by the accused/respondent No.1 and assurance was given to repay the amount in three equal installments within three months from the date of agreement, failure to which he shall be liable for legal action. Based on this, the applicant/complainant lodged FIR against the accused/respondents and after completion of investigation, charge sheet has been filed under Section 420, 467, 468 and 471/34 IPC against accused/respondent Nos. 1 and 2. The learned trial Court, after hearing the parties, vide judgment dated 09.05.2018, convicted accused/respondents No. 1 and 2 for the offence punishable under Sections 420/34, 467/34, 468/34 and 471/34 IPC & sentenced them to undergo R.I. for three years with fine of Rs.1,000/-, R.I. for three years with fine of Rs.1,000/-, R.I. for three years with fine of Rs.1,000/-, R.I. for two years with fine of Rs.1,000/-, plus default stipulation respectively.

03. The applicant/complainant, against the judgment and

order dated 09.05.2018, filed appeal for enhancement of conviction and appropriate compensation by the accused along with the application under Section 5 of the Limitation Act, but the learned appellate Court rejected the application filed under Section 5 of the Limitation Act as also the appeal filed by the applicant/complainant on limitation ground. Hence, this criminal revision by the applicant/complainant.

04. Learned counsel for the applicant submits that the impugned order dated 09.05.2018 is perverse, illegal, erroneous and contrary to the material available on record, therefore, the same is liable to be set aside. He further submits that he had not engaged any private counsel in the matter and, therefore, was not aware about the passing of the judgment by the trial Court. He further added that on 28.05.2018, he came to know about the judgment of the trial Court, thereafter, on very day he moved an application for certified copy of the judgment, which he received on 29.05.2018, but in the meanwhile, he suffered from physical ailment and was not in a position to move around and the appeal could be filed on 05.07.2018 i.e. after two months from the date of judgment, which is unintentional and bonafide. In support of his contention, he placed reliance on the decision of this Court in Acquittal Appeal No.121/2012 (**Smt. Ahilya Bai Satnami Vs. State of Chhattisgarh**).

05. On the other hand, learned counsel for respondents supports the impugned order.

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

07. In the case in hand, the applicant has taken a ground of his physical ailment for not filing the appeal in time before the Court below and has filed application under Section 5 of the Limitation Act, which was rejected by the Court below on the ground that the applicant has not filed any documentary evidence with regard to his physical ailment. The applicant applied for certified copy of the judgment on 28.05.2018 and he received the same on 29.05.2018 but the appeal could be filed on 05.07.2018.

08. This Court in Acquittal Appeal No.121/2012 **(Smt. Ahilya Bai Satnami Vs. State of C.G. and Anr.)** has held in para 65, which reads thus:-

“Question :-

“Whether the period of limitation prescribed for filing an appeal under Section 377 or 378 of the Code of Criminal Procedure would also apply to an appeal preferred by the victim under proviso to Section 372 of the Code of Criminal Procedure?”

Answer :-

(A) The period of limitation prescribed for filing an appeal against order of acquittal as provided under Article 114 and Article 115 of the Schedule to the Limitation Act, 1963, is not applicable in the matter of appeal that may be preferred by a victim under proviso to Section 372 of the Cr.P.C. against an order of

acquittal. Nevertheless, appeal is required to be filed by the victim within a reasonable period to be reckoned from the date the victim acquires knowledge of the order of acquittal. What would be the reasonable period, should depend upon the facts and circumstances of every case.

(B) The period of limitation prescribed in Article 115 (b) of the Limitation Act, 1963, would be applicable in the matter of appeal that may be preferred by a victim under proviso to Section 372 of the Cr.P.C. against an order convicting for lesser offence or imposing inadequate compensation.

09. In the light of aforesaid order of this Court and from the facts and circumstances of the present case, it is clear that the applicant filed the appeal before the Court below only after two months from the date when he came to know about the order of the Court below and this period of two months does not appear to be very long.

10. In the matter of **Bani Singh V. State of U.P.**¹, 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.

11. So far as limitation ground is concerned, the Hon'ble

¹ (1996) 3 CRI 54 SC

Supreme Court, in the matter of **N. Balakrishnan V. M Krishnamurthy**², has held as under:-

“That rules of limitation are not meant 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.”

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

13. 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/complainant on the ground of limitation.

² (1998) 7 SCC 123

14. Resultantly, the impugned order dated 19.09.2018 passed by the First Additional Sessions Judge, Balod, in Criminal Appeal No.1732/2018 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 09.12.2019.

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

Sd/-

(Rajani Dubey)
JUDGE

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