

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 1221 of 2018**

Bahur Ram Markandey, S/o Shri Dashru Ram Markandey,
 aged about 52 years, R/o – Village – Rampur, Post
 Office & Police Station – Bhakhara, Sub Tahsil –
 Bhakhara, District – Dhamtari (C.G.) (In Jail)

-----Petitioner

Versus

Mahesh Steel Fabrication, through proprietor
 Narottam Sinha, S/o – Mohpat Sinha, R/o – Main
 Road, Bhakhara, Post Office & Police Station –
 Bhakhara, Sub Tahsil – Bhakhara, District Dhamtari
 (C.G.)

----- Respondent

For Petitioner : Mr. Shivendu Pandya, Advocate.
 For Respondent : Mr. Sunil Sahu, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/01/2020

(1) The petitioner herein was convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (henceforth "Act, 1881") and he was sentenced to undergo simple imprisonment for six months with fine of Rs. 1,30,000/-, against which he preferred appeal under Section 374 (3) of the Cr.P.C. before the Court of Sessions with a delay of 30 days along with application for condonation of delay in preferring the appeal.

(2) The Appellate Court did not found favour with the application for condonation of delay in filing the appeal and finding no sufficient cause for delay in filing the appeal, dismissed the application for condonation of delay and consequently appeal was also dismissed, against which instant petition under Section 482 of the Cr.P.C. was preferred.

(3) Learned counsel for the appellant would submit that appellate Court is absolutely unjustified in holding that the appellant has failed to show sufficient cause for delay of 30 days in filing the appeal as he was not aware about passing of the judgment of conviction recorded by the trial Court, therefore, he could not prefer appeal right in time.

(4) Per contra, learned counsel appearing for the respondent, while supporting the impugned order, would submit that no sufficient cause has been shown by the petitioner for condoning the delay of 30 days in filing the appeal.

(5) I have heard learned counsel appearing for the parties and perused the material available on record with utmost circumspection.

(6) In an application under Section 5 of the Limitation Act, 1963 filed before the Court of Sessions, the

petitioner has clearly pleaded that his counsel did not inform him about passing of the judgment of conviction by the trial Court and when he came to know about the same on 15.03.2018, he immediately contacted his counsel and obtained certified copy of the judgment and then preferred appeal before the Court of Sessions and, therefore, the delay in filing the appeal before the appellate Court deserves to be condoned. No reply of the said application was filed by the respondents, as such, stand of the petitioner remained uncontroverted.

(7) Even otherwise, the petitioner has been convicted for the offence under Section 138 of the Act, 1881 and he would not get any advantage by delaying the filing the appeal, as such, this Court is of the opinion that the learned Sessions Judge has committed grave legal error in rejecting the application for condonation of delay in filing the appeal and consequently dismissing the appeal debarring him from questioning the judgment of conviction on merits. Learned Sessions Judge ought to have considered the application for condonation of delay in its proper perspective, which the learned Sessions judge has failed to consider. Accordingly, the matter is remitted to the appellate Court to decide the appeal on merits in accordance with law expeditiously preferably

within a period of three months from to date of receipt of certified copy of this order. Bail bonds already furnished shall remain in operation till the appeal is decided finally.

(8) The Cr.M.P. is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

