

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 829 of 2021**

Alomani Minz W/o. Anil Minz, aged about 41 years, Resident of Dandpani (Kharpani), Police Station Kansabel, District- Jashpur, Chhattisgarh.

---- Petitioner**Versus**

- State of Chhattisgarh Through, Officer in Charge Police Station- Kansabel, District- Jashpur, Chhattisgarh.

---- Respondent

For Petitioner : Mr. Love Kumar Ramteke, Advocate.

For State : Mr. D. P. Singh, Dy. A. G. and Mr. Gurudev I. Sharan, G. A.

Hon'ble Shri Justice Narendra Kumar Vyas**Order On Board****19.08.2021**

1. The petitioner has filed the present CRMP challenging the order dated 22.07.2021 passed by the learned Sessions Judge, District-Jashpur, by which the appeal filed by the applicant has been dismissed as barred by limitation on account of delay and laches in filing the appeal. Order of the Sessions Judge would reflect that learned Session Judge has recorded a finding that applicant (herein petitioner) has filed the appeal on 18.3.2021 which is more than one year from the date of passing of the order, therefore, the ground taken in the application for codonation of delay in filling the application on the pretext that due to Covid-19 pandemic the applicant could not file the appeal within limitation is not available to the petitioner. The learned trial Court has further recorded a finding that the impugned order was passed on 28.02.2020 which is much prior to 23.03.2020 and prior to that there was no prohibition on movement of persons and they can very well file the appeal within limitation as

such the reason assigned by the petitioner is not bonafide and sufficient therefore, the application for condonation of delay was rejected.

2. Learned counsel for the petitioner would submit that the impugned order was passed on 28.02.2020, by the learned Judicial Magistrate First Class, Bageecha, District Jashpur in Criminal Case No. 324/178/2018 (State of Chhattisgarh Vs. Alomani Minz) by which the learned Judicial Magistrate First Class imposed punishment of six months of simple imprisonment alongwith Rs. 10,000/- fine amount, in default of payment of fine amount, the applicant has to further undergo simple imprisonment for two months.
3. It is pertinent to mention here that as per Article 115 of Limitation Act, 1963, limitation for filing of appeal is 30 days from the date of passing of the order, in the instant case, the order was passed on 28.02.2020 and last date of filing of appeal was 30.3.2020 in the meanwhile, the lock down has been declared by the Central Government on 23.03.2020, the Hon'ble Supreme Court by considering the difficulty being faced by the litigants, in ***suo-motu Writ Petition (Civil) No. 03/20 in reference cognizance for explanation of limitation***, has passed the following direction:

“To obviate such difficulties and to ensure that lawyer/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.”

4. From perusal of the said order it is Crystal clear that the Hon'ble

Supreme Court has clearly held that from 15th March till further orders the time spent will be excluded for limitation purpose thereafter the Hon'ble Supreme Court has again passed the order reference *sue motu* on **08.03.2021** which reads as under:

- “1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.3.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.
2. In case where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.”
5. The petitioner has filed this appeal on 18.3.2021 i.e. within the 3rd day of start of limitation, it means the appeal has been filed within 18 days therefore, the ground assigned by the learned Sessions Judge is contrary to the law laid down by the Hon'ble Supreme Court, as such the appeal was within limitation prescribed under the Act, as such in view of the Judgment of Hon'ble Supreme Court, the petitioner is not required to file any application regarding condonation of delay in filing the appeal. The learned Sessions Judge without examining the order passed by Hon'ble Supreme Court, has passed the impugned order which is perverse and contrary to law laid down by the Hon'ble Supreme Court, therefore, it is liable to be quashed and is hereby quashed.
6. The learned Sessions Judge, Jashpur is directed to register the

appeal and decide the appeal on merit without being influenced by any of the observations made by this Court purely on the basis of the evidence, materials available on record.

7. With these observations and directions, the instant CRMP is allowed at motion hearing stage itself.
8. The petitioner is directed to appear before the learned Sessions Judge, Jashpur alongwith a copy of this order on **13.09.2021** and thereafter the appeal will be decided on merit by the learned Sessions Judge, in accordance with law.

**Sd/-
(Narendra Kumar Vyas)
Judge**