2024:CGHC:31069

**NAFR**

# HIGH COURT OF CHHATTISGARH AT BILASPUR

**CRMP No. 728 of 2024**

Faneshwar Yadav S/o Shri Balram Yadav Aged About 54 Years Resident Of Q. No. 104 Siddhshikhar Vistar Shanti Nagar, District- Bialspur Chhattisgarh.

**... Petitioner**

**versus**

Rajesh Jotwani S/o Gyanchand Jotwani Aged About 53 Years Resident Of Near Hero Honda Showroom, Nutan Chowk, P.S. Sarkanda, District Bialspur Chhattisgarh.

**... Respondent**

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| For Petitioner | : | Mr. Ritesh Verma, Advocate |
| For Respondent | : | Mr. Anand Kesharwani, Advocate |

**Hon'ble Shri Arvind Kumar Verma, Judge**

**Order on Board**

**16/08/2024**

1. The petition is being heard finally with the consent of the parties.
2. Heard on admission as well as I.A. No. 01/2024, an application for condonation of delay in filing the appeal.
3. The present petitioner has filed the instant petition under Section 378(4) of Cr.P.C., 1973 for grant of Special Leave to Appeal against the judgment of acquittal dated 29.06.2022 passed by Judicial Magistrate First Class, Bilaspur in Criminal Case No. 607/2019.
4. Learned Counsel for the petitioner submits that the complaint case was dismissed by the JMFC, Bilaspur on 29.06.2022 which

was not in his knowledge. The counsel of the applicant did not convey him about the dismissal of the case. He is posted at Jagdalpur and enquire about the case from time to time but his counsel has not informed him of the dismissal of the case for the want of prosecution. He got the information of dismissal of the case from one common friend of him and the accused. Thereafter, he enquired about the case and took certified copies of the impugned order and engaged a new counsel which took time and the petition got delayed.

**5.** I have heard learned Counsel for the parties and perused the record with utmost circumspection.

**6.** On perusal of record, it transpires that the respondent took a loan of Rs. 5,00,000/- from the petitioner and gave a cheque of Rs. 5,00,000/- on 28.01.2019 bearing No. 659021 of State Bank of India, Sarkanda Branch. The petitioner submitted the cheque for encashment on 28.01.2019 but the same was returned by the Bank stating “funds insufficient”. The petitioner then issued notice to the respondent on 21.02.2019. Thereafter, he filed a complaint case under Section 138 of NI Act, 1881 which was registered as Complaint Case No. 607/2019 on 28.03.2019. but the same was dismissed by the Trial Court for want of prosecution on 29.06.2022.

**7.** Section 5 of the Limitation Act 1963 provides that any appeal or any application, other than an application under any of the provisions of Order XXI of the **Code of Civil Procedure, 1908** may be admitted after prescribed period if the appellant or the applicant satisfies the court that he has sufficient cause for not preferring the appeal or making the application within such period.

**8.** The expression ‘sufficient cause’ in section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bonafides is imputable to the party seeking condonation of the delay, whereas in the instant case the

petitioner has filed present CRMP with a delay of 543 days and it appears that there is gross negligence and deliberate inaction on the part of the petitioner.

**9.** This Court is of the opinion that if there is a bonafide mistake on the part of the petitioner for condonation of delay, but the Counsel for the petitioner has not provided the sufficient cause and cogent reason for filing the appeal with delay of 543 days, specially, when the trial Court has dismissed the case for want of prosecution. As such, the petition barred by delay and laches and is not liable to be entertained.

**10.** In view of the same, I.A. No. 01/2024 stands **rejected** as well as the present Cr.M.P. is **dismissed** on the ground of delay and laches.

SD/-

**(**Arvind Kumar Verma**)**
**Judge**

Madhurima