



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 262 OF 2025

PETITIONERS

: Dharmendra Wanjari,
Partner of M/s Sankalp Developers,
R/o Sambodhi Colony, Maitraya
Buddha Maidan, Line No. 4717 to 31,
A-2122, Vithoba Dant Manjan Company,
Vaishali Nagar, Nagpur.

VERSUS

RESPONDENTS

: 1] Anita Rambhau Kapse,
Aged 37 years, Occu. Housewife,
R/o Plot No.3, Sanmarg Nagar,
Hudkeshwar Road, Nagpur.

2] State of Maharashtra,
through its Superintendent of Central Prison,
Nagpur.

Mr. A. D. Bhate, Advocate for the petitioner.
Respondent no.1 and her counsel absent.
Ms. Sonia Thakur, A.P.P. for respondent no.2.

CORAM : M. W. CHANDWANI, J.

DATE : MAY 05, 2025

ORAL JUDGMENT

1. **RULE.** Rule made returnable forthwith. By consent of the learned counsel for the parties, the matter is taken up for final disposal.

2. By this petition, the petitioner challenges the order passed by the State Consumer Disputes Redressal Commission, Nagpur, (hereinafter referred to as “the State Commission” for short) dated 05.11.2024, thereby rejecting the application for condonation of delay in preferring appeal under Section 27-A of the Consumer Protection Act, 1988 (hereinafter referred to as “the Act of 1988” for short) against the judgment and order of conviction passed by the Additional District Consumer Disputes Redressal Commission, Nagpur (hereinafter referred to as “the District Commission” for short) for non-compliance of the order dated 20.01.2023.

3. In a complaint filed by respondent no.1 which came to registered as case No. CC/12/1997 before the District Commission, the petitioner vide order dated 20.01.2014 was directed to execute the sale deed in respect of a plot which he agreed to sell to respondent no.1 ; or in the alternative, pay Rs.1,62,000/- with interest @ 12% per annum from 14.07.2010. Since, the petitioner could not comply the order, the execution proceedings bearing No. EA/15/10 came to be filed under Section 27 of the Act of 1988. During pendency of the execution proceedings, the petitioner was taken in custody in July-2022 and ultimately, the District Commission

convicted the petitioner by the order dated 20.01.2023 for non-compliance of the order dated 20.01.2014 of the District Commission. He was sentenced to suffer Simple Imprisonment for three years and to pay a fine of Rs.25,000/-. Feeling aggrieved by the said order, an appeal came to be filed before the State Commission along with an application for condonation of delay which came to be registered as Misc. Application No. MA/24/82. In the said appeal, an application for suspension of sentence was also filed by the petitioner. No order was passed by the State Commission on the application for suspension of sentence for considerable time. Therefore, the petitioner moved before the Division Bench of this Court by preferring Criminal Writ Petition No. 884/2024 for directions. This Court vide order dated 24.10.2024 directed the State Commission to decide the petitioner's application for suspension of sentence within seven working days. The State Commission, on 05.11.2024, instead of deciding the application for suspension of sentence, decided the application for condonation of delay which was already closed for orders. By the said order the State Commission dismissed the application for condonation of delay caused in preferring appeal. Feeling aggrieved by the order of dismissal of delay application, the present writ petition is filed for quashing the impugned order dated 05.11.2024.

4. Though respondent no.1 was duly served, nobody appears on her behalf. Respondent no.2 State is represented by learned Additional Public Prosecutor.

5. Concededly, filing an appeal is a statutory right of a convict under Section 374 of the Code of Criminal Procedure. Right to appeal from a judgment of conviction affecting the liberty of a person keeping in view of expansive definition of Article 21 of the Constitution of India is also a Fundamental Right (see. *Dilip S. Dahanukar .vs. Kotak Mahindra Co. Ltd.*¹) . The Court should not dismiss the appeal as time-barred without examining the reasons for the delay. More so because the right to appeal which concerns with the liberty of an individual, is a Fundamental Right under Article 21 of the Constitution (see. *Rajendra .v. State of Rajasthan*²). The application for condonation of delay in filing appeal should not be dismissed on mere technicalities without a substantive assessment of the appellant's reasons.

6. In the present case, the petitioner was taken in custody in July-2022 when the execution proceedings were pending before the

1 (2007) 6 SCC 528

2 (1982) 3 SCC 382

District Commission and thereafter the conviction was recorded on 20.01.2023. At the time of filing of appeal along with an application for condonation of delay, the appellant was in jail rather, till the date the appellant is in jail from July-2022.

7. Filing an appeal is not a simple process. It requires scrutiny of the judgment, instructions from the accused and also require payment of fine. For completing the formalities mentioned above, the involvement of the convict/appellant is very much essential. Though he might have been served with a copy of the impugned judgment on the date of decision, the appellant was taken to jail immediately. In the application for condonation of delay, apart from the ground of petitioner languishing in jail, the ground of financial constraint was also taken. It is also a matter of record that post conviction, the appellant was not produced either before the District Commission or the State Commission, to enable him to give proper instruction to the counsel for filing appeal and to arrange to deposit the fine amount, which was required to be deposited before filing of appeal.

8. As stated above, filing of an appeal by the petitioner

concerns with his liberty which is a Fundamental Right under Article 21 of the Constitution. Therefore, the delay is to be liberally construed. It appears that one of the reason mentioned in the application for condonation of delay is non-receipt of certified copy of the judgment, despite it was served on the petitioner on the date of conviction. The application for condonation of delay has been rejected on this ground without considering the broader probability when the petitioner is a convict and languishing in Central Prison at Nagpur, which itself is evident of his non-availability to instruct his counsel and he remained at the mercy of the jail authority. This reason was sufficient and reasonable for the State Commission to condone the delay, rather than dismissing the application on technical ground. The State Commission ought to have considered the question of liberty which is a Fundamental Right of a person and ought to have condoned the delay considering the right to appeal ensuring personal liberty as the Fundamental Right. Therefore, the order of the State Commission does not stand to the reasons.

9. Now the question here is that in spite of having an alternate remedy under Section 27-A of the Act of 1988 of filing an appeal before the National Commission, New Delhi whether the writ

petition can be entertained ?

10. In *Whirlpool Corporation .vs. Registrar of Trade Marks, Mumbai and others*³, relied upon by the learned counsel for the petitioner, the Hon'ble Supreme Court has made certain observations with regard to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the availability of alternate statutory remedies. It was observed that where an authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation, the High Court has discretion to entertain or not to entertain a writ petition. But in case of an effective and efficacious alternate remedy, the High Court has self imposed restrictions and would not normally exercise its jurisdiction. In paragraph 15 of the judgment, the Hon'ble Supreme Court has observed as under :

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three

contingencies, namely where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law in this point put to cut down this circle of forensic Whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

11. A reference can also be made to the decision in ***Bikramjit Singh .vs. State of Punjab***⁴, wherein the Hon’ble Supreme Court has expressed that in the matters concerned with personal liberty, the Court should not be too technical and must lean in favour of personal liberty.

12. In ***M/s Radha Krishan Industries .vs. State of Himachal Pradesh and others***⁵, the Hon’ble Supreme Court in paragraph 24, has held as under :

“24. The High Court has dealt with the maintainability of the petition under Article 226 of the Constitution. Relying on the decision of this Court in Assistant Commissioner (CT) LTU, Kakinada and others v Glaxo Smith Kline Consumer Health Care Limited²⁰, the High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the aggrieved person has an effective alternate

4 (2020) 10 SCC 616

5 (2021) 6 SCC 771 (Civil Appeal No. 1155 of 2021)

remedy available in law. However, certain exceptions to this “rule of alternate remedy” include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

13. Thus, the power under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. The power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorary for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution, but also for ‘any other purpose’. The High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. It has a self imposed restriction if an effective and efficacious remedy is available. The availability of alternate remedy does not operate as a bar at least when question of personal liberty is involved, which is directly concerned with the Fundamental Right.

14. In the present case, the petitioner is in jail since July-

2022 i.e. for about two years and nine months. Even prior to recording conviction by the District Commission, he was in jail. The appeal was presented before the State Commission along with the application for condonation of delay as well as the application for suspension of sentence under Section 389 of the Cr.P.C.

15. Notably, sub-section 3 of Section 389 of the Cr.P.C. gives right to a convict to get the conviction suspended and a mandatory duty is cast on the convicting Court to suspend the sentence, if the term sentence is not exceeding three years or where the offence for which he has been convicted is bailable one. Evidently, the District Commission has not awarded the sentence for more than three years. No application was moved before the District Commission. In that scenario, if the application for suspension of sentence was filed before the State Commission, it ought to have been decided without delay. In spite of pendency of the application for suspension of sentence before the State Commission/Appellate Court, it was not entertained for more than three months. The petitioner had to approach the Division Bench of this Court for seeking direction to decide the application for suspension of sentence and in spite of the direction of this Court, the application for suspension of sentence was not decided. The reason

given was non-availability of Coram and in stead of deciding the application for suspension sentence, the State Commission decided the application for condonation of delay, which frustrated the application filed by the petitioner for suspension of sentence.

16. It is informed at the bar that there is no Judicial Member available with the State Commission since no appointment has been made in this regard. The petitioner could not get his sentence suspended from the District Commission though the sentence is for not more than three years because he was in jail. Even the State Commission did not bother to decide the application for suspension of sentence expeditiously rather, rejected the application for condonation of delay on technical ground ignoring that the right of liberty is involved. Thus, the State Commission has not acted in consonance with fundamental principles of judicial procedure.

17. As held in *M/s Radha Krishan (supra)*, if the Statutory Authority has acted in defiance of fundamental principles of judicial procedure, the writ petition can be entertained by the High Court. Therefore, a case is made out for entertaining the writ petition.

18. In view of the reasons mentioned above, the order dated

05.11.2024 passed by the State Consumer Disputes Redressal Commission, Nagpur rejecting the application for condonation of delay, is set aside. The Misc. Application No. MA/24/82 is allowed. The delay is condoned.

19. Needless to mention, the consequence of this order would be that the appeal shall be heard on merits along with pending applications. Since the Division Bench of this Court has already directed to decide the application for suspension of sentence within seven days, the State Commission to decide the application for suspension of sentence within seven days from the date of receipt of this order.

20. Rule accordingly. The petition stands disposed of.

(M.W.Chandwani, J.)

Diwale