

2025 LiveLaw (SC) 28

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

B.V. NAGARATHNA; J., NONGMEIKAPAM KOTISWAR SINGH; J.

JANUARY 02, 2025

SPECIAL LEAVE PETITION (CRL.) No. 18045/2024

MAHESH SINGH BANZARA *versus* STATE OF MADHYA PRADESH

Constitution of India, Article 21 - Code of Criminal Procedure, 1973, Section 374 - Right to Appeal - The right to appeal against a conviction under Section 374 of the Cr.P.C. is both a statutory and a fundamental right under Article 21, given the expansive interpretation of liberty. Courts must consider reasons for delay in filing an appeal and cannot dismiss it on technical grounds alone. The High Court's dismissal of the appellant's appeal due to a 1637-day delay, without adequately assessing the reasons (lack of financial resources and absence from station for livelihood), was erroneous. The Supreme Court set aside the High Court's order, condoned the delay, and remanded the appeal to the High Court for adjudication on merits in accordance with law. [Relied on: *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528, and *Rajendra v. State of Rajasthan*, (1982) 3 SCC 382; Para 6]

[Arising out of impugned final judgment and order dated 02-03-2023 in CRA No. 1001/2021 passed by the High Court of Madhya Pradesh Principal Seat at Jabalpur]

For Petitioner(s) Mr. Sandeep Kumar Sen, AOR

For Respondent(s) Mr. Mrinal Gopal Elker AOR Mr. Amit Sharma, AAG Mr. Abhimanyu Singh, Adv. Ms. Shruti Verma, Adv. Mr. Chinmay Chaitanya, Adv.

ORDER

Leave granted.

2. The appellant is aggrieved by the impugned order dated 02.03.2023 passed by the High Court of Madhya Pradesh, Principal Seat at Jabalpur in Criminal Appeal No.1001/2021. By the said order, I.A. No.3780/2021 filed by the appellant herein seeking condonation of delay of 1637 days in filing the aforesaid Criminal Appeal has been dismissed. Consequently, the Criminal Appeal has also been dismissed. As a result, the Criminal Appeal as against the conviction and sentence passed by the Trial Court on 23.07.2015 has attained finality. Hence, this appeal.

3. We have heard learned counsel for the appellant and learned counsel for respondent-State and perused the material on record.

4. The reason for the delay has been stated by the appellant to be lack of monetary resources and his going out of station to earn his livelihood. The High Court has construed the same to mean that the appellant has absconded after the passing of the judgment and hence, has not been inclined to condone the delay in filing the appeal in Special Case No.9/2014. The appellant herein has been sentenced to seven years rigorous imprisonment and a fine of Rs.10,000/- and six months imprisonment in default under Section 366 of the Indian Penal Code (IPC) and ten years rigorous imprisonment and a fine of Rs.50,000/- with default sentence of six months imprisonment under Section 376(2)(n) of the IPC.

5. Since the application seeking condonation of delay has been dismissed, the appeal against the judgment of conviction and sentence has attained finality. Consequently, the

appellant has been deprived of his opportunity of assailing the said conviction as well as sentence.

6. In *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528, this Court observed that an appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374 of the Criminal Procedure Code. Right of Appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a Fundamental Right. It was also observed in *Rajendra v. State of Rajasthan*, (1982) 3 SCC 382 (2), that where the appellant furnishes reasons for delay in filing an appeal, the court would not dismiss the appeal as time-barred without examining the reasons for the delay. Hence, in light of the above, it is evident that the right to appeal, particularly when it concerns the liberty of an individual, is a fundamental right under Article 21 of the Constitution. The High Court's order dismissing the appeal solely due to delay, without properly examining the reasons for the delay, therefore, warrants reconsideration. Hence, there is a necessity of examining the reasons for delay in filing an appeal since the dismissal of the appeal based on mere technicalities, without a substantive assessment of the appellant's reasons, was erroneous.

7. In the circumstances, we find that the ends of justice would be subserved in the instant case if the impugned order dated 02.03.2023 is set aside. Consequently, the delay of 1637 days in filing the Criminal Appeal No.1001/2021 is condoned by allowing the application being I.A. No.3780/2021.

8. As a result, the Criminal Appeal No.1001/2021 is restored on the file of the High Court. The High Court is requested to dispose of the said Criminal Appeal on merits and in accordance with law.

This appeal is allowed in the aforesaid terms.

Pending application(s), if any, shall stand disposed of.

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