HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE
(SINGLE BENCH : HON. Mr. JUSTICE JARAT KUMAR JAIN)

CRIMINAL REVISION NO.942 of 2015

Ashwini Pandya.   ... **APPLICANT**

Vs.

State of Madhya Pradesh
Through Police Station Kotwali,
UJJAIN (M.P.)   .. **NON-APPLICANT**

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O R D E R

(Passed on   September, 2014)

This revision u/s. 397/401 of the Cr.P.C. is filed against the order dated 29.6.2015 passed by Second Additional Sessions Judge (ASJ), Ujjain in Cr. Appeal No.320/2011.

2. An offence u/s. 419, 420, 471, 120-B of the I.P.C. registered at Police Station Kotwali, Ujjain at Crime No.28/2006. After investigation, final report has been filed against the applicant and some other accused persons, which is registered as Cr. Case No. 4555/2006.

3. Learned Judicial Magistrate, First Class (JMFC), Ujjain acquitted the applicant along with other accused persons vide judgment dated 19.3.2011. Against the said judgment of acquittal, State has filed the appeal u/s. 378(1)(a) of the Cr.P.C. before the Court of Sessions.

4. The appeal was filed on 8.8.2011 and as such, the appeal was barred by limitation, therefore, the applicant took the objection. Thereupon, non-applicant filed an application u/s. 5 of the Limitation Act for condonation of delay. After hearing the parties, learned ASJ by the impugned order allowed the application and condoned the delay. Being aggrieved by this, applicant has filed the present revision.

5. Learned counsel for the applicant submits that the appeal against acquittal, as per amended provisions, is filed before the Sessions Court. For filing the appeal, the limitation prescribed is 30 days, whereas learned ASJ assuming the limitation of 90 days condoned the delay. It is submitted that no application for condonation of delay was filed along with memo of appeal, but when the applicant took the objection, non-applicant filed the application for condonation of delay after eighteen months of filing of appeal. Learned ASJ overlooked the illegalities and allowed the application and condoned the delay. The order passed by learned ASJ is erroneous and, therefore, deserves to be set aside.

6. On the other hand, learned Dy. Govt. Advocate submits that as per provision of Article 114 of Limitation Act, the limitation for filing an appeal against the order of acquittal is 90 days. In the Limitation Act, it is not provided that appeal against acquittal when filed before the Sessions Court, the limitation shall be computed as 30 days. Learned Dy. Govt. Advocate submits that applicant's counsel misconstrued the provisions. He further submits that it is not mandatory that the appeal should be accompanied with application for condonation of delay. Even if after filing of appeal, such an application can be filed and the Court can consider it. Learned ASJ has not committed any error of law. Thus, he prays for dismissal of the

revision.

7.   After hearing learned counsel for the parties, perused the record.

8.   Article 114 of Limitation Act of 1963 provides a period of ninety days limitation for appeals under sub-sections (1) and (2) of Section 417 of Code of 1898 (corresponding to sub-sections (1) and (2) of present Code) and a period of thirty days in case of appeal under sub-section (3) of Section 417 of that Code (corresponding to sub-section (4) of Section 378 of present Code). The Legislature, however, appears to have omitted to make corresponding amendments in Article 114 of Limitation Act, 1963 in spite of fact that no change in the period of limitation was thought necessary. (See Law Commission 41st Report para 31.20).

9.   By virtue of Section 8 of General Clauses Act, 1897 references to sub-sections (1) and (2) of Section 417 of repealed Code in Article 114 of Limitation Act, 1963 have to be construed as references to sub-sections (1) and (2) of the corresponding Section 378 of Code of 1973 and, therefore, period of limitation for filing an appeal against an acquittal on behalf of the State Government or Central Government in a case instituted otherwise than on complaint still remains 90 days from order of acquittal.

10.   As per Section 32 of the Cr.P.C. (Amendment) Act, 2005 w.e.f. 23.6.2006, a new Section 378(1)(a) and (b) is substituted. As per provision u/s. 378(1)(a), District Magistrate may direct the public prosecutor to present an appeal to the Court of Sessions against an order of acquittal passed by the Magistrate in respect of cognizable and non-bailable offence. After this amendment in Article 114 of

Limitation Act, it seems that no change in the period of limitation was though necessary by the Legislature. Thus, it is clear that the period of limitation for filing an appeal under Section 378(1)(a) against an order of acquittal before Court of Sessions is 90 days as per Article 114 of the Limitation Act.

11.   Learned counsel for applicant has been unable to point out that the limitation prescribed for filing the appeal against acquittal before the Court of Sessions is thirty days. Therefore, I am of the considered view that the learned ASJ has rightly held that the appeal shall govern by Article 114 of the Limitation Act and for filing such an appeal, the period of limitation is ninety days.

12.   Admittedly, the non-applicant has not filed the application for condonation of delay along with memo of appeal. After taking the objection by applicant, non-applicant filed the application for condonation of delay. It is settled law that it is not mandatory that such an application should be filed along with memo of appeal itself. Even if the application for condonation of delay is filed subsequent to filing of appeal, such an application cannot be rejected only on the ground that it was not filed along with the appeal.

13.   With the aforesaid discussion, I am of the considered view that there is no illegality or irregularity or impropriety in the impugned order. Accordingly, this revision fails and is hereby dismissed. The trial Court be informed accordingly. Trial Court is also directed to make all endeavors to decide the appeal at the earliest as this criminal appeal is pending since August, 2011.

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(JARAT KUMAR JAIN)
JUDGE.

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Alok/