

**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRMP No. 1009 of 2024**

Anil Kumar Kushwaha S/o - Late Shri Dharohar Prasad Aged About 66 Years R/o Chandra Nagar Umarpoti Post-Purai Tehsil Civil and Revenue District Durg, District- Durg C.G. **... Petitioner**

versus

Girdhari S/o Budhram Aged About 66 Years R/o - Railway Colony, Bhilai 3, Civil and Revenue District- Durg C.G. **... Respondent**

For the petitioner	:	Mr. Jaydeep Singh Yadav, Advocate.
For the respondent	:	

Hon'ble Shri Justice Sanjay Kumar Jaiswal**(Order on Board)****07.01.2026**

1. Heard on I.A.No.1 of 2024. There is delay of 283 days in filing the CRMP/ appeal.

It is submitted that the applicant who is aged about 66 years is suffering many ailments and due to his poor health condition, he is often required to get medical treatment in different hospitals and because of his ailments and medical treatment, he could not get the latest information about the case. Later when he came to know about the order dated 28.03.2023 passed by the Court he applied for grant of certified copy. Learned counsel submits that the delay is bonafide and not deliberate, therefore, the same may be condoned.



In view of the above submission and for the reasons stated in the application, the delay in filing the appeal is condoned. Accordingly, I.A.No.1 is allowed.

2. The complainant/petitioner has filed this petition under Section 378(4) of Criminal Procedure Code seeking grant of leave to appeal. The prayer made in the acquittal appeal filed along-with the petition shows that he seeks a direction to set aside the impugned judgment dated 28.03.2023 passed by the Judicial Magistrate, First Class, Durg, District Durg (C.G) in Complaint Case No.2583/2018 by which the respondent/accused was acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881.

3. Learned counsel for the petitioner submits that since the complaint filed u/s section 138 of NI Act before the trial Court stood dismissed, the petition filed u/s 419(4) of BNSS can be disposed of in terms of an acquittal appeal and it is no longer necessary to seek special leave to appeal, because the complainant is considered victim and has statutory right to appeal under the proviso to Section 413 BNSS (Section 372 CrPC).

4. Having considered the submission made by learned counsel, this Court is inclined to dispose of this petition in terms of acquittal appeal.

5. At the outset, learned counsel for the appellant submits that in view of the recent decision of the Supreme Court rendered in **M/s. Celestium Financial Vs. A. Gnanasekaran Etc. 2025 INSC 804** wherein it has been held that the complainant in a complaint filed under section 138 of the Act of 1881 is also a victim as defined in section 2(wa) of Cr.P.C. corresponding to Section 2(y) of Bhartiya Nagarik Suraksha Sanhita, 2023 (for short the "BNSS") and thus the said complaint can also be entitled to file an appeal under proviso to section 372 Cr.P.C. corresponding to Section 413 of the



BNSS, the instant case may be disposed of reserving liberty so as to avail the said remedy of appeal.

6. Having considered the submission of learned counsel and in view of the law laid down in case of **Celestium Financial** (*supra*), this Cr.M.P/Acquittal Appeal is disposed of with liberty to the appellant to file appeal before the appropriate Court within a period of 60 days from today . It is further made clear that if such an appeal is filed before the concerned Court within the time given by this Court, it would not insist upon the limitation while deciding the same and will proceed to decide the same in accordance with law.

7. Registry shall return the certified copies of the impugned judgment/order and relevant documents to counsel for the appellant after retaining the photocopy of the same.

Sd/-

(Sanjay Kumar Jaiswal)
Judge