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HIGH COURT OF CHHATTISGARH, BILASPUR

Acquittal Appeal No.350 of 2022

{Arising out of judgment of acquittal dated 5-2-2022 passed by the Special Judge (NIA Act) Scheduled Offences, Kanker, Distt. North Bastar Kanker in Special Sessions Trial No.21/2021}

Judgment reserved on: 13-1-2023

Judgment delivered on: 12-4-2023

State of Chhattisgarh, Through Police Station Bhanupratappur, District North Bastar Kanker (C.G.)

---- Appellant

Versus

Devdhar Nishad, S/o Rahipal Nishad, Aged about 40 years, R/o Karmoti, Police Station Bhanupratappur, District North Bastar Kanker (C.G.)

---- Respondent

For Appellant / State: Mr. Satish Chandra Verma, Advocate General with Mr. Ashish Tiwari, Government Advocate.

Amicus Curiae: Mr. Prasoon Agrawal, Advocate.

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Rakesh Mohan Pandey, JJ.

C.A.V. Judgment

Sanjay K. Agrawal, J.

1. This acquittal appeal preferred under Section 21(1) of the National Investigation Agency Act, 2008 (for short, 'the NIA Act') is directed against the impugned judgment dated 5-2-2022 passed by the Special Judge (NIA Act) Scheduled Offences, Kanker, Distt. North Bastar Kanker in Special Sessions Trial No.21/2021 by which the respondent herein has been acquitted of the charges under Sections 489A read with Section 34, 489B read with Section 34 & 489D read with Section 34 of the IPC (Scheduled Offences under

the NIA Act).

Brief facts: -

2. By virtue of sub-section (5) of Section 21 of the NIA Act, appeal under Section 21 has to be preferred within a period of thirty days from the date of the judgment, but since this appeal has been preferred by the appellant herein admittedly after 30 days from the date of judgment i.e. the date of judgment is 5-2-2022, whereas the appeal has been preferred on 20-12-2022 and by the first proviso to sub-section (5) of Section 21, delay in filing the appeal after the period of limitation of 30 days can be condoned and appeal can be entertained if the court is satisfied that the appellant has sufficient cause for not preferring the appeal within the period of 30 days, but the second proviso to sub-section (5) further limits that no appeal shall be entertained after the expiry of period of ninety days. As such, only 60 days' delay in filing the appeal under Section 21(1) of the NIA Act can be condoned by the appellate court against the appeal preferred under Section 21(1). Since against the judgment dated 5-2-2022, appeal has been preferred on 20-12-2022 and though the application for condonation of delay in filing the appeal has been filed, but since it is after the expiry of 90 days, the matter has been placed before the Bench holding that appeal is not maintainable as per Section 21(5) of the NIA Act.

Question involved: -

3. The short question for consideration in this appeal would be, whether appeal under Section 21(1) of the NIA Act can be entertained after the expiry of the period of 90 days in view of the

second proviso to sub-section (5) of Section 21 of the NIA Act?

Contentions of the appellant / State and the *Amicus Curiae*: -

4. Mr. Satish Chandra Verma, learned Advocate General ably assisted by Mr. Ashish Tiwari, learned Government Advocate appearing for the State / appellant, would submit with respect to the issue of maintainability of the instant acquittal appeal in light of the bar imposed under the second proviso to Section 21(5) of the NIA Act, as under: -

    1. Right to appeal, especially under criminal administration of justice, cannot be fettered with or made subject to any onerous condition or prerequisite.

    2. The word “shall” as stated in the second proviso to Section 21(5) of the NIA Act ought to be read as “may” and be treated as directory and not mandatory in nature for the said provision imposes complete restriction on the entertainment of appeal before a higher court of law which has been recognised as a right by the Supreme Court in the matters of **Madhav Hayawadanrao Hoskot v. State of Maharashtra**[1] and **Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and another**[2].

    3. The provision of Section 5 of the Limitation Act, 1963 is not excluded from its application under the NIA Act and therefore the appeal accompanied with the application for condonation of delay under Section 5 of the Limitation Act, 1963 can be

1 (1978) 3 SCC 544
2 (2007) 6 SCC 528

considered by this Court for deciding on the limitation aspect and the explanation rendered in the application ought to be looked into by this Court to condone the delay even beyond 90 days as provided under the second proviso to Section 21(5) of the NIA Act.

4. The language of the second proviso to Section 21(5) of the NIA Act takes away the power of judicial review from the Court without conferring any discretion and thus, even in appropriate cases where the delay exceeds even by one day or one week, in both cases, the Court's discretion cannot be exercised, which in itself is unreasonable and arbitrary condition and would cause serious prejudice to a litigant who has been subjected to prosecution under the NIA Act.

5. Mr. Prasoon Agrawal, learned counsel appearing as *amicus curiae*, would submit that while interpreting the proviso to Section 21(5) of the NIA Act, the sanctity to Article 21 of the Constitution of India has to be kept in mind and the right of appeal cannot be allowed to be taken away from the person aggrieved. He would further submit that since the constitutional validity of the said proviso is not under challenge before this Court, the interpretation of the proviso plays a key role and any statute, which is against the interest of society, cannot stand the test of reasonableness and has to be interpreted in a manner so that not only the legislative intent behind the enactment of the proviso is saved but also from the practical perspective of the society. There are numerous cases wherein the convicted person was not having the knowledge about his / her

right to appeal, there are instances where though there is acquittal of a person but is an unmerited acquittal. Therefore, the appeal would be maintainable even after the expiry of the period of 90 days subject to the complete satisfaction of the court and the discretion ought to be exercised by the court sparingly and cautiously so that the intent of the legislature and purpose and object behind the enactment of the NIA Act does not get frustrated.

6. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

Relevant provision of the NIA Act: -

7. In order to consider the plea raised at the Bar, it would be appropriate to first set out Section 21 of the NIA Act, which states as under: -

> "**21. Appeals**.—(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.
>
> (2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.
>
> (3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.
>
> (4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.
>
> (5) Every appeal under this section shall be

preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days."

Object of the NIA Act: -

8. To find out the answer and to reach to a plausible interpretation of the second proviso appended to Section 21(5) of the NIA Act, it would be appropriate to consider the object of the Legislature behind enacting / promulgating the NIA Act.

9. India has been the victim of large scale terrorism sponsored from across the borders. A large number of such incidents are found to have complex inter-State and international linkages, and possible connection with other activities like the smuggling of arms and drugs, pushing in and circulation of fake Indian currency, infiltration from across the borders, etc. Keeping all these in view and to satisfy the need for setting up an Agency at the Central level for investigation of offences related to terrorism and certain other Acts, which have national ramifications, the Parliament considered and though fit and expedient to make provisions for establishment of a "National Investigation Agency" by promulgating an Act which is called as "the National Investigation Agency Act, 2008" (Act 34 of 2008) which came into force with effect from 31-12-2008. The object of the said Act is as under: -

"An Act to constitute an investigation agency at the

> national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto."

10. The necessity to promulgate the said Act and its object itself speaks that it is an Act of national importance and it deals with the offence as enumerated in the Schedule related with the national integrity and security. The applicability of the NIA Act has been enlarged by incorporating Section 1(2)(d) which was brought into effect from 2-8-2019. Clause (d) of sub-section (2) of Section 1 of the NIA Act states as under: -

> "**1. Short title, extent and application**.—(1) This Act may be called the National Investigation Agency Act, 2008.
>
> (2) It extends to the whole of India and it applies also—
>
> (d) to persons who commit a Scheduled Offence beyond India against the Indian citizens or affecting the interest of India."

11. The term "Scheduled Offence" has been defined in Section 2(1)(g) of the NIA Act. "Scheduled Offence" means an offence specified in the Schedule. The Schedule specified in the NIA Act states as under: -

THE SCHEDULE

[See section 2(1)(g)]

1. The Explosive Substances Act, 1908 (6 of 1908);

1A. The Atomic Energy Act, 1962 (33 of 1962);

2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967);
3. The Anti-Hijacking Act, 2016 (30 of 2016);
4. The Suppression Unlawful Acts Against Safety of Civil Aviation Act, 1982 (66 of 1982);
5. The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993);
6. The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);
7. The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);
8. Offences under—

   (a) Chapter VI of the Indian Penal Code [sections 121 to 130 (both inclusive)];

   (b) Sections 370 and 370A of Chapter XVI of the Indian Penal Code (45 of 1860);

   (c) Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860);

   (d) Sub-section (1AA) of section 25 of Chapter V of the Arms Act, 1959 (54 of 1959);

   (e) Section 66F of Chapter XI of the Information Technology Act, 2000 (21 of 2000).

12. A careful perusal of the Schedule specified in the NIA Act would show that the offences enumerated in the Schedule are serious in nature and most of the offences enumerated in the said Schedule are punishable with imprisonment for life and considering the importance and seriousness of the offences, the jurisdiction to try the offences under the NIA Act has been vested with the Designated Special Sessions Court constituted under Section 11 of

the NIA Act and the Central Government has been empowered to designate the Court of Session as Special Court.

Legislative Intention of the NIA Act: -

13. In order to find out the legislative intent behind enacting the NIA Act and understand the provisions contained in the Statute, one has to read the entire Statute as a whole. The interpretation depends upon the text and the context and the Court has to find out the intention from the words vis-a-vis the Act. It is well settled law that when an interpretation leads to absurdity making the very Act itself as redundant or otiose, then such an interpretation will have to be eschewed. The Court has to consider the circumstances under which the enactment has been made. The real intention of the legislature, therefore, will have to be seen by making an overall assessment of the entire provisions of the Act and particularly with reference to its object and reasonings.

14. Justice G.P. Singh in his celebrated book '**Principles of Statutory Interpretation**' has observed as follows: -

> "… a statute must be read as a whole as words are to be understood in their context."

15. Their Lordships of the Supreme Court in the matter of **Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others**[3] have held that statutes have to be construed so that every word has a place and everything is in its place, by observing as under: -

> "33. Interpretation must depend on the text and the context. They are the bases of interpretation. One

3 (1987) 1 SCC 424

> may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. ..."

16. The manner of interpretation laid down by their Lordships of the Supreme Court in **Reserve Bank of India** (supra) was followed with approval in the matter of **Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra and others**[4] and subsequently in the matter of **Afjal Imam v. State of Bihar and others**[5] and in light of the aforesaid method of interpretation, the object and purpose of the subject provision of the NIA Act i.e. the second proviso to sub-section (5) of Section 21 is required to be interpreted / considered.

Interpretation of the second proviso to sub-section (5) of Section 21 of the NIA Act: -

17. A plain and literal sense as emanates from general reading of the second proviso to Section 21(5) of the NIA Act would show that there is an embargo put by the Legislature for entertainment of

4 (2010) 5 SCC 246
5 (2011) 5 SCC 729

appeal presented after the period of 90 days. To put in general and simple sense, it means that the appellate Court should not entertain the appeal either of unmerited acquittal or unmerited conviction after the expiry of the period of 90 days from the date of judgment. The effect of this meaning would be, the appellate Court would be precluded from considering / entertaining the appeal on merits and the appellate Court's hands are tied-up for hearing the appeal after ninety days and finality would be attached to the judgment passed by the Special Court after lapse of the said outer limit of ninety days either convicting or acquitting of an accused on untenable grounds and the appeal would be not accepted for consideration and the Court would become mute spectator and helpless by the operation of the second proviso to sub-section (5) of Section 21 of the NIA Act.

18. Looking to the object of the NIA Act i.e. 'National Integrity and Security' vis-a-vis 'Life and Liberty' of the person charged for the scheduled offence, the above plain sense and meaning lead to defeat the object of the Act. It bars and puts a complete embargo and ties-up the hands of the appellate Court to entertain the appeal for examination of the judgment in appeal on the ground of not instituting the appeal within 90 days from the date of judgment i.e. only on the ground of time limit. This could never be the intention of the legislature looking to the object sought to be achieved by promulgating the Special Act i.e. the NIA Act.

19. A literal interpretation is not the only way of interpretation and the Court has to look into and consider the circumstances under which

a provision of law has been enacted to find out the actual meaning.

In this regard, the following passage in the matter of **R.L. Arora v. State of Uttar Pradesh and others**[6] is reproduced gainfully: -

> "(9) … Further, a literal interpretation is not always the only interpretation of a provision in a statute and the Court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute. It is permissible to control the wide language used in a statute if that is possible by the setting in which the words are used and the intention of the law making body which may be apparent from the circumstances in which the particular provision came to be made. Therefore, a literal and mechanical interpretation is not the only interpretation which courts are bound to give to the words of a statute; and it may be possible to control the wide language in which a provision is made by taking into account what is implicit in it in view of the setting in which the provision appears and the circumstances in which it might have been enacted. ..."

The aforesaid ratio laid down by the Supreme Court has been quoted with approval in the matter of **Surjit Singh v. Mahanagar Telephone Nigam Limited**[7].

20. **Craies** in his book on **Statute Law** has observed in this regard pertinently as under: -

> "… It is the duty of Courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed' .. that in each case you must look to the subject-matter, consider the importance of the provision and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory."

6 AIR 1964 SC 1230
7 (2009) 16 SCC 722

21. Similarly, the principle of construction of law is stated by Holmes, J. as under: -

> "You construe a particular clause or expression by construing the whole instrument and any dominant purposes that it may express. In fact, intention is a residuary clause intended to gather up whatever other aids there may be to interpretation besides the particular words and the dictionary."

22. It is well settled law that if the Court is convinced with the purpose for which the enactment has been made, then such interpretation which would make the provision workable will have to be given effect to. Further, a construction of Statute must sub-serve the tests of justice and reasoning in order to achieve the objects and the Court will have to read into the objects. Justice Krishna Iyer in his inimitable way opined in the matter of **Carew and Company Ltd. v. Union of India**[8] as under: -

> "21. The law is not 'a brooding omnipotence in the sky' but a pragmatic instrument of social order. It is an operational art controlling economic life, and interpretative effort must be imbued with the statutory purpose. No doubt, grammar is a good guide to meaning but a bad master to dictate. Notwithstanding the traditional view that grammatical construction is the golden rule, Justice Frankfurter used words of practical wisdom when he observed[9] :
>
> > There is no surer way to misread a document than to read it literally."

23. In the matter of **K.P. Varghese v. Income Tax Officer, Ernakulam and another**[10], their Lordships of the Supreme Court held that the strict literal reading of a statute was avoided as by reason thereof

8 (1975) 2 SCC 791
9 Massachusetts B and Insurance Co. v. U.S., 352 US 128, 138.
10 (1981) 4 SCC 173

several vital considerations, which must always be borne in mind, would be ignored, by observing as under: -

> "5. … The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hand when he said :
>
> > … it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.
> >
> > * * *
> >
> > … the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create.
> >
> > * * *"

24. Further, the conflict between the Literal Interpretation and Purposive Interpretation has been addressed by their Lordships of the Supreme Court in the matter of **Abhiram Singh v. C.D. Commachen (dead) by Legal Representatives and others**[11] and

11 (2017) 2 SCC 629

after considering the authorities on the point, held as under: -

"**Literal versus Purposive Interpretation**

36. The conflict between giving a literal interpretation or a purposive interpretation to a statute or a provision in a statute is perennial. It can be settled only if the draftsman gives a long-winded explanation in drafting the law but this would result in an awkward draft that might well turn out to be unintelligible. The interpreter has, therefore, to consider not only the text of the law but the context in which the law was enacted and the social context in which the law should be interpreted. This was articulated rather felicitously by Lord Bingham of Cornhill in *R. (Quintavalle) v. Secy. of State for Health*[12] when it was said: (AC p. 695 C-H, paras 8-9)

> "8. The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.
>
> * * *"

12 2003 UKHL 13: (2003) 2 AC 687 : (2003) 2 WLR 692 (HL)

Law of limitation governing the field: -

25. Now, the question is, whether Section 5 of the Limitation Act, 1963 would be applicable for extension of time in order to entertain the appeal filed under Section 21(5) of the NIA Act beyond the period of ninety days?

26. The life span of 90 days has been prescribed under the second proviso to Section 21(5) of the NIA Act and, therefore, to come out of the rigor of the said rider, the aid of Limitation Act, 1963 should be taken. The NIA Act is a Special Act. It is a self-contained Code. Now, it has to be seen as to whether this limitation of 90 days can be extended by taking the aid of the provision of the Limitation Act or the applicability of the Limitation Act is excluded by the provision of the Special Act i.e. the NIA Act. To search out the same, the provisions of the Limitation Act are required to be scanned.

27. Section 3(1) of the Limitation Act states as under: -

> "**3. Bar of limitation**.—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

28. Section 29 of the Limitation Act plays the dominant role which is referable to the limitation prescribed otherwise than the Limitation Act in any other statute. Sub-sections (1) & (2) of Section 29 of the Limitation Act, 1963 state as under: -

> "**29. Savings**.—(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).
>
> (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation

> different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

29. A careful perusal of the aforesaid provision would show that though the Special Law prescribes the special period of limitation unless the said provision or the special enactment expressly excludes the application of the Limitation Act, in such eventuality, Sections 4 to 24 of the Limitation Act are made applicable. The important aspect would be that the provisions contained in Sections 4 to 24 of the Limitation Act or any provisions in between these two provisions including Section 5 should be expressly excluded by the special law and only in such a situation, the provision of special law would be strictly applicable and the operation of the Limitation Act would be excluded.

30. The Limitation Act, 1963 clearly provides that if the special law or the law otherwise than the Limitation Act, prescribes any period of limitation on its own, in such an eventuality, such limitation should be treated as the limitation prescribed under Section 3 of the Limitation Act. However, Section 29(2) clearly states that if the other provisions of the Limitation Act i.e. Sections 4 to 24, if not specifically excluded by the special law, in such an eventuality, the provisions of Sections 4 to 24 can be very well invoked even under the special law to extend the period of limitation on the grounds provided under the provisions of the Limitation Act. As such, the

proviso to Section 21(5) of the NIA Act excludes the entertainment of appeal after the expiry of the period of 90 days and if once it is held that appeal would be entertainable after the expiry of 90 days, then the aid of Section 5 of the Limitation Act can be taken and on showing sufficient cause, delay can be condoned.

31. In light of the aforesaid principles of law and method and manner of interpretation, reverting to the second proviso to sub-section (5) of Section 21 of the NIA Act, it would appear that the special limitation of 90 days has been prescribed in contrast with the Limitation Act, but there is no express exclusion of the provisions of the Limitation Act excluding the provision of Section 5 of the Limitation Act.

32. At this stage, it would be appropriate to notice the judgment of the Supreme Court in the matter of **Abdul Ghafoor and another v. State of Bihar**[13] in which it has been held that a sentence of imprisonment relates to a person's right to personal liberty which is one of the most important rights available to an individual and, therefore, the court should be very reluctant to shut out a consideration of the case on merits on grounds of limitation or any other similar technicality, and observed as under: -

> "3. The law of limitation is indeed an important law on the statute book. It is in furtherance of the sound public policy to put a quietus to disputes or grievances of which resolution and redressal are not sought within the prescribed time. The law of limitation is intended to allow things to finally settle down after a reasonable time and not to let everyone live in a state of uncertainty. It does not permit any one to raise claims that are very old and stale and does not allow anyone to approach the higher tiers of the judicial system for correction of the lower

13 (2011) 14 SCC 465

> court's orders or for redressal of grievances at one's own sweet will. The law of limitation indeed must get due respect and observance by all courts. We must, however, add that in cases of conviction and imposition of sentence of imprisonment, the court must show far greater indulgence and flexibility in applying the law of limitation than in any other kind of case. A sentence of imprisonment relates to a person's right to personal liberty which is one of the most important rights available to an individual and, therefore, the court should be very reluctant to shut out a consideration of the case on merits on grounds of limitation or any other similar technicality."

Right of Appeal: -

33. The 'Right of Appeal' is required to be considered in its wider perspective. The word 'Right' is used to mean a primary and substantive right. In the wider sense of the word, remedy is also a right but secondary right, a procedural right. The right of appeal is recognised under the statute. When the right is recognised that should not be in any manner allowed to be frustrated on the ground of technicalities particularly delay and the Court should not become handicapped in order to advance the substantial justice and in order to safeguard the rights and liabilities recognised under the statute. It is well settled principle of law that appeal is a statutory right or a creature of statute and, as such, this right created under the substantive laws is substantive right. The right of appeal is to be governed by substantive law and how it has to be exercised, that would be governed by procedural law. The right of appeal being substantive right should always stand in higher pedestal than the manner of preferring the appeal. The Court must ascertain the workability of the appeals as provided both under substantive law

and procedural law.

34. The Supreme Court in **Dilip S. Dahanukar** (supra), while dealing with Right to appeal, held as under: -

> "12. … 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. Right of appeal, thus, can neither be interfered with or impaired, nor can it be subjected to any condition."

35. V.R. Krishna Iyer, J. in the matter of **Sita Ram and others v. State of Uttar Pradesh**[14] while authoring the judgment in Constitution Bench matter of the Supreme Court held as under: -

> "31. … A single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the conception that men are fallible, that Judges are men and that making assurance doubly sure, before irrevocable deprivation of life or liberty comes to pass, a full-scale re-examination of the facts and the law is made an integral part of fundamental fairness or procedure."

36. In **Madhav Hayawadanrao Hoskot** (supra), the Supreme Court has held that appeal from the Court of Session to the High Court as per the provisions of the CrPC defines the value upheld in Article 21 of the Constitution of India, by observing as under: -

> "11. One component of fair procedure is natural justice. Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty, is basic to civilized jurisprudence. It is integral to *fair* procedure, natural justice and normative universality save in special cases like the original tribunal being a high bench sitting on a collegiate basis. In short, a first appeal from the Sessions Court to the High Court, as provided in the Criminal Procedure Code, manifests this value upheld in

14 (1979) 2 SCC 656

Article 21."

37. The law of limitation is founded on public policy. It is enshrined in the maxim '*interest reipublicae up sit finis litium*' i.e. it is for the general welfare that a limitation period be put to litigation. The rule of procedure like limitation are not meant to totally destroy the rights of the parties recognised under substantive law. The riders under the procedural law should not be used to close the substantive right. If the appellate Court is of the opinion that the parties very promptly seek their remedy without adopting any dilatory tactics too reasonably and genuinely prevented from exercising their substantive right, in such an eventuality, adopting of strict procedure may not be advisable. Thus, the object of providing legal remedy is to repair the damage caused by reason of legal injury.

38. The NIA Act deals with the Scheduled Offences which are serious in nature as has been held herein-above. Mainly it deals with the 'National Sovereignty, Security and Integrity' and most of the Scheduled Offences are punishable with life imprisonment. If the criminal trial initiated under the said Act turns in to favour of prosecution and accused is punished with life imprisonment and even after due diligence he was reasonably and genuinely prevented from exercising his substantive right of appeal during the period prescribed under the second proviso appended to sub-section (5) of Section 21 of the NIA Act and appeal could not be preferred within 90 days from the date of judgment prescribed therein then, in such eventuality dismissing his appeal on the

ground of not preferring appeal within 90 days from the date of judgment without testing his appeal on merits would amount to destroying his right of life and liberty as provided under Article 21 of the Constitution of India. The fundamental right as provided under Article 21 of the Constitution cannot be snatched away only by putting embargo through the procedural law of limitation, as the Supreme Court in the matter of **Ashok Tanwar and another v. State of H.P. and others**[15] has laid down a strict proposition that no statutory provision can stand in the way of a constitutional provision in case of conflict between them. Therefore, despite there being a bar contained in the second proviso to Section 21(5) of the NIA Act in case of conviction of an accused after full fledged trial under the provisions of the NIA Act, appeal has to be entertained after the period of 90 days provided sufficient cause is shown for not preferring the appeal within 90 days and similarly, if the trial goes in favour of the accused resulting in his unmerited / undeserving acquittal and the State approaches to the appellate Court after the period of limitation as provided in the second proviso to Section 21(5) i.e. 90 days with a plausible / explainable delay, then closing the door for the State without entertaining the appeal on merits would lead to more serious consequences as it hits the National Sovereignty, Security and Integrity.

Effect of the word 'shall' employed in the second proviso to Section 21(5) of the NIA Act: -

39. The Supreme Court in the matter of **P.T. Rajan v. T.P.M. Sahir and**

15 (2005) 2 SCC 104

others[16] has held that a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused.

40. Sub-section (2) of Section 14A and second proviso to sub-section (3) of Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 came into consideration before the Allahabad High Court (Full Bench) and same have been declared violative of Articles 14 & 21 of the Constitution of India in the matter of **In re Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015**[17] and it has been held as under: -

> "While we reject the challenge to section 14A (2), we declare that the second proviso to Section 14A (3) is clearly violative of both Articles 14 and 21 of the Constitution. It is not just manifestly arbitrary, it has the direct and unhindered effect of taking away the salutary right of a first appeal which has been recognised to be an integral facet of fair procedure enshrined in Article 21 of the Constitution. The absence of discretion in the Court to consider condonation of delay even where sufficient cause may exist renders the measure wholly capricious, irrational and excessive. It is consequently struck down."

41. Similar challenge has been considered by the High Court of Delhi in the matter of **Farhan Shaikh v. State (National Investigation Agency)**[18] and by the High Court of Jammu & Kashmir and Ladakh in the matter of **National Investigation Agency Through its Chief Investigaitng Officer, Jammu v. 3rd Additional Sessions Judge District Court Jammu**[19] in which the second proviso to Section

16 (2003) 8 SCC 498
17 2018 SCC OnLine All 2087
18 2019 SCC OnLine Del 9158
19 CrlA(D) No.46/2022 & CrlM No.1474/2022, decided on 13-12-2022

21(5) of the NIA Act has been held to be directory and not mandatory. However, we are not in full agreement with the view taken either by the Delhi High Court or by the High Court of Jammu & Kashmir and Ladakh. We are also not in agreement with the Calcutta High Court in the matter of **Sheikh Rahamtulla @ Sajid @ Burhan Sheikh @ Surot Ali and others v. National Investigation Agency**[20].

42. To sum-up the issue, the question for consideration is answered as under: -

> The second proviso appended to sub-section (5) of Section 21 of the NIA Act barring the entertainment of appeal preferred under Section 21(1) after the period of 90 days would not preclude the convict for the Scheduled Offences under the NIA Act showing sufficient cause in case of unmerited conviction and similarly, in case of unmerited acquittal, it would also not preclude the aggrieved party from preferring appeal after the period of 90 days showing sufficient cause.

Present Appeal: -

43. Coming to the facts of the present case, case of the prosecution, in short, is that on 18-9-2017, complainant David Patra had lodged a written report stating inter alia that he is running a grocery shop and about 15 days prior to the date of incident, the accused / respondent herein came to his shop and purchased an item for ₹ 150/- and paid ₹ 2,000/- and thereafter, he (complainant) returned ₹ 1,850/- to the accused / respondent. After 2-3 days, the complainant came to know that the accused / respondent has used

20 CRA (DB) 231 of 2022, decided on 1-3-2023

counterfeit note of ₹ 2,000/- and ₹ 100-100/- and purchased items from various shops in the village. The complainant has informed to the Sarpanch of the village and to villagers about the said incident and thereafter, reported the matter to the police on which FIR was lodged and Crime No.159/2017 was registered at Police Station Bhanupratappur for the offences punishable under Sections 489A read with Section 34, 489B read with Section 34 & 489D read with Section 34 of the IPC against the accused / respondent herein and after usual investigation, charge-sheet was filed and the respondent was tried for the aforesaid offences, and after full-dressed trial, he was acquitted of the said charges against which the instant acquittal appeal has been preferred by the State.

44. Reverting to the facts of the present case, the trial Court has clearly recorded a finding that no seizure of counterfeit currency has been held from the possession of the accused / respondent herein relying upon the statements of complainant David Patra (PW-1), Shriram Jain (PW-9) – Inspector & Paras Singh Thakur (PW-20) – Sub-Inspector and similarly, seizure witnesses Tularam (PW-2) & Chandrakant Patel (PW-3) have also not supported the case of the prosecution. It has further been held by the trial Court that complainant David Patra (PW-1) has also stated that he has given the currency note of ₹ 2,000/- to the investigating officer, however, he has accepted in his statement that many customers give him currency notes of 100, 200 & 2,000 denomination to him while purchasing the items, but he does not maintain register of receipt of currency notes and he did not inform the investigating officer about

the number of fake currency note of ₹ 2,000/-.

45. In view of the aforesaid finding recorded by the trial Court, we are unable to hold that the finding recorded by the trial Court acquitting the respondent herein is totally unmerited warranting entertainment of appeal after the period of 90 days, as it is the case of merited acquittal. Accordingly, we decline to entertain the appeal being not maintainable and it is hereby dismissed.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Rakesh Mohan Pandey)
Judge

Soma