

GAHC040013492022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : IA(Crl) 58/2022

1:Tapa Ramching
S/o Late Porsing Mosu,
R/o Sigin Colony, Daporijo, PO/PS Daporijo, District Upper Subansiri, Arunachal Pradesh.
M. No 8257935543

VERSUS

1:THE STATE OF AP and Anr.
Through Learned Public Prosecutor.

2:Tajit Mosu
S/o Lt. Tapor Mosu

Village Mosu
Circle Siyum
PS Taliha
Upper Subansiri District
Arunachal Pradesh

Advocate for the Petitioner : Lissing Perme

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 31-05-2023

Heard Mr. L. Perme, the learned counsel for the applicant,

namely, Shri Tapa Ramching. Also heard Ms. L. Hage, the learned Additional Public Prosecutor for the opposite party/respondent No.1 and Mr. M. Tunar, the learned counsel for the opposite party/respondent No.2.

2. The applicant has filed this application under Section 5 of the Limitation Act, 1963 for condonation of delay of 76 days in filing the criminal appeal against the impugned Judgment and order dated 25.05.2022 passed in BSR/SESS-847/13 U/s 302/34 IPC (State of Arunachal Pradesh Vs Shri Tajit Mosu) Passed by Hon'ble Additional Sessions Judge, West Sessions Division, Basar, Leparada District, Arunachal Pradesh, acquitting the accused person Shri Tajit Mosu on benefit of doubt from charges U/s 302/34 IPC.

3. It is submitted on behalf of the petitioner that the applicant immediately after the Judgment was passed on 25.05.2022, could not obtain copies, as the copy of the Judgment was furnished only on 01.06.2022. Meanwhile, the applicant's health was deteriorating because of old age ailments and also for Hemorrhoids, the applicant had to move to Itanagar for better treatment in the month of August of 2022 but surgery was not advisable as the applicant is an elderly person. Meanwhile, after the recovery, the applicant managed to file this application which is for condonation of delay of 76 days.

4. The applicant has also relied on the decision of this Court in the case of ***Paye Mosing Vs. Naba Bora@Jalia@Jintu & ORS***

reported in **2016(2) GLT 542** wherein it has been held that;

“49. Keeping the above provisions in mind, a chart showing the periods of limitation for enforcement of right, conferred on the victims of crime, under proviso to Section 372 is prepared in the following manner-

Subject to the exception carved out in Section 5 of the Limitation Act, the periods of Limitation for an appeal by a “victim” under-proviso to Section 372 of the Code shall be as follows:-

<i>In cases of acquittal-</i>		
<i>(i)</i>	<i>Where appeal lies to the High Court</i>	<i>90 days from the date of order appealed against</i>
<i>(ii)</i>	<i>Where appeal lies to any</i>	<i>30 days other Court from the date of order appealed against</i>
<i>(b) Any other sentence or order-</i>		
<i>(i)</i>	<i>Where appeal lies to the High Court</i>	<i>60 days from the date of sentence or order</i>
<i>(ii)</i>	<i>Where appeal to any other Court</i>	<i>30 days from the date of sentence or order.</i>

5. The applicant has also relied on the decision of the Hon’ble Supreme Court in the Case of **S. Ganesharaju (D) THR. LRS. Vs. V. Narasamma (D) THR. LRS.** reported in **2013 (11) SCC 341** wherein it has been observed that –

“14. The expression “sufficient cause” as appearing in Section 5 of the Indian Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice.

15. Unless Respondents are able to show malafide in not approaching the court within the period of limitations, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the

matter on merits, meaning thereby that such technicalities have been given a go-by."

6. The learned counsel for the opposite party/respondent has raised serious objection stating that lame excuses are being made, and delay is not to be condoned. It is submitted that 6 or 7 days time was taken for obtaining copies of deposition which is not believable as the applicant already had the copies of the deposition of the witnesses.
7. The learned counsel for the applicant has submitted that he has applied for certified copies of the Judgment immediately after the judgment was passed on 25.05.2022.
8. The respondent/opposite party has also relied on the decision of the Hon'ble Supreme Court in the case of **Balwant Singh Vs. Jagdish Singh and Others** reported **(2010) 8 SCC 685** wherein it has been stated that-

"25. We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be

achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

9. I have considered the submissions at the bar with circumspection.

10. I do not agree with the submission of the learned counsel for the opposite party/respondent. After considering the submission of the applicant, it is held that sufficient cause has been shown. The delay of 76 days falls within a concept of reasonable time. The applicant is also an elderly person and he was suffering from ailments. I have considered the concern of the applicant as well as of the opposite party/respondent in view of my foregoing discussions, I deem to proper to condone the delay. The delay is hereby, condoned.

JUDGE

Comparing Assistant