

GAHC010025092022



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

Case No. : Crl.Rev.P./55/2022

ASISH DAS @ ASHISH DAS
S/O LATE AKASH CH. DAS
PRINCIPAL PUBLIC H.S. SCHOOL,
P.O. AND P.S. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SUSHMITA DEB (SHOME)
W/O DR. PARTHA SARATHI DAS
C/O PUBLIC HIGH SCHOOL
HOSPITAT ROAD
P.O. AND P.S. KARIMGANJ

Advocates for the petitioner : Mr. S. C. Biswas, Adv.

Advocates for the respondents : Mr. P. Borthakur, P.P.

Mr. A. K. Bhuyan, R-2

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 16.03.2023

Date of Judgment & Order :03.04.2023

JUDGMENT & ORDER (CAV)

Heard Mr. S. C. Biswas, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Public Prosecutor representing the State respondent and Mr. A. K. Bhuyan, learned counsel for the respondent No.2.

2. This is an application filed under Sections 397/401 of the Code of Criminal Procedure, 1973, challenging the order dated 02.02.2022, passed by the learned Sessions Judge, Karimganj, in Criminal Miscellaneous Case No.11/2021, in connection with Criminal Revision 40/21.

3. The brief facts leading to the filing of the present petition is that;

3.1. The petitioner being the Principal lodged an FIR before the Officer-in-Charge, Karimganj against the respondent No.2 in connection with misappropriation of School fund amounting to Rs.6,852/- and unaudited amount of Rs.23,770/- approximately. The case was registered as Karimganj, P.S. Case No. 604/17 at 04.07.2017, registered under Sections 409/506 of the Indian Penal Code. Thereafter, thorough investigation was carried out and the case was charge-sheeted vide order dated 30.12.2017 against the respondent No.2. On receipt of the charge-sheet the learned Magistrate took cognizance of the matter in G.R. Case No.1448/17, dated 08.03.2018.

3.2. The respondent No. 2 has challenged the cognizance order dated 08.03.2018, and with a delay of 1360 days filed a revision petition No. 40/2021 along with the petition under Section 5 of the Limitation Act, which was been registered as Mis. Case No.11/2021, in connection with Criminal Revision No.40/2021.

3.3. The said Mis. Case 11/2021 was heard and disposed on 02.02.2022, and condone the delay of 1360 days and accordingly, the matter was fixed for hearing the revision petition on 09.02.2022.

4. Being highly aggrieved and dissatisfied of the order dated 02.02.2022, the present petitioner filed this Criminal Revision Petition indicating the following drawbacks;

4.1. It is stated that the learned Trial Court has passed the order without applying his judicial mind, while condoning the delay of 1360 days and thereby, causing a serious miscarriage of justice to the present petitioner.

4.2. The law requires day to day explanations for her delay, but, there was no explanation and the learned Session Judge vide order condoned the unusual delay in filing the revision before the Session Court, against the impugned order of cognizance at 08.03.2018 in G.R. Case No. 1448/2017.

4.3. The petitioner further submitted that the non submission of objection by any person does not liquidate the provision of law and as such the reason given

by the learned Session Judge is not tenable to condone the delay of 1360 days in preferring the Revision.

4.4. The petitioner submitted that no doubt in view of covid-19 dated 15.03.2020 to 02.10.2021 shall stand excluded, but, there was no explanation from 08.03.2018 to 14.03.2020 and thereafter, from 03.10.2021, it appears that the learned Court miserably failed to give judicious reasons for the period of minimum 90 days.

4.5. The respondent cannot put entire blame for wrong advice upon her engaged counsel for delay in preferring the revision petition. Further, the learned Judge also took into consideration of the alleged sanctioned matter which is illegal and not sustainable in law and as such same is liable to be set aside and quashed.

5. Accordingly, the learned counsel for the petitioner has prayed for setting aside and quashing of the order dated 02.02.2022, passed in Criminal Mis. Case No.11/2021 in connection with Crl.Rev./40/21.

6. In reply, the respondent No. 2, accordingly appeared and filed her affidavit-in-opposition on the following grounds;-

6.1. On 31.01.2017, the respondent No.2 took the charge of Principal from the outgoing Principal. At that time, her health was not keeping well, so she wrote a letter for leave for the period of 03.05.2017 to 06.05.2017, to undertake Medical treatment at Guwahati. Accordingly, as per letter dated 02.05.2017, the prayer

for casual leave along with station leave permission was allowed and granted by the Inspector of Schools, KDC, Karimganj on the same date.

6.2. When the respondent No.2 was in Guwahati for her treatment, the petitioner joined in the Public Higher Secondary School, Karimganj on 03.05.2017 as a regular Principal. In spite of having knowledge about the health conditions of the respondent No.2, the petitioner wrote a letter dated 06.05.2017, addressed to the Deputy Commissioner, Karimganj informing about her absence and also prayed to take necessary steps upon her, for handing over of the cash book to him.

6.3. But the cash book could not be delivered to the newly appointed Principal/petitioner due to her ongoing treatment at Guwahati. On 01.06.2017, the respondent No. 2 reported back to her duty and informed the petitioner/Principal about the reason of not attending the office as well as about her health condition along with that she also informed the petitioner that she is going to apply for the commuted leave.

6.4. In the meantime, she filed a Writ Petition being numbered as W.P. (C)/2785/2017 for claiming the post of Principal and the petitioner also filed a Writ Petition, i.e. W.P.(C)/4496/2017, challenging her B.Ed Degree. Thereafter, both the writ petitions were dismissed by this Court vide order dated 14.08.2018. In WP(C)2785/2017, a direction was given to the Secondary Education to give considerations to the grievances raised by the respondent No.2. On the other hand, the writ petition filed by the petitioner challenging the B.Ed Degree of the respondent No.2 was dismissed as the learned Court had not found valid

reason.

6.5. The respondent No.2 kept the record of expenditures and tendered the same along with cash amount lying with her, but the petitioner refused to accept the same. And the petitioner pressurizes her to withdraw the writ petition filed against him. But, she declined to withdraw same. Thus, the petitioner was not ready to accept the amount, and was trying to establish that the respondent No.2 was remaining absent unauthorizely.

6.6. Thereafter, the respondent No. 2 tendered the Bank Draft dated 04.08.2017, but the petitioner did not accept the same and hence with no other alternative the respondent tendered the bank Draft dated 22.02.2018 with a representation dated 24.02.2018 to the Director of Secondary Education, Assam. Thereafter, the petitioner lodged the FIR dated 04.07.2017 against the respondent No.2 alleging that she had misappropriated the amount mentioned in the First Information Report(FIR).

6.7. Thereafter, the IO of the case submitted the charge-sheet under Sections 409/420/505 of the IPC and the case was transferred to the Court of Additional Chief Judicial Magistrate, Karimganj by the Chief Judicial Magistrate, Karimganj for disposal. Accordingly, the said Court passed the order mechanically and issued summons for appearance. But, the respondent had no knowledge about legal position, that in view of the provisions of Section 197 Cr.P.C., cognizance of the offence could not be taken against her, without sanction from the appropriate authority.

6.8. The respondent No. 2 engaged the counsel to conduct the matter of the said Karimganj case, but, the said counsel was very reluctant in rendering any advice and he did not take the case seriously. Dates after date were fixed for prosecution witness, but the petitioner or other witnesses did not turn up. In the meantime, Covid-19 pandemic broke out and Court works got disrupted.

6.9. In the year 2021 the respondent No. 2 consulted one Advocate at Silchar, after obtaining certified copy. She came to know about the right to challenge the order of cognizance by filing a revision. Accordingly, the respondent No. 2 filed a Revision under Sections 397/399 of the Cr.P.C., in the Court of the learned Sessions Judge, Karimganj, which was registered as Criminal Revision No.40/2021 along with a petition under Section 5 of the Limitation Act for condonation of delay, which was registered as the Mis. Case No.11/2021.

6.10. After hearing the submissions made by both the parties, the learned Sessions Judge, Karaimganj passed the order dated 02.02.2022 in Mis. Case No.11/2021 arising out of the Criminal Revision No.40/2021 and thereby, the said Court allowed for condonation of delay. The petitioner with a view to harass the respondent No.2 in various ways filed cases one after another as the respondent No.2 refused to withdraw the writ petition which was filed against the petitioner.

6.11. The learned trial Court passed the reasoned order observing the view of the Hon'ble Apex Court as well as other High Courts, wherein, it is held that *"the day to day explanation is not required, though the required is to explain the reason for delay to the satisfaction of the Court."* Further it is also stated the

respondent No.2 never blamed the Advocate engaged by her. It is only stated that earlier engaged counsel could not advice the respondent for application of legal position regarding Section 197 Cr.P.C. The learned Trial Court rightly held that there is no an intentional latch or negligence on the part of the respondent No.2 by preferring the Criminal Revision Petition with a delay of 1360 days, which was allowed accordingly.

7. In this regard, the learned counsel for the petitioner has submitted that as per Section 5 of the Limitation Act, for condonation of delay, 'sufficient cause' for the same has be to shown by the respondent in clear terms, whereas, in the instant petition, there is no single word showing any such justifying reason for the delay, for which instant revision petition is filed for. He also added that, there is no explanation of delay from the date of 08.03.2018 to 14.03.2020, thereafter from 03.10.2021.

8. In reply to this arguments, the learned counsel for the respondent No.2, Mr. A. K. Bhuyan, has submitted the reason for delay or not challenging the impugned order within the period of limitation, is that the respondent was not aware of the provisions to challenge its legality before the appropriate forum, as she was not advised by her engaged counsel. Accordingly, the respondent No.2 filed a Revision under Sections 397/399 of the Cr.P.C., in the Court of the learned Sessions Judge, Karimganj, as soon as she came to know about the right to challenge the order of cognizance by filing a revision and the same was allowed.

9. In support of his submissions, he relied on the decision of ***Raghunath***

Das Vs. Gokal Chand & others passed in Civil Appeal No.251/1954 and in the case of ***M.P. Steel Corporation Vs. Commissioner of Central Excise*** in Civil Appeal No.4367/2004, wherein, after perusal of the aforesaid decisions shows that in the concerned cases, the delay of more than 4 years and 10 years respectively, got condoned considering the said period being consumed in proceeding with the same diligently in good faith.

10. Thus, the learned counsel for the respondent No.2, Mr. A. K. Bhuyan has submitted that the learned Trial Court has passed the order by discussing at length and only for such discussion regarding prosecution sanction, the said Court cannot held to be committed any illegality nor the petitioner was prejudice by the said order.

11. He also submitted that the respondent No. 2 is facing extreme financial hardship for not getting her pensionary benefit as well as other benefits. Accordingly, it is stated that there is no necessity of making any interference in the order passed by the learned Trial Court dated 02.02.2022, in Mis. Case No.11/2021 arising out of the Criminal Revision No.40/2021, whereby, the learned Session Judge, Karimganj condoned the delay in preferring the revision petition.

12. In addition to his submission, he further submitted that allowing the limitation petition or condoning the delay is purely interlocutory order and hence, no revision petition lies under Section 397 of the Cr.P.C., before this Court. And accordingly, it is liable to be dismissed on the ground that it is not maintainable under Section 397 (2) of the Cr.P.C. As per Section 397(2), wherein,

it is stated that, “***the power of revision petition confers by one shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding***”. Accordingly, it is submitted that the present criminal revision petition is not maintainable against the order of Limitation passed by the learned Trial Court and the said petition is exclusively against the interlocutory order. The connected criminal revision petition is still pending before the Court of learned Trial Court and final order is yet to be passed.

13. In this context, Mr. S. C. Biswas, learned counsel for the petitioner has submitted that there cannot be any legal bar in entertaining the criminal revision petition against the order made under Section 5 of the Limitation Act and the same can be entertain by filing of the revision petition.

14. Mr. S. C. Biswas, learned counsel for the petitioner also submitted that the learned Trial Court has committed a grave error in condoning huge delay of 1360 days in preferring the appeal. He also submitted that while condoning the delay, the said Court has not observed the sufficient cause for explaining the delay.

15. In support of his arguments, he relied on the decision of the Hon’ble Apex Court reported in ***(2001) 6 Supreme Court Cases 338***, wherein, it has been held that;

“Section 482 and 397(3)- High Court’s inherent jurisdiction under Section 482, held, remains unaffected by provisions of Section

397(3)-Fact that the impugned order was an interlocutory order of the Court of Session, held, immaterial."

He further submits that the High Court has the jurisdiction to interfere, if the order passed is miscarriage of justice.

16. In this contest a decision of the Hon'ble Delhi High Court passed in Crl.Rev.P./317/2014 dated 16.12.2014 in the case of **Praveen Bhutani Vs. Smti Usha Sethi & Anr.**, can also be relied on, wherein, the Hon'ble Delhi High Court has relied in the decision of the Hon'ble Apex Court passed in Amarnath (Supra) wherein, it has been held under;

"The term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."

17. Coming to the point raised by the petitioner regarding the illegality committed by the learned Trial Court by allowing the petition for condonation of

delay, it is submitted that the said Court had passed the order mechanically without applying his judicial mind and also there is no day to day explanation neither any sufficient explanation has been made in the petition for condonation of delay and brought allegation against the learned engaged counsel, who is designated as senior Advocate, stating that he has improperly advised the respondent No.2., which is not at all sustainable.

18. The learned Counsel further submitted that the Hon'ble Supreme Court in its various decisions held that "*for discharge of substantial justice, the length of delay is not very much material in deciding an application for condonation of delay, provided explanation for the delay is found to be reasonable and convincing.*" But, in the instant case there is complete negligence or latches on the part of the respondent No. 2 by putting the entire blame on the engaged counsel. More so, there is no proper explanation of condonation of delay for 1360 days by preferring the criminal revision petition.

19. The learned counsel for the respondent No. 2 has submitted in this regard that the learned Session Judge had passed the reasoned order, after discussing the entire aspect of the case. Accordingly, condonation of delay for 1360 days was allowed. The learned Session Judge also discussed in details about the provisions of law considering the view of the Hon'ble Apex Court. It is rightly stated by the learned Trial Court, that the respondent No.2 had contested the case filed against her without any knowledge about legal provisions of 197 Cr.P.C., wherein, she has the right to challenge the order of the case which was passed without any sanction from the authority concerned. Since, she was not instructed or not advised by her engaged counsel, thus, she was totally unaware

about the said provisions, and preferred this Criminal Revision only after coming to know about the legal provisions to challenge the order of cognizance by the learned Trial Court.

20. The respondent No.2 being a layman was not aware about any legal position to which she has the right to challenge the same. The impugned order of the case was challenged by the petitioner as there is no prosecution sanction to prosecute any criminal proceeding against the respondent No.2 being public servant. More so, the learned counsel for the respondent No. 2 also relied on the decision of the Hon'ble Apex Court reported in 1984 (Supp) SCC 431, in the case of ***Smti Lachi Tiwari & others Vs. Director of land records & others*** and another decision reported in 1972 (1) SCC 366, in the case of the ***State of West Bengal Vs. The Administrator, Howrah Municipality***.

21. Citing those above referred judgment of the Hon'ble Supreme Court, it is submitted that the wrong advice given by the engaged counsel cannot be held negligence on the part of the respondent No.2 to file any application under Section 5 of the Limitation Act for condonation of delay. He made stress on paragraph 37 of the judgment passed by the Hon'ble Apex Court in the case of the ***West Bengal Vs. The Administrator, Howrah Municipality***, wherein, it is stated that;

37. "On behalf of the appellant a wrong advice given by his legal adviser, he cannot be held guilty of negligence so as to disentitle the party to plead sufficient cause under Section 5 of the Limitation Act. Mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient cause within the section though there is certainty no general doctrines which saves parties

from the results of wrong advice.”

22. Further, the learned counsel for the respondent also relied on following decisions of the Hon’ble Apex Court;

- i. ***Ramlal Vs. Rewa Coalfields Ltd.***, reported in AIR 1962 SC 361;
- ii. ***Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Others***, reported in 1987 (2) SSC 107 and
- iii. ***N. Balakrishnan Vs. M. Krishnamurthy***, reported in 1988 (7) SCC 123.

23. In para 9 of the ***N. Balakrishnan*** (*Supra*), wherein, it has been stated that,

“9.....It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of jurisdiction was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

24. Accordingly, it is submitted by the learned counsel for the respondent that the learned Sessions Judge, Karimganj has committed no illegality or mistake by

allowing the petition filed under Section 5 of the Limitation Act. Further, it is submitted that unless the delay is condoned the respondent will be prejudiced and will not get a chance to raise the point in regards to prosecution sanction under Section 197 of the Cr.P.C. Accordingly, the learned counsel for the respondent has prayed for dismissal of the instant petition filed by the petitioner.

25. After considering the submissions made by the learned Advocates of both sides, it is seen that three points have been raised in this case;

(i) As to whether the present criminal revision petition is maintainable against the order passed by the learned Sessions Judge while dealing with section 5 of the Limitation Act.

(ii) Another issue is that, as to whether the learned Trial Court committed any mistake or error by allowing condonation of delay filed under Section 5 of the Limitation Act?

(iii) Whether wrong advice given to the respondent by the engaged counsel can be treated as negligence on her part.

26. As pointed out by the learned counsel for the petitioner and also considering the view of Delhi High Court relying on the decision passed in ***Amarnath(Supra)***, I find that the respondent has the right to contest the order passed under Section 5 of the Limitation Act and accordingly, and it can be considered as a final order. Also, there cannot be any bar for preferring any criminal revision petition passed against the order of condonation of delay as passed by the learned Sessions Judge, Karimganj.

27. Coming to the order passed by the learned Trial Court by allowing the petition for condonation, it is seen that the said Court had discussed in details while allowing this petition and considered the view of the Apex Court. Further, it is seen that the criminal revision petition was filed before learned Trial Court by raising the point that the respondent was not aware about the provision under Section 197 of the Cr.P.C., i.e. regarding the prosecution sanction before instituting any criminal proceeding against the petitioner. So she could not raise any point within the stipulated time, due to improper guidance of her engaged counsel. Subsequently, she raised the point, when she came to know that prosecution sanction is required to be obtain before initiating any criminal proceedings against Govt. employee. There may not be day to day explanation for delay in her petition, but, the respondent has shown sufficient cause for delay in filing the revision petition.

28. From the above discussion, it is also observed that the Hon'ble Apex Court has expressed the view that wrong legal advice in absence of any proper legal guidelines, cannot be held negligence on the part of the respondent and being layman she may not have the knowledge about the legal provisions. More so, if the respondent is not given the chance to raise the point under Section 197 of the Cr.P.C. there may be prejudice to the petitioner, and at the same time it is also seen that the present petitioner will get ample opportunity to contest the revision petition. Thus, no prejudice will be caused to the present petitioner, if the revision petition pending before the learned Sessions Judge, Karimganj is allowed to be proceeded by condoning the delay in preferring the said revision petition.

29. More so, the Hon'ble Apex Court in the case of ***Ramlal (Supra)***, expressed the view that discretion should be exercised in favour of the party and delay should be condoned. The length of delay is not a matter only for allowing the condonation of delay and the same can be legally approached while dealing with such kind of petition and the Court should take liberal approach to provide justice while dealing with the same.

30. So considering the entire discussion made above, it is seen that the learned Session Judge, Karimganj has not committed any error or mistake, while, passing the order dated 02.02.2022, passed in Criminal Miscellaneous Case No.11/2021 in connection with Criminal Revision 40/21. Thus, the order passed by the learned Sessions Judge, Karimganj does not suffer from any legality, propriety and correctness.

31. In the result I do not find merit in this petition and accordingly the same stands dismissed. Consequently, the impugned order dated 02.02.2022, passed by the learned Sessions Judge, Karimganj, in Criminal Miscellaneous Case No.11/2021 in connection with Criminal Revision 40/21, condoning the delay of 1360 days, stands upheld.

32. In terms of above observations, this criminal revision petition stands dispose of.

JUDGE

Comparing Assistant