

GAHC010053152018



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

Case No. : I.A.(CrI.)/183/2018

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM.

VERSUS

SRI RAJIB DEWRI
R/O VILL. NA DALAIBORI, P.O. CHABUKDHARA, DIST. MORIGAON,
ASSAM, PIN 782105

Advocate for the Petitioner : PP, ASSAM

Advocate for the Respondent :

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA
ORDER

17-02-2023

[Michael Zothankhuma, JJ]

1. Heard Ms. B. Bhuyan, learned Senior Counsel and Additional Public Prosecutor, Assam assisted by Ms. M. Chakraborty, learned counsel for the applicant. Also heard Mr. P.J. Saikia, learned Senior Counsel assisted by Mr. P. Bordoloi, learned counsel for the opposite party.

2. This is an application praying for condoning the delay of 2604 days in preferring an appeal against the judgment and order dated 29.09.2010 passed by the learned Sessions Judge, Morigaon in Sessions Case No.112/2009 (GR Case No.1056/2009), by which the opposite party/accused had been acquitted from the charge under Section 376 (I) of the IPC.

3. The learned Senior Additional Public Prosecutor submits that the request for preferring an appeal against the impugned judgment and order dated 29.09.2010 passed in Sessions Case No.112/2009 was received by the office of the Public Prosecutor, Gauhati High Court from the office of the LR-cum-Commissioner & Secretary to the Government of Assam in the month of December, 2017. As some of the pages of the judgment and order dated 29.09.2010 were missing and as no explanation for the delay was given by the LR-cum-Commissioner & Secretary to the Government of Assam to the office of the Public Prosecutor, Gauhati High Court, the said fact was brought to the notice of the LR-cum-Commissioner & Secretary to the Government of Assam, vide letter dated 21.12.2017 issued by the office of the Public Prosecutor, Guwahati High Court. Thereafter, the LR-cum-Commissioner & Secretary to the Government of Assam wrote a letter dated 22.12.2017 to the office of the Public Prosecutor, Gauhati High Court stating that the request for preferring an appeal against the impugned judgment and order dated 29.09.2010 had been made by the Public Prosecutor, Morigaon District and the same had been received by the Office of the LR-cum-Commissioner & Secretary to the Government of Assam only on 13.12.2017. However, the request for filing an appeal against the impugned judgment and order dated 29.09.2010 had not been made by the then Public Prosecutor, Morigaon who had conducted the case before the learned Trial Court, but by the Public Prosecutor, Morigaon who was in office in the year

2017. After receipt of the said letter dated 22.12.2017, the office of the Public Prosecutor, Gauhati High Court started the process for filling an appeal and obtained a fresh certified copy of the impugned judgment and order dated 29.09.2010 only on 06.01.2018. Thereafter, the appeal was filed on 31.01.2018.

4. Ms. B. Bhuyan submits that in view of the above facts the delay of 2064 days had occurred in preferring the appeal. She submits that there was no deliberate delay or negligence on the part of the applicant in approaching this Court, 7 years after the impugned judgment was passed. She submits that unless the delay is condoned, there would be a great miscarriage of justice, inasmuch as, the learned Trial Court had not taken into consideration irrelevant factors and had given importance to minor inconsistencies made in the statement of the victim under Section 164 of the Cr.P.C. vis-a-vis the evidence given during Trial, while acquitting the respondent. The learned Additional Public Prosecutor thus submits that the delay should be condoned and in support of her submission she has relied upon the judgment of the Apex Court in the Case of ***Indian Oil Corporation Limited and Ors. vs. Subrata Borah Chowlek & Ors.***, reported in ***(2010) 14 SCC 419***.

5. Ms. B. Bhuyan further submits that as the office of the Public Prosecutor, Gauhati High Court is responsible for filing appeals on the basis of the opinion of the Public Prosecutors in the districts of Assam, it is not imperative that the view of the Superintendent of Police and the Deputy Commissioners should be taken for filing every appeal. However, the consent and approval for filing an appeal should be taken from the office of the LR-cum-Commissioner & Secretary to the Government of Assam, Law and Judicial Department.

6. Mr. P.J. Saikia, learned Senior Counsel for the respondents, on the other hand, submits that the applicant has not given any day to day explanation for the delay and as such, the delay of more than 7 (seven) years should not be condoned. He further submits that in terms of Rule 27 of Part-IV of the Assam Police Manual, in cases of acquittal where there has been a grave miscarriage of justice, the District Magistrate is to approach the Government for filling an appeal, if a prior note has been sent to him by the Superintendent of Police, stating that the appeal is necessary against the judgment and that the appeal is likely to be successful. He submits that the application of the applicant clearly shows that no decision had been taken by the Superintendent of Police, Morigaon or the Deputy Commissioner, Morigaon to file the present appeal, in consonance with Rule 27 of the Part IV of the Assam Police Manual. He also submits that the appeal, if any, should have been filed within a period of less than 3 (three) months from the date of the impugned judgment and order, in terms of Rule 27.

7. Learned Senior Counsel for the respondents also submits that in terms of the judgment of the Apex Court in the case of the ***Office of the Chief Post Master General & Ors. vs. Living Media India Limited and Anr.,*** reported in ***(2012) 3 SCC 563***, the Apex Court has held that condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. A separate period of limitation cannot be possessed by the Government *vis-a-vis* the ordinary litigants. He thus submits that the delay of 2064 days should not be condoned.

8. We have heard the learned counsels for the parties.
9. The application submitted by the applicant for condoning the delay of 2064 days, contains five paragraphs, out of which the reasons for condoning the delay have been set out in Paragraph no.3, which reads as follows:

3. That the request for preferring an appeal against the said judgment dated 29.09.2010, was received by the office of the Public Prosecutor from the office of the L.R.-cum-commissioner & Secretary to the Govt. of Assam in the month of December, 2017. As some of the pages of the judgment were missing and as no explanation regarding the delay was forwarded to us, accordingly, the same was intimated to the L.R.-cum-Commissioner & Secretary to the Govt. Of Assam vide our letter dated 21.12.2017 immediately, on 22.12.2017, the office of the Public Prosecutor, Gauhati High Court was intimated by the office of the L.R.-cum-Commissioner & Secretary to the Govt. of Assam that the request for preferring an appeal against the said judgment dated 29.09.2010 from the present Public Prosecutor of Morigaon District had been received by the office of the L.R.-cum-Commissioner & Secretary to the Govt. of Assam only on 13.12.2017. Request in this regard was not made by the then Public Prosecutor who conducted the case for reasons best known to him. After receipt of the said letter dated 22.12.2017 as some pages of the judgment were missing, the office of the Public Prosecutor, Gauhati high Court took the initiative and obtained a fresh certified copy of the judgment only on 06.01.2018. In view of above, there is no deliberate delay in preferring the present appeal.”

10. A reading of Paragraph no.-3 of the application clearly shows that the applicant has not made any attempt to give reasons as to why no steps had been taken by the applicant to file an appeal between the date of passing of the impugned judgment and order dated 29.09.2010 till 13.12.2017. In fact, nothing has been mentioned by the applicant as to what had transpired between 29.09.2010 and 13.12.2017.
11. In the case of **Indian Oil Corporation Limited and Ors. vs. Subrata Borah Chowlek & Ors.** (supra), the Apex Court has held that even upon showing sufficient cause for condonation of delay, a party is not entitled to condonation of delay as a matter of right.

However, a Court should generally follow a liberal approach, particularly when no negligence, inaction or malafides can be imputed to the party. It further held that though Section 5 of the Limitation Act, 1963 makes no distinction between the State and the citizen, nonetheless adoption of a strict standard of proof in case of the Government, who do not have any personal interest, may lead to grave miscarriage of justice and therefore, certain amount of latitude is permissible in such cases. There was a delay of 59 days in preparing an appeal in the above case.

12. In the case of ***Ram Nath Sao vs. Gobardhan Sao***, reported in ***(2002) 3 SCC 195***, the Apex Court has held that the Court should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of the drive to dispose cases. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bonafides can be imputed to the defaulting party. The issue in the above case related to the abatement of an appeal filed by the defendants against a decree in a partition suit. As some of the appellants expired and no steps for substitution of their heirs and legal representatives were taken within the time prescribed, the appeal abated. The applications for substitution by the heirs and the legal representatives was allowed by the Apex Court, by condoning the different periods of delay from 130 days to 5 years, keeping in view the fact that appellants were rustic and illiterate villagers.

13. In the case of ***State (NCT of Delhi) vs. Ahmed Jann***, reported in ***(2008) 14 SCC 582***, the Apex Court has held that certain amount of latitude should be given to the appeals

brought by the State, keeping in view that the decisions are taken by Officers/Agencies proverbially at a slow pace and the encumbered process of pushing files from table to table. The Apex Court condoned the delay of 5 years in the filing and refilling of the Revision Petition, by holding that the reasons/explanations offered for the delay were plausible and deserved to be accepted.

14. In the case of ***Office of Chief Post Master General and Ors. vs. Living Media India Limited and Anr.*** (*supra*), the Apex Court has held that the condonation of delay is an exception and should not be used as an anticipated benefit for government departments.. The law shelters everyone under the same light and the Government cannot claim to have a separate period of limitation, when the department was possessed with competent persons familiar with Court proceedings.

15. As can be seen from the judgments of the Apex Court, acceptance of an explanation for condonation of delay should be given a liberal approach, provided no negligence or inaction or want of *bonfides* can be imputed to the defaulting party.

16. In the present case the acquittal of the opposite party by the learned Trial Court had been made after going through a lengthy trial, where evidence was adduced and parties were heard. The impugned judgment and order of the learned Trial Court was passed on 29.09.2010. However, no action was taken by the applicant with regard to the impugned judgment and order dated 29.09.2010 passed by the learned Sessions Judge, Morigaon, for more than 7 years. The delay in this case pertains to 2064 days. In fact, there is no attempt

to make any explanation for the period of delay between 29.09.2010 and 13.12.2017.

17. In view of the inordinate delay for which there is no explanation, this Court is of the view that there has been negligence and inaction on the part of the applicant in filing this appeal, to which this Court cannot turn a *Nelson's eye*. The above being said, Rule 27 of Part-IV of the Assam Police Manual gives the procedure for filing an appeal against the acquittal and also the period on which an appeal should be filed. As per Rule 27, under Section 535 of the Code of Criminal Procedure, 1898, the District Magistrate is to approach the Government for filing an appeal, if a prior note has been sent to him by the Superintendent of Police, stating that an appeal is necessary against the judgment/order and that the appeal is likely to be successful. Thereafter, the appeal is to be filed within 3 (three) months from passing of the impugned order passed. However, the said procedure has not been followed in the present case.

18. Be that as it may, the very fact that the applicant in paragraph 3 of the application has stated that a fresh certified copy of the judgment was obtained on 06.01.2018 implies that a certified copy of the impugned judgment and order had been obtained earlier and they were aware of the same. Further, the applicant and the Public Prosecutors of Morigaon District cannot be said to be rustic or illiterate villagers, who are not aware of the implications of the impugned judgment and order. As we find that the applicant has been negligent and has not made any attempt to explain the delay for the period between 29.09.2010 and 13.12.2017 for condoning the delay in filing the appeal, we are of the view that sufficient cause for condoning the delay has not been made out by the applicant.

19. The application is accordingly, rejected.
20. The LCR, if any, be remitted forthwith to the concerned Trial Court.

JUDGE

JUDGE

Comparing Assistant