

GAHC010161142009



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

Case No. : Crl.Rev.P./253/2009

MD DUDU HUSSAIN
S/O LT. ABDUL HUSSAIN P.O. and P.S. NORTH LAKHIMPUR, D K ROAD,
WARD NO. 7, DIST. LAKHIMPUR, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MS.S BEGUM

Advocate for the Respondent :

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. K. Goswami. Advocate.

For the Respondents : Mr. K. K. Parashar, Add.PP.

Date of Hearing : 03.08.2023

Date of Judgment : 03.08.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. K. Goswami, learned Senior Counsel for the petitioner as Amicus Curiae. Also heard Mr. K. K. Parashar, learned Additional Public Prosecutor for the State of Assam.
2. This criminal revision petition is filed under Section 397/401 of the Code of Criminal Procedure, 1973 against the impugned order dated 19.06.2009 passed by the learned Sessions Judge, Lakhimpur, North Lakhimpur in CrI. Misc. Case No. 121/09, whereby the application filed under Section 5 of the Limitation Act, 1963 for condoning the delay in filing the appeal against the impugned judgment and order of conviction dated 03.04.2009 passed by the learned Additional Chief Judicial Magistrate in G.R. Case No. 443/05 convicting the petitioner under Section 352 of the Indian Penal Code and sentenced to suffer simple imprisonment for a period of 2 (two) months and also to pay a fine of Rs. 300/- in default to suffer simple imprisonment for one month was rejected.
3. The brief facts of the prosecution case is that on 29.04.2005 at North Lakhimpur Town under North Lakhimpur Police Station, the accused/petitioner being the husband of Musst. Seema Begum subjected the said married women to cruelty by physical and mental torture and by keeping her separately in a rented house and also assaulted her and hence, the case was filed and to that effect the police registered a case being North Lakhimpur Police Station Case No. 281/05 and took up the

investigations and after completion of the same charge sheet was submitted against the accused petitioner under Section 498A IPC sending him up for trial.

4. After trial, the learned Additional Chief Judicial Magistrate, Lakhimpur, North Lakhimpur vide judgment dated 03.04.2009, in G.R. Case No. 443/05 convicted the accused petitioner under Section 352 of the Indian Penal Code and sentenced to suffer simple imprisonment for a period of 2 (two) months and also to pay a fine of Rs. 300/- in default to suffer simple imprisonment for one month.
5. Being aggrieved, the accused petitioner preferred an appeal before the learned Sessions Judge, Lakhimpur, North Lakhimpur. However, while preferring such appeal, there was delay of 30 days. Accordingly, the petitioner filed an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 30 days. Said application was registered as CrI. Misc. Case No. 121/09.
6. The basic grounds of delay as explained, were that the petitioner fell ill on 06.04.2009 and he was under treatment and he could not move and had to remain in bed, for which the petitioner could not file the appeal against the judgment and order passed by the learned trial Court below within the prescribed period of limitation.
7. The learned appellate Court dismissed such application disbelieving the medical certificate and also concluded that diabetic mellitus is not such a serious disease that it would confine the patient to bed. Consequently, the appeal was dismissed. Being aggrieved, the present criminal revision

petition is preferred.

8. The Hon'ble Apex Court in ***Esha Bhattcharjee vs- Managing Committee of Raghunathpur Nafar Academy***, reported in ***(2013) 12 SCC 649***, after elaborately relying on the earlier decision of the apex Court on the issue of condonation of delay culled out the following principles:-

“15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

16. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -*

a) *An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters”.

9. In the case in hand, the learned appellate Court has dealt with the explanation given by the petitioner in a mechanical manner. The appeal was dismissed by not condoning the delay of 30 days only on the ground that the doctor who issued the certificate was not examined and the diabetic mellitus is not such a serious disease that it would confine the patient to bed. The learned appellate Court ought to have considered such certificate. Thus, in the considered opinion of this Court, the impugned order has been passed in ignorance of the settled proposition of law as discussed hereinabove. This court after perusal of the certificate, do not find anything to disbelieve the certificate.
10. As held by the Hon'ble Apex Court in the case of ***Santosh Hajari Vs Purushuttom Tiwary (2001) 3 SCC 179***, the paramount overall consideration before a Court is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis.
11. In the considered opinion of this Court, the cause of delay shown by the appellant cannot be termed as a gross negligence inasmuch as the learned Court below ought not to have attached presumption to causation of delay. From the explanation, this Court also doesnot find any lack of bonafide. In

the case in hand no prejudice shall be caused in condonation of delay inasmuch as it is the petitioner who suffered conviction. Therefore, this Court is of the considered opinion that the petitioner was able to show sufficient causes in preventing him in filing the appeal within the prescribed period of time.

12. This Court is of the opinion that the principles of law as discussed hereinabove was clear on account of the aforesaid binding precedent. However, the Court below has decided the matter ignoring such settled legal principles. Accordingly, the present Criminal Revision Petition is allowed by setting aside the impugned order dated 19.06.2009 passed by the learned Sessions Judge, Lakhimpur, North Lakhimpur in CrI. Misc. Case No. 121/09. The learned appellate court to register the appeal and proceed to hear the same in accordance with law.

JUDGE

Comparing Assistant