

GAHC010163802022



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

Case No. : I.A.(Crl.)/485/2022

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM.

VERSUS

PARAG GOSWAMI AND ANR.
S/O LATE RADHA NATH GOSWAMI, RESIDENT OF VILLAGE B.G ROAD,
JYOTI NAGAR, PS AND DIST SIVASAGAR, ASSAM

2:SMTI GEETA KAKOTI @ GEETA KAKOTI BARUAH
W/O SHRI DIGANTA BARUAH
RESIDENT OF VILLAGE GANAKPATTY
WARD NO. 10
SEUJPUR
PS AND DIST SIVASAGAR
ASSAM

Advocate for the Petitioner : PP, ASSAM

Advocate for the Respondent : MR G CHOUDHURY (R-1,2)

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 16-03-2023
(M. Zothankhuma, J)

Heard Ms. S Jahan, learned Additional Public Prosecutor for the applicant.
Also heard Mr. G Choudhury, learned counsel for the respondent Nos. 1 and 2.

Learned Additional Public Prosecutor submits that there is a delay of 78 days in filing the appeal against the judgment and order dated 28.12.2021, passed by the learned Special Judge, Sivasagar in Special (POCSO) Case No. 30/2020, acquitting the respondents from the charge under Sections 376(2)/323 IPC read with Section 6 of the POCSO Act.

The learned Additional Public Prosecutor submits that the impugned judgment and order has been passed on 28.12.2021, acquitting the respondents during the pandemic period. She submits that due to the various restrictions that were in place during the pandemic, the various Departments in the Government had to deal with the problem of lethargy that had steeped into the working atmosphere of the Government offices. She submits that the decision to file an appeal against the impugned judgment was communicated to the Public Prosecutor, Gauhati High Court only on 10.06.2022. Subsequent to 10.06.2022, documents had to be collected and for the time taken in drafting the appeal and filing the same, a total of 78 days delay has occurred. The learned Additional Public Prosecutor submits that the delay is not intentional and in that view of the matter, the delay of 78 days may be condoned, otherwise there would be grave miscarriage of justice.

Mr. G Choudhury, learned counsel for the respondents submits that the application should be dismissed as no proper explanation for the delay has been given.

We have heard the learned counsels for the parties.

It is seen that the impugned judgment and order had been made during the pandemic period, when restrictions were in place all over India. Further, in view of the orders passed by the Apex Court in ***Suo-Moto Writ Petition***

(Civil) 3/2020, the period between 15.03.2020 and 28.02.2022 was not to be counted for the purpose of limitation. In that view of the matter, the period of limitation would have to be counted from 01.03.2022 and as the present appeal has been filed on 16.08.2022, a delay of 78 days has occurred.

On considering the submissions made by the learned Additional Public Prosecutor, we find it plausible that lethargy had crept into the working atmosphere of not only the Government offices, but also in the general public. On considering the reasons given by the learned Additional Public Prosecutor in the application for condonation of delay, we find that sufficient cause for the delay has been made out, though the alleged atmosphere of lethargy should have been dealt with sternly by the authorities.

The delay of 78 days is condoned. Registry is directed to register the criminal appeal and list the same after a week.

This interlocutory application stands disposed of.

JUDGE

JUDGE

Comparing Assistant