

GAHC010261242022



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

Case No. : I.A.(Crl.)/22/2023

RUPAK MAHANTA
S/O SRI DEBEN MAHANTA, R/O VILL-KARIGAON, NOWBOICHA, P.O.-
DOOLAHAT, P.S.-NORTH LAKHIMPUR, DIST-LAKHIMPUR, ASSAM, PIN-
787023

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:DEEPANKAR PAUL

COURT MANAGER
LAKHIMPUR DISTRICT JUDICIARY
NORTH LAKHIMPUR
ASSAM
PIN-78700

Advocate for the Petitioner : MR. B D GOSWAMI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 25-01-2023

Heard Mr. A. Borua, learned counsel for the applicant and Mr. K. K.

Das, the learned Addl. PP for the State of Assam.

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 259 days in filing the application for restoration of Criminal Petition No. 690/2019.

It is submitted that the Criminal Petition No. 690/2019 was instituted by the present petitioner and this Court vide order, dated 24.06.2019 was pleased to issue notice upon the respondent No. 2 returnable by 4 (four) weeks with a further observation that the interim prayer shall be considered on the next returnable date. Thereafter, the petitioner took steps as directed by this Court for service of notice upon respondent No. 2 but the case was never listed and during the outbreak of *COVID-19 Pandemic*, the functioning of the Court was running in a very restricted manner and only limited numbers of case were listed which were of emergency in nature.

In the meantime, the petitioner had engaged a different sets of counsel who initially handled the criminal petition before this Court. In the month of November, 2021 only, the petitioner took the brief from the earlier sets of counsel with no-objection certificate and engaged present sets of counsel. Accordingly, Vakalatnama was also filed by the present sets of counsel on 18.11.2021 through their Advocate clerk and the present sets of counsel was on a bonafide believe that the matter will be listed but it was not listed and the name of the present sets of counsel was not shown in the cause-list and hence, they were not aware of listing of the case. It has come within the knowledge of the present sets of

counsel only after dismissal of the case for non-prosecution on 25.02.2022 and thereafter, one petition for restoration was filed for restoring the Criminal Petition No. 690/2019 with a delay of 259 days.

It is submitted by the learned counsel for the petitioner that though there is no wilful negligence or lapse on the part of the petitioner and for the reasons, as stated above, the petition for restoration could not be filed within the statutory period of limitation. Further, the learned counsel for the petitioner submits that if the application for condonation of delay is not allowed, the petitioner will suffer from irreparable loss and injury and accordingly, prayed to condoned the delay of 259 days in filing the present application for restoration of Criminal Petition No. 690/2019.

On the other hand, the learned Addl. PP Mr. K. K. Das in his usual fairness raised no objection in the event of allowing the condonation application.

Considering the submission of the learned counsel for both the side and the entire aspect of the case, I find that this is a fit case to allow the condonation application.

Resultantly, the condonation of delay of 259 days in filing the application for restoration of Criminal Petition No. 690/2019 is hereby condoned.

Accordingly, the Registry is directed to restore the restoration petition.

With the above observation and direction, this Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant