

GAHC040016892023



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

Case No. : IA(Crl)/68/2023

Maga Sakter
S/o Lt. Maga Ter, R/o Bank Tinali Itanagar, PO/PS Itanagar, District papum Pare,
Arunachal Pradesh, Mobile No. 8132908579

VERSUS

Biki Tamo
S/o Biki Talang, R/o C Sector Itanagar, PO/PS Itanagar, District papum Pare,
Arunachal Pradesh.

Advocate for the Petitioner : J Tsering

Advocate for the Respondent : H.R. Obing

BEFORE
HONBLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 30.04.2024

Heard Mr. K. Tama, the learned counsel for the applicant.
Also heard Mr. H. Lampu, the learned counsel for the respondent.

2. This is an application filed under Section 5 of the Limitation

Act for condonation of the delay of 31(Thirty One) days in preferring criminal revision petition against the Judgment and order dated 11.08.2023, passed in criminal appeal No. 02/2023.

3. The petitioner is aggrieved by Judgment and order of conviction dated 23.03.2023, passed by the learned court of Chief Judicial Magistrate, Yupia, under Section 138 of the Negotiable Instrument Act, 1881 whereby the learned court was pleased to sentence him to pay fine of 1) Rs. 1,18,00,000/-(Rupees One Crore Eighteen Lakhs) only, the cheque amount, and 2) Rs.2,00,000/- (Rupees Two Lakhs) only for loss and damage sustained by the complainant/respondent due to non-payment of cheque amount within three months. And in default of payment of fine to undergo further simple imprisonment of 1(one) year.

4. The applicant being aggrieved by the aforesaid judgment and order of conviction preferred the criminal appeal No.02/2023 before the learned Sessions Court, which was dismissed by the learned Sessions Court vide its order dated 11.08.2023, only on the ground that the appellant failed to deposit the 20% of the fine awarded by the learned trial court.

5. Being aggrieved by the aforesaid order of the learned Sessions Court, the applicant filed the connected criminal revision

petition before this Court. However, there has been a delay of 31(thirty one) days while filing the said revision petition. Accordingly, the instant interlocutory application for condoning the said delay of 31(thirty one) days has been filed.

6. Mr. K. Tama, the learned counsel for the applicant submits that delay has been occasioned on the health ground of the applicant and the same is unintentional and beyond the control of the applicant.

7. Mr. H. Lampu, the learned counsel for the respondents, on the other hand, strongly opposes the prayer for condonation. He submits that the petitioner has stated to have been admitted at the Institute of Liver & Biliary Sciences, New Delhi on 20.09.2023, whereas the order put to challenge by the criminal revision petition is of 11.08.2023.

8. I have heard the submissions made at the bar and perused the averments made in the interlocutory application for condonation of delay. Paragraph-4 and 5 of the interlocutory application is reproduced hereunder for ready reference:-

”4. That the applicant begs to state that, after the aforesaid impugned dismissal order was passed, he immediately forethought of challenging the same before this Hon'ble Court and while he was consulting advocates suddenly his health deteriorated and he had to get admitted at Institute of Liver & Biliary Sciences, New Delhi on 20.09.2023 wherein

after several diagnosis, the doctors have found that the appellant is further suffering from Chronic Liver Disease i.e., CLD ethanol + TB. Though at present the applicant is under recovery however the doctor has advised him for hospitalization till 24.10.2023 therefore, till date he is undergoing treatment at Delhi.

It is to be mentioned herein that, since the year 2018 he has been a patient of seizure disorder, neuro related illness and psychiatric issues. He has been undergoing treatment regularly for months in Guwahati and Itanagar hospitals which caused him hefty expenditures. He could barely recover from such sufferings, again from the month of September 2023 he had to get admitted at Institute of Liver & Biliary Sciences, New Delhi.

5. That the applicant begs to state that, after he started to recover from his illness, he could engage the present advocate through phone calls and it took considerable amount of time in collecting necessary documents/files from previous counsel and for preparation of the instant criminal revision petition the documents had to scrutinize minutely. After draft was completed, the petition had to send to the applicant at Delhi and receive back the original for filing before this Hon'ble Court and in the whole process it caused a considerate delay of 31 (Thirty-One).days."

9. It appears that pursuant to the order of the Sessions Court's dismissing the appeal of the applicant, the applicant though consulted his advocate for challenging the same before this Hon'ble Court, however, due to his sudden deterioration of his health, he had to travel to New Delhi wherein he was admitted. Thereafter, being recovered, he has filed the present revision petition along with the condonation.

10. The aforesaid reason stated in the interlocutory application appears to be sufficient and bonafide. Accordingly, in the interest of justice, the delay of 31(thirty one) days is condoned. Resultantly, the Interlocutory application is allowed.

Disposed of.

JUDGE

Comparing Assistant