

GAHC010170702023



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

Case No. : I.A.(CrI.)/697/2023

RAFIQUL ISLAM
S/O ABDUL HOQUE
VILL- TUNGRURCHAR, P.O. AND P.S. MOHENDRAGANJ, DIST. SOUTH
WEST GARO HILLS,
MEGHALAYA, PIN-794106

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:MS. NARGIS BEGUM
D/O ZAMAN MANDAL
VILL AND P.O. HATSINGIMARI
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA-MANKACHAR
ASSAM
PIN-78313

Advocate for the Petitioner : MR J ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

11.01.2024

Heard Mr. J. Islam, learned counsel for the applicant and also heard Mr. P.S. Lahkar,

learned Additional Public Prosecutor, Assam, appearing for the State opposite party No.1.

2. Order dated 29.11.2023 passed by the Lawazima Court indicates that as per track consignment report, available in the case record indicates that notice in respect of opposite party No.2 has been delivered to the addressee on 08.09.2023, and as such, service stands completed in respect of the opposite party No.2. But the opposite party No.2 remains unrepresented today.

3. Mr. Islam, learned counsel for the applicant submits that this interlocutory application is filed under Section 5 of the Limitation Act for condoning the delay of 368 days in filing the connected criminal revision petition, challenging the ex-parte order, dated 30.04.2022 passed by the learned Chief Judicial Magistrate, South Salmara-Mankachar, in Misc. Case No.29/2020, under Section 125 Cr.P.C., by which the learned Court below has granted maintenance allowance @ ₹ 7,000/- per month to the opposite party No.2 from the date of filing of the petition. The learned counsel for the applicant further submits that the impugned order is an ex-parte order and without causing service of notice upon the applicant as at the relevant point of time, he was serving at Nyveli of Tamil Nadu as CISF constable the impugned order was passed and therefore, the learned counsel submits that the criminal revision petition could not be filed in time and the delay is not intentional, rather it is circumstantial and therefore, it is contended to condone the same.

4. On the other hand, Mr. Lahkar, learned Additional P.P. submits that since the opposite party No.2 had failed to turn up in spite of service of notice, he has no objection in the event of condoning the delay of 368 days in filing the criminal revision petition.

5. Having heard the submission of learned Advocates of both sides, I have gone through the application and the documents placed on record. It appears that the impugned order dated 30.04.2022 was passed by the learned Chief Judicial Magistrate, South Salmara-Mankachar ex-parte.

6. In view of the explanation so forthcoming for the delay of 368 days, this Court is

inclined to accept the same and condone the delay of 368 days in filing the connected criminal revision petition.

7. Accordingly, the I.A. stands disposed of.

8. Registry to register and number the connected criminal revision petition and list the same before this Court.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant