

GAHC010173442024



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

Case No. : I.A.(Crl.)/861/2024

SUNTU @ HUNTU BORAIK
R/O. OUGURIJAN, TILA BASTII, P/S. BIHUBOR, DIST. SIBASAGAR, ASSAM.

VERSUS

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

Advocate for the Petitioner : MS B R A SULTANA,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 13.09.2024
[Manish Choudhury, J.]

Heard Ms. B.R.A. Sultana, learned Legal Aid Counsel for the applicant-appellant and Ms. A. Begum, learned Additional Public Prosecutor for the opposite party no. 1, State of Assam.

2. The instant interlocutory application under Section 5 of the Limitation Act, 1963 is preferred seeking condonation of the period of delay which is stated to have occurred in filing the accompanying criminal appeal. The applicant as the appellant, has preferred the accompanying criminal appeal to assail a Judgment and Order dated 29.10.2022 passed by the Court of learned Additional Sessions Judge-cum-Special Judge [POCSO], Sivasagar [the

Special Court', for short] in Special POCSO Case no. 43 of 2021. By the Judgment and Order dated 29.10.2022, the applicant-appellant has been convicted for the offences under Section 6, Protection of Children from Sexual Offences [POCSO] Act, 2012 and Section 376AB, Indian Penal Code [IPC]. In view of the provisions contained in Section 42, POCSO Act, 2012, the applicant-appellant has been sentenced to undergo rigorous imprisonment for a period of twenty years and also to pay a fine of Rs. 10,000/-, in default of payment of fine, to undergo further rigorous imprisonment for a period of six months.

3. On perusal of the application, we find that the period of delay which is stated to have occurred in filing of the accompanying appeal is 602 days beyond the statutory period of limitation. It transpires from a Letter dated 15.07.2024 of the Secretary, District Legal Services Authority, Sivasagar, appended to the application as Annexure-C and addressed to the Secretary, High Court Legal Services Committee, Gauhati High Court [GHC], that when shifting of records was taking place on 12.07.2024, a bundle relating to jail appeals was found. It is stated that though the appeals were kept ready, but the same were not sent to the High Court Legal Services Committee, GHC. The matter was then informed to the Hon'ble Chairman, District Legal Services Authority, Sivasagar for taking necessary action and to take necessary steps for filing of appeal before the appellate court.

4. During the period from 29.10.2022 till date, the applicant-appellant is in jail serving his sentence.

5. Ms. Begum, learned Additional Public Prosecutor has submitted that from Annexure-C and Annexure-D, it transpires that the delay is not attributed prima facie to the applicant-appellant. Ms. Begum has fairly submitted that considering the fact that the applicant-appellant has been convicted and sentenced for a period of twenty years, the interest of justice will be better sub-served if the accompanying criminal appeal is heard on merits by condoning the delay. With such submission, Ms. Begum has submitted that the State has no objection if the period of delay occasioned herein is condoned.

6. Section 5 of the Limitation Act, 1963 is engrafted in order to enable the court to do

substantial justice to the parties by disposing of matters including the criminal appeals, on merits. The expression 'sufficient cause' is interpreted as an elastic concept to enable the court to apply the law in a meaningful manner with the ultimate objective to sub-serve the ends of justice. When the substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. As the applicant-appellant has been convicted and sentenced for a period of twenty years, it cannot be presumed that the delay has been occasioned deliberately by the applicant-appellant. It is also clear that a convict like the applicant-appellant, does not stand to gain any benefit by resorting to delay deliberately. If the refusal to condone the delay itself results in miscarriage of justice, it could also be a ground to condone the delay.

7. As the offence involved is Section 6, POCSO Act, the victim/guardian of the victim/informant, etc. will have participatory right in the accompanying criminal appeal to contest.

8. Having regard to the factors attributable to the delay and as the same are prima facie not attributable to the applicant-appellant, we find that the accompanying criminal appeal deserves consideration on merits to sub-serve the ends of justice. Accordingly, the instant application seeking condonation of delay of 602 days in preferring the accompanying criminal appeal stands allowed.

9. The Office to register the accompanying criminal appeal and thereafter, list the same for admission.

JUDGE

JUDGE

Comparing Assistant