

GAHC010196142023



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

Case No. : I.A.(CrI.)/814/2023

KISHAN LAL TOSHNIWAL
S/O LATE MANGILAL TOSHNIWAL, FLAT NO. 501, ROYAL GRAND, STREET
NO. 3, SURVEY OF INDIA, MADHAPUR, HYDERABAD, PIN- 500081.

VERSUS

DEEPMONI SAIKIA AND ANR.
S/O LATE NABA SAIKIA,
VILL.- HUJGAON, P.S.- NAGAON, DIST.- NAGAON, ASSAM, PIN- 782002.

2:STATE OF ASSAM
REP. BY PUBLIC PROSECUTOR

Advocate for the Petitioner : MR. D K KOTHARI, MR Y KOTHARI,MR P PRAWAR

Advocate for the Respondent : PP, ASSAM, MS K SARMA,MS K BHATTACHARYYA,MR. P
BORA

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 07.08.2024

[Manish Choudhury, JJ]

Heard Mr. Y. Kothari, learned counsel for the applicant; Ms. A. Sarma, learned counsel for the opposite party no. 1; and Ms. B. Bhuyan, learned Senior Counsel & Additional Public Prosecutor assisted by Ms. M. Chakraborty, learned counsel for the opposite party no. 2, State of Assam.

2. The instant application under Section 5 of the Limitation Act, 1963 is preferred seeking

condonation of delay of 40 days, which is stated to have occurred in filing the accompanying criminal appeal under the proviso to Section 372, Code of Criminal Procedure, 1973.

3. The applicant as the appellant has preferred the accompanying appeal against a Judgment dated 17.05.2023 passed by the learned Sessions Judge, Dibrugarh in Sessions Case no. 258/2014 whereby the learned Sessions Court acquitted the opposite party no. 1 who faced the trial therein, for the charges framed under Section 302, Indian Penal Code [IPC] read with Section 120B, IPC.

4. We have gone through the statements and averments made in the instant interlocutory application, more particularly, in paragraph 3 thereof, wherein the applicant has explained the reasons for which the appeal could not be preferred within the statutory period of limitation.

5. Having gone through the same, we are of the considered view that the applicant has been able to show reasons showing sufficient cause as to why the appeal have to be preferred 40 days beyond the period of limitation.

6. Ms. Sarma, learned counsel for the opposite party no. 1 and Ms. Bhuyan, learned Senior Counsel & Additional Public Prosecutor for the opposite party no. 2, State of Assam have submitted, in unison, they have no objection if the period of delay is condoned and the accompanying appeal is heard on merits.

7. As the applicant has shown sufficient cause for the period of delay and the opposite parties have no objection to condone the delay, the instant interlocutory application seeking condonation of delay of 40 days in preferring the accompanying appeal is allowed.

8. The Registry to register the accompanying appeal and thereafter, list the same for admission.

JUDGE

JUDGE

Comparing Assistant