

GAHC010201072019



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

Case No. : I.A.(CrI.)/272/2020

GOLAPI BORO
D/O- LATE NALINI KANTA BORO, VILL.- PUB KHAGRABARI, MAUZA-
CHAPAGURI, P.S. SIMLA, DIST.- BAKSA, ASSAM.

VERSUS

SANTOSH SWARGIARY AND ANR
S/O- LATE KAMESWAR SWARGIARY, VILL.- GOLAGAON, P.S. SIMLA, DIST.-
BAKSA (BTAD), ASSAM, PIN- 781343.

2:THE STATE OF ASSAM
REP. BY THE PUBLIC PROSECUTOR
ASSAM

Advocate for the Petitioner : MR. J AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 13-03-2024

Heard Mr. J. Ahmed, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. Although the name of the counsel for respondent No. 1 has been reflected

in the cause list, none appears when the matter is called. As such, this interlocutory application for condonation of delay is taken up for hearing.

3. This is an application filed by the petitioner for condonation of delay of 89 (Eighty Nine) days in filing the leave petition to file an appeal against the impugned judgment and order dated 30.01.2019 passed by the learned Judicial Magistrate First Class, Baksa, Mushalpur in C.R. Case No. 103/2018 (old CR No. 56/2016).

4. The brief facts of the case is that the applicant had filed a complaint case being CR Case No. 103/2018 in the learned Court of Sub-Divisional Judicial Magistrate, Balaji, Pathsala on 09.03.2016. Accordingly, cognizance was taken and charge was framed under Section 494/506 IPC against the respondent No. 1. After hearing the parties, the learned trial Court acquitted the respondent No. 1 from the charges by the judgment and order dated 30.01.2019.

5. Being aggrieved by the aforesaid judgment, the petitioner has filed the connected leave application wherein there has been a delay of 89 (Eighty Nine) days. Accordingly, the present condonation application has been filed.

6. Mr. J. Ahmed, learned counsel for the petitioner submits that the delay is unintentional. He further submits that the petitioner due to poverty could not come to Guwahati within the stipulated time period and engage the lawyer for which the delay occurred.

7. Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent submits that he has received no instruction to oppose the prayer of condonation delay.

8. I have heard the submissions made at the bar and have perused the materials available on record.

9. It appears from the averment made in the condonation application that the petitioner after having come to know about the judgment and order, applied for certified copy and after receipt of the same, the petitioner collected the same from her engaged lawyer. However, due to personal difficulties, the petitioner could not meet the engaged lawyer on 26.04.2019 and the engaged counsel handed over the certified copies on 01.05.2019. Thereafter, the petitioner felt ill and as such, could not take any steps. However, later on, after consulting with her family members, she met a lawyer at Pathsala and upon his advice, she had come to Guwahati to engage a lawyer. However, due to her financial conditions, the appeal could not be filed within time.

10. The aforesaid grounds appear to be sufficient and unintentional. Accordingly, in the interest of justice, 89 (Eighty Nine) days' delay occurred in filing the leave application is condoned.

11. Application is allowed.

12. This disposes of the interlocutory application.

13. Let the leave application be listed.

JUDGE

Comparing Assistant