

GAHC010203952023



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

Case No. : I.A.(Crl.)/861/2023

BHARAT DEKA
S/O LATE DAYARAM DEKA,
VILL.- CHOTONAGAON, P.S.- MANGALDAI, DIST.- DARRANG, ASSAM.

VERSUS

ABDUL JALIL HAZARIKA
S/O LATE JUMAR ALI,
VILL.- BAINAOJHA, P.S.- MANGALDAI, DIST.- DARRANG, ASSAM.

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : MD. H BHUYAN

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 19.04.2024

Heard Mr. S. Dey, learned counsel for the applicant. Also heard Mr. A. Mohammad, learned counsel for the respondent.

This application under Section 5 of the Limitation Act, 1963 has been filed by the applicant, namely, Sri Bharat Deka praying for condoning the delay of 17

days in preferring an application under Section 378(4) of the Code of Criminal Procedure, 1973 seeking leave to appeal against the judgment dated 15.06.2023 passed by the learned Additional Chief Judicial Magistrate, Darrang, in NIR Case No. 04/2021, whereby the respondent was acquitted of the charge under Section 138 of the NI Act.

The learned counsel for the applicant has submitted that the delay in preferring the Leave Application under Section 378(4) of the Code of Criminal Procedure, 1973, has been caused due to delay in getting the certified copy of the impugned judgment by the applicant. It is submitted by the learned counsel for the applicant that the certified copy of the impugned judgment was provided to applicant after 10 days of applying for the same and said period of 10 days is liable to be deducted from the period of delay caused in filing the Leave Application. It is also submitted by the learned counsel for the applicant that the counsel's father was not well, therefore, he was unable to prepare the brief and file the Leave Application within time and due to such reasons, only 7 days delay has been caused. Said delay was beyond control of the present applicant.

The learned counsel for the respondent has opposed the condonation of delay of 17 days on the ground that the Leave Application has been filed by the present applicant only to harass the respondent.

I have considered the submissions made by the learned counsel for the applicant as well as the learned counsel for the respondent and have perused the materials available on record. It appears that the reasons cited in Paragraph No. 3 of the Condonation of Delay Petition, which were beyond control of the present applicant as he was prevented from filing the Leave Application within

time as he has received the certified copy of the impugned judgment at delay stage and his counsel's father was not well. Considering the said circumstances, I am of the considered opinion that reasons mentioned in Paragraph No. 3 of the Condonation of Delay Petition are sufficient reasons which had prevented the applicant to approach this Court within the period of limitation for filing the Leave Application under Section 378(4) of the Code of Criminal Procedure, 1973.

In view of the above, the delay of 17 days in filing the Leave Application is hereby condoned and this Interlocutory Application is accordingly disposed of.

Let the connected Leave Application be accordingly registered and list the matter after two weeks.

JUDGE

Comparing Assistant