

GAHC010216112023



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

Case No. : I.A.(CrI.)/968/2023

DIBYAJYOTI DEKA
S/O THANESWAR DEKA
R/O VILL- TANGLA, WARD NO. 4, NEAR ARUNODOI ACADEMY
P.O./P.S. TANGLA, IN THE DISTRICT OF UDALGURI, ASSAM

VERSUS

THANESWAR DEKA
S/O LATE RAJANI KANTA DEKA
R/O PUB PANERY
P.S. PANERY
P.O. PANERY HAAT
DIST. UDALGURI, ASSAM

Advocate for the Petitioner : MR. A TALUKDAR
Advocate for the Respondent : MR. P K DAS

Linked Case :

DIBYAJYOTI DEKA

VERSUS

THANESWAR DEKA A

Advocate for : MR. A TALUKDAR
Advocate for : appearing for THANESWAR DEKA A

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 15-02-2024

Heard Mr. D. Kalita, learned counsel for the applicant and also heard Mr. P. K. Das, learned counsel for the respondent.

This Interlocutory application, u/s 5 of the Limitation Act is preferred by applicant, Sri Dibyajyoti Deka, for condonation of delay of 380 days, in filing the connected revision petition, against the judgment and order dated 30.5.2022, in M.R. Case No. 18/2021, u/s 125 Cr.P.C.

It is to be noted here that vide said judgment and order dated 30.5.2022, the learned Chief Judicial Magistrate, Odalguri has directed the applicant to pay a sum of Rs.10,000/-per month to the respondent, u/s 125 Cr.P.C.

Mr. Kalita, learned counsel for the applicant submits that the applicant has been serving as Constable in S.S.B. and he was posted in Arunachal Pradesh and also in Jammu & Kashmir and that the judgment and order dated 30.5.2022, in M.R. Case No. 18/2021 was not communicated to him by his engaged counsel and that he has also been suffering from financial hardship and therefore, he could not file the connected Criminal Revision petition before this Court and as such, there is delay in 380 days in preferring the connected revision petition and the said delay is not intentional, rather, it is circumstantial and therefore, it is contended to allow this application by condoning the aforementioned delay.

On the other hand, Mr. Das, learned counsel for the respondent submits that

as per his instruction the applicant remained present before the learned Court below, on the date of judgment and that the explanation so forthcoming from the applicant side is not at all satisfactory and therefore, Mr. Das contended to dismiss the same.

Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record.

It is not in dispute that the applicant has been working as Constable in S.S.B. and he was posted in Arunachal Pradesh and also in Jammu & Kashmir and that there was lack of communication between him and his counsel and he was also not aware of the provision of law and therefore, he could not prefer the revision petition before this Court. Thus, the delay so occasioned, seems to be not intentional but circumstantial. And it appears to be explained sufficiently.

Having considered all the facts and circumstances in its entirety, this Court is of the view that ends of justice will be meted out, if the delay of 380 days is condoned, as in considered opinion of this Court that same has been explained sufficiently. Accordingly, delay of 380 days stands condoned.

In terms of above, this I. A. stands disposed of.

In view of the order passed in I.A., Now, the Registry shall proceed to register the connected Revision Petition and placed the same before the Court.

JUDGE

Comparing Assistant