

GAHC010281832023



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

Case No. : I.A.(Crl.)/114/2024

BASANTA PATNAYAK
S/O LATE JIBON PATNAYAK,
KOTHALGURI T.E MARIANI, JORHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:SIMA PATNAYAK
W/O BIRKHO PATNAYAK
MARIANI KATHALGURI TEA ESTATE
PS MARIANI
JORHAT
ASSA

Advocate for the Petitioner : MS S SARMA HAZARIKA (LEGAL AID COUNSEL)

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

19.06.2024

[M. Choudhury, J.]

Heard Ms. S. Sarma Hazarika, learned Legal Aid Counsel for the applicant and Mr. K.K. Das, learned Additional Public Prosecutor for the opposite party no. 1, State of Assam.

2. Mr. Das, learned Additional Public Prosecutor has submitted on the basis of a report dated 08.05.2024 received from the Officer In-Charge, Mariani Police Station that service of notice upon the opposite party no. 2 - informant has duly been served.

3. None has appeared for the opposite party no. 2 – informant today on call though the notice is seemed to be served on 08.05.2024.

4. The instant interlocutory application under Section 5 of the Limitation Act, 1963 is preferred seeking condonation of delay of 196 days, which is stated to have occurred in preferring the connected appeal under Section 374 [2] of the Code of Criminal Procedure, 1973 against a Judgment and Order dated 23.02.2023 passed by the learned Special Judge, Jorhat [‘the trial court’, for short] in Special Case no. 29/2019. By the Judgment and Order dated 23.02.2023, the learned trial court has convicted the applicant-appellant, Basanta Patnayak for the offences under Section 376[3] of the Indian Penal Code and under Section 4[2] of the Protection of Children from Sexual Offences Act, 2012 [‘POCSO Act’, for short]. Under Section 4[2] of the POCSO Act, the applicant-appellant has been sentenced to undergo rigorous imprisonment for 20 [twenty] years and to pay a fine of Rs. 10,000/-, in default of payment of fine, to undergo simple imprisonment for another 1 [one] year.

5. We have perused the statements and averments made in paragraph nos. 2 & 3 of the instant application wherein the reasons for the delay of 196 days in preferring the accompanying appeal have been explained.

6. It is *inter-alia* averred that in seeking to prefer the accompanying appeal, the assistance of the jurisdictional District Legal Services Authority [‘DLSA’, for short] was sought for and on being sought for, the DLSA has appointed one Legal Aid Counsel to prefer the accompanying appeal.

7. Having considered the reasons explained in the application, we are of the considered view that the applicant-appellant has been able to explain the reason for delay

showing sufficient cause. We are also of the view that the cause of substantial justice would be better sub-served if the accompanying appeal is heard on merits, after condoning the delay of 196 days in preferring the accompanying appeal.

8. Mr. Das, learned Additional Public Prosecutor has submitted that he has no objection if the accompanying appeal is heard on merits.

9. Accordingly, the instant interlocutory application is allowed.

10. The Registry to register the accompanying appeal and thereafter, list the appeal accordingly.

JUDGE

JUDGE

Comparing Assistant