

Court No. - 86

Case :- CRIMINAL REVISION No. - 1473 of 2025

Revisionist :- Badrunnisha

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Mohammad Zafar Yab Khan, Shahroze Khan

Counsel for Opposite Party :- G.A.

Hon'ble Manjive Shukla, J.

1. Heard Sri Shahroze Khan, learned counsel appearing for the revisionist and learned Additional Government Advocate appearing for the State.

2. This Court vide order dated 3.4.2025 had issued notice to Opposite Party No.2. In spite of service of notice on Opposite Party No.2, no one is present on his behalf.

3. The above-captioned criminal revision has been filed assailing therein, the order dated 18.1.2025 passed by the learned Sessions Judge, Siddharth Nagar in Criminal Misc. Case No.56 of 2024 (Smt. Badrunnisha Vs. Fateh Alam and others) whereby, the application filed by the revisionist along with her criminal appeal, for condonation of delay in filing the criminal appeal, had been rejected.

4. Brief facts of the case are that the F.I.R. was registered as Case Crime No.180A/1996 under Sections 456, 323, 504, 427, 224, 225 I.P.C. The Investigating Officer after completing investigation submitted charge sheet against four accused namely Fateh Alam, Chhotkan, Hafizullah and Masiuddin. Since Masiuddin was a juvenile therefore, his matter was referred to the Juvenile Justice Board. The trial of Fateh Alam, Hafizullah and Masiuddin started by framing of charges against them under Sections 456, 323, 504, 427, 224, 225 I.P.C. During trial, two accused namely Chhotkan and Hafizullah had died therefore, the trial stood abated in respect of the said accused.

5. The trial court proceeded with the trial against accused Fateh Alam but since the prosecution did not produce any witness as such, the trial court concluded the trial vide judgment and order dated 27.1.2023 passed in Case No.207 of 2019 (State Vs. Fateh Alam and others) and acquitted the accused from the charges.

6. The revisionist did not get information regarding conclusion of the trial vide judgment and order dated 27.1.2023 and she for the first time came to know about the said order, on 14.2.2024 when one Habibur Rahman @ Jumman went to the court for doing pairavi in cross case i.e. Case Crime No.180 of 1996.

7. Ultimately, the revisionist filed a criminal appeal challenging therein, the judgment and order dated 27.1.2023 passed by the learned trial court in Criminal Case No.207 of 2019 and along with the criminal appeal, she also filed an application under Section 5 of the Limitation Act, 1963 with an affidavit and prayed for condonation of delay in filing the criminal appeal.

8. The learned Sessions Judge, Siddharth Nagar vide order dated 18.1.2025, passed in Criminal Misc. Case No.56 of 2024 (Smt. Badrunnisha Vs. Fateh Alam and others), had rejected the application filed under Section 5 of the Limitation Act, 1963 and as a consequence thereof, the criminal appeal filed by the revisionist had also been dismissed.

9. Learned counsel appearing for the revisionist has argued that the learned appellate court had rejected the application filed by the revisionist, under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the criminal appeal, on the ground that the revisionist in the affidavit filed along with the application had stated that she for the first time came to know about the judgment and order dated 27.1.2023, passed in Criminal Case No.207 of 2019, on 14.2.2024 when Habibur Rahman @ Jumman went to the court for doing pairavi of the cross case bearing Case Crime No.180 of 1996 but nowhere it has been stated that on what date Habibur Rahman @ Jumman has informed the revisionist regarding the judgment and order dated 27.1.2023. Learned appellate court had also taken note of the fact that no affidavit given by the Habibur Rahman @ Jumman has been filed along with the application for condonation of delay therefore, it cannot be believed that the revisionist was informed about the order dated 27.1.2023 by the Habibur Rahman @ Jumman. The appellate court, while rejecting the application filed by the revisionist under Section 5 of the Limitation Act, had also taken into consideration that the date of the application for condonation of delay in filing the criminal appeal is 29.2.2024 whereas the affidavit filed in support of the application is of 27.2.2024.

10. Learned counsel appearing for the revisionist has argued that the revisionist is aged about 61 years therefore, she was not in a good position to do proper pairavi of the criminal trial in question

therefore, she could not get information in respect of the judgment and order dated 27.1.2023 passed by the learned trial court in Criminal Case No.207 of 2019. The revisionist for the first time came to know about the judgment and order dated 27.1.2023, on 14.2.2024 when one Habibur Rahman @ Jumman went to the court for doing pairavi in the cross case i.e. Case Crime No.180 of 1996. It has further been argued that the version given by the revisionist in her application for condonation of delay in filing the criminal appeal could not have been rejected by the learned appellate court unless there was clinching evidence demonstrating that the revisionist has willfully and deliberately committed delay in filing the criminal appeal.

11. Learned counsel appearing for the revisionist has vehemently argued that it is well settled proposition of law through catena of judgments of the Hon'ble Supreme Court that in the matters of condonation of delay in filing appeals, the court must take lenient view so that the ends of substantial justice may not suffer whereas, in the present case, learned appellate court had taken a very strict and harsh position and thereby had rejected the application filed by the revisionist for condonation of delay in filing the criminal appeal. It has also been argued that the matters under criminal appeals are not the matters of adjudication of the civil rights of the two parties, as in the said appeals, adjudication is to be made in respect of the offence committed by the accused which not only affects the victim but also affects the society at large therefore, the trial court, in normal circumstances, should condone the delay in filing the criminal appeals unless it is glaring that the delay in filing the criminal appeal is willful and deliberate. It has also been argued that in the case in question it is apparent that the delay is not huge and the said delay took place only for the reason that the revisionist is an aged person and therefore, she could not get information of the judgment and order dated 27.1.2023 as such, the appellate court, while rejected the application filed by the revisionist under Section 5 of the Limitation Act, 1963, had committed an error apparent on the face of the record.

12. Learned Additional Government Advocate appearing for the State though has opposed this criminal revision but could not give any justifiable reason for which the delay in filing the criminal appeal may not be condoned and the criminal appeal may not be heard on merit.

13. I have considered the arguments advanced by the learned counsels appearing for the parties and I find that the trial court had passed the judgment and order in Criminal Case No.207 of 2019,

on 27.1.2023 and the criminal appeal along with the application for condonation of delay was filed before the appellate court on 29.2.2024. No doubt, this Court finds that there is little delay in filing of the criminal appeal but the revisionist/appellant in her application, filed under Section 5 of the Limitation Act, 1963, had given plausible explanation that she was not aware about the judgment and order dated 27.1.2023 and she for the first time came to know about the said order when one Habibur Rahman @ Jumman went to the court for doing pairavi in the cross case i.e. Case Crime No.180 of 1996.

14. This Court further finds that the revisionist/appellant immediately after coming to know about the judgment and order dated 27.1.2023 on 14.2.2024 had filed the appeal in question on 29.2.2024. This Court does not find any willful and deliberate delay in filing of the criminal appeal by the revisionist therefore, this Court is of the view that the appellate court ought to have taken a lenient view and must have condoned the delay and proceeded to hear the criminal appeal on its merit so that the ends of substantial justice may not suffer.

15. Even otherwise, this Court is of the view that the matters in the criminal appeals are not confined only to the civil rights of two parties rather the crime, besides having impact on the victim also has a vital impact on the society at large therefore, the courts dealing with the criminal matters must always try to conclude the proceedings on merit and should not throw out the matters on the ground of delay unless it is glaring from the record that the person seeking condonation of delay in filing the criminal proceedings had willfully and deliberately avoided to initiate the criminal proceedings within the time stipulated under the statute.

16. In view of the aforesaid reasons, the order dated 18.1.2025 passed by the learned Sessions Judge, Siddharth Nagar, which is impugned in this criminal revision, is liable to be set aside and the delay in filing the criminal appeal by the revisionist/appellant is liable to be condoned.

17. Accordingly, this criminal revision is allowed. The impugned order dated 18.1.2025 passed by the learned Sessions Judge, Siddharth Nagar in Criminal Misc. Case No.56 of 2024 (Smt. Badrunnisha Vs. Fateh Alam and others) is hereby set aside. The delay in filing the criminal appeal by the revisionist/appellant against the judgment and order dated 27.1.2023 passed by the learned Civil Judge (Junior Division)/Judicial Magistrate, Dumariaganj, Siddharth Nagar in Criminal Case No.207 of 2019

(State Vs. Fateh Alam and others), is hereby condoned. The learned Sessions Judge, Siddharth Nagar is hereby directed to hear and decide the criminal appeal filed by the revisionist/appellant, on merit.

Order Date :- 9.7.2025

Salim