

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14012 of 2013

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Chandra Bhushan Sharma @ Sanjay Singh Son Of Radheshyam Sharma Resident
Of Village - Lodipur, P.S. Konch, District - Gaya

.... Petitioner

Versus

1. The State Of Bihar
2. The Commissioner, Magadh Division, Gaya
3. The District Magistrate, Gaya

.... Respondent

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Appearance :

For the Petitioner : M/s Ramakant Sharma, Sr. Advocate and
Rajesh Kumar, Advocate

For the State : M/s Gautam Bose, AAG 8
Vikas Jha, Shailly Kumari, S.Mishra, A.Cs. to AAG 8

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 29-09-2015

Heard learned counsel for the petitioner and the State.

Petitioner is aggrieved by the order dated 30.05.2013
passed in the Arms Appeal No. 111/13 by Commissioner, Magadh
Division, Gaya, whereby and whereunder he has refused to entertain
the appeal on the ground of delay in its filing.

It is mentioned in the impugned order that the appellant
has made a prayer for admitting the appeal by explaining the delay
and taking ground that the date of order was not known to him
claiming to have filed it within 30 days from the date of knowledge
of the impugned order passed by the District Magistrate, Gaya
cancelling his arms licence. It is stated on behalf of the petitioner



that the order of cancellation was passed by the District Magistrate on 4.2.2013 and, on getting the certified copy, the appeal was preferred. There is apparent delay is of about 44 days. Though it appears from the impugned order as contained in Annexure 1 that a prayer was made for admission of appeal after explaining the delay but a proper application for condoning the delay was not filed, therefore, the appeal was dismissed on the ground of limitation.

In my view when such stand was being taken by the petitioner, for the ends of justice, an opportunity could have been given to him for filing a petition explaining the delay and, thereafter, a decision in accordance with law should have been taken by the authority.

In above view of the matter the impugned order dated 30.05.2013 as contained in Annexure 1 is quashed and the matter is remitted back to the Commissioner, Magadh Division, Gaya – cum – Appellate Authority to take fresh decision in Appeal No. 111/2013 after granting a reasonable time to the petitioner to explain his delay by filing a proper application. Though it is contended on behalf of the petitioner that delay was explained in the appeal itself but in my view that would also not be sufficient and proper petition explaining the delay with prayer to condone the same must be filed by the petitioner within the time granted by the appellate authority.

Thereafter, the appellate authority would be required to take a decision with respect to the condoning of delay in accordance with law. However, while doing so he should also consider the decision of the Apex Court in **State Of Bihar & Ors vs Kameshwar Prasad Singh & Anr [2000(3)PLJR (SC) 81]** and **S. Ganesharaju v. Narasamma [2013) 11 SCC 341]**.

(Dr. Ravi Ranjan, J)

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