

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15439 of 2012

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1. Ramashish Sharma S/O Late Mukhlal Singh Residing At Village- Pariawan, Police Station- Ghoshi, District- Jahanabad
 2. Ramswaroop Singh S/O Late Mukhlal Singh Residing At Village- Pariawan, Police Station- Ghoshi, District- Jahanabad

.... Petitioners

Versus

1. The State Of Bihar Through The Commissioner, Magadh Division, Gaya
2. The District Magistrate-Cum-Collector, Jehanabad Null Null
3. The Superintendent Of Police, Jehanabad
4. The Officer In-Charge, Ghoshi, District- Jehanabad

.... Respondents

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Appearance :

For the Petitioners : Mr. Rajendra Sharma, Advocate
For the State : Mr. Sunil Kumar, AC to AAG 6

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 28-09-2015

Heard learned counsel for the petitioners and the State.

It is submitted on behalf of the petitioners that one set of additional court-fee has already been deposited by them.

Through this writ application, the petitioners seek quashing of the order passed by the District Magistrate-cum-Licensing Authority, Jehanabad dated 26.12.2011 contained in Annexure 3 as well as the appellate order dated 10.05.2012 as contained in Annexure 4, by which the appeal has been dismissed on the ground of limitation.

It is contended that the petitioner no. 1 has been acquitted of the charges in the criminal case whereas the petitioner no. 2

was not sent up for trial.



However, a short question has been raised on behalf of the petitioners at the time of hearing of this application that the appellate authority has dismissed the appeal on the ground of limitation by passing an unreasoned order though a petition for condoning the delay in preferring the appeal was filed on behalf of the petitioners but the grounds stated in the petition have not been dealt with by the appellate authority. Though a copy of the limitation petition has not been brought on record it has been stated in the writ petition that the order dated 26.12.2011 regarding rejection of his arms licence passed by the licensing authority could come to the knowledge of the petitioners only on 26.02.2012 and, thereafter, they immediately filed requisition for obtaining the certified copy of the same as it is contended that a copy of the order passed by the licensing authority was never received by the petitioner. The certified copy of the order was made available to the petitioners on 14.03.2012, however, the aforesaid period has also not been considered by the appellate authority. The appeal was finally filed on 12.04.2012 along with a petition for condoning the delay, however, vide order dated 10.05.2012 the appeal was dismissed on the ground of delay.

In my considered opinion, the appeal was required to be heard on merit as the appeal was filed after a delay of about 77 days



after deducting the period of limitation which has been granted under Rule 55 of the Arms Rules, 1962. If the period taken for supplying the certified copy is deducted therefrom, then that would come to about 50-51 days, which, in my considered opinion, was not such a period of delay which could not have been condoned.

The Apex Court in **S. Ganesharaju v. Narsamma [(2013)**

11, Supreme Court Cases, 341] has held as under:

8. We have also critically gone through the averments of IA No. 1 of 2008 to find out ourselves if the appellants have been able to explain delay of 53 days satisfactorily or not and if sufficient cause has been shown by them. After having gone through the same, we are more than satisfied that delay has been explained properly and to our satisfaction. It reflects that sufficient cause was shown and proved before the learned Single Judge. It is also to be noted that delay was only for 53 days, which would certainly not fall in the category of exorbitant or inordinate delay. If delay of 53 days is not condoned and the matter is not heard on merits, then it would tantamount to rendering injustice to the appellants, who were seeking condonation of delay. Looking to short delay, as a routine, it should have been condoned and the matter should have been heard on merits.”

In yet another decision rendered by the Apex Court in **State of Bihar v. Kameshwar Prasad Singh (2000(3) Patna Law**

Journal Reports(SC) 81) it has been held as under:

“11. Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in **Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors.** [1987 (2) SCR 387] held that the expression „sufficient cause” employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice- that being the life purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realized that: “1. Ordinarily a litigant does not stand to benefit by lodging an appeal late. 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. 3. „Every day”s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour”s delay, every second”s delay? The doctrine must be applied in a rational common sense pragmatic manner. 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. 5. There is no presumption that, delay is occasioned deliberately, or on account of culpable negligence, or on account of *mala fides*. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected

to do so.”

Having regard to the facts and circumstances of the case, the appellate authority should have condoned the delay and heard the appeal on its own merit and in accordance with law.

Accordingly, this writ application is allowed to the extent that the delay in filing the appeal is condoned and the matter is remitted back to the appellate authority for its adjudication in accordance with law. While doing so, the petitioners would be at liberty to raise all the grounds which would be available to them. It is expected that the aforesaid decision would be taken by the appellate authority within a period of three months from the date of receipt/production of a copy of this order.

(Dr. Ravi Ranjan, J)

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