

Party Name : JIBAN KRISHNA SAHA Vs ASHOK CHOUDHURY & ANR

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. N. Majumder, learned counsel appearing for the appellant-applicant as well as Mr. A. Ghosh, learned PP appearing for the respondent No.2 and Mr. S. Das, learned counsel appearing for the respondent No.1.

This petition filed under Section 5 of the Limitation Act, 1963 for condoning the delay of 311 days in preferring the appeal against the order of acquittal dated 22.10.2013 delivered in CR No.156 of 2008 by the Judicial Magistrate, 1st Class, Agartala, West Tripura, Court No.3 under Section 378(4) of the Cr.P.C.

The petitioner has submitted that within the statutory period he could not file the appeal due to "some unavoidable circumstances and various family troubles". From the period from 22.10.2013 to 13.03.2014 the petitioner was out of State and engaged for treatment of his maternal uncle namely Kalyan Prasad Saha at New Delhi, AIIMS who died on 13.03.2014. The petitioner could not follow the proceeding and as such he could not know when the impugned order was delivered and hence the delay occurred.

Mr. S. Das, learned counsel appearing for the respondent No.1 submitted that there is no acceptable explanation for such long delay. Even except a death certificate of Kalyan Prasad Saha, Annexure-A to the petition, no other treatment document or travel document has been filed by the petitioner. The explanations are vague in nature and as such this Court should be loath in accepting such explanations.

After going through the records and on hearing the submission, this Court finds that this petition is not properly documented or not supported by acceptable explanations for such long delay. But taking an overall view of the matter and nature of the challenge in the connected appeal, this Court is inclined to take a lenient view for condoning the delay. Accordingly, the said delay is condoned.

Misc. case stands allowed and disposed of.