

19.01.2021
tkm/ct 42
sl no. 22

C.R.R. No. 46 of 2021

In Re : Gopal Ghlosh

.....petitioner

Md. Sabir Ahmed
Mr. M Ali Naskar
Mr. S Sarkar

..... for the petitioner

Md. Anwar Hossain
Ms. Sreyashee Biswas

..... for the State

The impugned order dated 11.2.2020 passed by the learned Additional District Judge, Baruipur, South 24 Parganas in Criminal Motion no. 31 of 2018 thereby rejecting the application under section 5 of the Limitation Act for condonation of delay is the subject of challenge in this revisional application.

Learned counsel for the petitioner submits that he made a prayer before the learned magistrate to get back his title deeds standing in the name of the petitioner and others. It is the contention of the petitioner that for some individual business of the petitioner, the seized document was sought to be returned, which was rejected by the learned court below, and against which the petitioner being aggrieved with, filed a Criminal Motion No. 31/18 before the learned Additional Sessions Judge, Baruipur, South 24 Parganas.

Since there was a delay of 298 days, a petition under section 5 of the Limitation Act admittedly came to be filed, and which upon hearing, the learned court below rejected the same raising

suspicion that medical certificate alone in absence of the medical prescription of the petitioner would not be sufficient to reveal the prolonged illness of the petitioner.

Learned counsel for the petitioner submits that the petitioner underwent treatment taking medicines, as prescribed by the concerned doctor. For some reasons and others, the necessary medical prescription could not be readily available, and as a result thereof there was no proper consideration in respect of prolonged illness sustained by the petitioner. He produces a prescription, which went unproduced before the learned court below.

Learned counsel appearing for the State submits that the impugned order rejecting an application should go undisturbed on the simple ground that sufficient reasons have been assigned by the learned court below.

The rejection of section 5 application was principally made for want of production of medical prescription, though a medical certificate dated August 7, 2017 was produced. Medical prescription as produced today, incidental to the medical certificate speaks volume against the illness, suffered by the petitioner, which needs to be duly appreciated under the behest of section 5 of the Limitation Act. On the ground of rejection of section 5 application, the revisional application (vide Criminal Motion 31/18) could not be disposed of.

When a further document, incidental to the medical certificate is produced in support of the illness of the petitioner, the court is of the view that the petitioner has attempted to offer

sufficient explanation in support of his illness, which prevented him from preferring revisional application before the learned court below within the stipulated period of time. The delay having been thus sufficiently explained, needs to be condoned. The section 5 application thus filed by the petitioner is allowed.

The revisional application being Criminal Motion No. 31/18 be restored to its original file and number.

Learned Additional District Judge, Baruipur, South 24 Parganas in connection with Criminal Motion No. 31/18 is directed to dispose of the pending criminal motion within four weeks from the date of receipt of communication of this order after hearing the necessary parties.

Petitioner is further directed to furnish a copy of the medical prescription, now produced before the court, before the learned court below, after the criminal motion no. 31/18 is restored to original file and number.

With this direction and observation, revisional application stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon usual undertaking.

(Subhasis Dasgupta, J.)