

13.08.2024
Court No.29
Item No. 04
TN

CRMSPL 55 of 2024
IA No: CRAN 1 of 2024

Madan Mohan Ghosh
Versus
State of West Bengal and others

Mr. Chittaranjan Ray

.... for the appellant

Mr. Suman De,
Ms. Purnima Ghosh

.... for the State

In Re: CRAN 1 of 2024

1. This is an application for condonation of delay in preferring the appeal. The case under Sections 498A, 304 and 304B IPC was registered on 3rd May, 1999. After due investigation charge sheet was submitted and the trial commenced.
2. The learned Additional Sessions Judge, Arambagh by a judgment dated 7th September, 2009 acquitted the accused. The application for special leave to appeal under Sections 419(3) and 419(4) of the BNSS, 2023 corresponding to Section 378(3) and 378(4) of the CrPC, 1973 has been filed. Although there was no requirement to file of the application for special leave to appeal in view of definition of victim in Section 2(wa) of the Code of Criminal Procedure, 1973 corresponding to Section 2(1)(y) of the BNSS, 2023 and the law declared by the Hon'ble Supreme Court in *Mallikarjun Kodagali (dead) vs. The State of Karnataka & Ors.* reported in (2019) 2 SCC 752.

3. However, there is a delay of 5440 days in preferring the appeal.

The only explanation offered for such delay is stated in paragraph no. 3 and 4. The said paragraphs are reproduced below:

3. That your appellant/petitioner states that during pendency of the case the victim was breath her last in the Hospital by using poison upon the victim through the accused persons. As a result of which your appellant/petitioner struck with wonder, what to do now in this way, time goes on like an arrow and late to file an application before the Hon'ble Court for condonation of delay for non communication was made with the Ld. Advocate since 2009 to 1/8/2024 have already been passed away i.e. at about 5440 days.

4. It is stated that the appellant/petitioner is always diligent and careful in conducting the Judgment/order dated 07.09.2009 passed by the Lenard Additional Session Judge at Hooghly as His Honour would graciously be pleased to re-call the matter and be restored to file and should be heard on merit otherwise the appellant/petitioner would suffer irreparable loss and injury.

4. The explanation being unsatisfactory, we are not inclined to accept this application for condonation of delay.

5. Moreover, we find from the judgment of the learned Single Judge that the allegation of administration of poison was detected in the visera said to be of the deceased victim.
6. However, in view of the fact that we are not satisfied with the explanation offered for the delay and allowing the said application at this stage would cause serious prejudice to the opposite parties, we are not inclined to allow this application.
7. Accordingly, this application for condonation of delay is rejected.

(Soumen Sen, J.)

(Uday Kumar, J.)