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C.R.R. 3553 of 2024

Re: Sabyasachi Das

Mr. Bibek Dey

... For the Petitioner

Affidavit of service filed on behalf of the petitioner is taken on record.

None appears for the opposite parties despite service.

The petitioner is aggrieved by the order passed by the learned Additional Sessions Judge, 1st Court, Sealdah on 26th July, 2024 in Criminal Appeal no. 24 of 2024 wherein the learned Judge has refused to admit the appeal since it was barred by limitation and also on the ground that the petitioner did not approach the Court with clean hands.

The opposite party who is the wife of petitioner filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 being DV case no. 74 of 2017 before the learned Judicial Magistrate, 2nd Court, Sealdah. The petitioner appeared in the said case and contested the same till 19th December, 2022. The petitioner stopped taking steps therein since 29th May, 2023 and upon granting several opportunities to the petitioner to contest the case, the case was finally disposed of by the learned Magistrate by judgment delivered on 10th August, 2023. The criminal appeal was filed on 21st June, 2024, that is, beyond the statutory period of time.

Learned Appellate Court refused to admit the appeal primarily on the said ground.

Learned counsel for the petitioner submits that the petitioner seeks to file an application under Section 5 of the Limitation Act before

the learned Appellate Court for condonation of delay in filing the appeal and seeks further liberty to place his case before the learned Appellate Court on merits. Learned counsel submits that since the mandate laid down by the Hon'ble Supreme Court in the authority in Rajesh vs Neha and another reported in (2021) 2 SCC 324 has not been complied with before the learned trial Court, the appeal ought to be heard on merits in order to render justice to the parties.

True, the observation of the learned Appellate Court in the order impugned is a matter of record and it cannot be said that the petitioner was not aware of the proceeding before the learned trial Court and, therefore, could not take steps therein. However, since the petitioner intends to place his case before the learned Appellate Court on merits upon filing an application for condonation of delay in filing the appeal, the said liberty be granted in the interest of justice.

The order impugned dated 26th July, 2024 passed by the learned Additional Sessions Judge, First Court, Sealdahi in Criminal Appeal no. 24 of 2024 be set aside.

The petitioner is granted liberty to file an application under Section 5 of the Limitation Act before the learned Appellate Court seeking condonation of delay in filing the appeal.

The Appellate Court is directed to deal with the application leniently in order to afford an opportunity to the petitioner to place his case on merits before the learned Court.

CRR 3553 of 2024 is disposed of.

Urgent certified website copy of this order, if applied for, be given to the parties, upon compliance of requisite formalities.

(Suvra Ghosh, J.)

