GAHC010209012026

2026:GAU-AS:15156

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1424/2026

GHANASHYAM SARMA
S/O-LATE JIBESWAR SARMA,
RESIDENT OF - VILLAGE- AMAYAPUR,P.S- NALBARI, P.O- BAGALS ROAD CHOWK, DISTRICT-NALBARI,ASSAM

VERSUS

STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MADAN CH. BARMAN
S/O -LATE MAHESWAR BARMAN
RESIDENT OF- VILLAGE- PORAKUCHI
P.O- SANDHA
P.S- NALBARI
DISTRICT- NALBARI
ASSAM

Advocate for the Petitioner : MR P DAS, MS N BARUAH,MR K J PATHAK

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

08.10.2026

Heard Mr. P. Das, learned counsel for the petitioner and also heard Mr. P.

Borthakur, learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1.

2. In this petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhia (BNSS), 2023, the petitioner has challenged the order dated 27.05.2026, passed by the learned Sessions Judge, Nalbari, in Misc. Limitation Case No.3/2026, whereby the learned Sessions Judge, Nalbari, was pleased to reject the Petition No.340/2025, under Section 142(b) of Negotiable Instrument Act, read with Section 5 of the Limitation Act to condone the delay of 58 days in filing the appeal against the impugned judgment and order dated 07.08.2025, passed by the learned Additional Chief Judicial Magistrate, Nalbari, in N.I. Case No.82/2016.

3. Mr. Das, learned counsel for the petitioner submits that the petitioner stood convicted in N.I. Case No.82/2016, vide judgment and order dated 07.08.2025, for the offence punishable under Section 138 of the N.I. Act and sentenced him to undergo simple imprisonment for 6 months and also to pay a fine of Rs.8,00,000/- with default stipulation and also directed that interim compensation, if any, paid earlier, shall be exhausted against the total fined amount of Rs.8,00,000/-.

4. Mr. Das, learned counsel for the petitioner submits that after the judgment and order of conviction was passed, the petitioner suffered from ailment and he could not visit the chamber of his counsel and therefore, the appeal could not be filed in time. Mr. Das also submits that the learned Sessions Judge has dismissed the petition whimsically and the said order is illegal and liable to be interfered with. Mr. Das also submits that the petitioner has arguable point in the appeal and the same are to be heard and considered on merit. And

therefore, Mr. Das has contended to allow this petition by interfering the impugned order, dated 27.05.2026, and to remand the matter to the learned Sessions Judge, Nalbari, to hear the same on merit after admitting the appeal.

5. On the other hand, Mr. Borthakur, learned Additional P.P. has supported the impugned order, dated 27.05.2026. He submits that the learned Sessions Judge has rightly dismissed the petition as the petitioner herein has failed to explain the delay properly. He pointed out that on hand the petitioner has taken the plea that on account of ailment he could not visit the chamber of his counsel and on the other hand he continued to attend his school where he was serving without any leave, as revealed from the RTI reply obtained by the other party. Mr. Borthakur also submits that though there was only 58 days delay in filing the appeal the same could not be explained satisfactorily.

6. In reply to the submission of Mr. Bothakur, Mr. P. Das, learned counsel for the petitioner submits that the said RTI reply also indicates that the petitioner herein had no leave in his credit and under compulsion he had attended the School and this aspect was not considered by the learned Sessions Judge, Nalbari.

7. Having heard the submission of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also perused the impugned order, dated 27.05.2026, passed in Misc. Limitation Case No.03/2025.

8. It is to be noted here that the principle of condonation of delay in a petition under Section 5 of the Limitation Act is well settled in catena of decision. In the case of **Collector, Land Acquisition, Anantnag and Another vs. vs. Mst. Katiji and Others,** reported in **(1987) 2 SCC**

107; Hon'ble Supreme Court has observed as under:-

> "**The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice - that being the life purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy, and such a liberal approach is adopted on principle as it is realized that:**
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> 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.**

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the

course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even- handed justice on merits in preference to the approach which scuttles a decision on merits."

8.1. Again, in the case of **N. Balakrishnan vs. M. Krishnamurthy**, reported in **(1998) 7 SCC 123**, Hon'ble Supreme Court went a step further and made the following observations:-

"**It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be un-condonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.**

Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their

remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finislitium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant,

the court shall compensate the opposite party for his loss."

8.2. In the case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Others**, reported in **(2013) 12 SCC 649**, Hon'ble Supreme Court, referring to its earlier authorities, broadly culled out the principles of condonation of delay as under:-

"**(i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.**

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause

public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully

scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

8.3. To the aforesaid principles, Hon'ble Supreme Court also added some more guidelines taking note of the present day scenario, in the said case. They are:-

"**(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.**

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."

8.4. Again in the case of **Pundlik Jalam Patil (Dead) by Lrs. vs. Executive Engineer, Jalgaon Medium Project and Another**, reported in **(2008) 17 SCC 448**, while dealing with the issue of condonation of delay, Hon'ble Supreme Court has held as under:-

> "**29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his *Jurisprudence* states that the laws come to the assistance of the vigilant and not of the sleepy.**
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> **30. Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner sub-serves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation/ resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging**

the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest.

31. It is true that when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for governmental authorities. The Limitation Act does not provide for a different period to the Government in filing appeals or applications as such. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot entertain the submission made across the Bar without there being any proper foundation in the pleadings."

8.5. It is to be noted here that in the case of **Ramlal vs. Rewa Coalfields Limited**, reported in **AIR 1962 SC 361**, Hon'ble Supreme Court has held as under:-

"**In construing Section 5 of the Limitation Act, it is**

relevant to bear in mind two important considerations. The first consideration is that the expiration of period of limitation prescribed for making an appeal gives rise to right in favour of the decree-holder to treat the decree as binding between the parties and this legal right which has accured to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause of excusing delay is shown discretion is given to the court to condone the delay and admit the appeal. It is further necessary to emphasize that event if the sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage the *diligence* of the party or its bona fides may fall for consideration."

8.6. The legal proposition, which can be crystallized from the aforesaid decisions and discussion, is that courts are not supposed to legalize injustice, but are obliged to remove injustice. Therefore, liberal, pragmatic, justice-oriented, non- pedantic approach has to be adopted while dealing with an application for condonation of delay if 'sufficient cause' is being shown. The terms 'sufficient cause' should be understood in their proper spirit, philosophy and purpose and regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation. The paramount and pivotal consideration is substantial justice; the technical considerations should not be given undue and uncalled for emphasis.

In respect of deliberate causation of delay the presumption is not available but, gross negligence on the part of the counsel or litigant is to be taken note of, besides lack of bona fides imputable to a party seeking condonation of delay, which is a significant and relevant fact. The courts should not adhere to strict proof, but required to be vigilant so that there is no real failure of justice. The approach of the court must be liberal but at the same time it must be reasonable also. In case of inordinate delay, strict approach is required to be taken while in case of delay of short duration, a liberal delineation is required. The fundamental principle, being weighing the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach. While condoning delay the conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. In the case of the explanation, being offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such litigation. The entire gamut of facts is to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception. The State or a public body or an entity, representing a collective cause, should be given some acceptable latitude. But, the law of limitation is same for citizen and for governmental authorities.

9. In the instant case, perusal of the impugned order of the learned Sessions Judge, Nalbari, reveals that the learned Sessions Judge has held that while the judgment was pronounced on 07.08.2025, by the learned Trial Court, the appeal ought to have been preferred within 30 days from 07.08.2025, but due to the alleged ailment of the petitioner he was unable to contact with his engaged

counsel to prefer the appeal and therefore, the delay of 58 days was caused. The learned Sessions Judge also held that the petitioner was suffering from liver disease and he did not apply for leave and the RTI report filed by the school authority indicates that the petitioner was regularly attending the school without taking any leave and the teachers attendance register also indicates the arrival and departure time of the petitioner at 8:45 a.m. and 3:45 p.m., respectively and he was doing his duty regularly and that the petitioner has failed to explain the delay and therefore, the learned Sessions Judge has dismissed the petition.

10. The above finding of the learned Sessions Judge, while examined in the light of the proposition so laid down in the cases discussed herein above, this Court finds that the impugned order dated 27.05.2026, suffers from no irregularity or illegality requiring any interference of this Court.

10.1. It appears from the record that the judgment was pronounced on 07.08.2025, by the learned Trial Court. And as such the appeal ought to have been preferred within 30 days from 07.08.2025. It is the contention of the petitioner that on account of his ailment he was unable to contact with his engaged counsel to prefer the appeal. It is his further contention that he was suffering from liver disease and therefore, the delay of 58 days was caused.

10.2. However, it appears that he was serving as Teacher and from the RTI reply given by School Authority where the petitioner was serving as Teacher, indicates that he did not apply for leave and he was regularly attending the school without taking any leave and the teachers attendance register also indicates the arrival and departure time of the petitioner at 8:45 a.m. and 3:45 p.m., respectively.

10.3. While the petitioner was attending his duty regularly from 8:45 a.m. and

3:45 p.m., during the 58 days, without taking any leave, his explanation that he could not visit his counsel's chamber to file an appeal against the judgment and order, where he has been convicted, on account of his ailment, is far from satisfactory and it cannot be accepted as an explanation, let alone a satisfactory explanation, as contemplated under Section 5 of the Limitation Act even if a very liberal approach is taken in the matter.

11. In the result, this Court finds this petition devoid of merit. The order impugned order dated 27.05.2026, so passed by the learned Sessions Judge, Nalbari, in Misc. Limitation Case No.3/2026, withstand the legal scrutiny. It suffers from no illegality or irregularity requiring any interference of this Court. And accordingly, the petition stands dismissed at the motion stage itself.

JUDGE

Comparing Assistant