

GAHC010244952024



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

Case No. : I.A.(Crl.)/1123/2024

HRIDOY JYOTI MAHANTA
S/O DILIP MAHANTA
R/O HOUSE NO. 49A, GOVINDA KUTIR, NEAR BIKASH KENDRA
NAMGHAR, K.P. BARUAH ROAD, CHANDMARI, KRISHNA NAGAR, DIST.
KAMRUP (M), ASSAM, P.S. AND P.O. CHANDMARI, GUWAHATI, PIN-781003

VERSUS

BARNALI DEKA
D/O SRI HEMEN DEKA
R/O BARDAI PAKHIA
P.S. KAMALPUR,
P.O. BAIHATA
DIST. KAMRUP, PIN-781380

Advocate for the Petitioner : MR R SENSUA, R A LAHKAR,G KAUSHIK

Advocate for the Respondent : MR. S DAS , MS. P KALITA,MR K DAS,MR H GOGOI,MRS. R T DAS

**BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA**

ORDER

Date : 27.11.2025

- 1.** Heard Mr. R Sensua, learned counsel for the petitioner. Also heard Mr. S Das, learned counsel for the respondent side.
- 2.** This I/A has been preferred by the petitioner namely, Sri. Hriday Jyoti Mahanta (husband) seeking condonation of delay of 92(ninety-two) days in preferring the connected criminal revision petition which has been preferred challenging an order of interim maintenance granted by the Ld. Family Court in favour of the respondent.
- 3.** The order under challenge was passed on 24.04.2024 and it is stated in the instant petition that upon receiving the certified copy of the order on 24.04.2024, the Petitioner could not immediately contact the present set of counsels as the Petitioner works outside Guwahati in Amingaon and comes home late at night. It is pertinent to mention herein that, in the meantime the father of the Petitioner who is a senior citizen was suffering from various ailments suddenly fell ill during that time due to which being the only son he had to be engaged in medical related works.
- 4.** It is further stated that the Opposite Party had also filed another case of Domestic Violence against the Petitioner and his parents before the Judicial Magistrate First Class, Kamrup (M) at Guwahati numbered as Misc (DV) Case No. 218/2022. Since the facts of the case in both cases were similar and thus the petitioner was waiting for the outcome of the Domestic Violence case, wherein the Opposite Party had sought for interim maintenance which was rejected vide Order dated 01.08.2024. It is submitted that after the outcome of the Misc (DV) Case No. 218/2022 on interim maintenance the Petitioner could apply for the certified copy of the Order dated 01.08.2024 only on 17.08.2024. Finally, on 27.08.2024 the

Petitioner received the certified copy of the Order dated 01.08.2024. During that time the father of the petitioner continued to be ill and had to be taken care of by the Petitioner only as his mother is also a senior citizen herself. The petitioner being the only son had to manage his work and also look after his ailing father and thus could not visit the present set of counsels. During the first week of October 2024 the father of the Petitioner became stable and thereafter the Petitioner approached the present set of counsels. The counsels after perusing the Order dated 24.04.2024 passed by the Principal Judge Family Court No. II, Kamrup (M) at Guwahati in Family Court (Crl) case No. 313/2023 and Order dated 01.08.2024 passed by the Judicial Magistrate First Class, Kamrup (M) at Guwahati in Misc (DV) Case No. 218/2022 advised the petitioner to file a Criminal Revision Petition assailing the impugned Order dated 24.04.2024 before the Hon'ble Gauhati High Court. However, due to the puja holidays of the Hon'ble Gauhati High Court from 07.10.2024 to 20.10.2024 the counsels could not file the Criminal Revision Petition immediately and the same was accordingly filed on 24.10.2024. The Petitioner could not assail the impugned Order dated 24.04.2024 passed in F.C. (Crl.) No. 313/2023 passed by the Hon'ble Principal Judge No. II, Family Court, Kamrup (M), Guwahati within the time stipulated by law and hence, there has been a delay of 92 days in assailing the same before the Court.

5. A written objection has been submitted on behalf of the respondent wherein, it has been stated, *inter alia*, that the statements made by the petitioner therein are false as Amingaon is adjacent to Guwahati and that the petitioner could have contacted his counsels during his off days as well as via phone but chose not to do so for reasons best known to him. The respondent further submits that, the petitioner has not submitted a single document regarding his father's illness. This clearly shows that the petitioner is in fact making false statements regarding his father's illness with a view to mislead the Court and as such, the instant petition of the

petitioner should be dismissed.

6. Further, Mr. S Das, learned counsel for the respondent side has relied upon the following decisions of the while opposing the prayer for condonation of delay.

(i) Basawaraj & Others V. the Spl. Land Acquisition Officer reported in (2013) 0 SCC 766.

(ii) State of Madhya Pradesh V. Ramkumar Choudhury reported in (2024) 0 SCC 1136.

(iii) The Secretary to the Government of India, Ministry of Defence & Ors. V. Sh. Rohmingliana and Ors. reported in (2022) 0 Supreme(GAU) 369.

(iv) Meghalaya State Electricity Board, Shillong V. Ambunath Choudhury reported in (1993) Supreme(GAU) 213.

7. The sum and substance of the aforesaid decisions is that the petitioner is required to show sufficient cause for condonation of the delay. In the aforesaid case, the delay concerned were huge ones ranging from 5 years to 1411 days.

8. Mr. R Sensua, learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in ***Inder Singh V. State of Madhya Pradesh*** reported in ***MANU/SC/0376/2025*** wherein the previous decisions of the Hon'ble Supreme Court ***Ramchandra Shankar Dyohar V. State of Maharashtra*** reported in ***(1974) 1 SCC 317*** were cited, wherein it was held that : (Para 16 17 39 of Inder Singh)

10....There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the Respondents, was sufficient to disentitle the Petitioners to any relief in a petition Under Article 32 of the

Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the Rule which says that the Court may not inquire into belated and stale claims is not a Rule of law, but a Rule of practice based on sound and proper exercise of discretion. and there is no inviolable Rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in Tilokchand Motichand v. H.B. Munshi MANU/SC/0127/1968 1968:INSC: 310: (1969) 1 SCC 110, 116:(1969) 2 SCR 824] "is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit.... It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose.

9. The Hon'ble Apex Court further held that :

No doubt, Ramchandra Shankar Deodhar (supra) relates to a writ petition, but the statement of law laid down is clear. Sheo Raj Singh (supra) has also considered the impersonal nature of the functioning of the State, taking note of what was observed in State of Manipur v. Kotin Lamkang, MANU/SC/1480/2019: 2019:INSC: 1182: (2019) 10 SCC 408. In A.B. Govardhan v. P. Ragothaman, MANU/SC/0952/2024 : 2024:INSC:640 (2024) 10 SCC 613, the Court considered as under :

37. In Collector (LA) v. Katiji (Collector (LA) v. Katiji, MANU/SC/0460/1987: 1987:INSC:54: (1987) 2 SCC 107], the Court noted that it had been adopting a justifiably liberal approach in condoning delay and that "justice on merits" is to be preferred as against what "scuttles a decision on merits". Albeit, while reversing an order of the High Court therein condoning delay, principles to guide the consideration of an application for

condonation of delay were culled out in Esha Bhattacharjee v. Raghunathpur Nafar Academy [Esha Bhattacharjee v. Raghunathpur Nafar Academy, MANU/SC/0932/2013: 2013: INSC:620: (2013) 12 SCC 649: (2014) 1 SCC (Civ) 713: (2014) 4 SCC (Cri) 450: (2014) 2 SCC (L&S) 595. One of the factors taken note of therein was that substantial justice is paramount [Para 21.3 of Esha Bhattacharjee [Esha Bhattacharjee v. MANU/SC/0932/2013: 2013:INSC:620: Raghunathpur Nafar Academy, (2013) 12 SCC 649: (2014) 1 SCC (Civ) 713: (2014) 4 SCC (Cri) 450: (2014) 2 SCC (L&S) 595]].

22.... The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such, but the test is whether by reason of delay there is such negligence on the part of the Petitioner, so as to infer that he has given up his claim or whether before the Petitioner has moved the writ court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay.

39. The Bombay High Court's eloquent statement of the correct position in law N.L. Abhyankar case MANU/MH/0408/1994: (1995) 1 Mah LJ 503 found approval in Municipal [N.L. Abhyankar Union of India, Council, Ahmednagar v. Shah Hyder Beig [Municipal Council, Ahmednagar v. Shah Hyder Beig, MANU/SC/0022/2000: 1999: INSC: 549: (2000) 2 SCC 48 and Mool Chandra v. Union of India [Mool Chandra v. Union of India, MANU/SC/0835/2024: 2024:INSC: 577: (2025) 1 SCC 625: 2024 SCC OnLine SC 1878]."

9. Considering the explanation, I have duly considered the cause shown by the applicant as reflected above as well as the objection of the respondent. The mere fact that the petitioner could file a divorce case during the period in question does not necessarily mean that he could not

have been prevented from doing some other things such as preferring the present application on account of the reasons cited above.

10. Keeping the aforesaid in view and the cause of substantial justice in mind and the relatively short duration of delay of 92(ninety-two) days, I consider it a fit case to condone the aforesaid delay.

11. It is accordingly so condoned and the I/A stands allowed.

12. List the connected Revision Petition for hearing after **4(four) weeks.**

JUDGE

Comparing Assistant