

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 2579 of 2023

Prabin Nath Jaiware, s/o Indra Narayan Jaiware, aged about 50 yrs.,
resident of Mandir More Near Trisul Hotel, Jhounsagarhi, P.O.-
Deoghar, P.S.-Deoghar (Town), Dist.-Deoghar

.... Petitioner

Versus

1. The State of Jharkhand
2. Shiv Shankar Gupta, s/o late Girdharilal Sah, r/o S.B. Roy Road
Piyarelal, Girdharilal cloth shop opposite Bhagwan Hotel Deoghar,
P.O.+P.S.-Deoghar, Dist.-Deoghar

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioners	: Mr. Nilendu Kumar, Advocate
For the State	: Mr. Manoj Kr. Mishra, Addl. P.P.
For O.P. No.2	: None

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By the Court:-

1. Heard the parties.
2. Though notice has validly been served upon the opposite party no.2 but no one turns up on behalf of the opposite party no. 2 in spite of repeated calls.
3. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with the prayer to quash and set aside the order dated 04.11.2022 passed by the learned Sessions Judge, Deoghar in Criminal Revision No. 165 of 2022 whereby and where under, the learned Sessions Judge, Deoghar has dismissed the criminal revision and affirmed the order dated 01.06.2022 passed by the learned Judicial Magistrate

1st Class, Deoghar whereby the Complaint Case No. 848 of 2020 stood dismissed for default without examination of the complainant and inquiry witnesses.

4. The brief fact of the case is that the petitioner is the complainant of Complaint Case No. 848 of 2020 of the court of Judicial Magistrate 1st Class, Deoghar. The learned Judicial Magistrate 1st Class, Deoghar vide order dated 01.06.2022 dismissed the complaint filed on behalf of the petitioner-complainant under Section 203 of the Code of Criminal Procedure.
5. Being aggrieved by the said order, the petitioner-complainant filed Criminal Revision No. 165 of 2022 in the court of learned Sessions Judge, Deoghar but the same was filed after a delay of 18 days. Along with the said Criminal Revision No. 165 of 2022, the petitioner filed a petition to condone the delay under Section 5 of the Limitation Act on the ground that because of the serious ailment of suffering from cancer by the sister of the complainant, the complainant could not be able to attend the court and make *pairvi* which resulted in dismissal of the complaint but again because of the complainant remaining engaged in treatment of his sister, the delay in filing the revision petition occurred. The petitioner filed photocopies of the medical report and prayed that the delay of 18 days in filing the criminal revision be condoned.
6. The learned Sessions Judge, Deoghar instead of appreciating the contention of the absence or otherwise of the sufficient cause for the delay in filing the criminal revision, went into the merits of the

revision and considered that the complainant has lost its interest in the complaint; as it appears from the conduct of the complainant, hence, the complainant failed to explain his non-appearance before the court below and by thus, considering the merits of the criminal revision held that the delay of 18 days could not be explained.

7. It is submitted by the learned counsel for the petitioner that the learned Sessions Judge, Deoghar was under an obligation to arrive at the finding as to whether the cause shown by the petitioner for the delay in filing the criminal revision was sufficient or not for exercise of the power to condone the delay in filing the criminal revision vested with said court under Section 5 of the Limitaiton Act, 1963 but having not done so and instead of going into the merits of the case, the learned Sessions Judge, Deoghar has committed a gross illegality. Hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.
8. The learned Addl. P.P. on the other hand defends the impugned order passed by the learned Sessions Judge, Deoghar and submits that there is no illegality in the same. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.
9. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that the Hon'ble Supreme Court of India in the case of **Thirunagalingam v. Lingeswaran and Another** reported in

2025 INSC 672 : 2025 SCC OnLine SC 1093, paragraph no. 31 of which reads as under:-

“31 It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.” (Emphasis supplied)

has reiterated the settled principle of law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the *bona fides* of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter.

10. In view of the settled principle of law, this Court has no hesitation in holding that the learned Sessions Judge, Deoghar has committed a gross illegality by not considering the sufficient or otherwise cause shown by the petitioner for the delay of 18 days in filing the criminal revision but instead went to the merits of the criminal revision and erroneously made observation regarding the merits of the criminal revision; without considering the sufficiency or the otherwise of the cause shown for the condonation of the delay in filing the criminal revision and the same in the considered opinion of this Court is not sustainable in law.

11. Accordingly, the order dated 04.11.2022 passed by the learned Sessions Judge, Deoghar in Criminal Revision No. 165 of 2022 is quashed and set aside.
12. The case is remitted to the court of Sessions Judge, Deoghar to pass a fresh order in accordance with law.
13. In the result, this criminal miscellaneous petition is allowed with the aforesaid direction.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 27th November, 2025
AFR/Sonu-Gunjan/-

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