

**Present:****Mr. Justice Md. Salim****Criminal Rule No.22 (Con-A) of 2019**

Latiful Huda

-----appellant.

-Versus-

The State and another.

..... Respondents.

No one appears

..... For the appellant-petitioner.

Mr. M. Mahmudul Hasan, Advocate

--- For the Respondent No.2.

Mr. Monzurul Alam Sujon, DAG with

Mr. Towhidul Islam, A.A.G. and

Mr. Syed Akhtarul Islam, A.A.G.

..... For the State.

**Heard and Judgment on 29.04.2026.**

This Rule was issued calling upon the opposite parties to show cause as to why the delay of 1901 days in filing Criminal Appeal against the judgment and order of conviction and sentence dated 01.09.2013 passed by the learned Additional Metropolitan Sessions Judge, 5<sup>th</sup> Court, Chattogram in Sessions Case No.853 of 2011 convicting the petitioner under section 138 of the Negotiable Instrument Act,1881 and

sentencing him to suffer simple imprisonment for 6(six) months and to pay a fine of Tk.9,00,000/- should not be condoned and or pass such other or others and order as to this court may seem fit and proper.

Facts in brief is that the opposite party No. 2 herein as complainant filed Sessions Case No.853 of 2011 against the convict petitioner under section 138 of the Negotiable Instrument Act,1881 which was subsequently heard by the learned Additional Metropolitan Sessions Judge, 5<sup>th</sup> Court, Chattogram, and eventually by the judgment and order dated 01.09.2013 found this petitioner guilty under section 138 of the Negotiable Instrument Act,1881 and sentenced him to suffer simple imprisonment for 6(six) months and to pay a fine of Tk.9,00,000/- against the same in filing the Criminal appeal there had been a delay of 1901 days. However, a single Bench of this Division considered the application under section 5 of the Limitation Act and issued the instant Rule on 21.01.2019.

Despite posting the matter with the name of the learned Advocate for the petitioner in the cause list for consecutive dates, no one is inclined to appear on behalf of the petitioner to press the Rule. However, in the presence of Mr. M. Mahmudul Hasan, the learned Advocate for the respondent No.2, and Mr. Monzurul Alam Sujon, the learned Deputy Attorney General, we proceed to dispose of the matter on merit.

We have perused the application, the judgment and order passed by the court below, the annexures, and other materials on record.

Be that as it may, it appears that the convict petitioner, after a long delay of 1901 days, submitted a petition for appeal with an application under section 5 of the Limitation Act before this court, challenging the above-mentioned judgment and order of conviction and sentence. However, the reasons for the delay have not been properly explained. On the other hand, the petitioner made vague, inconsistent, and contradictory statements in the application, which show that the

petitioner was indolent and did not act vigilantly, and that the delay is due to wilful and deliberate lapses and latches committed by the petitioner.

It is a settled principle of law that the power to condone delay as given under section 5 of the Limitation Act is within the discretion of the court. However, the court's discretion is circumscribed by the terminology used in section 5 of the Limitation Act.

The provisions of Section 5 of the Limitation Act provide that the applicant must satisfy the court that he had sufficient cause for not filing the appeal within the stipulated period. Thus, it is clear that the court can condone the delay if it is satisfied that there was sufficient cause for the delay. However, this does not mean that the court can condone the delay when it is not so satisfied or when no sufficient cause is shown. Moreover, the order sheet indicates that the Rule was issued on 21.01.2019, but the petitioner did not take the necessary steps for hearing of the Rule.

Notably, this convict petitioner, after conviction and sentence, obtained bail from the trial court on 30.09.2018, which was extended till 15.01.2019; thereafter, he became a fugitive, as the bail period was not extended or this court passed any order of bail at the time of issuance of the Rule. Thus, the petitioner, being a fugitive has no right of redress as against his grievance if any, against the judgment and order of Court convicting him to imprisonment.

In the above facts and circumstances, it appears that no valid and cogent ground for condoning the long delay of 1901 days is made out in the application filed under Section 5 of the Limitation Act.

In view of the above, we find no merit in this Rule. Thus, we do not find substance in the Rule.

Resultantly, the Rule is discharged.

Communicate the Order.

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(Md. Salim, J).