

**Present:**

**Mr. Justice Mamnoon Rahman**

**Criminal Rule No. 101(con/A) of 2024**

In the matter of:

An application under section 84 of the Information and Communication Technology Act, 2006.

And

In the matter of:

Md. Abdur Rahim Rasel

..... Appellant-Petitioner.

-Versus-

The State

.... Respondent-Opposite party.

Mr. Sikder Mahmudur Razi, Adv. with

Mr. Md. Zahirul Islam, Adv.

Mr. Kazi Akbar Ali, Adv.

Mr. Gazi Salahuddin, Adv.

...For the convict-appellant.

Mr. Md. Taifoor Kabir, DAG with

Mr. Md. Lokman Hossain, AAG.

Mr. Md. Hatem Ali, AAG

...For the State.

**The 30<sup>th</sup> May, 2024.**

In preferring the instant appeal there had been a delay of 213 for which the convict-appellant filed an application under section 5 of the Limitation Act for condoning the delay and consequently the rule was issued in the following terms;

*“Let a Rule be issued calling upon the respondent to show cause as to why the delay of 213 days in filing the Criminal Appeal should not be condoned and/or pass such other or further order or orders as to this Court may seem fit and proper”.*

I have heard the learned Advocate for the convict-appellant as well as the learned Deputy Attorney General for the State. I have perused the memorandum of appeal, grounds taken thereon, application for

condonation of delay as well as necessary papers and documents annexed herewith.

On perusal of the same, it appears that the instant appeal is being filed as per section 84 of the Information and Communication Technology Act, 2006 hereinafter called the Act of 2006. It further appears that the appellant-petitioner was convicted by the court below, namely the Cyber Tribunal, Rangpur in C.T. Case No. 98 of 2021 wherein the court below convicted and sentenced three accused persons including the present appellant under section 56/66 of the Act of 2006 and sentenced him to suffer rigorous imprisonment for 7(seven) years and also to pay fine of Tk. 50,000/- in default to suffer rigorous imprisonment for a further period of 5(five) months. The present appellant preferred the appeal before this court and since there is a delay filed an application for condonation of delay under section 5 of the Limitation Act.

On meticulous perusal of the same, it transpires that the convict-appellant-petitioner was convicted under the provisions of Act, 39 of 2006. Section 82 of the said Act prescribed for formation of Cyber Appeal Tribunal. Section 84 of the said Act further provides that until and unless a Cyber Appeal Tribunal has been established whatever contains in the Code of Criminal Procedure an appeal shall be filed in the High Court Division of the Supreme Court of Bangladesh against the verdict and order given by the trial court, namely Cyber Tribunal. However, on meticulous perusal of the provision of Act 39 of 2006, it transpires that there is no specific limitation provided for preferring an appeal before any

superior court. However, section 75 of the said Act stated that during trial the provision of Chapter 23 of the Code of Criminal Procedure can be followed.

Apart from that it further transpires that subsequently another Act, namely Digital Security Act, 2018 was repealed and substituted by the Act of 39 of 2023 wherein as per the said provisions of section 49 the provisions of the Code of Criminal Procedure shall be applicable in case of any investigation, trial, appeal and other aspects. As per the provisions of Article 155 of the Limitation Act, 1908 in ordinary cases an appeal is to be filed within 60 (sixty) days from passing of the judgment and order of conviction and sentence and in the absence of any specific provision and in view of the section 75 of the Act 39 of 2006 as well as section 49 of the Act 39 of 2023, I am of the view that the provision of Article 155 shall be applicable in the present case in hand. As such, the provision of section 5 of the Limitation Act is also applicable for preferring any appeal against the verdict and order passed under the provisions of Information of Communication Technology Act, 2006, Digital Security Act, 2018 (now repealed) as well as Cyber Security Act, 2023.

Considering the facts and circumstances, I find substance in the instant rule. Accordingly, the instant rule is made absolute and the delay of 213 in filing the appeal is hereby condoned.

The office is directed to register the appeal in accordance with law.

(Mamnoon Rahman,J;)