

Present:

Mr. Justice Md. Khairul Alam

Criminal Revision No. 1050 of 2005.

Md. Asor Uddin.

..... Petitioner.

-Versus-

The state.

..... Opposite party.

No one appears

..... For the petitioner.

Ms. Shiuli Khanom, D.A.G

..... For the state.

Heard on 25.11.2024 and

Judgment on 26.11.2024.

This Rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 09.06.2005 passed by the learned Sessions Judge, Lalmonirhat in Criminal Appeal No. 50 of 2005 dismissing the appeal summarily on the ground of limitation and thereby affirming the order of conviction and sentence dated 19.02.2003 passed by the learned Magistrate, First Class, Lalmonirhat in C.R Case No. 192 of 2001 convicting the petitioner under section 4 of the Dowry Prohibition Act, 1980 and sentencing him to suffer rigorous imprisonment for 1 (one) year and also to pay a fine of Tk. 1,000/- in default to suffer simple imprisonment for 1 month more should not be set aside and/or pass such other or

further order or orders as to this court may seem fit and proper.

Relevant facts for disposal of the Rule are that the present petitioner was put on trial before the Court of Magistrate, First Class, Lalmonirhat in C.R Case No. 192 of 2001 corresponding to T.R No. 332 of 2002 for an offence of section 4 of the Dowry Prohibition Act, 1980 filed by his wife Nazma Begum. After the trial, the learned Magistrate, First Class, Lalmonirhat by the judgment and order of conviction and sentence dated 19.02.2003 found the petitioner guilty of the offence and sentenced him as aforesaid.

Against the aforesaid order of conviction and sentence, the petitioner preferred an appeal before the Court of Sessions Judge, Lalmonirhat. Since the petitioner preferred the appeal after the statutory period of limitation, he filed an application under section 5 of the Limitation Act, 1908 for condoning the delay of 845 days in filing the appeal stating, inter alia, that the petitioner reached into a compromise with the complainant and as per terms of the compromise the complainant supposed to withdraw the case, hence the petitioner was advised, not to appear in the case. The complainant in

violation of the terms of compromise continued the proceeding and as a result of this, the aforesaid conviction and sentence were passed against him in his absence. Subsequently, on 07.04.2005, the petitioner was shown-arrested in this case, and he for the first time could come to know about the judgment and order of conviction and sentence. Accordingly, he filed this appeal, but by that time the delay of 845 days had caused. The learned Sessions Judge, Lalmonirhat by the impugned judgment and order dated 09.06.2005 rejected the prayer for condonation of delay and thereby dismissed the appeal, summarily holding, inter alia, that the grounds were not well explained and not at all satisfactory.

Being aggrieved by and dissatisfied with the aforesaid judgment and order the petitioner moved before this Hon'ble Court and obtained the present Rule.

None one appears for the petitioner to support the Rule though this matter appears in the delay cause list for number of days.

Mrs. Shiuli Khanom, the learned Deputy Attorney General opposes the Rule and submits that the learned

appellate Court rightly rejected the application under section 5 of the Limitation Act, 1908 as the petitioner having full knowledge did not contest the case and filed the appeal beyond the statutory period.

Heard the learned Deputy Attorney General, perused the petition as well as the application filed by the petitioner under section 5 of the Limitation Act and other materials on record.

From the application filed by the petitioner under section 5 of the Limitation Act, 1908 it appears that the petitioner specifically stated that the petitioner obtained bail on the condition of compromise and accordingly, he compromised the matter. As per terms of the compromise, the complainant was supposed to withdraw the case, but the complainant violated the compromise and without withdrawing, continued the proceeding and as a result of this, the aforesaid conviction and sentence were passed against him in his absence. Subsequently, on 07.04.2005, he was shown-arrested in this case, and he for the first time could come to know about the judgment and order of conviction and sentence. Accordingly, he filed this appeal, but by that time the delay of 845 days had caused.

From the order sheet of the trial Court, it appears that the petitioner was granted bail on condition of compromise. A combined consideration of the said order and the statement of the application it would be clear that the cause shown, for the delay of 845 days in filing the appeal, was explained satisfactorily. It also appears that the petitioner had sufficient reasons for the delay.

Therefore, I am of the view that the Court of appeal below on misconception of law and facts rejected the application for condonation of delay and thereby, passed the impugned judgment and order. Hence, I am also of the view that justice would be met if the petitioner is given an opportunity to challenge the judgment and order of conviction and sentence of the trial Court, in appeal, and if the Court of appeal below scrutinise his conviction and sentences in the light of the evidence adduced by the prosecution.

Therefore, I find merit in the Rule.

Accordingly, the Rule is made absolute.

The impugned judgment and order dated 09.06.2005 passed by the learned Sessions Judge, Lalmonirhat in Criminal Appeal No. 50 of 2005 is hereby set aside.

The learned Sessions Judge, Lalmonirhat is hereby directed to dispose of the appeal, on merit, in accordance with the law.

Send a copy of this judgment to the concerned Court along with the lower Court record (L.C.R) forthwith.