

**Present:**

Mr. Justice Raziuddin Ahmed

**Criminal Revision No.1244 of 2007**

Mizanur Rahman (Faruk)

----- Petitioner

**-Vs-**

The State

---- Opposite Party

No one appears

----For the Petitioner

Mr. Md. Taherul Islam (Tawhid), D.A.G

---- For the State

**Heard on 29.01.2026, 01.02.2026 and**

**Judgment on 09.02.2026**

On an application filed under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the Deputy Commissioner, Feni to show cause as to why the judgment and order dated 18.07.2007 passed by the learned Sessions Judge, Feni in Criminal Appeal No.44 of 2007 dismissing the appeal and thereby affirming those dated 20.12.2005 passed by the learned Magistrate, 1<sup>st</sup> Class, Feni in C.R. Case No.138 of 2003, should not be set aside and/ or such other or further order or orders passed as to this Court may deem fit and proper.

The prosecution case, in short is that one Abul Kalam Azad, as complainant, filed a complaint petition before the Court of the learned Magistrate, 1<sup>st</sup> Class, Feni alleging, inter alia, that the accused-petitioner took a loan of Tk.1,00,000/-(one lac) from him on 15.04.2003 with an assurance that the same would be repaid within one month. However, the

accused-petitioner failed to repay the said amount within the stipulated time. Thereafter, on 17.06.2003, the accused-petitioner issued a cheque in favour of the complainant in discharge of the said liability. The complainant presented the cheque in Sonali Bank, Agrabad Branch, Chittagong for encashment, but the said cheque was dishonoured on 18.06.2003. Thereafter, the said cheque was again presented and dishonoured on 03.07.2003 and 14.07.2003 respectively. The complainant then sent a legal notice to the accused-petitioner on 06.08.2003 through his lawyer, but the accused-petitioner did not receive the same. Subsequently, another legal notice was sent on 16.08.2003, which also remained unserved. Hence the complainant filed this complaint case.

The learned Magistrate, Feni upon examining the complainant under section 200 of the Code of Criminal Procedure, 1898 took cognizance of the offence and subsequently after examining the witness and considering the materials on record, convicted the accused-petitioner under section 138 of the Negotiable Instrument Act, 1881 in absentia and sentenced him to suffer rigorous imprisonment for 01(one) year by judgment and order dated 20.12.2005.

Subsequently, the accused-petitioner was arrested on 01.07.2007 and was produced before the court of learned Magistrate, 1<sup>st</sup> Class, Feni, who sent him to jail custody.

Thereafter, the accused-petitioner preferred Criminal Appeal No.44 of 2007 before the Court of the learned Sessions Judge, Feni along with an application under section 5 of the Limitation Act, 1908 for condonation of delay.

The learned Sessions Judge, Feni, upon hearing the said application, rejected the prayer for condonation of delay of 566 days and dismissed the appeal summarily by the impugned judgment and order dated 18.07.2007, thereby affirming the judgment and order of conviction and sentence dated 20.12.2005 passed by the learned Magistrate, 1<sup>st</sup> Class, Feni.

Being aggrieved by and dissatisfied with the aforesaid judgment and order dated 18.07.2007 passed by the learned Sessions Judge, Feni, the accused-petitioner moved this court and obtained the present Rule.

No one appears to support the Rule on behalf of the petitioner.

I have perused the revisional application, the impugned judgment, and the lower court records.

It appears from the impugned judgment and order dated 18.07.2007 that the learned Sessions Judge refused to condone the delay of 566 days in filing the appeal and dismissed the appeal summarily, thereby affirming the judgment and order of conviction and sentence dated 20.12.2005 passed by the learned Magistrate, 1<sup>st</sup> Class, Feni.

It is by now a settle principle of law that an application under section 5 of the Limitation Act,1908 is to be considered with a liberal and lenient approach, particularly in criminal matters, where technicalities should not be allowed to defeat the cause of justice if sufficient cause is shown.

From the record, it appears that the accused-petitioner, in his application for condonation of delay, stated that he had no knowledge of the case and that the warrant of arrest and the process of attachment of

property were not served at his correct address. He further stated that the notification allegedly published in the newspapers is also not a widely circulated newspaper and, as such, he had no occasion to come to know of the proceedings pending against him.

In the case of Rahmat Ali –Vs- the State reported in 1 BLC 435, it was held that;

*“As the appellant was not aware of the trial, he did not see the notification in the newspaper and that no warrant of proclamation and attachment was served or executed in his village address preventing the appellant from filing the appeal in time which are sufficient cause for condoning the delay of 1649 days in filing the Criminal appeal.”*

The principle laid down in the aforesaid decision is fully applicable to the facts of the present case.

Having considered the facts and circumstances of the case, I find substance in the contention that the accused-petitioner was prevented by sufficient cause from filing the appeal within the prescribed period of limitation. There is nothing on record to suggest that the delay was deliberate, willful, or occasioned by negligence or laches on the part of the petitioner.

In such view of the matter, I am of the opinion that the learned Sessions Judge, Feni committed an error of law in rejecting the application for condonation of delay and in dismissing the appeal summarily without entering into its merit.

In the result, the Rule is made absolute.

The delay of 566 days in filing Criminal Appeal No.44 of 2007 before the learned Sessions Judge, Feni is hereby condoned.

The learned Sessions Judge, Feni is directed to restore the said appeal to its original file and number and to hear and dispose of the same on merit in accordance with law.

Send down the lower court records at once.

I.Sarwar/B.O