GAHC010094342026

2026:GAU-AS:15689

# THE GAUHATI HIGH COURT
## (HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**Case No. : Crl.Rev.P./260/2026**

ABDUL MOZID AND ANR
S/O SURAT ALI

2: SURAT ALI
S/O LT. KASIMUDDIN
BOTH ARE RESIDENT OF BEJORSUTI
P.O. MAHTOLI
P.S. BOKO
DIST. KAMRUP
ASSAM
PIN-781136

VERSUS

SANIYARA BEGUM
D/O LATE SIDDIQUE ALI
VILL- BEJORSUTI, P.O. MAHTOLI,P.S. BOKO
DIST. KAMRUP, ASSAM, PIN-781136

**Advocate for the Petitioner** : MR. A ALI,

**Advocate for the Respondent** : MS. A RANA, AMICUS CURIAE,

**BEFORE**

**HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Advocates for the Petitioners : Mr. A. Ali.

Advocate for the Respondent : Ms. A. Rana, Amicus Curiae.

Date of Delivery of Judgment : 14.10.2026

**JUDGEMENT AND ORDER**

Heard learned counsel Mr. A. Ali for the petitioner and learned Amicus Curiae Ms. A. Rana for the respondents.

**Factual Matrix :-**

2. The petitioner No. 1 in this case is the husband of the respondent (name withheld), whereas the petitioner No. 2 is the father of the petitioner No. 1 and happens to be the father-in-law of the respondent. Both the petitioners are aggrieved by the order dated 31.03.2026 in connection with Misc. Criminal Case No. 6 of 2025, whereby their petition for condonation of delay was rejected by the learned Additional Session Judge, Kamrup, Amingaon.

**Case of the Petitioners :-**

3. The Misc. Criminal Case No. 6 of 2025 was registered on the basis of a petition under Section 5 of the Limitation Act, 1963 (the Limitation Act for short) with prayer to condone the delay in filing the appeal against the *ex-parte* orders dated 10.10.2023 and 12.10.2023 and all the subsequent orders passed by the learned Judicial Magistrate First Class (JMFC for short or Magistrate), Boko in connection with DV Case No. 04/2021. The petitioners are also aggreived by the impugned order dated 03.02.2024 and the subsequent orders passed by the same Court in connection with petition No. 40/2024 dated 03.02.2024.

4. Aggrieved by the *ex-parte* order dated 10.10.2023 and the order dated 12.10.2023 and all the subsequent orders passed by the learned JMFC, Boko in connection with DV Case No. 4/2021 and also the impugned order dated

03.02.2024 and all the subsequent orders passed by the Court in connection with petition No. 40/2024 dated 03.02.2024, directing compliance of the impugned order dated 10.10.2023, the petitioner filed an appeal before the learned Sessions Judge, Kamrup, Amingaon on 12.03.2025. Having endorsed the same as Criminal Appeal No. 5/2025, the case was made over to the learned Additional Sessions Judge, Kamrup, Amingaon. The petitioners also assailed the *ex-parte* order dated 10.10.2023 and all subsequent orders passed therewith before this Court vide Criminal Petition No. 603/2024.

5. This Court vide order dated 12.11-2024 directed the petitioners to prefer an appeal under Section 29 of Protection of Women from Domestic Violence Act, 2012 (DV Act, for short). Accordingly, the petitioners preferred the appeal as directed, but while doing so, there was some delay and therefore, the petitioners filed a miscellaneous application under Section 5 of the Limitation Act read with Section 151 of the Code of Civil Procedure, 1908 (CPC for short). This application was registered as Misc Criminal Case No. 6/2025.

6. After hearing the petitioners and the respondent, the learned Additional Sessions Judge, Kamrup, Amingaon, rejected the petition with prayer for condonation delay vide order dated 31.03.2026 in connection with Misc Criminal Case No. 06/2025.

7. It is contended that the learned Additional Sessions Judge has resorted to technicalities and had taken a pedantic view, rejecting the petition as the petitioner had a good case to appeal. The learned Additional Sessions judge has totally ignored the fact that the petitioner was not heard and the decision was passed by the Trial Court *ex-parte* and this has highly prejudiced the petitioner. In fact, the respondent does not deserve maintenance as the petitioner No. 1's children are staying with the petitioner No. 1 and the petitioner No. 1 is

maintaining his family. Moreover, the respondent had withdrawn all the litigations between both the parties and after an amicable settlement, the respondent was granted compensation of Rs.1,93,000/- (Rupees One Lac and Ninety Three Thousand), which was received and accepted by the respondent and paid by the petitioner No. 1.

8. It is further contended that the petitioners cannot be made liable and burdened with the reasons of delay as the petitioners had preferred a criminal petition before this Court, which is also an additional ground, resulting in the delay in filing the criminal appeal against the *ex-parte* order.

9. It was submitted that the delay occurred as this Court had directed the petitioners to appear before the proper forum and prefer an appeal under section 29 of the DV Act.

10. It is submitted by the learned counsel for the petitioners that although it appears that the delay was of 1023 (One Thousand and Twenty Three) days from the orders dated 10.10.2023 and 12.10.2023 passed by the learned JMFC, Boko in DV Case No. 04/2021, in reality, the actual delay was of only 120 (One Hundred and Twenty) days as the petitioners had preferred the Criminal Petition No. 603/2024 against the final orders dated 10.10.2023 and 12.10.2023 in DV Case No. 04/2021. It is further contended that the delay had occurred subsequent to the order dated 12.11.2024 passed in Criminal Petition No. 603/2024 due to some medical condition of a family member of the engaged counsel. It is submitted that immediately after the order dated 12.11.2024, the petitioners had handed over the brief to their engaged counsel, who was supposed to file an appeal immediately thereafter.

11. It is also contended that the learned Appellate Court had manifestly erred

by rejecting the petitioners' Miscellaneous Application on the ground that there is no explanation for the delay between the period from 16.01.2025 upto 13.03.2025, which may have occurred due to incompetence or inadvertent error on the part of the engaged counsel as the petitioners are ordinary laymen and are not conversant with any legal aspect. It is also further submitted that the petitioners were not at all aware that the engaged counsel's family member was suffering from certain medical issues, which led to the delay in filing the application with prayer for condonation of delay.

12. Further it is averred that the Appellate Court in paragraph 8 of the impugned order dated 31.03.2026 has erroneously held that copies were furnished, but in fact the order clearly speaks that there was a direction that copy be furnished and the petitioner has stressed in his argument that nowhere it is mentioned that copies were actually furnished to the petitioners.

13. The learned counsel has emphasized through his argument that the copy of the final order was never furnished to the petitioners as the petitioner No. 1 was out of the State of Assam by that time. It was also emphasized through their arguments that the Appellate Court failed to take note of the fact of medical emergency of the learned engaged counsel, who produced medical slips and reports to substantiate this stance.

14. The petitioners have thus prayed to set aside the impugned order dated 31.03.2026 (Annexure-5) passed in Misc Criminal Case No. 06/2025 arising out of Criminal Appeal No. 5 of 2025 and to remand the matter back to the learned Appellate Court to decide the Criminal Appeal No. 5/2025.

**Case of the Respondent :-**

15. Learned Amicus Curiae Ms. A. Rana laid stress in her argument that no

error is apparent on the face of the record. The petition with prayer for condonation of delay was correctly rejected by the learned Additional Sessions Judge. The petition *ex facie* does not reveal the number of days leading to the delay in filing the appeal. This is a major discrepancy as the petitioners have failed to correctly disclose the exact number of days of delay in filing the appeal.

16. Now, while filing this revision petition, enumerating the exact number of days to be 120 (One Hundred and Twenty) days will not absolve the petitioners from their responsibility in calculating and disclosing the total delay in their petition for condonation of delay before the Appellate Court. It is submitted that the impugned order dated 31.03.2026 in connection Misc Criminal Case No. 06/2025 has been correctly passed by the learned Additional Sessions Judge and this order may not be interfered as there is no illegality or impropriety in the order passed by the learned Additional Sessions judge. The learned Amicus Curiae has prayed to dismiss this petition as the petition filed by the petitioners for condonation of delay is barred by inexplicable delay.

**Analysis and Conclusion :-**

17. I have considered the submissions at the bar with circumspection. The petition with prayer for condonation of delay is marked as Annexure-3 at page-78 of the petition. The petition does not at all reveal the number of days of delay in preferring the appeal. The petition filed under Section 5 of the Limitation Act does not at all reveal the exact number of days of delay in preferring the appeal against the *ex-parte* order. I have also scrutinized the scanned copies of the Trial Court Records. While passing the order dated 31.03.2026 in connection with Misc Criminal Case 6 of 2025, it was observed by the learned Additional Sessions Judge that :-

"*8. The record reveals that the impugned order was passed on 12/10/2023 in DV case number 04/2021. As per section 29 of the Protection of Women from Domestic Violence Act, 2005, the appeal is to be filed within 30 days from the date of receipt of a copy of the order. Para 21 of the impugned order reveals that the parties were furnished with a copy of the order immediately after its pronouncement. It has been submitted on behalf of the petitioners that the petitioner number 1 was outside the state in connection with his livelihood, when the impugned order was passed. However, subsequently he filed a criminal petition before the Hon'ble Gauhati High Court. That petition was disposed of vide order dated 12/11/2024 passed by the honourable High Court in Crl.Pet 603/2024. A perusal of the copy of that order reveals that the petitioner had himself withdrawn that petition with a prayer to file appeal before the concerned jurisdictional appellate court. Although that order was passed on 12/11/2024, the appeal was not filed immediately thereafter. The petitioner took the plea that his counsel was busy with the treatment of his nephew from 06/12/2024 to 16/01/2025. The appeal could have been filed between 12/11/2024 to 06/12/2024. There is no explanation in this regard as to why the appeal was not preferred within that period. The plea that the advocate was busy with the treatment of his nephew is not a sufficient cause to condone the delay. The petitioner/appellant could have engaged some other counsel or the learned engaged counsel for the petitioner could have also taken help from some other counsel to, at least, file the appeal within a reasonable time. If the learned counsel for the petitioner remained busy up to 16/01/2025, he could have filed the appeal immediately thereafter. However there is no explanation as to why he waited till 13/03/2025. The vague ground that the petitioner/appellant was financially unsound is not sufficient to condone the delay. The petitioner has also failed to show as to what kind of change in his financial position had prompted him to file the appeal on 13/03/2025."*

18. Thus, it is clear that the impugned *ex-parte* order was passed on 12.10.2023 in connection with DV Case No. 4/2021. Without preferring an appeal under Section 29 of the Domestic Violence Act, a criminal petition was preferred before this Court which was registered as Criminal Petition No. 603 of 2025. This Criminal Petition was disposed of vide the order dated 12.11.2024, after a year and a month, the DV Case No. 4/2021 was disposed of.

19. The impugned order dated 31.03.2026 clearly reveals that the petitioners had withdrawn the Criminal Petition No. 603 of 2024 and thus, the order dated 12.11.2024 was passed in connection with Criminal Petition No. 603/2024. The petitioner took the plea that his counsel was busy with the treatment of his nephew from 06.12.2024 up to 16.01.2025.

20. It was thus held by the learned Additional Sessions Judge that the appeal could have been easily filed within the window of 24 days, i.e. from 12.11.2024 up to 06.12.2024, but the petitioners failed to file their appeal and they had taken a plea that their engaged counsel was busy with the treatment of his nephew. This was not found to be a sufficient cause. The learned Additional Sessions Judge did not disbelieve the fact that the engaged counsel of the petitioners was busy with the treatment of his nephew, but the petitioner could have easily preferred an appeal within the window of 12.11.2024 up to 06.12.2024.

21. Now, considering the window of 24 days within which the petitioners could have filed their appeal against the impugned order in the DV Case No. 4/2021, this Court is of the opinion that a lenient view can be taken considering the plight of the petitioners. It is clear that the petitioners are laymen and unaware of the legal aspects of this case. They are best advised by their engaged counsel. This Court has also considered the submissions on behalf of the petitioners, which is not disputed by the learned Amicus Curiae representing the respondent that the litigations between the petitioners and the respondent were settled and the respondent had accepted Rs.1,93,000/- (Rupees One Lac and Ninety Three Thousand) after amicable settlement of the earlier pending litigations. This Court has also considered the submission that the petitioner No. 1 is taking care of his children. It appears that the appeal can be admitted to be

heard on merits.

22. This Court has considered the submission that the engaged counsel had to attend to his relative, who was ailing. This Court has also considered the submission that delay was also due to the time spent in preferring a Criminal Petition by the engaged counsel of the petitioners, which was later disposed of with a direction to prefer an appeal under section 29 of the DV Act.

23. The petitioners have relied on the decision of the Hon'ble Supreme Court in *Mool Chanda Versus Union of India & Anr. reported in 2024 INSC 577* wherein vide order dated 05.08.2024 in connection with SLP ((Civil) Nos. 2733-2734 of 2024 arising out of Civil Appeal Nos. 8435-8436 of 2024, it has been observed that :-

> "*20. Be that as it may. On account of liberty having been granted to the appellant to pursue his remedy in accordance with law, yet another O.A. No.2066 of 2020 along with an application for condonation of delay came to be filed. The delay was not condoned by the Tribunal on the ground that it was filed more than one year after the impugned order came to be passed. No litigant stands to benefit in approaching the courts belatedly. It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of "sufficient cause", irrespective of the length of delay same deserves to be condoned. However, if the cause shown is insufficient, irrespective of the period of delay, same would not be condoned."*
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> ***** ***** *****
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> "*22. If negligence can be attributed to the appellant, then necessarily the delay which has not been condoned by the Tribunal and affirmed by the High Court*

*deserves to be accepted. However, if no fault can be laid at the doors of the appellant and cause shown is sufficient then we are of the considered view that both the Tribunal and the High Court were in error in not adopting a liberal approach or justice oriented approach to condone the delay. This Court in Municipal Council, Ahmednagar and Anr. Vs. Shah Hyder Beig and Ors. 2000 (2) SCC 48 has held:*

> "*6. Incidentally this point of delay and laches was also raised before the High Court and on this score the High Court relying upon the decision in Abhyankar case (N.L. Abhyankar v. Union of India [(1995) 1 Mah LJ 503] ) observed that it is not an inflexible rule that whenever there is delay, the Court must and necessarily refuse to entertain the petition filed after a period of three years or more which is the normal period of limitation for filing a suit. The Bombay High Court in Abhyankar case [(1995) 1 Mah LJ 503] stated that the question is one of discretion to be followed in the facts and circumstances of each case and further stated:*
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> "*The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such but the test is whether by reason of delay, there is such negligence on the part of the petitioner so as to infer that he has given up his claim or where the petitioner has moved the writ court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay."*

24. Reverting back to this case, it appears that without getting into the technicalities of calculation, delay may be condoned. Thereby the order dated 31.03.2026 in Misc Criminal Case No. 06/2025 passed by the learned Additional Sessions Judge, Kamrup, Amingaon, is set aside and the delay of 120 (One Hundred and Twenty) days in preferring the criminal appeal is condoned.

25. In terms of the above observation, this petition stands disposed of.

**JUDGE**

**Comparing Assistant**