

Smt. Helen Dawngliani
Addl. District & Sessions Judge

Crl.misc.Appln. No.70/2013
In Crl.Revision No.22/2013

Mizoram Rural Bank, Vaivakawn Branch
Aizawl, through the Branch Manager Applicant

1. Hmingthansiami D/o Laldala(L)
Chaltlang Ruam Veng
Ex. Branch Manager
Rural Bank, Vaivakawn Branch
2. FR Ralsun(Ex.OJM) S/o HL Sela
R/o Bazar Bungkawn, Aizawl

.... Opposite Parties

Date of Order 08.05.2014

For the Applicant	Mr. M.M. Ali Mr. T. Lalnunsiam, Advocates
For the Opposite parties	Mr. W. Sam Joseph Mr. Bhanu Kwar, Advocates

1. This application u/s 5 of the Indian Limitation Act, 1963 have been filed for condoning the delay of 68 days in filing a revision petition against the Order dt.13.12.2011 passed by the Ld. Judicial Magistrate First Class, Aizawl in Crl. Tr. No. 2528/2009 u/s 409/420/34 IPC.

3. Mr. T. Lalnunsiam, Ld. Counsel for the applicant submitted that the two opposite parties were discharged of criminal liability u/409/420/54 IPC by the Ld. Judicial Magistrate First Class, Aizawl vide its Order dt.13.12.2011. The Ld. Counsel submitted that the applicant came to know about the said Order only on 24.1.2013 when they received legal notice from the respondents. Immediately on gaining knowledge about the Order, applicants approached the Ld. Public

Prosecutor to take necessary steps towards filing revision/appeal against the said Order of Discharge. However the Ld. Public Prosecutor failed to take steps as desired by them. On the basis of legal advice, the applicants filed another FIR at Vaivakawn PS on 28.1.2013 with a request to register fresh case on the same facts. But the O/C declined to register a fresh case. Thereafter, the applicants approached the Superintendent of Police Aizawl u/s 154 (3) Cr.PC requesting him to investigate the said offences but the said authority did not take any action. Then the applicants approached the Ld. Public Prosecutor once again with a request to file a revision petition against the Order of discharge. This time also, the Ld. PP refused their request. Again on the basis of legal advise the applicants approached the honb'le high Court by filing a writ petition which was registered as WP(C) 18/2013 and the said writ petition was for a direction to the O/c of Vaivakawn PS to register a fresh FIR and to be investigated by the Criminal Investigation Department. However, as the applicants felt that they were not going to get the relief they decided not to prosecute the writ petition and accordingly vide Order dt.12/4/2013 the writ petition was dismissed for non-prosecution. Thereafter, the applicants filed a criminal revision petition before the Ld. Addl.Sessions Judge which was registered as Crl. Revision No.15/2013 alongwith an application for condonation of delay of 37 days which was registered as Crl.Misc. Appln. No.53/2013. The applicants realized that there was some error in the miscellaneous application and thus made a prayer for withdrawal of the same with liberty to file afresh and the same was allowed vide Order dt.26.4.2013. Subsequently the present application have been filed and by which time there is delay of 68 days. The Ld. Counsel further submitted that the applicability or otherwise of the Indian Limitation Act. It has also been submitted by the Ld. Counsel that copy of the Discharge Order was not given to the Mizoram Rural Bank Vivakawn Branch.

On the other hand, Mr.W.Sam Joseph Ld. Counsel for the opposite parties strenuously argued that the applicant has no locus standi to file the instant case. In this connection, the Ld. Counsel submitted that the said Bank can sue /can be sued through its Chairman and only thereafter, the concerned branch representative may be added. But in the instant case, the application is filed by a particular branch of the Bank through its Branch Manager. There is no authorization from the authority to file the present application.The Ld. Counsel argued that from a reading of the FIR itself, it is clear that the applicant Bank cannot do anything without concurrence of its Chairman. Secondly, the Ld. Counsel argued that the applicant cannot plead ignorance of the order dt.13.12.2011. In this regard the Ld. Counsel has placed on record a letter/representation dt.14.12.2011 submitted by OP No.2 to

the Chairman of the Mizoram Rural Bank with a prayer for re-instatement on the ground of his Discharge in the criminal case. The representation bares a seal dt.14.12.2011. Thirdly, the Ld. Counsel submitted that earlier the applicant has filed revision petition alongwith condonation of delay application. The same were disposed on withdrawal. According to the Ld. Counsel, there is no provision for the applicant to file a second revision petition on the same subject. Fourthly, the Ld. Counsel submitted that as the applicant Bank gained knowledge of the Order through the representation of the opposite Party dt.14.12.2011, the delay in filing the revision petition is 410 days and that the same have not been properly explained by the applicant. Fifthly, the Ld. Counsel submitted that as the undue delay in filing the revision petition is harassment to the opposite parties. The Ld. Counsel submitted that as per section 121 of the Limitation Act, the period for filing a revision petition is 90 days. Accordingly, in the instant case, the revision petition ought to have been filed by March, 2012. Even if it is presumed that the Limitation Act is not applicable in the State, the same has to be filed within a reasonable time. However, after remaining silent for a long time the applicant has belatedly filed the instant revision. The next submission of the Ld. Counsel for the Opposite parties is that the offence complained off is an offence against the State. The applicant has to come through the State Government i.e the Public Prosecutor or a by a clear direction from the Secretary to the Government of Mizoram, Home Department. According to the Ld. Counsel, considering the nature of Order passed by the Ld. Trial court, it is not a fit case for a private party to prefer a revision petition.

4. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of social interests of the community at large and so it is for the State to take all the steps that is necessary for bringing the person who acted against social interests of the community to book.

5. In the case at hand, upon hearing the parties, the main explanation given by the applicant in the application is that they were not aware of the existence of the impugned Order until 24.1.2013 when legal notice was served upon them. On the other hand, the respondent submitted that on 14.12.2011 application for reinstatement into service was made by respondent No.2 on the basis of the impugned order and as such the applicants were well aware of the existence of the impugned order.

6. It is seen from the pleadings that from 24.1.2013 the applicant has been taking various recourses for settlement of their grievance against the Order discharging the two accused persons from criminal liability. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of social interests of the community at large and so it is for the State to take all the steps that is necessary for bringing to book the person who acted against social interests of the community. In the instant case, it is noticed that the applicants approached the Public Prosecutor many times but their requests for challenging the order has proved futile. The impugned Order shows that the same was passed due to technical defect which was not cured by the Investigating officer despite repeated directions made from the Court.

7. The respondents/accuseds persons were employee of the applicant bank during the relevant time. According to the applicants, discharge of the accused persons for heinous crime was not only against the interest of the Bank but against the interest of the state as a whole.

8. Perused the objection filed by the respondents. It is not the case of the respondents that in the intervening period they have been reinstated into service and that due to the belated action of the applicant in filing a revision petition they are now in danger of being ousted once again from their job. On the other hand, it is noticed that from January, 2013 the applicants have been taking various steps to redress their grievance by approaching various forums and by adopting various methods. Considering the action of the applicant from the month of January, 2013 it cannot be said that they have been negligent and that there was willful and deliberate delay in filing the instant revision petition.

9. Without going into the technicalities of the application, considering the nature of the application, I find that the explanation offered from paragraph No. 2 to 11 of the application are sufficient to condone the delay.

10. Accordingly, the delay in filing the revision petition is condoned.

11. Application stands disposed off.

Sd/- HELEN DAWNGLIANI
Addl. District & Sessions Judge
Aizawl Judicial District, Aizawl

Memo No.:...../AD&SJ(A)/2014 : Dated Aizawl, the 8th May, 2014
Copy to: -

1. The Branch Manager, Mizoram Rural Bank, Vaivakawn Branch through Counsel Mr. M.M. Ali, Advocate.
2. Hmingthansiami D/o Laldala(L),
Chaltlang Ruam Veng,
Ex. Branch Manager, Rural Bank, Vaivakawn Branch
3. FR Ralsun(Ex.OJM) S/o HL Sela
R/o Bazar Bungkawn, Aizawl.
4. Registration Section.
5. Guard File.
6. Case Record.
7. Calendar Judgment.

through Counsel,
Mr. W. Sam Joseph,
Advocate.

P E S H K A R