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THE HIGH COURT OF SIKKIM : GANGTOK

Crl. M. Appl. No.6 of 2007
(Ref. Crl. A. No.3 of 2007)

In the matter of an application under Section 5 of the
Limitation Act

and

in the matter of

State of Sikkim

..... **Applicant/
Petitioner**

versus

1. **Raju Chettri,
S/o Late Dil Bahadur Chettri,
R/o Duli Kaman, Darjeeling,
West Bengal**

2. **Puran Rai,
S/o Narshing Rai,
R/o Bermiok Kaman,
Darjeeling,
West Bengal**

..... **Respondents**

For Petitioner : Mr. J. B. Pradhan, Public Prosecutor and
Mr. Karma Thinlay, Additional Public
Prosecutor.

For Respondents : Mr. N. Rai, Legal Aid Counsel with Ms.
Jyoti Kharka, Advocate.

**PRESENT : THE HON'BLE MR. JUSTICE A. N. RAY, CHIEF JUSTICE.
THE HON'BLE MR. JUSTICE A. P. SUBBA, JUDGE.**


Last date of hearing : 2nd June, 2008

DATE OF JUDGMENT : 19th June, 2008

J U D G M E N T

A. N. RAY, C.J.

I have had the advantage of reading my brother Hon'ble Shri
Justice A. P. Subba's Judgment in the draft and I wholly agree with
what his Lordship says.


(Justice A. N. Ray)
Chief Justice

19-06-2008




A. P. SUBBA, J.

This is an application filed by the State of Sikkim under Section 5 of the Limitation Act for condonation of delay in filing an appeal for enhancement of sentence under Section 377 of the Criminal Procedure Code (in short "Cr.P.C.").

2. The case of the petitioner is that the respondents herein were convicted and sentenced to life imprisonment and fine by the learned Sessions Judge, Special Division - I (I/C) at Gangtok in Sessions Trial Case No.4 of 2004 on 31st March, 2006. When the appeal filed by the respondents against the judgment of conviction and sentence came up for hearing before this Court on 2nd May, 2007, the learned Public Prosecutor, appearing before this Court submitted that the sentence of life imprisonment and fine passed under Sections 302/34 of the Indian Penal Code (in short "IPC") was grossly inadequate and as such, the State proposes to take necessary steps for enhancement of sentence. Upon such submission being made, the matter was adjourned so as to enable the State to take necessary steps to file an appeal under Section 377 Cr.P.C. Accordingly, the State took necessary steps and filed the accompanying appeal. It is, therefore, contended that the delay that occurred on account of the reasons stated above was genuine and as such, the cause shown is satisfactory and sufficient for condonation of the delay sought for.

3. The respondents opposed the application by filing a joint written objection wherein it is contended that the appeal having been filed after a lapse of about 450 days was hopelessly time barred. Over and above, the explanation given by the State-petitioner does not explain the full length of delay that occurred in filing the appeal and as

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such the same cannot be taken as satisfactory in the circumstances of the case.

4. Mr. J. B. Pradhan, learned Public Prosecutor and Karma Thinlay, learned Additional Public Prosecutor appearing for the petitioner and Shri N. Rai, learned Legal Aid Counsel assisted by Ms. Jyoti Kharka, Advocate appearing for the respondents were heard.

5. It is urged by the learned Public Prosecutor appearing before this Court that the learned Public Prosecutor who conducted the prosecution in the Court below did not press for passing sentence of death even though the materials which had come on record warranted such a severe sentence. It was only after the Public Prosecutor appearing for the State before this Court examined the matter in depth that the question of filing an appeal for enhancement of sentence arose. Hence, the delay was not attributable to any lack of *bona fide* on the part of the State. The learned Legal Aid Counsel appearing on behalf of the respondents, on the other hand, submitted that the explanation as given by the learned Public Prosecutor, even if accepted, explains the delay only in part and cannot be accepted as "sufficient cause" within the meaning of Section 5 of the Limitation Act.

6. Admittedly, the question of filing an appeal for enhancement of the sentence did not arise till the matter cropped up on 2nd May, 2007 in this Court during the hearing of the appeal filed by the respondents. However, it appears that once the learned Public Prosecutor appearing before this Court was convinced, on perusal of papers, that an enhancement of sentence was called for, the process was initiated without further loss of time. This would, therefore, show that there was no laxity on the part of the State after 2nd May, 2007.






However, it does not appear to be the case with regard to the substantial period of delay preceding 2nd May, 2007. There is, therefore, no doubt that the explanation offered, if taken in isolation, cannot be treated as satisfactory for condonation of the whole period of delay. However, we would hasten to add that, such an approach would not be in conformity with the well-recognised principles evolved over the years on the basis of judicial pronouncements. Some of such pronouncement to which we propose to refer are the following.

7. In ***Shakuntala Devi Jain vs. Kuntal Kumari and Others*** reported in ***AIR 1969 SC 575*** the Apex Court held that unless want or *bona fides* of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned. In ***New India Insurance Co. Ltd. vs. Smt. Shanti Misra*** reported in ***AIR 1976 SC 237*** it has been held that discretion given by Section 5 of the Limitation Act should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. Similarly, in ***G. Ramegowda, Major and Others vs. Special Land Acquisition Officer*** reported in ***(1988) 2 SCC 142*** the Apex Court has held that the expression "sufficient cause" must be given a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of *bona fides* is imputable to the party seeking condonation of delay.

8. After surveying the previous decisions including the above cases on the subject and summarising the law on the point, a Bench of three Judges of the Apex Court in ***State of Haryana vs. Chandra***



Mani and Others reported in **(1996) 3 SCC 132** laid down the law as follows:-

"11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court – be it by private party or the State – are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay – intentional or otherwise – is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit." [emphasis supplied]

9. The following observation made by the Apex Court in the later case of **Ram Nath Sao alias Ram Nath Sahu and Others vs. Gobardhan Sao and Others** reported in **AIR 2002 SC 1201** makes the point further clear on the subject.

"11. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of *bona fide* is imputable to a party. In a particular case whether explanation furnished would

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constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the Courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party."


The following further observation made by the Apex Court on the point in the same paragraph is also relevant and apposite.

"..... However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit."

[emphasis supplied]

10. To the similar effect are the observations made by the Apex Court in the more recent decision of ***Divisional Manager, Plantation Division, Andaman and Nicobar Islands vs. Munnu Barrick and Others*** reported in ***2005 AIR SCW 109*** wherein it has been held that where serious questions of law are raised by the appellants the Court should take a liberal view on the application for condonation of delay.

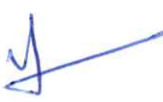
11. At this juncture, it would not be out of place to note that a Division Bench of this Court in ***Principal Secretary, Transport Department, Government of Sikkim, Gangtok vs. Narmaya Das*** reported in ***2006 ACJ 150*** relying on the above decisions as well as several other decisions of the Apex court on the point has held that while considering application for condonation of delay merits of the appeal cannot be lost sight of and as such the explanation put forward in such application for condonation of delay should be considered along




with merits of appeal. It has thus been further observed that if serious points of law are *prima facie* found to have been raised in appeal, application for condonation of delay cannot be lightly brushed aside without any reference to the merits of the case.

12. Thus, the position in law that can now be taken as fairly well-settled is that while considering prayer for condonation of delay explanation put forward in the application should be considered along with merits of the appeal and if it is found that serious point of law have been raised in appeal the application for condonation of delay should not be lightly brushed aside taking into account only the length of delay in the matter.

13. It thus follows from the above that an application for condonation of delay ought not to be considered in isolation without any reference to the points of facts and law raised in the appeal. Thus a passing reference to the merits of the accompanying appeal would not be uncalled for. A perusal of the impugned judgment would go to show that the present respondents have been convicted under Section 302 IPC for committing murder of two helpless women, namely, mother and daughter in Sikkim Hotel, Paljor Stadium Road, Gangtok. The contention of the learned Public Prosecutor on the basis of the facts which have been found to have been proved by the learned trial Court is that the murder was committed with such brutality that it shocks the conscience of the society. In such view of the matter, the learned counsel contended that in cases like the present one where the whole family is wiped off or where the victim of murder is an innocent child, or a helpless woman or old or infirm person etc. a severe sentence of death would be warranted as per the guidelines laid down by the Supreme Court in **Sushil Murmu vs. State of Jharkhand**






reported in **AIR 2004 SC 394**. We have perused this decision and keeping in view the guidelines laid down therein which are to be borne in mind while considering whether the case falls in the 'rarest of the rare' category and the facts and circumstances of the present case, we entertain no doubts in our minds that important questions of law arise in the appeal.

14. Therefore, keeping in view the legal position as highlighted above and the peculiar facts and circumstances of the case in hand, we are of the view that the cause shown by the petitioner for condoning the delay must be held to be sufficient in the circumstances of the case.

15. In the result, the application is allowed and the delay in filing the accompanying appeal stands condoned.


(**Justice A. P. Subba**)
Judge
19-06-2008