

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Revisional Jurisdiction)

Dated : 25th June, 2024

SINGLE: THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.Rev.P. No.04 of 2024

Revisionists/Petitioners : Bidhan Trikhatri and Others

versus

Respondent : State of Sikkim

Application for revision under Sections 397
and 401 of the Code of Criminal Procedure, 1973

Appearance

Mr. Jorgay Namka, Senior Advocate (Legal Aid Counsel) for the
Petitioners/Revisionists.

Mr. S. K. Chettri, Government Advocate for the State-Respondent.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. This Criminal Revision Petition impugns the Order of the Learned Sessions Judge, Sikkim at Gangtok, in Criminal Appeal Case No.06 of 2023, dated 31-10-2023, by which an Application filed by the Revisionists, seeking condonation of 388 days' delay in filing the Appeal was dismissed by the Learned Court.

2. The genesis of the matter as submitted by Learned Senior Counsel for the Revisionists/Petitioners, is that, the Learned Chief Judicial Magistrate, Gangtok, in General Register Case No.05 of 2022, vide its impugned Judgment, dated 23-08-2022, convicted the three Revisionists for the offences under Sections 454 and 380 of the Indian Penal Code, 1860 (for short, "IPC"). By the Order on Sentence, dated 24-08-2022, under Section 454 of the IPC, they were each sentenced to undergo rigorous imprisonment for five years, and pay a fine of ₹ 20,000/- (Rupees twenty thousand) only. Under Section 380 of the IPC, they were sentenced to simple

imprisonment for three years each, with fine of ₹ 10,000/- (Rupees ten thousand) only, each. The sentences of fine bore default stipulations. The period of imprisonment were ordered to run concurrently.

3. Aggrieved thereof, the Revisionists were before the Learned Sessions Judge in Appeal. As there was a delay of 388 days in filing the Appeal, the Revisionists sought condonation of the said delay. The Learned Appellate Court vide the assailed Order dated 31-10-2023 observed that the reasons furnished by the Revisionists cannot be treated as "sufficient cause" for admitting the Appeal. That, only normal circumstances had been cited by the Revisionists and no reason had been mentioned as to why they had to wait for more than one year to file the Appeal. Accordingly, the Petition for condonation of delay was dismissed and consequently, the Criminal Appeal No.06 of 2023.

4. Learned Senior Counsel advanced the argument that after the conviction of the Revisionists in the said General Register Case before the Learned Chief Judicial Magistrate, the delay occurred in filing the Appeal for the reason that the Revisionists had earlier been given Legal Aid Counsel. Consequent upon their conviction, they sought to engage a private Counsel. They were however unable to engage a private Counsel on time, all three being incarcerated at the relevant time and only the wife of the Revisionist No.3 taking steps in this context. In November, 2022, the Sikkim State Legal Services Authority appointed a Legal Aid Counsel for the Revisionists. As and when the said Counsel was appointed, the wife of the Revisionist No.3 again informed that they had decided to engage a private Counsel whose services they managed to obtain in August, 2023. That, thereupon they

furnished all relevant documents to the Counsel and the instant Appeal came to be filed on 18-10-2023. That, due to the above circumstances, augmented by the fact that the Revisionists were incarcerated at the relevant time, they were unable to take steps as expeditiously as they would otherwise have. That, in the Appeal they seek to agitate the points of non-identification of two of the Revisionists and also issues regarding the finger prints of all the Revisionists. That, non-examination of the merits of the Appeal would seriously prejudice the Revisionists. Hence, the delay be condoned and the Revision Petition be allowed.

5. *Per contra*, Learned Additional Public Prosecutor submits that he has strong objection to the Petition on grounds that the Revisionists had failed to explain the delay on a day-to-day basis. That, for the purpose of seeking condonation of delay, it is imperative that the Revisionists explain everyday's delay which would then only tantamount as "sufficient cause". That, the Petition be dismissed as the Revisionists were correctly identified by the Learned Trial Court.

6. I have given due consideration to the rival submissions advanced by the Learned Counsel for the parties and perused the Revision Petition.

7. The impugned Judgment of the Learned Trial Court was pronounced on 23-08-2022. The Appeal ought to have been filed within sixty days thereof. The Appeal along with the Application seeking condonation of 388 days' delay came to be filed only on 18-10-2023. While discussing the parameters for exercising discretion by the Courts in condoning delay, the Supreme Court in ***Sheo Raj Singh (Deceased) through Legal Representatives and Others***

vs. ***Union of India and Another***¹ considered and discussed its various pronouncements and looked into the approaches adopted by the Court, sometimes in rejecting a delay of four days only, while at other times condoning the delay of more than three hundred days. It was ultimately held that as the Judgments of the Supreme Court have shown that such an exercise of discretion does at time call for a liberal and justice-oriented approach by the Courts. The matters discussed were as follows;

"18. *State of Nagaland v. Lipok Ao* [(2005) 3 SCC 752] arose out of an appeal where this Court condoned the State's delay of 57 days in applying for grant of leave to appeal before the High Court against acquittal of certain accused persons. This Court observed that in cases where substantial justice and a technical approach were pitted against each other, a pragmatic approach should be taken with the former being preferred. Further, this Court noted that what counted was indeed the sufficiency of the cause of delay, and not the length, where the shortness of delay would be considered when using extraordinary discretion to condone the same. This Court also went on to record that courts should attempt to decide a case on its merits, unless the same is hopelessly without merit. It was also observed therein that it would be improper to put the State on the same footing as an individual since it was an impersonal machinery operating through its officers.

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20. *Lanka Venkateswarlu v. State of A.P.* [(2011) 4 SCC 363] happened to be a case where this Court set aside the impugned judgment condoning both a delay of 883 days in filing the petition to set aside the dismissal order by the relevant High Court, along with a delay of 3703 days caused by the respondents in bringing on record the legal representative of the appellant. This Court observed that whilst the High Court admonished the Government Pleaders concerned for their negligence in prosecuting the appeal before it and not providing a sufficient cause for delay, it nonetheless proceeded to condone the delay despite holding the same to be unjustifiable.

21. In *Postmaster General v. Living Media India Ltd.* [(2012) 3 SCC 563], this Court noted that in cases when there was no gross negligence, deliberate inaction, or lack of bona fides, a liberal concession ought to be adopted to render substantial justice but on the facts before the Court, the appellant could not take advantage of the earlier decisions of this Court. Further, merely because the State was involved, no different metric for condonation of delay could be applied to it. Importantly, it noted that the appellant department had offered no proper and cogent explanation before this Court for condonation of a huge

¹ (2023) 10 SCC 531

delay of 427 days apart from simply mentioning various dates. The claim on account of impersonal machinery and inherited bureaucratic methodology of making file notes, it was held, not acceptable in view of the modern technologies being used and available. Also, holding that the law of limitation undoubtedly binds everybody, including the Government, this Court went on to reject the prayer for condonation.

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26. *G. Ramegowda v. LAO* [(1988) 2 SCC 142], while summarising the position of law on “sufficient cause”, had the occasion to observe that the contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals have been set out in a number of pronouncements of this Court. It was observed to be true that there is no general principle saving the party from all mistakes of its the counsel. Noting that there is no reason why the opposite side should be exposed to a time-barred appeal if there was negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its the counsel, it was further observed that each case will have to be considered on the particularities of its own special facts. However, this Court reiterated that the expression “sufficient cause” in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring 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 the delay. This was followed by these words: (SCC p. 148, paras 15 & 17)

“15. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

* * *

17. Therefore, in assessing what, in a particular case, constitutes “sufficient cause” for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have “a little play at the joints”. Due recognition of these limitations on governmental functioning — of course, within reasonable limits — is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process.”

27. *Katiji* [(1987) 2 SCC 107] was also noticed by a Bench of three Hon'ble Judges of this Court in *State of Haryana v. Chandra Mani* [(1996) 3 SCC 132] where we find the following discussion: (*Chandra Mani case* [(1996) 3 SCC 132], SCC p. 138, para 11)

"11. ... 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."

8. On the bedrock of the foregoing pronouncements and having considered the case of the Revisionists herein, I find that consequent upon the pronouncement of the impugned Judgment they have been relegated to the State Central Prison, Rongyek. They were unable to take steps expeditiously being dis-advantaged by the fact of their incarceration and thereby were constrained to foist the entire responsibility on the wife of the Revisionist No.3. These circumstances are mitigating circumstances in their favour, apart from which it has to be observed that the Revisionists are also entitled to legal Counsel of their choice. If they are not satisfied with the services of a Legal Aid Counsel and they seek to

engage a private Counsel the Courts cannot stand in their way, in their quest for justice as they perceive it.

9. In *G. Ramegowda (supra)* while summarising the position of law on "sufficient cause" observed that there is no general principle saving the party from all mistakes of its Counsel. However, the expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and that generally delays in preferring 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.

10. In my considered opinion, there does not seem to be gross negligence or deliberate inaction on the part of the Revisionists. The circumstances were not in their favour. The course of justice ought to be advanced and mere technicalities ought not to impede the path of justice.

11. In view of the facts and circumstances as discussed above, the delay has been explained with sufficient cause which accordingly deserves to be considered and condoned.

12. The impugned Order dated 31-10-2023 of the Learned Sessions Judge, Sikkim at Gangtok, in Criminal Appeal Case No.06 of 2023, is set aside.

13. Consequently, the delay is condoned.

14. Criminal Revision Petition is allowed and disposed of accordingly.

(Meenakshi Madan Rai)
Judge

25-06-2024

Approved for reporting : **Yes**