

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

Dated : 18th October, 2023

DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

I.A. No.02 of 2023 in CRL.L.P/16/2023/(Filing No.)

Petitioner : State of Sikkim

versus

Respondent : Suresh Pradhan

Application under Section 5 of the Limitation Act, 1963

Appearance

Mr. Yadev Sharma, Additional Public Prosecutor for the Petitioner.

Mr. Umesh Ranpal, Advocate (Legal Aid Counsel) for the Respondent.

ORDER

Meenakshi Madan Rai, J.

1. The Petitioner seeks condonation of sixty-six days delay in filing the Petition under Section 378(3) of the Code of Criminal Procedure, 1973, seeking Leave to Appeal.

2. Learned Additional Public Prosecutor urging this Court to condone the delay submitted that since the File was processed from one officer to the next officer right from the Court Inspector (C.I.) up to the highest authority of the State, consequently, despite the best efforts put in by the Prosecution the delay occurred in filing the application. He invited the attention of this Court to the decision of the Supreme Court in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others***¹ and contended that the principles applicable for condonation of delay have been elucidated therein. That, the Supreme Court has observed *inter alia* that there should be a liberal, pragmatic,

¹ (2013) 12 SCC 649

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justice-oriented, non-pedantic approach while dealing with an application for condonation of delay as the courts are not supposed to legalise injustice but are obliged to remove injustice. That, it was further elucidated that the term "sufficient cause" should be understood in its proper spirit, philosophy and substantial issues should be paramount while technical considerations should not be given undue and uncalled for emphasis. Hence, on the bed rock of the principles enunciated in *Esha Bhattacharjee (supra)* the grounds put forth for the delay in the Petition be given due consideration and the delay condoned.

3. Stridently repudiating the contentions advanced by Learned Additional Public Prosecutor, Learned Counsel for the Respondent submitted that all that the State-Petitioner has put forth by way of explanation for the delay is that the File was forwarded by the C.I. to the Special Public Prosecutor (POCSO), Sessions Court Namchi, who then forwarded it to the Deputy Inspector General of Police (DIGP), Namchi Range, who was responsible for forwarding it to the Special Director General of Police (SDGP), Law and Order and then ultimately to the office of the Advocate General from where it travelled to the highest authority for approval as stated by the Learned Additional Public Prosecutor. Consequent thereto, the Petition as well as the Leave to Appeal was filed. That, such grounds do not culminate in "sufficient cause" but merely exhibit a lackadaisical attitude on the part of the Prosecution and the Police Officers concerned. That, as the grounds fail to explain the delay sufficiently and as the Court is to dispense justice to the litigants before it, which includes the Respondent, who will be prejudiced if the above Petition is allowed, the Petition deserves a dismissal.

4. We have heard Learned Counsel for the parties and given due consideration to their submissions. The grounds as put forth by the State-Petitioner for the delay are as follows;

- “
2. That the judgment was pronounce (sic.) on 16.11.2022 in the instant case therefore the present appeal ought to be filed within 90 days i.e. within 16.02.2023.
 3. That on 6.12.2022 the Superintendent of Police Namchi District, Sikkim forwarded the file to the Court Inspector for reasons of acquittal and whether appeal can be preferred before the Hon'ble High Court of Sikkim.
 4. That on 13.12.2022 the Court Inspector forwarded the file to the concerned Spl. P. P. (POCSO) Sessions Court Namchi for opinion whether appeal can be preferred in the instant case.
 5. That on 19.12.2022 the Spl. P. P. (POCSO) Sessions Court Namchi was of the opinion that there may be few and trivial grounds for preferring an appeal.
 6. That thereafter the file was forwarded to DIG/Namchi Range and the same was forwarded for taking opinion from other authorities.
 7. That on 6.1.2023 the Dy. Inspector General of Police, Namchi Police Range, Police Headquarter, Gangtok forwarded the file to SDGP, Law and Order.
 8. That on 19.1.2023 the SDGP, Law and Order was of the opinion that the appeal could be preferred and forwarded the file to Spl. Director General of Police, Law and Order, Police Headquarter.
 9. That on 1.2.2023 the Spl. Director General of Police, Law and Order, Police Headquarter was of the opinion that there are adequate grounds for appeal and forwarded the file to Office of the Advocate General for opinion.
 10. That on 14.02.2023 the Learned Additional Advocate General was of the considered opinion that appeal can be preferred in the instant case.
 11. That on 14.2.2023 the Director General of Police, Govt. of Sikkim Gangtok forwarded the file for necessary approval.
 12. That eventually on 12.03.2023 the file was approved for preferring an appeal before the Hon'ble High Court of Sikkim.
 13. That on 27.3.2023 SDGP, Law and Order forwarded the file to the Office of the Advocate General for preferring an appeal.
 14. That subsequently the office of the Advocate General took time to prepare and file the same before this Hon'ble Court.
 15. That the delay in filing the Appeal before this Hon'ble Court is unintentional.
 16. That the Petitioner/Appellant further states that the Petitioner/Appellant has a very good case on

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merits and there is a good chance of success in the instant appeal.

17. That a delay of 66 days in filing the present appeal have occurred due to unintentional latches from the part of the Petitioner/Appellant.

.....”

5. We find that although the impugned Judgment was dated 16-11-2022, the Petitioner has failed to reflect the date on which the application for certified copy of the Judgment was made. Be that as it may, it appears that between the months of November, 2022 to April, 2023, the File went from one office to the next. In the interregnum on 19-12-2022 the Special Public Prosecutor opined that there may be “*few and trivial grounds for preferring an appeal*”. The File was then forwarded to the Deputy Inspector General of Police. The date of such forwarding has not been mentioned, nevertheless, the Deputy Inspector General of Police on 06-01-2023 forwarded the File to the Special Director General of Police, Law and Order. The date on which the File was forwarded to the Special Director General of Police, Law and Order and to the Director General of Police (DGP) finds no mention as the averment merely states that on 01-02-2023 the Special Director General of Police, Law and Order “was of the opinion” that there were adequate grounds for appeal. It thus emerges from a consideration of the Petition that although dates have been indicated in the Petition, they pertain to the dates on which the concerned officer “formed their opinion”. Thus, with clever drafting the State-Petitioner has attempted to create a discombobulation in the mind of this Court. Whatever be the reasons that the Petitioner seeks to set forth for condonation of delay, it is apparent that there has been a lackadaisical, laid back and callous attitude on the part of the officers concerned in processing their opinions

and forwarding the File from their respective office to the next authority.

6. That, having been said we deem it essential to consider the plethora of Judgments on this point decided by the Supreme Court of India. As far back as in 1987 in **Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and Others**², the High Court refused to condone the delay of four days that had occurred in filing the Appeal by the Collector in a land acquisition matter. The Supreme Court setting aside the Order *inter alia* observed as follows;

"3. And such a liberal approach is adopted on principle as it is realized that:

.....
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

.....
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

....."

(i) In **State of Nagaland vs. Lipok AO and Others**³, where the State had delayed by a period of fifty-seven days in applying for grant of leave to appeal before the High Court, against the acquittal of certain accused persons, the Supreme Court reiterated that where substantial justice and a technical approach were pitted against each other, a pragmatic approach should be taken with the former being preferred.

² (1987) 2 SCC 107

³ (2005) 3 SCC 752

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(ii) In ***Postmaster General and Others vs. Living Media India Limited and Another***⁴, the Supreme Court observed 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. However, merely because the State was involved, no different metric for condonation of delay could be applied. The Supreme Court also noticed that the Appellant department had offered no proper and cogent explanation before it for condonation of delay of 427 days apart from simply mentioning various dates. The claim on account of the impersonal machinery and inherited bureaucratic methodology of making file notes was not acceptable in view of the modern technologies in use and available. The Court thus went on to reject the prayer for condonation of delay.

(iii) In ***Esha Bhattacharjee (supra)*** referred to by the Learned Additional Public Prosecutor, the High Court had condoned the delay of 2449 days. The Supreme Court while considering its various pronouncements on the question of delay observed that, neither leisure nor pleasure has any room while one moves an application seeking condonation of delay almost seven years, on the ground of lack of knowledge or failure of justice. Reference in the said matter was made to ***N. Balakrishnan vs. M. Krishnamurthy***⁵ where the following observations were made;

"11. ... The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending

⁴ (2012) 3 SCC 566

⁵ (1998) 7 SCC 123

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uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

(iv) The Supreme Court also culled out principles from the various Judgment referred to by it as detailed in Paragraph 21 of the ratio.

(v) In ***University of Delhi vs. Union of India and Others***⁶, a Bench of three Hon’ble Judges of the Supreme Court opined that the delay of 916 days had not been sufficiently explained. The Court distinguished the matter from ***Mst. Katiji (supra)*** on facts and observed that the entire explanation for the inordinate delay of 916 days is twofold i.e., the non-availability of the Vice-Chancellor due to the retirement and subsequent appointment of new Vice-Chancellor and the fact that the matter was placed before the Executive Council and a decision was taken to file the Appeal and the said process had caused the delay. The Supreme Court observed that the reasons as stated did not appear very convincing, since the situation was of availing the appellate remedy and not the original proceedings requiring such deliberation, when it was a mere continuation of the proceedings which had already been filed on behalf of the Appellant after due deliberation. That, in ***Mst. Katiji (supra)*** it was held that every day’s delay need not be explained with such precision but the fact remains that a reasonable and acceptable explanation is very much necessary. That, in the matter of condonation of delay and laches, the well-accepted position is also that the accrued right of the opposite

⁶ (2020) 13 SCC 745

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party cannot be lightly dealt with. The condonation of delay was rejected with the Court having also noted that the Delhi Rail Metro Corporation (DMRC) had received sums of money as far back as in the year 2008. That, the said amount as indicated is used for its projects providing metro rail service to the commuting public. In such circumstance, if at this stage the inordinate delay is condoned unmindful of the lackadaisical manner in which the appellant has proceeded in the matter, it would also be contrary to public interest.

(vi) The Supreme Court in ***Sheo Raj Singh (Deceased) through Lrs. and Others vs. Union of India and Another***⁷ was considering the matter at the instance of certain affected landowners who had challenged the Order dated 21-12-2011 passed by the Learned Single Judge of the High Court of Delhi. By the Order under challenge, the High Court had allowed an application filed by the Union of India under Section 5 of the Limitation Act, 1963 and thereby condoned the delay of 479 days in presentation of an Appeal from the decision of the Reference Court under Section 18 of the Land Acquisition Act, 1894. The delay of 479 days in presentation of the Appeal was condoned but not without the High Court imposing costs of ₹ 10,000/- on the first Respondent. A Bench in the Supreme Court comprising of two Hon'ble Judges in appeal, considered a catena of Judgments on the point of condonation of delay and ultimately opined as follows;

"37. Having bestowed serious consideration to the rival contentions, we feel that the High Court's decision to condone the delay on account of the first respondent's inability to present the appeal within time, for the reasons assigned therein, does not suffer from any error warranting interference. As the aforementioned judgments have shown, such an

⁷ 2023 SCC OnLine SC 1278

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exercise of discretion does, at times, call for a liberal and justice-oriented approach by the Courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests.

CONCLUSION

38. For the foregoing reasons and the special circumstances obtaining here that the impugned order reasonably condones the delay caused in presenting the appeal by the first respondent before the High Court, the present appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed of."

7. From a careful consideration of the catena of Judgments referred to hereinabove, it emerges that the State-Petitioner is to be treated at par with any other litigant and no special favour is to be bestowed on them while considering their Petition for condonation of delay merely by virtue of the fact that they are the Government. It is also evident that the impersonal machinery, inherited bureaucratic methodology, lack of updation on use of digital media by the concerned officers ought not to thwart the ends of justice. The State Government as any other litigant is to explain what "sufficient cause" prompted them to require the indulgence of the Court to condone the delay, by exercising its discretion. The Court is also to consider if there was gross negligence, deliberate inaction, or lack of *bona fides* on the part of the litigant or its Counsel, each case would have to be considered on the peculiarity of its own facts. That, having been said the overriding consideration in a Petition for condonation of delay is that substantial justice ought to be given preference over technical considerations when pitted against each other.

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8. Having considered the gamut of facts and grounds for the delay placed before us, we have noticed that the File has moved from one table to the next and sometimes the File has stayed on one table for more than a week. It is worth remarking that such delays merely expose the inefficiency and incompetence of the concerned officer, although it may not necessarily indicate lack of *bona fides*. It must be borne in mind that the Court is here to mete out substantial justice and as held in **Sheo Raj Singh** (*supra*) if the higher Court while refusing to condone the delay fails to consider the legality and validity of an Order of the lower Court, unholy gains would accrue to the opposite parties, which would be a travesty of justice.

9. Thus, keeping the interest of justice in the forefront, we allow the Petition and thereby condone the delay of sixty-six days in filing the Petition of Leave to Appeal against the acquittal of the Respondent.

10. However, all the officers/authorities mentioned in the Petition shall jointly pay costs of ₹ 35,000/-(Rupees thirty five thousand) only, from their personal accounts and deposit it with the Sikkim State Legal Services Authority, for use in the rehabilitation for disabled victims of the disaster of 4th October, 2023. The deposit shall be made within ten days from today failing which the costs shall be enhanced.

11. I.A. No.02 of 2023 stands disposed of accordingly as also I.A. No.01 of 2023.

(**Bhaskar Raj Pradhan**)
Judge
18-10-2023

(**Meenakshi Madan Rai**)
Judge
18-10-2023