

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

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

I.A. No. 1 of 2023

in

CRL. L.P. No. 31 of 2023 (Filing No.)

State of Sikkim

..... Applicant

versus

1. Rup Narayan Rai (Chamling),
Son of Lachuman Rai,
Aged about 51 years,
Resident of Upper Sadam,
District Namchi,
Sikkim – 737128.

2. Padma Kumar Chettri (Rai),
Wife of Rup Narayan Rai (Chamling),
Aged about 50 years,
Resident of Upper Sadam,
South Sikkim.

3. Damber Kumar Chettri,
Son of Krishna Bahadur Chettri,
Aged about 40 years,
Resident of Melli Gumpa,
South Sikkim.

4. Upashna Rai,
Daughter of Rup Narayan Rai (Chamling),
Aged about 23 years,
Resident of Upper Sadam,
South Sikkim.

..... Respondents

Application under Section 5 of the Limitation Act, 1963

Appearance:

Mr. Yadev Sharma and Mr. S.K. Chettri, Additional Public Prosecutors, for the Applicant.

Mr. K.T. Bhutia, Senior Advocate with Mr. Sishir Mothay, Advocate for the Respondents.

Date of hearing : 6th May, 2024
Date of judgment : 15th May, 2024

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. This is to consider an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 273 days in preferring criminal appeal against the judgment dated 30.6.2022, passed by the learned Special Judge, Protection of Children from Sexual Offences Act, 2012 at Namchi in *Sessions Trial (POCSO) Case No. 27 of 2020* in the matter of *State of Sikkim vs. Rup Narayan Rai (Chamling) & Others*. The Stamp Reporter's computation suggests that the delay is 274 days.

2. The delay is sought to be explained on various grounds. According to the Applicant, on 28.9.2022 the learned Public Prosecutor having received a copy of the judgment on 26.9.2022 opined that there were very few and trivial grounds to prefer an appeal but nevertheless, opinion may be sought from the learned Advocate General's Office. The time taken by the learned Public Prosecutor to give his opinion is explained on the ground that the case involved a lot of evidence and further that he had his personal and other professional engagements. On a chance meeting on 9.12.2022 by the learned Public Prosecutor with the learned Additional Public Prosecutor of this Court, it is said, he inquired about the status of the opinion but the learned Additional Public Prosecutor had no knowledge. The learned Additional Public

Prosecutor was, however, attending to his ailing mother at Gyalshing. In February 2023 on the reopening of this Court, the learned Additional Public Prosecutor inquired about the legal opinion and found that there was no opinion sought. The learned Additional Public Prosecutor on learning that the testimony of the victim had not been demolished, sought for a copy of the judgment for preferring an appeal. The copy of the judgment was received on 28.3.2023, after which it was examined, discussed and opined that there was sufficient grounds for preferring an appeal. Thereafter, the learned Additional Public Prosecutor on 29.3.2023 sought for approval from the Director General of Police to file the appeal. The Files, thereafter, moved from one Officer to the other on various dates, back and forth, numerous times. A certified copy of the judgment was obtained on 12.4.2023. On 19.5.2023, the Director General of Police forwarded the File to the Chief Secretary, Government of Sikkim, for approval and finally to the Hon'ble Chief Minister on 24.5.2023, who eventually sanctioned the filing of an appeal on 30.5.2023. Even thereafter, it was only on 15.6.2023, the Legal Officer, Police Headquarter, forwarded the File to the learned Advocate General for preferring an appeal. The Office of the Advocate General, thereafter took further time to prepare the appeal and finally filed it on 29.6.2023. According to the Applicant, delay was caused due to sufficient and bona fide reasons and the State had been vigilant and diligent.

3. The respondents have filed a reply to the application for condonation of delay. It is contended that the application is

vexatious, harassive and based on misconceived facts. It is alleged that it has been made with mala fide intention and ulterior motives. It is pointed out that as per the copy of the judgment annexed with the appeal, the judgment was ready on 1.7.2022 and therefore no explanation is forthcoming from the Applicant for the period 1.7.2022 to 26.9.2022. It is also submitted that the explanations made by the Applicant do not reflect that the prosecution was diligent. The respondents contend that the applicant had any substantial merits in the appeal which was filed after a delay of 275 days and not 273 days as pleaded by the Applicant.

4. Heard Mr. Yadev Sharma and Mr. S.K. Chettri, both learned Additional Public Prosecutors, on behalf of the State-Applicant. Heard Mr. K.T. Bhutia, learned Senior Counsel for the respondents. Mr. K.T. Bhutia, learned Senior Counsel for the respondents, vehemently contested the application for condonation of delay. The learned Additional Public Prosecutors prayed that the delay may be condoned in the interest of justice. The learned Additional Public Prosecutors relied upon ***State of Sikkim vs. Raju Chettri***¹, a judgment of a Division Bench of this Court in support of their contentions. The learned Senior Advocate for the respondents referred to two judgments of the Supreme Court, i.e., ***Union of India vs. Jitendra***², ***State of Madhya Pradesh And Others vs. Bherula***³ and of the High Court of Delhi in ***Principal Commissioner of Income-Tax vs. National Fertilizers Ltd.***⁴

¹ (2008) SCC Online Sikk 2: AIR 2008 Sikk 13

² (2021) 10 SCC 789

³ (2020) 10 SCC 654

⁴ (2023)458 ITR 20 : 2023 SCC OnLine Del 5119

5. In **Raju Chettri** (supra), a delay of 450 days for filing an appeal for enhancement of sentence under Section 377 of the Code of Criminal Procedure, 1973 was condoned after examining the law laid down by the Supreme Court in **Shakuntala Devi Jain vs. Kuntal Kumari**⁵, **New India Insurance Co. Ltd. vs. Smt. Shanti Misra**⁶, **G. Ramegowda, Major vs. Special Land Acquisition Officer**⁷ and **State of Haryana vs. Chandra Mani**⁸.

6. In **Chandra Mani** (supra), the Supreme Court held:

“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.
.....”

7. In **Raju Chettri** (supra) referring to the judgments of the Supreme Court in **Chandra Mani** (supra), **Ram Nath Sahu vs.**

⁵ AIR 1969 SC 575

⁶ AIR 1976 SC 237

⁷ (1988) 2 SCC 142

⁸ (1996) 3 SCC 132

Gobardhan Sao⁹, **Divisional Manager, Plantation Division, Andaman and Nicobar Islands vs. Munnu Barrick**¹⁰ and **Principal Secretary, Transport Department, Government of Sikkim, Gangtok vs. Narmaya Das**¹¹, the Division Bench of this Court held that the position in law that can now be taken as fairly well-settled is that while considering prayer for condonation for delay, explanation put forward in the application should be considered along with merits of the appeal and if it is found that serious points 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 in the matter.

8. In **Jitendra** (supra), a delay of 607 days in filing an appeal against bail in a matter involving NDPS Act was not condoned as the explanation delay in processing of file was held to be unsatisfactory and not acceptable. It was held that there was gross negligence on the part of the officers concerned for prosecuting the remedy. While doing so, the Supreme Court deprecated the practice of authorities coming before the Supreme Court after inordinate delay assuming as if the law of limitation does not apply to them.

9. In **Bherulal** (supra), a delay of 663 days in preferring special leave petition was not condoned as the reason attributed for a delay was due to unavailability of documents and the process of arranging the documents. It was held that it was a preposterous

⁹ AIR 2002 SC 1201

¹⁰ 2005 AIR SCW 109

¹¹ 2006 ACJ 150

proposition propounded that if there is some merit in the case, the period of delay is to be given a go by. It was held that if a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shutout good cases. However, it was also held that this does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

10. The Supreme Court was of the opinion that both the cases, i.e., **Jitendra** and **Bherulal** (supra), were cases categorised as “certificate cases” and the object appeared to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. Both **Jitendra** and **Bherulal** (supra), are distinguishable from the facts of the present case.

11. In **National Fertilizers** (supra), a delay of 498 days in preferring an appeal against an order passed by the Income Tax Appellate Tribunal was not condoned by a Division Bench of the High Court of Delhi as they could not find any cause explaining the delay.

12. These are the cases referred to by the learned counsel for the parties. There are numerous other judgments sometimes condoning lengthy delays and sometimes rejecting applications based on sufficiency of the cause. Each of these cases has been decided on the particular facts of each case. Section 5 of the Limitation Act, 1963 pivots around “sufficient cause”. What is, however, certain is that a pragmatic approach has to be adopted and when substantial justice and technical approach are pitted

against each other substantial justice has to be preferred. Section 5 of the Limitation Act, 1963 has to be construed liberally towards that end. Gross negligence, or deliberate inaction, lack of bona fides are some of the grounds to be considered while deciding an application for condonation. There cannot be a straightjacket formula for deciding such applications. Courts of justice should not have the tendency of fault finding with the cause shown and accepting the explanation furnished should be the rule, and refusal, an exception, unless gross negligence or deliberate inaction or want of bona fides are glaringly visible. The explanation ought not to be rejected on a pedantic and hyper technical view. While it is important that litigants including the State are accorded the same treatment and the law is administered in an even handed manner, a little latitude is considered by the Courts when the State is the litigant since it is common knowledge that decisions are taken at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay although it is deprecated. Public interest invariably suffers if appeals filed by the State are rejected on the ground of delay and not considered. A justice oriented pragmatic approach is always preferred although the Courts deprecate these practices and bureaucratic red tapism in the process of decision making.

13. Although, the explanation in the condonation of delay application is lacking in particulars in explaining certain periods of the delay there is no lack of bona fides on the part of the State. The Application reflects more or less what actually led to the delay. What

happened after having received a copy of the judgment immediately on the next day of the passing of the judgment till the learned Public Prosecutor is said to have received a copy on 26.9.2022 is in the dark. The unexplained delay for these periods may be attributed to the Officers of the prosecution who were handling the matter. Although the State has offered no explanation for this period and they ought to have it is but obvious that it is due to callousness of the prosecution. However, it is also noticed that there has been no attempt to mislead the Court by giving false explanation. It may also equally be true that when the Additional Public Prosecutor of this Court learnt about the case he could not immediately take steps as he was attending to his ailing mother. What is noticeable is that while the learned Public Prosecutor of the concerned Court gave an opinion that there were few and trivial grounds in preferring an appeal, he also was a little sceptical and sought for opinion from the Office of the learned Advocate General. When the Office of the learned Advocate General finally considered the case, they opined otherwise. Thereafter, due to the winter break lethargy is noticed in the follow-up action on the part of the concerned Legal Officers of the State. Noticeably, "the impersonal machinery in the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos" is also reflected in the explanation sought to be expounded in the application. While the Legal Officers delayed in taking a firm decision, whether to file or not to file the appeal, and delayed further in taking the necessary approvals, the cause of justice lay hanging in uncertainty.

14. At this juncture, it may be essential to understand the nature of the case. The appeal sought to be preferred is against a judgment dated 30.6.2022 passed in a criminal prosecution against the respondent no.1 for alleged offences under Sections 5(l) and 5(n), Section 7, Section 9(l) of the Protection of Children from Sexual Offences Act, 2012 and under Sections 376 (2)(n), 376(3) and 354 of the Indian Penal Code, 1860. The respondents no. 2 and 3 faced trial for offences under Section 201 of the IPC while the respondent no.4 faced trial for offence under Section 21(1) of the POCSO Act. A perusal of the impugned judgment also reflects that 26 prosecution and 4 defence witnesses were examined during the trial. 48 documents were exhibited by the prosecution and 6 by the defence. The learned Special Court finally acquitted the respondents on the ground that the prosecution had failed to prove its case beyond reasonable doubt. Evidently, the trial was against the respondents for serious criminal charges. The complaint was filed by the minor brother of a minor victim of having been sexually assaulted on numerous occasions by her guardian - the respondent no.1. Both the minor victim and the minor brother deposed before the learned Special Court. The minor victim has deposed about the incidents.

15. In a criminal prosecution, unlike civil cases, the lack of diligence, lethargy, impersonal attitude not only affects the State but also the victim. When delay is not condoned because of these reasons, in a civil case it is the litigant who has failed to show sufficient cause who is punished. However, in a criminal prosecution,

in most cases, the victims are waiting in the sidelines for justice while the State prosecutes the accused persons. Lethargy, lack of diligence, impersonal attitude of the State Officers seldom punishes them when a condonation of delay application is rejected. Invariably, however, the victim suffers. The criminal procedure provides a statutory appeal against the judgment of the Special Judge to review its correctness and legality with the ultimate aim to do justice. Therefore, when the State machinery delays the process due to indecisiveness of the Law Officers and impersonal attitude and bureaucratic methodology, the cause of justice suffers. We are thus of the view that in such criminal prosecutions it is equally important to take into consideration this dimension while taking a decision whether or not to condone the delay inspite of the tardiness and inaction of the State machinery. This same Bench had taken a similar view in **State of Sikkim vs. Tenzing Bhutia**¹². When the offences alleged relates to crime against minor children, this Court owe an obligation to the society to examine such cases with utmost sensitivity. (See Order dated 6.11.2000 passed by the Supreme Court in State of Rajasthan vs. Madan in Criminal Appeal No. 939 of 2000)

16. On a pragmatic and justice oriented approach, we are of the considered view that the State has shown sufficient cause for the condonation of delay. We are also of the view that even the lethargy and indecisiveness of the concerned Law Officers, lengthy process of decision making by the concerned State Officers cannot overrun the cause of substantial justice for the victim. We opine that

¹² 2018 SCC OnLine Sikk 189

justice shall be better served if the delay is condoned to enable us to decide the criminal leave petition and appeal on its own merits.

17. In the facts and circumstances of the case, we are of the considered view that it is a fit case where costs should be imposed upon the Applicant. Let the Applicant pay costs of Rs.20,000/- (Rupees twenty thousand) only, to Sikkim State Legal Services Authority, Gangtok, within ten days from today for utilisation in the Lee Aal Old Age Home.

18. Accordingly, the Application for condonation of delay is allowed.

(Bhaskar Raj Pradhan)
Judge

(Meenakshi Madan Rai)
Judge

Approved for reporting : **Yes/No**
Internet : **Yes/No**

bp