

Crl. L.P No.10 of 2019

STATE OF SIKKIM

APPELLANT (S)

VERSUS

RUPESH MANGER (THAPA)

RESPONDENT (S)

Date: 26/06/2020**CORAM :****HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CJ.
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.**

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Heard Mr. S.K Chettri, learned Counsel for the appellant. Also heard Mr. N. Rai, learned Senior Counsel for the respondent.

2. This is an application for condonation of delay in filing Leave to Appeal and Memorandum of Appeal under Section 5 of the Limitation Act, 1963.

3. By the judgment and order dated 30.10.2018 passed in Sessions Trial Case No.01/2017, the learned Sessions Judge, Special Division-I, Sikkim at Gangtok, while holding that the respondent had caused the fatal injuries, acquitted him by accepting the plea of insanity set up by the respondent.

4. By this application, the appellant is seeking condonation of delay of 92 days. The respondent had filed an objection to the application. According to the respondent, delay is of 187 days.

5. This application along with Leave to Appeal and Memorandum of Appeal were filed on 14.10.2019.

6. The parties are *ad idem* that period of limitation had expired on 12.02.2019. When this application was filed on 14.10.2019, evidently delay cannot be of 92 days.

7. It appears that appellant had earlier filed a Leave to Appeal, registered as Crl. L.P. No.06 of 2019, along with I.A No.01/2019,

which was an application for condonation of delay, against the very same judgment against which the present appeal is sought to be preferred.

8. The present application for condonation of delay indicates that the aforesaid Crl. L.P. No.06/2019 and I.A No.01/2019 were allowed to be withdrawn by this Court by an order dated 26.09.2019 with liberty to file afresh. The order dated 26.09.2019 also goes to show that the Court granted permission to the State to take back the certified copies of the judgment dated 30.10.2018 and depositions of prosecution witnesses filed in the appeal.

9. It is seen from the record that the appeal filed along with Crl. L.P. No.06/2019 and I.A No.01/2019 was not numbered. Thereafter, the present application for condonation of delay along with Crl. L.P. No.10/2019 and the appeal, as noted earlier, were filed on 14.10.2019.

10. Mr. Chettri submits that when the appeal was initially filed along with Crl. L.P. No.06/2019 and I.A No.01/2019, there was delay of 92 days and, therefore, the delay is sought to be explained for 92 days in this application for condonation of delay.

11. Mr. Rai, on the other hand, submits that once the Crl. L.P. and application for condonation of delay were withdrawn, period of delay has to be counted from 13.02.2019. He has further submitted that though it is stated in the objection that delay was of 187 days, it is actually 244 days. Since the State had sought to explain the delay of only 92 days, evidently delay has not been explained for the entire period and, therefore, the application for condonation of delay is liable to be rejected. It is further submitted by him that even for the period

of 92 days, sufficient cause has not been shown to condone delay of the said period.

12. Mr. Rai has placed reliance on a judgment of the Hon'ble Supreme Court in the case of ***Postmaster General & Others v. Living Media India Limited & Another***, reported in ***(2012) 3 SCC 563*** as well as on a decision of this Court in ***Central Bureau of Investigation, Kolkata v. Nirmal Pradhan***, reported in ***2014 CriLJ 924***.

13. Relying upon the aforesaid judgments, Mr. Rai submits that condonation of delay is an exception and unless there is reasonable and acceptable explanation for the delay and there was bona fide effort, there is no necessity to accept the explanation that is usually given by the Government departments that delay had occurred due to procedural process.

14. The Hon'ble Supreme Court had not condoned the delay of 427 days in preferring the appeal in ***Postmaster General*** (supra). In ***Central Bureau of Investigation*** (supra), being not satisfied with the explanation for the delay, this Court had refused to condone the delay of 236 days in preferring the appeal.

15. In this present application for condonation, delay of 92 days is sought to be explained till 15.05.2019 when the appeal was filed on the earlier occasion which was subsequently withdrawn. It is stated that there was consultation in between various authorities regarding advisability of filing the appeal and ultimately, on 11.01.2019, the learned Public Prosecutor of High Court of Sikkim had given an opinion for filing an appeal and, thereafter, after obtaining the approval of the Chief Minister, file was forwarded to the Senior Government Advocate on 19.03.2019 for preparation and filing of appeal. It is stated that a relative of the Assistant Public Prosecutor, who was entrusted with the

preparation of appeal, etc., had expired and later on, from 18.04.2019 to 30.04.2019, he himself was suffering from high fever and cough. Because of the circumstances, the appeal could be filed only on 15.05.2019.

16. We are of the considered opinion that delay, till such filing of appeal on 15.05.2019, is sufficiently explained by the State. Though the prayer for condonation of delay is limited to the aforesaid period, we may take note of the fact that the Crl. L.P No.06/2019 and I.A No.01/2019 along with appeal were pending consideration before this Court till 26.09.2019, on which date the same were allowed to be withdrawn with liberty to file afresh. After such withdrawal, the Leave to Appeal along with this application for condonation of delay and appeal came to be filed on 14.10.2019, i.e. within a period of 18 days.

17. We are constrained to note that the application for condonation of delay had been filed in very casual manner. The period for which the earlier Crl. L.P. No.06/2019 and I.A No.01/2019 along with appeal were pending may be taken as a ground to explain the delay that has finally occasioned but certainly, such period cannot be excluded while computing the period of limitation.

18. On an overall consideration of materials on record, we are inclined to condone the delay in preferring the Crl. L.P. No.10/2019 and the connected appeal.

19. I.A No.01/2019 in Crl. L.P. No.10/2019 stands disposed of.

20. Registry will now list this case on for consideration on 13.08.2020.

Judge

Chief Justice