

**HIGH COURT OF SIKKIM**  
**Record of Proceedings**

**I.A. No.01 of 2023 in CRL.L.P/22/2023/(Filing No.)**  
**with**  
**I.A. No.02 of 2023 in CRL.L.P/22/2023/(Filing No.)**  
**and**  
**I.A. No.03 of 2024 in CRL.L.P/22/2023/(Filing No.)**

STATE OF SIKKIM

APPLICANT

VERSUS

LALL BAHADUR RAI

RESPONDENT

**Date: 01.04.2024**

CORAM:

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

For Applicant      Mr. Yadev Sharma, Additional Public Prosecutor.  
                                 Mr. Sujan Sunwar, Assistant Public Prosecutor.

For Respondent    Mr. Karma Thinlay, Senior Advocate.  
                                 Mr. Yashir N. Tamang, Advocate.  
                                 Mr. Zamyang Norbu Bhutia, Advocate.  
                                 Mr. Chetan Sharma, Advocate.

**ORDER**

**1.**            I.A. No.01 of 2023 is an application filed by the Applicant under Section 5 of the Limitation Act, 1963, seeking condonation of 79 days delay in filing the instant Appeal.

**2.**            Learned Additional Public Prosecutor while walking this Court through the Petition submits that the grounds for the delay have been detailed with specific dates. That, the official procedure prescribed took time and that apart wherever there has been a delay in the office of any particular officer it was for the reason that the concerned officer was engaged in other pressing official duties which required priority. That, the grounds put forth are sufficient to condone the delay. Hence, the application be allowed.

**3.**            Learned Senior Counsel for the Respondent submits that the delay cannot be condoned for the reason that the Prosecution has failed to give sufficient grounds for the delay. Merely stating that the File moved from one office to the next that too within the Police Department

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which does not suffice to explain the delay. That, the delay must be for the reason that it was beyond the control of the Applicant however, this has not been delineated in the Petition. That, the Supreme Court in a plethora of judgments has detailed the principles on which the delay can be condoned. The grounds put forth by the Applicant do not fall within the ambit of the principles which have been elucidated by the Supreme Court. That, in the aforementioned circumstances, the application suffers from inadequacy of grounds and deserves a dismissal.

**4.** I have given due consideration to the submissions put forth by Learned Counsel for the parties. I have also perused the grounds given by the Applicant. It is apparent that various authorities were involved in the decision making process as to whether the Appeal can be preferred or not. Indeed, it is the duty of every officer to consider the official papers placed before them before expressing an opinion but this ought not to result in delay. The entire process in the instant matter is indicative of bureaucratic inertia.

**5.** Be that as it may, while considering a Petition for delay, in ***Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and Others***<sup>1</sup>, the Supreme Court opined that legislature had conferred power under Section 5 in order to enable the courts to do substantial justice to the parties by disposing of matters on "merits". It was further held that the expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. The Supreme Court *inter alia* observed as follows;

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

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<sup>1</sup> (1987) 2 SCC 107

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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.

.....”

**6.** A Bench of three Hon'ble Judges of the Supreme Court in ***State of Manipur and Others vs. Koting Lamkang***<sup>2</sup> was faced with a delay of 312 days by the State in preferring its first appeal before the High Court. The Supreme Court, on grounds of public interest, the impersonal nature of governments, and the ramifications of individual errors on State interest, condoned the delay in filing the first appeal on payment of costs of Rs 50,000/-.

**7.** ***Mst. Katiji*** (*supra*) was also noticed by a Bench of three Hon'ble Judges of the Supreme Court in ***State of Haryana v. Chandra Mani and Others***<sup>3</sup> where the Supreme Court observed as follows;

“**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

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<sup>2</sup> (2019) 10 SCC 408

<sup>3</sup> (1996) 3 SCC 132

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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.** In *Sheo Raj Singh (Deceased) through Lrs. and Others* vs. *Union of India and Another*<sup>4</sup> it was *inter alia* held that in such matters the approach of the Court should not be pedantic but justice oriented.

**9.** In light of the foregoing discussions, I am of the considered opinion that in the interest of justice, the delay ought to be condoned. Let the State-Applicant pay costs of ₹ 10,000/-(Rupees ten thousand) only, which shall be paid to the Sikkim State Legal Services Authority, within one week from today, for utilizing in a Child Care Institution.

**10.** I.A. No.01 of 2023 stands disposed of accordingly.

**11.** Register the Criminal Leave Petition.

**12.** List on 29-04-2024.

**13.** I.A. No.02 of 2023 is an application filed by the Applicant for placing additional documents on record i.e., copy of the Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C) statement of the victim along with the deposition of the victim, P.W.1, Bhakta Kumar Rai, father of the victim and P.W.2, Ganga Rai, mother of the victim.

**14.** Learned Senior Counsel for the Respondent has no objection to the I.A. *supra*.

**15.** The documents are accordingly taken on record.

**16.** I.A. No.02 of 2023 stands disposed of accordingly.

**17.** I.A. No.03 of 2024 is an application filed by the Respondent seeking to file a copy of the First Information Report (FIR) and translated copy of the said FIR, copy of the statements of P.W.6 and

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<sup>4</sup> 2023 SCC OnLine SC 1278

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P.W.11 under Section 164 of the Cr.P.C, statement of the victim, P.W.2 and P.W.6 recorded under Section 161 of the Cr.P.C and rough sketch of the place of occurrence as prepared by the Investigating Officer.

- 18.** The Petition is not opposed by the State-Applicant.
- 19.** The documents are accordingly taken on record.
- 20.** I.A. No.03 of 2024 stands disposed of accordingly.

**Judge**  
01.04.2024

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