



IN THE HIGH COURT OF SIKKIM AT GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 02-12-2013

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HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

Criminal Appeal No.15 of 2013

Central Bureau of Investigation
Represented by its S.P. III, CBI, ACB,
2nd MSO Building,
234/AJC Bose Road,
14th - 15th Floor,
Nizam Palace,
Kolkata – 700 020 ... **Appellant**

Versus

Nirmal Pradhan,
S/o Late J. B. Pradhan,
Inspector of Customs, Preventive Unit,
Customs Office, TNHS Marg,
Development Area, Gangtok,
East Sikkim.

Resident of Bagdhara Road,
P.O. & P.S. Kalimpong,
Distt.Darjeeling,
West Bengal. ... **Respondent**

FOR THE APPELLANT : MR. MOHD.ASHRAF ALI, ADVOCATE

FOR THE RESPONDENT : MR. A. MOULIK, SENIOR ADVOCATE
WITH MR. B. K. GUPTA, MS. K. D.
BHUTIA, MR. MANISH KR. JAIN AND
MR. RANJIT PRASAD, ADVOCATES.



ORDER (ORAL)

Wangdi, J.

Heard learned Counsel for the parties.

2. In terms of the order dated 06.09.2013, the application for condonation of delay in filing the Appeal has been taken up today.

3. Mr. Mohd. Ashraf Ali, learned Counsel appearing for the Appellant, submits that the delay of 206 days in filing the appeal has occurred due to bonafide reasons. It is submitted that the delay is primarily on account of the procedure that had been followed in filing appeals as in the present case.

4. Attention of this Court was drawn to paragraph 3 of the application which sets out the various dates and events which begin from 22.09.2012 when the impugned judgment was pronounced. The facts set out in paragraph 3 are reproduced below: -

"Para 3.	In the instant case it would be evident from the following that the delay has been caused due to unavoidable circumstances.
22.09.2012	Ld.Court passed impugned order in Case No.1 of 2005 arising out of the RC No. 50 of 2004 CBI/ACB/KOL. Under Section 7/13(1)(d)(ii) read with Section 13(2) of the Prevention of Corruption act, 1988 acquitting the accused.
22.09.2012	Date of application for certified copy of impugned order.



06.10.2012	Date when certified copy of impugned order was read for delivery.
08.10.2012	Date of delivery of the Order to CBI/ACB/Kolkata through CBI Siliguri Branch.
12.10.2012	Order was put up before SP, CBI, ACB, Kolkata for perusal and the file was endorsed for comments to the Special PP, who conducted the trial.
26.10.2012	Special Public Prosecutor submitted his written comments with recommendation of filing appeal.
29.10.2012	SP after going through the comment of Special PP, requested the Senior Public Prosecutor of Branch for offering his comments.
1.11.2012	Senior Public Prosecutor, CBI, ACB, Kolkata made his comments.
5.11.2012	Comments of Spl.PP and Sr.PP with recommendation of filing Appeal was put up before the DIG/Head of the Branch (HOB) who asked for comments of SP.
22.11.2012	SP agreed with Special PP and Sr.PP in his note dated 22.11.2012 for preferring an Appeal against the impugned Judgment/Order dated 22.9.2012 and instructed the Legal Section to put up detailed comments and grounds of appeal for taking approval of the competent authority for filing appeal.
21.12.2012	SP put up detailed branch comments for filing an appeal before Hon'ble Sikkim High Court against impugned Judgment/Order dated 22.9.2012.
1.1.2013	DIG/HOB made his comments and recommended for filing appeal and endorsed the file to the Joint Director/Head of the Zone (HOZ) CBI, Kolkata Zone.
2.1.2013	HOZ requested Dy. Legal Adviser (A) to examine and comment.
7.1.2013	DLA (A) after going through the file recommended filing appeal against the impugned Judgment/Order.
8.1.2013	HOZ after going through the file and comments of different officers of CBI made her comments and agreed with the unanimous recommendation of all for filing the appeal and forwarded the file to SDCBI New Delhi for orders.
11.1.2013	SDCBI requested Director of Prosecution (DOP), CBI, New Delhi who asked ALA, CBI, SC Zone New Delhi to examine the matter and offer comments.
14.1.2013	ALA, CBI, SC Zone also recommended in his comments for agitating the matter before Hon'ble High Court by way of filing appeal against the impugned Judgment and the file was forwarded to Director of Prosecution (DOP).



15.1.2013	Director of Prosecution also recommended to file appeal and sent back the file to SDCBI (S).
16.1.2013	SDCBI (S) also endorsed the unanimous recommendation of the officers for filing appeal against the impugned judgment and forwarded the file to DCBI who approved the proposal and sent back the file to SDCBI (S).
17.1.2013	SDCBI sent the file to HOZ, CBI, Kolkata for necessary action.
21.1.2013	HOZ, Kolkata received the file from CBI, HO, New Delhi and endorsed the file to HOB who in turn endorsed the file to SP for necessary action regarding filing of appeal.
24.1.2013	SP requested the Retainer Counsel of CBI, Calcutta High court, Calcutta for preparing draft appeal for approval.
08.3.2013	It was decided to send a proposal to Department of Personnel & Training of Government of India for seeking approval of Central Government U/s 378(2) of Cr.P.C. for filing Appeal. Legal Section was instructed to prepare Self Contained Note along with other materials to be sent to DOPT.
14.3.2013	HOZ, CBI, Kolkata Zone, Kolkata sent the proposal along with enclosures to the Jt. Secretary (V), DOPT, North Block, New Delhi to convey approval of the competent authority for filing appeal along with petition for condonation of delay.
7.5.2013	Approval of the Central government was conveyed by the Under Secretary of DoPT on 22.04.2013 which was received by CBI, Kolkata on 07.05.2013.
10/13.05.13	Draft application prepared by the Retainer Counsel, CBI, Calcutta High Court with application for condonation of delay U/s 5 of Limitation act were endorsed to the concerned officer for checking factual correctness and to the Law Officer for legal vetting.
21.05.2013	Law Officer vetted the draft appeal.
23.05.2013	Retainer Counsel was requested to make necessary corrections in the draft and also to prepare a fresh application for condonation of delay.
27.06.2013	Corrected copy of application for condonation of delay in the prescribed proforma was sent to the Retainer Counsel.
28.06.2013	SP instructed the concerned officer dealing with the file to put up fresh copy of Appeal and application for condonation of delay."



As can be seen from the above, against each of the dates, steps which the respondent had taken have been indicated and, in paragraph 3 it has been averred that the delay had been caused due to unavoidable circumstances.

5. Mr. A. Moulik, learned Senior Counsel appearing for the Respondent, submits that from the facts set out in the application, particularly the portion reproduced above, it is quite manifest that the delay has been caused due to the negligent and casual manner in which the Appellant had taken and not due to unavoidable circumstances as urged by them. It is submitted that the date on which the period of limitation would begin is 06.10.2012 when the certified copy of the impugned judgment was made ready and, ought to have culminated on 29.08.2013 when the appeal was filed and not on 28.06.2013 as indicated in list of dates. By filing a list of dates and events, it is submitted that no cause has been shown at all, leave alone reasonable cause, for the periods falling within the dates. We may reproduce the list of dates and events upon which Mr. Moulik has relied upon : –

“LIST OF DATES AND EVENTS

Date	Events
22.09.2012 -	Judgment pronounced in ST CBI Case No.01/2005
06.10.2012 -	Copy of judgment was made ready.

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- 08.10.2012 - Judgment copy received by CBI/Appellant.
- 06.10.2012 - 06.10.2012 to the date of filing appeal on 29.08.2013
to in total 326 days minus 90 days limitations equals to
29.08.2013 236 days. So delay is 236 days and not 206 days as
claimed by the CBI/Appellant.
- At paragraph 2 appellant has claimed that there is a
delay of 206 days till 29.07.2013 (appellant counted
time from 08.10.2012 to 29.07.2013)
- 28.06.2013 - There is no explanation in their application for the period
To 28.06.2013 5 to 29.08.2013 when the appeal was filed
29.08.2013 i.e. for 62 days (2+31+29)
- While giving explanation at para 3 they have explained
causes of delay only upto 28.06.2013.
- 29.06.2013 - Therefore there is no explanation for the delay from
To 29.06.2013 to 29.08.2013 i.e. for 62 days.
29.08.2013
- 12.10.2012 - No explanation for the long delay of 15 days from
To 12.10.2012 to 26.10.2012. It appears that S.P., CBI,
26.10.2012 Kolkata and Special P.P., Kolkata have offices in the
same place of Kolkata.
- 05.11.2012 - No explanation for a long delay of 18 days from
To 05.11.2012 to 22.11.2012 although the officers are in
22.11.2012 the same city.
- 22.11.2012 - No explanation for long 30 days from 22.11.2012 to
To 21.12.2012. The same officer dealt with the file and
21.12.2012 kept with him for 30 days without any plausible
explanation.
- 21.12.2012 - No explanation for a gap of 10 days from 21.12.2012 to
To 01.01.2013 though the officers were in the same place.
01.01.2013
- 24.01.2013 - No explanation for long delay of 43 days from 24.01.2013
To 08.03.2013
08.03.2013
- 14.03.2013 - No explanation for long delay of 52 days from
To 14.03.2013 07.05.2013
to 07.05.2013
- 10.05.2013 - No explanation for long delay of 12 days from
To 10.05.2013 to 21.05.2013
21.05.2013
- 29.06.2013 - No explanation for long delay from 29.06.2013 to
To 29.08.2013 till filing of the appeal on 29.08.2013 i.e. 2
29.08.2013 months
- Appeal was affirmed on 22.08.2013 while explanation is
Only upto 28.06.2013
- Delay explanation is signed by the lawyer and not by the
petitioner."



6. Mr. Moulik submits that there is a difference between delay which can be avoided and those that are unavoidable. As per him, in the present case, from the facts and circumstances indicated above, it cannot but be said that the delay is avoidable.

7. The principle underlying Section 5 of the Limitation Act has been set out in **Balwant Singh vs. Jagdish Singh : AIR 2010 SC 3043** in which reliance has been placed on an earlier decision in **Ramlal and others v. Rewa Coalfields Ltd., : AIR 1962 SC 361**, wherein the Hon'ble Supreme Court has held in paragraph 13 that the term 'sufficient cause' appearing in Section 5 of the Limitation Act, 1972 has to receive liberal consideration as to squarely fall within the concept of reasonable time of the concerned party and that it is to be understood in its general connotation. It has also been laid down that "The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. When the delay is directly a result of negligence, default or inaction of that party, Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to




deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

8. In the case of **Ramlal and others v. Rewa Coalfields Ltd., : AIR 1962 SC 361** which has been relied upon in **Balwant Singh (supra)** it has been held as under: -

“7. In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan ILR 13 Mad 269.

It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration.....”

9. Most significantly it has been observed that “it must be kept in mind that whenever a law is enacted by the



legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well-settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision odious. Once the legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the Learned Counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22 Rule 9 of the CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law. Liberal construction of the expression 'sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable....."



10. There is of course the decision of **Collector (LA) v. Katiji : 1987 (2) SCC 107** in which the Hon'ble Supreme Court has made a significant departure from the earlier judgments in its approach when it is the State which is seeking condonation of delay which we find referred to in the case of **Maniben Devraj Shah v. Municipal Corpn. Of Brihan Mumbai : 2012 (5) SCC 157**. The substance of the decision is that while dealing with the question of condonation of delay Courts are not to be pedantic in their approach but ought to be liberal so as to advance the cause of substantial justice and the fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant."

11. However, in the very case of **Maniben Devraj Shah** (supra) it has further been held as follows :-

"25. In cases involving the State and its agencies/instrumentalities, the court can take note of the fact that sufficient time is taken in the decision-making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."

12. A number of decisions were cited by Mr. Moulik on this question amongst which are :-

"1. 2001(9)SCC 106 : Vedabai Alias Vijayanatabai Baburao Patil v. Shantaram Baburao Patil and Others :



2. **AIR 1999 Patna 203 : Bihar State Electricity Board, Patna and Others v. Baxi S.R.P. Sinha and Another :**
3. **AIR 1998 Patna 137 : State Govt. of Bihar and Others v. Sunil Kumar Singh and Others."**

13. It is pertinent to note that in the last two decisions of the Patna High Court, reliance has been placed upon **Ramlal and others v. Rewa Coalfields Ltd., : AIR 1962 SC 361** in holding that if indulgence is shown in such cases, the very purpose and object of the Limitation Act would be frustrated.

14. On the anvil of the law as set out above, I am of the considered view that the Appellant has failed to make out sufficient cause for the delay to be condoned. I am inclined to agree with Mr. A. Moulik, learned Senior Counsel for the Respondent that there are delays in between the dates indicated by the Appellant in the application mentioned under paragraph 3 of the application which have remained unexplained. The delay during the period commencing from 06.04.2012 to the date of filing the appeal, i.e., 29.08.2013, appears to be 236 days and not 206 days as urged on behalf of the appellant. There are delays of 62 days, 18 days, 30 days, 10 days, 43 days, 52 days, 12 days and delay of more than 2 months between 29.6.2013 to 29.08.2013 which have not been explained at all. In fact the application is bereft of any explanation for the period of



2 months between 29.06.2013 and 29.08.2013 when the appeal was filed.

15. As observed earlier, in paragraph 3 of the application, the delay is said to be due to “unavoidable circumstances”. Against each date in the list set out therein, steps said to have been taken by them have been mentioned and, in paragraph 4, it has been said that all out efforts were made by the petitioner for filing of Appeal at the earliest and that in spite of sincere efforts the scrutiny, processing and other connected processes could not be completed earlier. However, in all these they are silent as to the cause of the delay in between the dates on which steps were said to have been taken by them. As would appear from the list of dates set out in the application, between 08.10.2012 to 08.01.2013, the file moved from table to table in the Kolkata office of the Appellant in Kolkata. Thereafter, between 11.01.2013 to 16.01.2013, i.e., for about 15 days, the matter was deliberated in its New Delhi office. After that again i.e., 17.01.2013 to 08.03.2013, i.e., for a period of almost 2 months, the matter lay in the Legal Section of the Appellant. There is no explanation as to why it remained pending there. The case again travelled to Delhi on 14.03.2013 and remained there until 22.04.13 i.e., for an unexplained period of 39 days just for the purpose of approval from the Central Government which was received



by Kolkata office on 07.05.2013. Thereafter, the file moved most leisurely from table to table in the Kolkata office until 28.06.2013 just to implement the decision to file Appeal. The matter gets even worse when nothing has been stated as to what transpired after 28.06.2013, on which day the S.P. is said to have instructed the concerned office dealing with the file to put up a fresh copy of appeal and application for condonation of delay. The appellant is blissfully silent on this. The appeal was ultimately filed 2 months later, i.e., on 29.08.2013. The vague statement of "best efforts" on their part, are not supported by material particulars. It is rather obvious that the petitioners have been very casual and negligent in their approach and have proceeded in a routine manner taking for granted that the delay would be condoned.

16. In State Government of Bihar vs. Sunil Kumar Singh (supra), it is observed that public servants take undue advantage and move leisurely in a careless manner under the garb of collective responsibilities and that this amounts to "malicious" use of power. The statements of dates and events furnished on behalf of the Appellant, simply reflects making certain correspondence and placing the file from table to table in the process of which unnecessary time appears to have been consumed causing inordinate delay in filing the appeal. The delay was



certainly avoidable had the Appellant been diligent in their efforts. The explanation, vague as they are, can hardly be termed as sufficient that could warrant condonation of delay.

17. Under such circumstances, therefore, the Appellant is not worthy of the discretionary relief under Section 5 of the Limitation Act, 1963.

18. In the result, the application stands rejected and consequently the Appeal is hereby dismissed as being barred by the Law of Limitation.

19. No order as to costs.

20. Records of the Learned Trial Court be sent back forthwith.

Sd/-
(S. P. Wangdi)
Judge
02.12.2013

Approved for Reporting : Yes

Internet : Yes

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