

**HIGH COURT OF SIKKIM**

Record of Proceedings

**I.A No.01 of 2018**

**IN**

**Crl. L.P No.02 of 2018**

State of Sikkim

.....Petitioner/Applicant

VERSUS

Tenzing Bhutia

....Respondent

Date: 14/09/2018

CORAM :

**HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, A.C.J**

**HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.**

For Petitioner/Applicant : Mr. Karma Thinlay, Senior Govt. Advocate with Mr. Thinlay Dorjee Bhutia, Govt. Advocate, Mr. S.K Chhetri and Ms. Pollin Rai, Asst. Govt. Advocate.

For Respondent : Ms. Gita Bista, Legal Aid Counsel.

**Pradhan, J.**

1. 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.
2. The explanation given by the Applicant-State of Sikkim is :-

*"That the impugned judgment acquitting the respondent was passed on 30.11.2017. An application for the certified copy of the said judgment was applied on 26.12.2017. The certified copy was made ready and delivered on the same day i.e. on 26.12.2017. As such appeal is required to be filed within 90 days i.e. on or before 28.02.2018, there is 73 (seventy three) days delay in filing the leave to appeal and memorandum of appeal. On 14.02.2018 Superintendent of Police (South) Sikkim had opined to file an appeal and forwarded the file to ADGP Law and Order. Thereafter on 15.02.2018 ADGP headquarter forwarded the file to Law Officer Police for comments. On 17.02.2018 Law Officer of Police had opined to file an appeal and forwarded the file to ADGP. Thereafter, on 19.02.2018 ADGP Law and Order forwarded the file to Director General of Police, Government of Sikkim. Then the file was forwarded by the Director General of Police to Ld. Addl. Advocate General for his opinion on 21.02.2018. Thereafter, on 21.02.2018 the Ld. Addl. Advocate General forwarded the file to Sr. Government Advocate /PP for obtaining his opinion in the instant matter. The Sr. Government Advocate/PP while perusing the Judgment dated 30.11.2017 it was found that the Judgment was underlined in many places and same would not be acceptable by the*

**HIGH COURT OF SIKKIM**Record of Proceedings

*Registry of the Hon'ble High Court of Sikkim when the same is filed with the appeal. Therefore, Sr. Government Advocate/PP office of the Advocate General advised the Investigating Officer of the case to apply once again the certified copy of the judgment from the Ld. Sessions Court, Namchi, South Sikkim. And the Investigating Officer again applied for the certified copy of the judgment on 05.03.2018 and the same was delivered on 07.03.2018. On 24.02.2018 the Sr. Government Advocate/PP had given his opinion and forwarded the file to Ld. Addl. Advocate General. Thereafter, Ld. Addl. Advocate General taking into the consideration the evidence highlighted by the Ld. Sr. Government Advocate/PP in his opinion had advised to file an appeal against the order of acquittal. Thereafter, on 26.02.2018 Ld. Addl. Advocate General forwarded the file to Director General of Police for government approval. On 28.02.2018 Director General of Police forwarded the file to Addl. Chief Secretary had forwarded the file to Hon'ble Chief Minister for approval. Thereafter, the Hon'ble Chief Minister had approved the file on 14.03.2018 and sent back to Chief Secretary, Government of Sikkim. On 15.03.2018 Chief Secretary, Government of Sikkim forwarded the file to DGP. Thereafter, on 19.03.2018 DGP forwarded the file to ADGP Law and Order and ADGP Law and Order forwarded the file to Superintendent of Police, South, Namchi. Thereafter, on 03.04.2018 Superintendent of Police, Sought, Namchi sent the file to Ld. Sr. Government Advocate, office of the Advocate General for filing an appeal. That Superintendent of Police, Namchi could not send the file to Ld. Sr. Government Advocate in time as the Superintendent of Police, South, Namchi was on official training at New Delhi for a week. Then the office of the Advocate General received the file only on 04.04.2018. Thereafter, on the same date i.e. 04.04.2018 Ld. Sr. Government Advocate handed over the file to Asst. Public Prosecutor for drafting of the memorandum of Appeal, Leave to Appeal and Condonation of delay. The Asst. Public Prosecutor prepared and drafted the memorandum of Appeal, Leave to Appeal and Condonation of delay and on 19.04.2018 placed before the Ld. Sr. Government Advocate cum PP could not vet the drafts of memorandum of Appeal, Leave to Appeal and Condonation of delay due to day to day continuous hearing before this Hon'ble Court. Thereafter, due to unavoidable work of Ld. Sr. Government Advocate cum PP from 01.05.2018 to 05.05.2018 could not vet the draft memorandum of Appeal, Leave to Appeal and Condonation of delay was settled by the Ld. Sr. Government Advocate-cum-PP."*

3. The Respondent has filed his reply/objection to the application for condonation of delay in which it is submitted that the Applicant has failed to explain delay of 26 days for the period 30.11.2017 to 26.12.2017, since admittedly, the Applicant had applied for the certified copy of the impugned Judgment dated 30.11.2017 only on 26.12.2017.

**HIGH COURT OF SIKKIM**Record of Proceedings

4. The Respondent would also contest the application for condonation of delay on the ground that no explanation has been provided by the Applicant for the period 26.12.2017 to 14.02.2018 for not filing the Appeal within period prescribed.
5. Mr. Karma Thinlay, learned Senior Government Advocate would honestly submit that it is true that the Applicant has not explained the period between 30.11.2017 to 26.12.2017, the period of nearly 26 days in the application. However, he would submit that since it is the duty of the Public Prosecutor or the Court Inspector to apply for the certified copy of the Judgment passed in a criminal case, evidently, it was an error committed by the Prosecution in failing to apply for certified copy during the said period.
6. After applying for a copy of the impugned Judgment dated 30.11.2017 only on 26.12.2017 as per the explanation given in the paragraph quoted above it was only on 4.02.2018 that the Superintendent of Police opined to file the appeal and forwarded the file to Additional Director General of Police, Law and Order (ADGP. This makes it clear that the Prosecution took the period 26.12.2017 to 14.02.2018 to get the opinion from the Superintendent of Police. Whether the Prosecution promptly placed the file for opinion of Superintendent of Police on time immediately after obtaining the copy of the impugned Judgment on 26.12.2017 or the Superintendent of Police took that much time to render his opinion is not clear from the application. However, it is certain that the Prosecution took the period 26.12.2017 to 14.02.2018 to get the opinion of the Superintendent of Police.
7. Mr. Karma Thinlay would rely upon the Judgment of the Supreme Court in re: ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors. reported in (2013) 12 SCC 649*** and submit that there is a distinction between inordinate delay and delay of short duration or few days and that it is only in the former case of inordinate delay that doctrine of prejudice may be attracted and for a delay of short duration the doctrine of prejudice may not be attracted. It is submitted that the inordinate delay warrants strict

**HIGH COURT OF SIKKIM**Record of Proceedings

approach and a delay of short duration warrants liberal delineation. Mr. Karma Thinlay would submit that the delay of 73 day cannot be termed as inordinate delay especially after the explanation given.

8. A perusal of the application reflects bureaucratic impediments in the process of seeking administration of justice. Unfortunately, this is the process which has been followed due to which time is taken for the movement of file from one officer to other seeking opinions, views and approvals. The Limitation Act, 1963 does not provide any concession to the Government. However, the fact that process of approval seeking in the Government does travel from one office to the other and back and forth until decision is finally taken seems to be usual and thus, cannot be ignored. The Court may not approve all these bureaucratic impediments but unfortunately, cannot also ignore that due to this process which has been practiced delay does occur. In a criminal case the State represents the victim of crime. The delay caused due to the process of seeking approval in this manner, almost usual for Government offices, leading to a delay of 73 days cannot to our mind be an impediment for the State of Sikkim seeking justice. The cause of justice cannot be impeded by the slow approach or even the lethargy of those officers whose ground the Applicant-State of Sikkim seeks condonation of. The delay of 73 days read with the explanation given by the State Applicant would not amount to gross negligence or deliberate inaction or lack of bona fides imputable to the State of Sikkim-the Applicant. In this view of the matter 'sufficient cause' has been shown by the Applicant to condone the delay in preferring the present Leave to Appeal and the Appeal.
9. In view of the aforesaid, the delay is condoned. Application is allowed.
10. I.A stands disposed.

**Judge**

14-09-2018

**Acting Chief Justice**

14-09-2018

Index : ~~Yes~~ / NoAvi/ Internet : Yes / ~~No~~