

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

Dated : 27th November, 2024

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

I.A. No.01 of 2023 in CRL.L.P/41/2023/(Filing No.)

Applicant : State of Sikkim

versus

Respondents : Pratiksha Rai and Another

Application under Section 5 of the Limitation Act, 1963

Appearance

Mr. S. K. Chettri, Additional Public Prosecutor for the State-Applicant.

Mr. Yozan Rai, Advocate for the Respondents.

ORDER

Meenakshi Madan Rai, J.

1. By filing the instant application under Section 5 of the Limitation Act, 1963, the Applicant/State of Sikkim seeks condonation of fifty-six days' delay in filing the leave to Appeal.
2. Relevantly, it may be mentioned that on 25-08-2023 the first application came to be filed and subsequently a better affidavit was filed on 18-03-2024.
3. Learned Additional Public Prosecutor advancing the grounds that led to the delay contended that, the delay was neither malafide nor intentional, but occurred on account of the prolonged official process that requires obtaining of opinions and approvals from the chain of authorities before the Appeal can be filed. That, the State-Applicant seeks to assail the Judgment of the Court of the Learned Sessions Judge, at Namchi, in Sessions Trial Case No.03 of 2020 (*State of Sikkim vs. Pratiksha Rai and Another*), in which the Respondents were acquitted of the offence under

Sections 302 and 34 of the Indian Penal Code, 1860 (hereinafter, the "IPC"). The Judgment having been pronounced on 31-03-2023, the leave to Appeal was to have been filed within ninety days', however a copy of the Judgment was made available by the Learned Trial Court only on 18-04-2023, although application for such copy was made on 04-04-2023. The period of limitation expired on 30-06-2023, which resulted in the delay of fifty-six days'. That, after procurement of the Judgment, it had to be placed before the Superintendent of Police, Namchi District, the Deputy Inspector General of Police, Namchi Range, the Legal Officer of the Police Department, the Director General of Police and other senior officials of the Law Department, which being a time consuming process, resulted in the delay which may be condoned bearing in mind the gravity of the offence which culminated in an acquittal by the Learned Trial Court.

4. Vehemently objecting to the prayers advanced by Learned Additional Public Prosecutor, Learned Counsel for the Respondents walked this Court through the Judgment of the Supreme Court in ***Postmaster General and Others vs. Living Media India Limited and Another***¹ and urged that the Supreme Court has specifically held therein that, a government body ought to have a reasonable and acceptable explanation for the delay and show bonafide efforts. That, the government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. That, condonation of delay is an exception and should not be swirled for the benefit of a few. In the said matter, considering that there was no proper explanation offered by the department nor were cogent reasons offered to

¹ (2012) 3 SCC 563

condone the delay of 427 days’ the Petition was dismissed. Similarly, in the instant case in the absence of any cogent reasons which suffices to condone the delay, the Petition ought to be dismissed.

5. We have heard Learned Counsel for the parties and given due consideration to their submissions. The grounds as put forth by the State-Applicant for the delay are *inter alia* as follows;

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 4. That there is a delay of 56 days in filing an appeal due to awaiting the correct opinion, the file was processed back and forth from one office to other for further examination to ascertain as to whether to file an appeal or not since the State represents the cause of the community.
 5.
 6. That the judgment was pronounced on 31.03.2023 by Ld. Sessions Judge Namchi. The Prosecution had filed for procuring certified copy of judgment to the copy section on 4/04/2023. That only on 18/04/2023 the judgment copy was made ready by the copy section and was supplied to the prosecution branch duly obtaining signature of Prosecution staff ASI K. B. Sunar in the form which was earlier submitted to the copy section while applying the certified copy.
 7. That on the same day i.e. on 18/04/2023 the certified copy of judgment was sent to the office of Superintendent of Police Namchi District who is the competent authority for perusing the matter and seeking legal opinion for filing an appeal.
 8. That on 19.04.2023 the Superintendent of Police Namchi District had forwarded the file to the office of Ld. Public Prosecution, Namchi Court through the Court inspector Namchi for legal opinion. The same day, the then Court inspector PI Thinlay Gyatsho Rai had put up the file before Ld. Public Prosecutor for comments on judgment with respect to reasons for acquittal and for highlighting the grounds for appeal before higher forum.
 9. That on 27/04/2023 the Ld. Public Prosecution Mr. Bhupendra Pokhrel had given an opinion with regard to reasons for acquittal and grounds for appeal. The Public Prosecutor has given his Legal opinion in respect to file an appeal that there are no sufficient grounds to

prefer an appeal before the higher forum. For that, any further opinion, if required can be sought from Office of the Learned Advocate General. Subsequently, after having received the legal opinion from the office of the Ld. P.P, the file was forwarded to the office of Superintendent of Police, Namchi for further necessary action.

10. Thereafter, the Superintendent of Police forwarded the file to Director General of Police Namchi branch for further opinion for filing an appeal before the Hon'ble High Court. The Director General of Police has opened that although in the instant case the concerned Public Prosecution has given that there are no sufficient grounds for preferring an appeal but as this case is a heinous crime under Section 302 IPC and in the judgment the Hon'ble Ld. Trial Court has commented that the accused persons deserved benefit of doubt and forwarded the file to Legal Officer, Headquarters Gangtok on 15/04/2023 for further comments.
11. That the Legal Officer has given her opinion for prefer an appeal that due to several contradictions in the evidence of the prosecution witnesses the respondents were acquitted by Ld. Sessions Judge, at Namchi in Sessions Trial Case No. 3 of 2020 in the matter of (State of Sikkim v. Pratiksha Rai and Another). However, unless examined the entire case records i.e depositions of all the witnesses, Section 313 Cr.P.C of the accused and the charge framed by the Hon'ble Court, it is not prudent to comment in such a heinous offence. The Legal Officer of Police Department, the file was forwarded to Deputy Inspector General of Police for taking further necessary action.
12. That on 23/05/2023 the Deputy Inspector of General, again the file was forwarded to Superintendent of Police Namchi, South to furnished the entire documents i.e Certified copy of judgment, 313 Cr.P.C and entire depositions of Prosecution witnesses & other relevant documents. Thereafter the Superintendent of Police forwarded the file to concerned Court Inspector Namchi on same day i.e 23.05.2023 for obtaining the Certified copy of Judgment, 313 Cr.P.C, copy of charge framed against the accused by Hon'ble Court and other relevant documents.
13. Thereafter, the Court Inspector was obtained (sic.) the Certified copy of Judgment dated 31.03.2023. 313 Cr.P.C, Charge framed against the accused along with relevant documents and same was forwarded to Superintendent of Police, Namchi on 30.05.2023. That the Court Inspector, Namchi forwarded the file to the Deputy Inspector General of Police, Namchi Police Range, Police Headquarters along with all

relevant documents, depositions, 313 Cr.P.C on 2.06.2023.

14. That the Deputy Inspector General of Police Namchi Police Range, Police headquarter, Gangtok again forwarded the file to Legal Officer, Police Headquarters Gangtok by stating that *"entire case records are ready for filing an appeal and the same was forwarded to Special Director General of Police/Law & Order" for further comments on 03.06.2023.*
15. Thereafter, on 8/6/2023 the legal Officer, Police Headquarters, Gangtok has given the valuable opinion and forwarded the file to Deputy Inspector General of Police, Namchi for further necessary action. The opinion of the Legal Officer has extracted herein below:-
"PW 10 Roshan Kr Rai, S/o Dhan Bahadur Rai (deceased) deposed that: I do not remember the exact date but it was in the month of December 2020, there was fight between my father and mother in the courtyard of our house. My maternal uncle was also involved in the said fight. I saw my maternal uncle assaulting my father. The above statement was not demolished in the cross examination." The above statements were corroborated by the seizure witnesses and by the IO of the case..."
16. That on 15/6/2023 again the Deputy Inspector General of Police forwarded the file to Additional Advocate General, High Court of Sikkim *"for valuable Legal opinion to prefer an appeal before the Hon'ble High Court of Sikkim"*
17. Thereafter on 16/06/2023 the Ld. Additional Advocate General has given the opinion for filing an appeal after careful perusal of the judgment, 313 statements, depositions of prosecution witnesses. The opinion of Ld. Additional Advocate General has extracted herein below:-
"That the injuries on the body of the deceased have been proved by the prosecution. There are no other reasons apart from the bodily injury on the body on the body of the deceased which could have caused death of the deceased. There is strong circumstances and perusal of the copy of impugned judgment, evidences and other documents on records."
18. That the file was forwarded to Deputy Inspector General of Police Namchi Range on 16.06.2023. Again, the Deputy Inspector General of Police was forwarded the file to Legal Officer for Government approval. The Legal Officer was again forwarded the file to Deputy Inspector General of Police, Namchi Police Range. The Deputy Inspector General of Police Namchi was forwarded the file to Special Director General of Police/Law & Order on 17/06/2023 and the same was forwarded to Director General of Police for further comments.

19. That after going careful perusal (sic.) the Director General of Police had given his Legal opinion for preferring an appeal and the file was forwarded to Chief Secretary, Government of Sikkim on 21.06.2023. Thereafter, the Chief Secretary forwarded the file to Law Secretary on 22.06.2023 for his valuable opinion.
20. That the L.R-cum-Secretary, Law & P.A Department had forwarded the file to joint LO – 1 on 27/06/2023 for examined the file in details. The Joint (L.O) – 1 forwarded the file to Assistant Government Advocate for further examined the file in details. The Assistant Government Advocate examined the file and the same was forwarded again to Joint (L.O) – 1 on 30.06.2023. After examined the same was forwarded to L.R-cum-Secretary, Law & P.A Department for his valuable opinion. The L.R-cum-Secretary, Law & P.A Department has given his opinion and forwarded the file to Director General of Police, Headquarters Gangtok.
21. That on 12.07.2023 the Director General of Police forwarded the file to Chief Secretary, Government of Sikkim for Government approval.
22. That on 15.07.2023 the file was forwarded to Hon'ble Chief Minister, Government of Sikkim for Government approval.
23. That on 25.07.2023 eventually *"the file was sanction for preferring an appeal before the Hon'ble High Court of Sikkim"*
24. Thereafter, the file was forwarded to Chief Secretary, Government of Sikkim and the Chief Secretary forwarded the file to Director General of Police and the Director General of Police again forwarded the file to Legal Officer for forwarding the file to Office of Advocate General for filing an appeal.
25. That on 31.07.2023 the Legal Officer Police Headquarters, Gangtok, forwarded the file to the Office of the Advocate General for preferring an appeal before the Hon'ble High Court of Sikkim.
26. Accordingly, the said file was forwarded to Additional Public Prosecutor, Office of the Advocate General from the Ld. Additional Advocate General on 1/08/2023. Thereafter, on perusal of the entire case record by the Additional Public Prosecutor, it was found that the certified copy of FIR, medical report and other relevant documents were not available in the file which was required for preparation of appeal. This being the situation a telephonically conversation was made by the Ld. Additional Public Prosecutor to the IO of the case requesting him to furnish the certified copy of the above said documents. The investigation Officer of the case submitted the said documents to this office for filing an appeal.

Thereafter, the same was placed before the Additional Advocate General for her vesting. As per the direction, the necessary correction was made in the appeal. As such, the leave to appeal along with the memorandum of appeal and application for condonation of delay of 56 days is being filed on 25.08.2023 before this Hon'ble Court.

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- 30. That it is humble submission that the appeal filed by the State before the Hon'ble Court has substantial merit in the case & raises substantial questions of Law which are important for interest of justice. The appeal also raises fundamental question as to whether the eye witnesses of prosecution can be relied to convict the respondent or whether the Ld. Trial Court failed to considered the legal aspect.
- 31. That there is 56 fifty-six days delay in filing an appeal before the Hon'ble Court.
....."

6. On examining the certified copy of the Judgment, it appears that there is no "block stamp" affixed by the Copy Section of the Learned Trial Court to enable this Court to examine the date on which the certified copy of the Judgment was applied for by the Applicant or when the copy was made available to the said Applicant. We have also noticed that the Applicant has specifically mentioned that the Judgment having been pronounced on 31-03-2023, the Prosecution filed for the certified copy of the Judgment on 04-04-2023 which was made available on 18-04-2023. Indeed, it is noticed that the Prosecution failed to apply for the certified copy immediately on pronouncement but having applied for it after a few days, it was made available by the Court only after two weeks *sans* reasons. Hence, in our considered view the period of limitation would begin to run from 18-04-2023.

(i) That, having been said this Court in **State of Sikkim vs. Suresh Pradhan**² while disposing of a similar Petition seeking condonation of sixty days delay *inter alia* observed that;

“5.Whatever be the reasons that the Petitioner seeks to set forth for condonation of delay, it is apparent that there has been a lackadaisical, laid back and callous attitude on the part of the officers concerned in processing their opinions and forwarding the File from their respective office to the next authority.”

On pain of suffering we reiterate this opinion in the facts and circumstances of this case as well.

(ii) At this juncture, it is essential to peruse the exposition of the Hon’ble Supreme Court on matters pertaining to delay in the case of **Living Media India Limited and Another** (*supra*), the Supreme Court observed that in cases when there was no gross negligence, deliberate inaction, or lack of *bona fides*, a liberal concession ought to be adopted to render substantial justice. However, merely because the State was involved, no different metric for condonation of delay could be applied. The Supreme Court also noticed that the Appellant department had offered no proper and cogent explanation before it for condonation of delay of 427 days’ apart from simply mentioning various dates. The claim on account of the impersonal machinery and inherited bureaucratic methodology of making file notes was not acceptable in view of the modern technologies in use and available. The Court thus went on to reject the prayer for condonation of delay.

(iii) In **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others**³, the High Court had condoned the delay of 2449 days’. The Supreme Court while considering its various pronouncements on the question of delay

² I.A. No.02 of 2023 in CRL.L.P/16/2023/(Filing No.) of this High Court decided on 18-10-2023.

³ (2013) 12 SCC 649

observed that, neither leisure nor pleasure has any room while one moves an application seeking condonation of delay almost seven years, on the ground of lack of knowledge or failure of justice. Reference in the said matter was made to **N. Balakrishnan vs. M. Krishnamurthy**⁴ where the following observations were made;

"**11.** ... The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

(iv) More recently the Supreme Court in **Sheo Raj Singh (Deceased) through Legal Representatives and Others vs. Union of India and Another**⁵ was considering the matter at the instance of certain affected landowners who had challenged the Order dated 21-12-2011 passed by the Learned Single Judge of the High Court of Delhi. By the Order under challenge, the High Court had allowed an application filed by the Union of India under Section 5 of the Limitation Act, 1963 and thereby condoned the delay of 479 days in presentation of an Appeal from the decision of the Reference Court under Section 18 of the Land Acquisition Act, 1894. The delay of 479 days in presentation of the Appeal was condoned but not without the High Court imposing costs of ₹ 10,000/- on the first Respondent. The Supreme Court, in Appeal, considered a catena

⁴ (1998) 7 SCC 123

⁵ (2023) 10 SCC 531

of Judgments on the point of condonation of delay and ultimately opined as follows;

"**41.** Having bestowed serious consideration to the rival contentions, we feel that the High Court's decision to condone the delay on account of the first respondent's inability to present the appeal within time, for the reasons assigned therein, does not suffer from any error warranting interference. As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the Courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests.

Conclusion

42. For the foregoing reasons and the special circumstances obtaining here that the impugned order reasonably condones the delay caused in presenting the appeal by the first respondent before the High Court, the present appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed of."

7. Thus, after meticulously perusing and considering the litany of Judgments extracted hereinabove, it is clear that the State-Applicant has to be treated at par with any other litigant and no special favour is to be bestowed on them while considering the Petition for delay, merely by virtue of the fact that they are the government. The overriding consideration in a Petition for condonation of delay is that, substantial justice is to be given preference over technical considerations when pitted against each other. As this Court is to mete out substantial justice and as held in **Sheo Raj Singh** (*supra*), if the higher Courts while refusing to condone the delay fails to consider the legality and validity of an Order of the lower Court, unholy gains would accrue to the opposite parties, which would be a travesty of justice.

(i) Thus, in light of the foregoing discussions and bearing in mind that the Court is to dispense even handed justice, the delay of fifty-six days is condoned.

8. I.A. No.01 of 2023 stands disposed of accordingly.

9. It is also imperative to direct the Learned Trial Courts to ensure that the "block stamps" are affixed on every certified copy made available to the parties, which would enable this Court to peruse the date of application for copy of Judgment/Order and when it was made available to the Applicant.

10. Copy of this Order be forwarded to all the Learned Courts below for compliance of Paragraph 9 of this Order.

(Bhaskar Raj Pradhan)
Judge
27-11-2024

(Meenakshi Madan Rai)
Judge
27-11-2024

Approved for reporting : **Yes**