

**IN THE HIGH COURT OF SIKKIM : GANGTOK
(CRIMINAL JURISIDITION)**

SINGLE BENCH: BHASKAR RAJ PRADHAN, JUDGE.

Crl. Rev. P. No. 04 of 2017

Shri Bal Krishna Dhamala,
S/o Shri Dadhiram Dhamala,
R/o Chalamthang,
P.O & P.S. Pakyong, East Sikkim

... Petitioner/Revisionist.

Versus

Smt. Mala Rai,
W/o Bal Krishna Dhamala,
R/o Chalamthang,
P.O & P.S. Pakyong, East Sikkim

.... Respondent.

**REVISION PETITION UNDER SECTION 397 AND 401
READ WITH SECTION 482 OF THE CODE OF CRIMINAL
PROCEDURE, 1973.**

Appearance:

Mr. Zangpo Sherpa, and Ms. Mon Maya Subba, Advocates for the
Petitioner.

Dr. Doma T. Bhutia and Ms. Sudha Sewa, legal Aid Counsels for
the Respondent.

ORDER
(09.11.2017)

Bhaskar Raj Pradhan, J.

The present Revision Application impugns the order dated
30.03.2017 in Criminal Appeal No. 03/2017 passed by the
learned Session Judge, East Sikkim at Gangtok, by which while
issuing notice on the Appeal preferred, the learned Session
Judge also disposed of an application filed by the respondent
herein under Section 5 of the Limitation Act, 1963 for
condonation of delay of 110 days in preferring the Appeal.

2. Way back in 1966, the Apex Court in re: ***Martin Burn Ltd. v. Corpn. of Calcutta***¹, held that a result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not. The laws of limitation is founded on public policy with the aim of securing peace, to suppress fraud and perjury, to quicken diligence and to prevent oppression. When the statutory period of limitation runs out a right enures in favour of the opposite party.

3. Admittedly, while allowing the application for condonation of delay, the learned Session Judge did not hear the petitioner against whom the Appeal had been preferred by the respondent before the learned Session Court. The petitioner had been relieved of the accusation of domestic violence alleged by the respondent in D.A.V Case No. 05/2014.

4. Admittedly again, the notice of the filing of the Appeal was issued only on 01.04.2017, pursuant to which the petitioner herein came to know of the passing of the impugned order dated 30.03.2017.

5. Under Section 29 of the Protection of Women from Domestic Violence Act, 2005 an Appeal could be preferred within a period of 30 days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later. The prescribed period of 30 days for preferring Appeal fixes a

¹ AIR 1966 SC 529

Crl. Rev. P. No. 04 of 2017
Bal Krishna Dhamala v. Mala Rai

lifespan for such legal remedy for the redress of the legal injury. The law of limitation is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). On the expiry of the said period of 30 days a right would enure in favour of the petitioner who had been successful in the Judgment dated 29.10.2016 passed by the learned Judicial Magistrate, East Sikkim at Gangtok in D.A.V case No. 05/2014 preferred by the respondent against the petitioner. This right enured in favour of the petitioner could not have been taken away by the learned Session Judge without first issuing notice and then hearing the petitioner. It was incumbent upon the learned Session Judge to have issued the notice upon the petitioner to show case as to why the appeal shall not be condoned. It was also incumbent upon the learned Session Judge to have heard the petitioner before passing any order adverse to the petitioner in the application for the condonation of delay. It is a fundamental requirement of the principles of natural justice which is inherent in all judicial proceedings.

6. On this short point, the impugned order dated 30.03.2017 is set aside.

7. The application for condonation of delay filed by the respondent is restored in the file of the learned Session Court.

8. The learned Session Judge is directed to hear the said application for condonation of delay after due notice to the petitioner herein and on which date or dates the sufficiency of

Crl. Rev. P. No. 04 of 2017
Bal Krishna Dhamala v. Mala Rai

the explanation to the delay for preferring the appeal would be decided afresh, after hearing the parties.

9. The present revision application is disposed of accordingly.

(Bhaskar Raj Pradhan)
Judge
09-11-2017

Avi/

Approved for reporting: yes.
Internet: yes.