

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Criminal Appellate Jurisdiction)

DATED : 20<sup>th</sup> MARCH, 2018

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

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I.A. No.01 of 2018  
in  
Crl.A. No.03 of 2018

**Appellant** : Ashim Stanislaus Rai,  
Aged about 24 years,  
S/o Tula Raj Rai,  
R/o Gaucharan,  
Assam Lingzey,  
East Sikkim  
(Presently at State Central Jail,  
Rongyek, East Sikkim).

**versus**

**Respondent** : The State of Sikkim

Application under Section 5 of  
the Limitation Act, 1963

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**Appearance**

Mr. K. T. Tamang, Advocate as Legal Aid Counsel for the Appellant.

Mr. Karma Thinlay Namgyal, Additional Public Prosecutor with Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Public Prosecutors for the State-Respondent.

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**O R D E R**

Meenakshi Madan Rai, J.

**1.** Heard on I.A. No.01 of 2018, which is an Application for condonation of delay.

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**2.** The Appellant seeks condonation of delay of 22 (twenty-two) days, as calculated by him, in view of the grounds set out in the Application as follows;

- (i) That the impugned Judgment convicting the Appellant under Sections 354B, 376(2)(i), 376(2)(f) of the Indian Penal Code, 1860 and Sections 5(m)/6, 5(f)/6 of the Protection of Children from Sexual Offences Act, 2012, and the impugned Order on Sentence, were pronounced on 22-09-2017, by the Learned Special Judge (POCSO), North Sikkim, at Mangan, in Sessions Trial (POCSO) Case No.01 of 2017.
- (ii) On 25-10-2017, Learned Counsel was appointed by the Sikkim State Legal Services Authority (SSLSA), vide its letter dated 25-10-2017 received by the Applicant on 27-10-2017.
- (iii) On 13-11-2017, the Legal Aid Counsel for the Applicant/Appellant was provided with the certified copy of the case records by the SSLSA vide letter of the same date, pursuant to which the Legal Aid Counsel visited the State Jail, Rongyek, East Sikkim, and obtained instructions from the Appellant.
- (iv) Consequently, the Counsel filed the Appeal on 03-02-2018 resulting in delay of 22 (twenty-two) days of which, he seeks condonation.

**3.** Learned Additional Public Prosecutor submitted that the limitation has been calculated incorrectly and the delay would be of 74 (seventy-four) days and not 22 (twenty-two) days, as stated in the Application. That, the Learned Counsel has failed to specify the date on which he obtained instructions from the Jail where the

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Applicant is lodged and details of steps taken from 13-11-2017 to 03-02-2018 when the Appeal was filed. In the absence of satisfactory grounds, the application merits no consideration and ought to be dismissed.

**4.** We have heard Learned Counsel for the parties at length.

**5.** The period of limitation for filing the instant Appeal is 60 (sixty) days, thereby the instant Appeal ought to have been filed on 21-11-2017. However, as per the submission of Learned Counsel for the Appellant, Legal Aid was made available by the Applicant only on 25-10-2017 while certified copy along with case records by the SSLSA was made available on 13-11-2017. Although it has to be pointed out that no reasons for the delay from 13-11-2017 have been detailed in the Application, however, during the verbal submissions, it was put forth that apart from the aforesaid grounds for the delay, certain unavoidable personal pre-occupation of Learned Counsel also arose which contributed to the delay.

**6.** As far back as in 1987, in ***Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and Others***<sup>1</sup> that the requirement of explaining everyday's delay does not mean that there should be a pedantic approach, but infact it should be a justice-oriented approach. In other words, priority is to be given to meting out

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

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`justice on the merits of a case. More recently, in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others***<sup>2</sup> it has been laid down, *inter alia*, that –

- (i) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- (ii) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*
- (iii) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*
- (iv) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*
- (v) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.*

**7.** From the grounds put forth before us, it cannot be said that the Applicant has been negligent. Satisfactory grounds have been furnished for the delay to which the personal pre-occupation of Learned Counsel also comprised a contributory factor.

**8.** In such circumstances, we are inclined to exercise our discretion to condone the delay of 74 (seventy-four) days on being satisfied that there has been no gross negligence or deliberate inaction or lack of *bona fides* imputable to the party.

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<sup>2</sup> (2013) 12 SCC 649

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**9.** Consequently, the delay is condoned and Application is allowed.

**10.** I.A. No.01 of 2018 stands disposed of.

**( Bhaskar Raj Pradhan )**  
**Judge**  
20-03-2018

**( Meenakshi Madan Rai )**  
**Judge**  
20-03-2018

Approved for reporting : **Yes**

Internet : **Yes**