

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 25th APRIL, 2018

**DIVISION BENCH : THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CHIEF JUSTICE
THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

I.A. No.01 of 2018
in
Crl.A. No.07 of 2018

Appellant : Tshering Thendup Bhutia,
Aged about 68 years,
S/o Late Kalu Bhutia,
R/o Sakyong,
Upper Onglop,
Gyalshing,
West Sikkim
(Presently at State Central Jail,
Rongyek, East Sikkim).

versus

Respondent : The State of Sikkim

Application under Section 5 of the Limitation Act, 1963

Appearance

Ms. Puja Lamichaney, Advocate as Legal Aid Counsel for the Appellant.

Mr. Karma Thinlay Namgyal, Additional Public Prosecutor with Mrs. Pollin Rai, Assistant Public Prosecutor for the State-Respondent.

O R D E R (ORAL)

Meenakshi Madan Rai, J.

1. Heard.

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2. The Appellant herein seeks condonation of delay of 47 (forty seven) days in filing the CrI.A. No.07 of 2018, taking exception to the impugned Judgment dated 09-11-2017 and the Order on Sentence dated 13-11-2017 in Sessions Trial (POCSO) Case No.02 of 2017, passed by the Learned Special Judge (POCSO), West Sikkim, at Gyalshing.

3. The grounds enumerated for the delay are that on pronouncement of the Order on Sentence on 13-11-2017, the Appellant was taken into custody at the State Jail and on 08-12-2017 Legal Aid Counsel Ms. Puja Lamichaney was provided to file an Appeal. Case papers were handed over to her on the same date, who on perusal, found that some required documents were not available. Consequently, on 09-12-2017, Counsel requested the Appellant's earlier Counsel to hand over the case records for comparison in order to update the incomplete records supplied. On 13-12-2017, the case records were handed over and Learned Counsel travelled to Gangtok on 16-12-2017 to seek instructions from the Appellant. However, on account of her travel from Gyalshing, West Sikkim to Gangtok, East Sikkim, she suffered severe backache and was able to seek instructions only on 18-12-2018. On receiving instructions, she returned to Gyalshing, where she was diagnosed with cervical spondylosis at the Gyalshing Hospital following which she had to undergo Physiotherapy for a month thereafter. By 23-02-2018, the Appeal was prepared and on 24-02-2018 the Appeal was filed before this Court and hence, the delay. That, the grounds are *bona fide* and delay be condoned.

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4. No serious objection was raised by Learned Additional Public Prosecutor as the delay evidently had occurred on account of the physical ailment of Learned Counsel for the Appellant.

5. We are satisfied with the grounds put forth and find that the sufficient cause has been laid out for not preferring the Appeal within the period prescribed. We are thus inclined to exercise our discretion to advance the cause of substantial justice as no negligence or inaction is found and the delay was on account of *bona fide* grounds.

6. Delay is condoned, Application allowed.

7. I.A. No.01 of 2018 stands disposed of.

Sd/-
(Meenakshi Madan Rai)
Judge
25-04-2018

Sd/-
(Satish K. Agnihotri)
Chief Justice
25-04-2018

Approved for reporting : **No**

Internet : **Yes**