

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 27th June, 2018

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

I.A. No.01 of 2017 in Crl.L.P. No.03 of 2017

Petitioner : Central Bureau of Investigation,
Special Crime Branch,
2nd Floor, A Wing, DF Block,
Salt Lake, Kolkata,
Represented by the Superintendent of Police.

versus

Respondents : 1. Dr. Pratap Makhija,
S/o Late Sunder Das Makhija,
R/o Flat No.328, DDA Multistoried Building,
Sector 19B, Dwarka,
P.S. Dwarka, New Delhi,
Presently residing near Ramleela Maidan,
Ghogar Rewa,
P.O. Rewa,
P.S. Uparahati,
District Rewa,
Madhya Pradesh.

2. Ramayan Singh Meena,
S/o Late Rameswar Dayal,
R/o B-91 (S-2) Balaji Apartment,
Dilsad Colony,
P.S. Seemapuri,
New Delhi.

3. Surendra Mohan Sihara,
S/o Ganga Sahay Meena,
R/o Village Ranouli,
Tehsil Tadabhim,
P.S. Shrimahavirji,
District Karuli,
Rajasthan.

4. Mukesh Kumar,
S/o Ramkishan Balmiki,
R/o Village Neola,
P.O. & P.S. Chhipur,
District Jhajar, Haryana,
Presently residing at Deokota Building,
Daragaon, Tadong,
Gangtok, East Sikkim.

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5. Tarachand,
S/o Hukum Singh,
R/o Village Salimpur,
P.O. Bareiley Chhah,
Tehsil Nadbai,
District Bharatpur,
Rajasthan.

**Application for condonation of under
Section 5 of the Limitation Act, 1963**

Appearance

Mr. Anirban Mitra, Advocate for the Petitioner.

Mr. K. T. Bhutia, Senior Advocate with Ms. Bandana Pradhan,
Advocate for Respondent No.1.

Mr. Sonam Palden Tamang, Advocate for Respondent No.2.

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri and Ms.
Malati Sharma, Advocates for Respondent No.3.

Mr. B. K. Rai and Mr. Loknath Khanal, Advocates for Respondent
No.4.

Mr. S. S. Hamal, Advocate for Respondent No.5.

O R D E R (O R A L)

Meenakshi Madan Rai, J.

1. Heard on I.A. No.01 of 2017, which is an application under Section 5 of the Limitation Act, 1963, filed by the applicant seeking condonation of 118 days delay in filing the application for Leave to Appeal and the Appeal.

2. Urging that the delay be condoned, Learned Counsel for the Petitioner put forth the arguments that although a certified copy of the impugned Judgment pronounced on 30-08-2016 was ready on 12-09-2016 and obtained on 14-09-2016, however, as the File travelled from the table of one officer to the next, the delay

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occurred. That, from the time the File was first placed before the Dy. S. P. (Legal), on 19-09-2016 to the time of vetting and final approval by the Head of Zone (NE) on 28-02-2017, making over of the File to the Retainer Counsel on 02-03-2017, till filing of Appeal all attributed to the delay, which however has been explained in detail. That, in view of the grounds set forth, the delay may be condoned.

3. While vehemently opposing the grounds put forth, Learned Senior Counsel for the Respondent No.3 contended that infact the delay was of 120 days and not 118 days as computed by the Petitioner. That mere placing of File before various officers on various dates neither explains the delay nor should it be condoned, hence, the application be dismissed to prevent prejudice to the Respondents.

4. Learned Counsel for the other Respondents while joining issue with Learned Senior Counsel Mr. N. Rai were in agreement with his submissions and adopted the same.

5. The submissions were considered carefully.

6. It is worthwhile noticing that Learned Counsel for the Petitioner has failed to apprise the concerned higher officials of the period of limitation. In my considered opinion it is the bounden duty of the concerned legal personnel of the Department to place the correct facts before the senior officers in order to enable them to appreciate the legal provisions pertaining to limitation. Nevertheless it is seen that although the File has moved from table

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to table from that of the Dy. S.P. (Legal) to the Dy. Legal Advisor and the Head of Branch, the grounds for the delay have been mentioned with specific dates.

7. In *Postmaster General and Others vs. Living Media India Limited and Another*¹, the Hon'ble Supreme Court while dismissing the prayer for condonation of delay cautioned the Government departments to perform their duties with diligence and commitment was of the following view;

"29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

This observation ought to be in the know of every Government department.

8. That having been extracted above, it may be reiterated that the requirement of law is that the applicant has to satisfy the Court that sufficient cause prevented him from approaching the Court within the period of limitation.

¹ (2012) 3 SCC 563

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9. The Court is to gauge the *bona fides* of the applicant and to assess whether there was any negligence or lethargy on the part of the party concerned.

10. In *Collector, land Acquisition, Anantnag and Another vs. Mst. Katiji and Others*² the Hon'ble Supreme Court held as follows;

"3.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

11. Bearing the above in mind, what can be gleaned from the grounds put forth in the instant case is that the delay was

² (1987) 2 SCC 107

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attributable to the size of the department and number of officers that the File had to reach before final approval could be granted. Although the Petitioner herein being a Government department ought to have been diligent in ensuring that the File movement was monitored to adhere to the prescribed period of limitation, nevertheless I find that the delay has been sufficiently explained with dates furnished to substantiate the grounds.

12. Delay stands condoned.

13. Consequently, the application is allowed and disposed of.

(Meenakshi Madan Rai)
Judge
27-06-2018

Approved for reporting : **Yes**

Internet : **Yes**