

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

DATED : 13TH APRIL, 2016

D. B. : HON'BLE MR. JUSTICE SUNIL KUMAR SINHA, CHIEF JUSTICE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.M.Appl. No.09 of 2015
in
Crl.A. No.04 of 2015 (Jail Appeal)

Appellant : Suraj Rai @ Suresh,
S/o Dhan Bahadur Rai,
R/o Chissopani,
South Sikkim.
[Presently in Central Prison,
Rongyek, East Sikkim]

versus

Respondent : State of Sikkim
through the Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.

Application under Section 5 of
the Limitation Act, 1963

Appearance

Mr. N. Rai, Senior Advocate (Senior Legal Aid Counsel) with Ms. Tamanna Chhetri, Advocate (Legal Aid Counsel) for the Appellant.

Mr. J. B. Pradhan, Public Prosecutor with Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Public Prosecutors for the State.

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O R D E R

Meenakshi Madan Rai, J.

1. The instant Application has been filed by the Appellant seeking condonation of delay for a period of 14 years and 7 months in filing the Appeal against the Judgment and Order of Sentence of the Learned Court of Sessions (S & W) Sikkim at Namchi, dated 11-08-2000 in Criminal Case No.9 of 1996.

2. For clarity, the sequence of events before this Court is narrated hereunder;

On hearing the Senior Counsel for the Appellant, it emerged that he had been engaged through the Sikkim State Legal Services Authority on 27-11-2014 and had filed the Appeal on 05-03-2015 whereas the impugned Judgment and Order on Sentence was dated 11-08-2000. No records being available before this Court to indicate what transpired between 11-08-2000 till November, 2013, i.e., the date of re-arrest of the Appellant, the Senior Counsel sought sometime to clarify. This was done on 26-05-2015 and taken on record wherein the main ground urged for seeking condonation of delay was that a copy of the impugned Judgment and Order were not supplied to the Appellant. As no endorsement appeared either in the original Judgment or in the relevant Order Sheet of the Learned Trial Court on this aspect, a Report was called for from the

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concerned Court seeking clarification. A Report was submitted by the Learned Sessions Judge on 05-08-2015 based on the records before him, explaining that a certified copy of the Judgment was made over to the Counsel of the Accused/Appellant Shri Bandhan Rai on 21-08-2000 pursuant to his application dated 18-08-2000.

3. On the prayer of the Learned Senior Counsel to file some documents in support of his application seeking condonation, this was allowed and on 05-03-2016 he filed an application duly supported by an affidavit sworn by Advocate Shri Bandhan Rai to the effect that after he submitted an application on 18-08-2000 for supply of certified copy of the impugned Judgment and it was made over him on 21-08-2000. Thereafter, he remained out of touch with the Appellant who was at the State Jail at Gangtok, as such, he could not send the certified copy of the Judgment to him.

4. While placing his verbal submissions, Learned Senior Counsel contended that apart from non-receipt of the impugned Judgment and Order by the Appellant, the delay also occurred as the Sikkim State Legal Services Authority appointed him on 27-11-2014 and copy of the case records for preparing the Appeal was made over to him on 02-01-2015 after which he took some time to prepare the matter. That the Appellant once committed to Jail, was told by inmates that he would be incarcerated for life on which after jail breaking he fled therefrom the Jail on 12-10-2000. That, he went to

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Taplayjung in Nepal, spent three years therein, obtained a Nepalese Passport and left for Malaysia, where he worked as a Carpenter for two and half years and returned to Nepal. He spent another year in Nepal before leaving for Dubai where he worked for another four years. In the year 2000, on his return to Nepal and being unable to live there, returned to Sikkim in 2010 and lived in Sombaria, West Sikkim, from where he shifted to Jorethang, South Sikkim. On 01-11-2013, when he was in a Bank at Jorethang he was re-arrested, produced before the Learned Trial Court, and on 02-11-2013 committed to the State Jail to serve out his sentence. That, as he remained in the Jail, he was unable to assist the Counsel in collecting the files to enable drafting of the Appeal which was another of the reasons for the delay in the instant Appeal.

5. Learned Senior Counsel for the Appellant while urging his ground for condonation drew the attention of this Court to the decisions in *Madhav Hayawadanrao Hoskot* vs. *State of Maharashtra*¹ and *Dilip S. Dahanukar* vs. *Kotak Mahindra Co. Ltd. and Another*² and submitted that the right to Appeal is implicit in Article 21 of the Constitution of India which provides that no person shall be deprived of his life and liberty except according to procedure established by Law.

6. The Learned Public Prosecutor refuting the grounds put forth by the Learned Senior Counsel submitted that the Appellant

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1. (1978) 3 SCC 544
2. (2007) 6 SCC 528

has failed to set out '*sufficient cause*' for the delay as breaking Jail and fleeing, when sentenced for a crime, is no ground for seeking condonation of delay for a long period extending to 14 years and 7 months, for most of which he remained out of the country. Besides he has misled the concerned Authorities by his acts of obtaining Nepalese Passport and travelling abroad when he was not entitled to it. On his return to Sikkim in 2010, he did not deem it necessary to surrender before the Police but remained at large and was re-arrested at Jorethang, South Sikkim on 01-11-2013 by the Police and produced before the Court on 02-11-2013. Thus, the application being devoid of merit ought to be dismissed outright.

7. We have heard the Learned Counsel at length and given due consideration to the rival contentions.

8. Vide the impugned Judgment and Order on Sentence dated 11-08-2000 of the Learned Sessions Judge (S & W) in Namchi in Criminal Case No.9 of 1996, the Appellant was convicted under Section 302 of the Indian Penal Code, 1860 (for short "IPC") and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/- (Rupees two thousand) only, in default, to undergo further imprisonment of two months. He was further convicted under Section 201 of the IPC and sentenced to undergo

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imprisonment for four years and to pay a fine of Rs.1,000/- (Rupees one thousand) only, with a default clause of imprisonment.

9. While addressing the arguments of Senior Counsel for the Appellant it has to be stated that the facts in ***Dilip S. Dahanukar***² are distinguishable from the facts in the instant case *inasmuch* as in that case the Appellants had been convicted under Section 138 of the Negotiable Instruments Act, 1881. On appeal against the Judgment, the Appellants were directed to deposit a sum of Rs.5,00,000/- (Rupees five lakhs) only, each within four weeks of the date of order. Before the Hon'ble Apex Court it was agitated that the right to prefer an Appeal being a constitutional right in terms of Article 21 of the constitution of India, no condition could have been imposed in respect thereof or for suspension of sentence. No question of delay had arisen there contrary to the case in hand here.

10. What requires consideration, therefore, is whether the conduct of the Appellant was *bona fide* and whether he has been able to establish '*sufficient cause*' for his delay to be condoned.

11. It has been laid down in ***Collector, Land Acquisition, Anantnag and Another*** vs. ***Mst. Katiji and Others***³ that everyday's delay must be explained does not mean that a pedantic approach should be made but there should be a justice-oriented approach. In sum and substance this means that Courts are to give priority to meting out justice on the merits of a case. At the same time one

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3. (1987) 2 SCC 107

cannot overlook the aspect that the *bona fides* of the Appellant has to be looked into by the Court.

12. In *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others*⁴ 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.

13. It may also be pointed out that the Apex Court in *Basawaraj & Another vs. Special Land Acquisition Officer*⁶ while relying on the decision of *Madanlal vs. Shyamla*⁶ and *Ram Nath Sao alias Ram Nath Sahu & Others vs. Gobardhan Sao & Others*⁷, held that-

“11. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be

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4. (2013) 12 SCC 649
5. (2013) 14 SCC 81
6. (2002) 1 SCC 535
7. (2002) 3 SCC 195

imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible.

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "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." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."

[emphasis supplied]

14. Bearing the above in mind, although an argument may be raised that the Judgment and Order of Sentence was not made over to the Appellant on the date of pronouncement and his Counsel subsequently applied for it on 18-08-2000 and copy was received by him on 21-08-2000, it is no one's case that the said Counsel did not represent the Accused when the Counsel had applied for a copy. It is assumed that he has acted under the instructions of the Appellant. It is also no one's case that the Appellant himself was not present in the Court, which would in any event be an incongruous situation, the very fact of his presence implies his knowledge of the assailed Judgment and Sentence. Delay of 14 years and 7 months has largely been due to the conduct of the Appellant, i.e., of him having broken

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the Jail and escaped pursuant to which he embarked on his adventure of living outside the country on a Passport to which he was not legally entitled. This point not being the subject-matter of discussion is not being delved into.

15. Thereafter, it is also evident that although he returned to Sikkim in the year 2010 and engaged himself in doing petty contracts he failed to let his conscience rule him and surrender either before the Police or before the convicting Court. Hence, the conduct of the Appellant is by no means beyond reproach. Consequently, although this Court is conscious that the Appellant has statutory and substantive rights under Article 21 of the Constitution of India, however, this Court while exercising discretionary powers, has to give due weight to the legal position as postulated in *Basawaraj*⁵ as also the statutory provisions which cannot be expanded to accommodate the Appellant.

16. In conclusion, from the discussions hereinabove, the conduct of the Appellant does not reveal any *bona fides* consequently, we are constrained to and do reject the application for condonation of delay.

17. Ordered accordingly.

(Meenakshi Madan Rai)

(Sunil Kumar Sinha)

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Judge
13-04-2016

Chief Justice
13-04-2016

Approved for reporting : **Yes**

Internet : **Yes**

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