

HIGH COURT OF SIKKIM
Record of proceedings

Crl. A. No. 05 of 2018

Tshering Tempa Sherpa

.... Appellant (s)

Versus

State of Sikkim

.... Respondent (s)

Date:18.04.2018

CORAM

HON'BLE MR. SATISH KUMAR AGNIHOTRI, CHIEF JUSTICE
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.

For Appellant (s) : Mrs. Gita Bista and Ms. Anusha Basnet,
Advocates.

For Respondent (s) : Mr. Karma Thinlay and Mr. Thinlay Dorjee
Bhutia, Addl. Public Prosecutor with Mrs. Pollin
Rai, Assistant Public Prosecutor.

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I.A. No. 01/2018

1. The present application is preferred under Section 5 of the Limitation Act, 1963 praying for condonation of delay of 53 days in filing the statutory appeal against the judgment and order on sentence dated 05.12.2017 passed by the Learned Special Judge, Protection of Children from Sexual Offences Act, 2012 (POCSO). The Learned Special Judge has convicted the Applicant under Section 376 (2) (n) and 376 (2) (l) of the Indian Penal Code, 1860 (IPC) and sentenced him to undergo rigorous

imprisonment of 10 years and to pay a fine of Rs.5000/- (Rupees five thousand) for both the offences. It is pleaded that the applicant is 70 years of age.

2. The delay of 53 days in filing this appeal is explained by the Applicant stating that vide reference No.3708/SLSA/250 dated 11.02.2018 the Sikkim State Legal Services Authority (SSLSA) appointed Shri N. B. Khatiwada, Learned Senior Advocate along with Mrs. Gita Bista, Learned Advocate to conduct the case for the applicant before this Court. It is pleaded that the case papers were received by the Counsel for the applicant on 15.02.2018. Due to the pre-occupation of the Counsel for the applicant with some urgent matters, the appeal could not be prepared on time and the Counsel started preparing the appeal only on 01.03.2018 and was completed within two days. As the Learned Senior Advocate was out of station from 10.02.2018 till 23.03.2018 the draft petition prepared by the Learned Counsel could be vetted only on 23.04.2018 by the Learned Senior Advocate who had been appointed by the SSLSA. The 25th and 26th of March, 2018 being Government holidays the appeal could be filed only on 27.03.2018. It is pleaded that after the receipt of the appointment letter till the filing of the appeal there is a delay of only 41 days.

3. The Respondent-State has filed a reply to the application seeking condonation of delay. The failure of the applicant to disclose on which date he had approached the SSLSA for appointment of Legal Aid Counsel is one of the grounds taken in the said reply. It is also submitted that there is no pleading explaining the events which took place from the date of the judgement till the date of the appointment of Legal Aid Counsel from SSLSA. The Respondent-State also submits that the applicants failure to show sufficient cause for delay for the period 11.02.2018 i.e. the date of appointment letter to 15.02.2018 i.e. the receipt of the appointment letter as well as the applicants failure to show sufficient cause for the period of 24 days from 01.03.2018 i.e. the date on which the Counsel started drafting and 24.03.2018 i.e. the date on which the Learned Senior Advocate vetted the draft appeal should also be considered for the purpose of the present issue.

4. Heard Mrs. Gita Bista for the applicant as well as Mr. Karma Thinlay, Additional Public Prosecutor for the Respondent-State. The Learned Counsel for the applicant reiterated the pleadings in the application for condonation of delay and submitted that the delay is not deliberate but due to unavoidable circumstances beyond the control of the Counsel for the applicant. The Learned Senior Government Advocate very fairly submitted that as

the delay seems to have been on account of the Counsel the said delay may be condoned.

5. The applicant is a 70 years of old man convicted for commission of a heinous crime and sentence to 10 years of rigorous imprisonment. The appeal preferred is a statutory appeal. From the pleadings in the application for condonation of delay it seems quite clear that the delay in preferring the appeal is not for any wanton reason attributable to the applicant. The applicant has been in judicial custody since 31.03.2016. The failure, in such circumstances, to minutely explain every days delay may not lead to a conclusion that the delay is deliberate, wanton and not condonable.

6. In the circumstances, we are of the considered view that the present application seeking condonation of delay must be allowed and the appeal heard on merits. I.A. No. 01 of 2018 is allowed and disposed off.

7. Admit. Requisition lower Courts records.

8. Registry is directed to prepare the paper-book at the earliest.

Judge
18.04.2018

Chief Justice
18.04.2018

Approved for reporting: yes.
Internet: yes.