

**HIGH COURT OF SIKKIM**

Record of Proceedings

**I.A No.01/2018  
IN  
Crl. A No.06/2018**

ARUN RAI ..... Appellant.

VERSUS

STATE OF SIKKIM ..... Respondent.

Date: 04/05/2018

CORAM :

**HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.**

For Appellant : Ms. Gita Bista, Legal Aid Counsel.  
For Respondent : Mr. Thinlay Dorjee Bhutia, Addtl. Public  
Prosecutor and Mr. S.K Chettri, and Ms.  
Pollin Rai, Assistant Public Prosecutor.

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**ORDER**

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 79 days for filing the appeal before this Court filed on 28.03.2018. Subsequently, a further affidavit dated 28.04.2018 has been filed by the Appellant in which it is pleaded that there is a delay of 75 days only if calculated as per the mandate of the limitation Act, 1963.

2. The State Respondent has filed a reply dated 03.05.2018 contesting the said application for condonation of delay.
3. Heard Ms. Gita Bista, learned Legal Aid Counsel for the Appellant and Mr. S.K Chettri, learned Assistant Government Advocate for the State-Respondent.

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4. As per the affidavit dated 28.04.2018 filed by the Appellant the Counsel for the Appellant visited the office of the Sikkim State Legal Services Authority (SSLA) and the State Central Prison, Rongyek, East Sikkim on 20.04.2018 to gather information about the delay caused in preferring the present appeal. The said affidavit states that in view of the information gathered the following facts have come to light.
5. It is the case of the Appellant that he was convicted on 09.11.2017 and the order on sentence was passed on 13.11.2017. On 15.11.2017 the Appellant made an application before the SSLSA requesting for legal aid Counsel to conduct the case. It is the further case of the Appellant that vide memo no.508/GOS/P/2017 dated 15.11.2017 the Assistant Superintendent / Jailor, State Central Prison, Rongyek, East Sikkim forwarded the copy of the Petition made by the Appellant for grant of legal aid Counsel along with the copy of the Judgment to the SSLSA. On 23.11.2017 the SSLSA issued an appointment letter to Shri Pujan Kharka, Advocate to conduct the case. It is said that on the same date the SSLSA sent a requisition to the Peshkar for supply for certified copy of the records from the Court of Special Judge, (POCSO), West Sikkim to enable the Appellant to file the Appeal. On 28.11.2017 certified copy of the records were received by SSLSA from the Peshkar of the Court of Special Judge (POCSO). Although, the date of application has not been mentioned in the certified copies supplied, the records of the SSLSA clearly reflects that SSLSA had applied for certified copy on 23.11.2017 itself. However, on 01.03.2018 the Counsel for the Appellant, Shri Pujan

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Kharka withdrew from the case and thereafter, the SSLSA issued yet another appointment letter on 07.03.2018 to the present Counsel for the Appellant which was received on 09.03.2018 and the relevant case papers were handed over the said Counsel on 13.03.2018. On receipt of the appointment letter and the case papers from the SSLSA the Counsel for the Appellant completed drafting the Appeal on 18.03.2018 itself. However, the learned Senior Counsel who had also been appointed by the SSLSA to conduct the case before this Court was out of station from 10.02.2018 till 23.03.2018 and thus he could vet the draft petition only on 24.03.2018. The learned Senior Advocate appointed by SSLSA examined the draft petition on 24.03.2018 and vetted the same on the same date. 25.03.2018 and 26.03.2018 being Government holidays the appeal was filed on 27.03.2018.

6. Ms. Gita Bista, learned Counsel for the Appellant would thus submit that the delay caused in preferring the present appeal was neither wanton nor deliberate on the part of the Appellant and in fact was completely out of his control and as such, the delay may be condoned.

7. The State-Respondent has filed a detailed reply dated 03.05.2018 to the application for condonation of delay. It is pleaded that the Appellant has failed to explain sufficiently the delay for the period between 09.11.2017 (i.e. the date of Judgment) to 20.04.2018 (i.e. the date on which the learned Counsel for the Appellant is said to have visited the SSLSA and the State Central Prison pursuant to the order dated 20.04.2018).

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8. The State Respondent also objects to the failure of the Appellant to furnish sufficient cause for the period 23.11.2017 i.e. the date on which Mr. Pujan Kharka, learned Counsel had been appointed by the SSLSA on behalf of the Appellant till 01.03.2018 i.e. the date on which Mr. Pujan Kharka , learned Counsel withdrew from the case. The reply filed by the State-Respondent further pleads that there has been a failure on the part of the Appellant to show sufficient cause for the period 18.03.2018 i.e. the date on which the learned Counsel for the Appellant completed drafting the Appeal till 24.03.2018 i.e. the date on which the learned Senior Counsel for the Appellant returned to Gangtok.
9. A perusal of the detailed affidavit filed by the Appellant on 28.04.2018 in support of the application for condonation of delay filed on 27.03.2018 makes it evident that the delay caused indisputably was beyond the control of the Appellant. The delay has been well explained. The reply filed by the State-Respondent fails to canvas any valid objection to the explanation provided by the Appellant.
10. In view of the aforesaid I.A No.01/2018 is allowed. The delay in preferring the Appeal is condoned and the Appeal is admitted for hearing.

**Judge**

04-05-2018