

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(GCA) No. 3 of 2022

Ref:- GCA No. of 2022

The State of Manipur represented by the Special
Secretary (Home), Government of Manipur, Old
Secretariat, Babupara, Imphal West – 795001.

...Appellant

-Versus-

1. Mr. HS Joy, aged about 62 years, S/o late HS Ruichumhao of Zorcheng Village, P.S. Ukhrul, Ukhrul District, Manipur.
2. Mr. Ngatangmi Kazingmei, aged about 54 years, S/o late K. Ronhung of Zorcheng Village, P.S. Ukhrul, Ukhrul District, Manipur.
3. Mr. Kazingmei Ramngathing @ Ningkhangam, aged about 27 years, S/o K. Alexandar of Zorcheng Village, P.S. Ukhrul, Ukhrul District, Manipur.
4. Mr. Yangmaso Kazongmei, aged about 56 years, S/o late K. Somi of Zorcheng Village, P.S. Ukhrul, Ukhrul District, Manipur.
5. Mr. HS Ningkhalem, aged about 37 years, S/o HS Kahaosan of Zorcheng Village, P.S. Ukhrul, Ukhrul District, Manipur.

6. Mr. Yungching Thumrah, aged about 38 years, S/o late Th. Mathing of Zorcheng Village, P.S. Ukhrul, Ukhrul District, Manipur.
7. Mr. HS Ngamkasung, aged about 45 years, S/o late HS Vachin of Harkui Kathe Colon, P.S. Ukhrul, Ukhrul District, Manipur.

.... Respondents

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN

For the Appellant	::	Mr. Athouba Khaidem, Addl. PP
For the Respondents	::	Mr. Serto T. Kom, Adv.
Date of Hearing and reserving Judgment & Order	::	07.10.2023
Date of Judgment & Order	::	16.10.2023

JUDGMENT AND ORDER
(CAV)

Heard Mr. Athouba Khaidem, the learned Additional Public Prosecutor for the petitioner/State and Mr. Serto T. Kom, the learned counsel for the respondent/accused.

2. This petition has been filed by the petitioner/State under Section 5 of the Limitation Act to condone the delay of 109 days in filing the criminal appeal against the judgment and order dated 7.10.2020 passed in S.T. Case No.6 of 2017 on the file of the Sessions Judge, Ukhrul.

3. Mr. Athouba Khaidem, the learned Additional Public Prosecutor, drawing this Court's attention to various letter correspondence between the office of the Public Prosecutor (High Court of Manipur) and the Deputy Secretary (Law) and the Special Secretary (Home), Government of Manipur so also the letter correspondence between the Additional Public Prosecutor (High Court) and the Superintendent of Police, Ukhrul District, submitted that, vide order dated 5.11.2020, the Deputy Secretary (Law) was pleased to direct the Public Prosecutor (High Court) to prefer an appeal against the judgment dated 7.10.2020 passed in S.T. Case No.6 of 2017. On 11.11.2020, the Additional Public Prosecutor (High Court) was entrusted for preparing the appeal. In this regard, the office of the Additional Public Prosecutor wrote a letter to the Special Secretary (Home) and the Deputy Secretary (Law) to furnish certain documents and also the certified copy of the judgment for preparing the appeal.

4. The learned Additional Public Prosecutor further submitted that during the course of letter correspondence, on 22.7.2022, the Deputy Secretary (Home) wrote a letter to the Additional Public Prosecutor stating that when the file was processed initially on 3.7.2021, no records were available and the file was marked down asking for records to the then concerned

Legal Officer. Thereafter, the records were traced out on 21.7.2022 and requested the Additional Public Prosecutor to prepare the appeal along with application for condonation of delay. On 31.7.2022, the Additional Public Prosecutor wrote a letter to the Deputy Secretary (Home) requesting to return back all the records along with draft affidavit which was sent for swearing for preparing the application for condonation of delay. Finally, the Deputy Secretary (Home) sent all the records, including the draft affidavit on 2.8.2022 and from 2.8.2022, the Additional Public Prosecutor took time for preparation of the application for condonation of delay and the appeal grounds.

5. The learned Additional Public Prosecutor would submit that the Hon'ble Supreme Court passed an order dated 10.1.2022 in Suo-motu W.P.(C) No.3 of 2020 thereby directed that the period from 15.3.2020 till 28.2.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

6. According to the learned Additional Public Prosecutor, while computing the period of limitation from the date of passing the impugned judgment dated 7.2.2020 till the date of filing the appeal, there is an unavoidable delay of 109 days after

the deduction of the statutory period of 90 days as provided under Article 114 of the Schedule of Limitation Act. According to the learned Additional Public Prosecutor, the delay is neither wilful nor wanton. If the said delay is not condoned, the petitioner/State would put to much prejudice and, if the delay is condoned, no prejudice would be caused to the respondent. Thus, a prayer has been made to condone the delay of 109 days in filing the appeal. In support of his submissions, the learned Additional Public Prosecutor placed reliance upon the following decisions:

- (i) *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others*, (2013) 12 SCC 649
- (ii) *Collector, Land Acquisition, Anantnag and another v. Katiji and others*, (1987) 2 CC 107
- (iii) *State of Nagaland v. Lipok AO and others*, (2005) 3 SCC 752

7. Per contra, Mr. Serto T. Kom, the learned counsel for the respondent submitted that the petitioner has not shown any acceptable explanation of 109 days which is no doubt short but the shortest range may be uncondonable due to want of acceptable explanation. The explanation given in the petition, i.e. the file was processed initially on 3.7.2021 and no record of the

case was available and the file was marked down asking for records to the then concerned Legal Officer but the same could be traced only on 21.7.2022 and only then a request was made for preparing the application praying for condonation of delay, is not sufficient cause for the delay. In fact, the petitioner/State has failed to show that they have acted with reasonable diligence in prosecuting the appeal, inasmuch as the State has failed to act for more than one year from 3.7.2021 i.e. the date when the file is processed initially without the case record until the file is said to be traced on 21.7.2022. In fact, no sincere effort was taken to trace out the case record during the said period.

8. The learned counsel for the respondent further submitted that no reasonable statement can be expected to explain the delay when in fact no sincere and continuous effort was given to trace out the said missing case records for filing the appeal. Thus, a prayer has been made to dismiss the petition. In support, the learned counsel has placed reliance upon the following decision.

(i) *N.Balakrishnan, v. M.Krishnamurthy*,
(1998) 7 SCC 123.

(ii) *State of Nagaland v. Lipok AO and others*, (2005) 3 SCC 752.

9. This Court considered the rival submissions and also perused the materials available on record.

10. The petitioner/State has filed the present petition seeking to condone the delay of 109 days in filing the criminal appeal against the order dated 7.10.2020 passed by the learned Sessions Judge, Ukhruil in S.T. Case No.6 of 2017 on the ground that when the file was processed initially on 3.7.2021, no records of the case was available and the file was marked down asking for records to the then concerned Legal Officer and finally the records were traced out on 21.7.2022 and thereafter filed the appeal with a delay. According to the petitioner/State, the delay is neither wilful nor wanton and if the delay is not condoned, the State will put to much hardship. There are arguable points in the appeal.

11. Refuting the submission of the learned Additional Public Prosecutor, the learned counsel for the respondent submitted that the State has not shown any acceptable explanation of 109 days delay and the State ought to have acted with reasonable diligence in prosecuting the appeal. In support, the learned counsel relied upon the decisions of the Hon'ble Supreme Court in the cases of *N.Balakrishnan and Lipok Ao*, supra.

12. In *N.Balakrishnan*, supra, the Hon'ble Supreme Court held:

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

13. In *Lipok Ao*, supra, the Hon'ble Supreme Court held:

"8. The proof by sufficient cause is a condition precedent for exercise of the extraordinary restriction (sic discretion) vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances

to be taken into account in using the discretion. In *N. Balakrishnan v. M. Krishnamurthy* [(1998) 7 SCC 123 : AIR 1998 SC 3222] it was held by this Court that Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the court has to go in the position of the person concerned and to find out if the delay can be said to have resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case as sufficient. Although no special indulgence can be shown to the Government which, in similar circumstances, is not shown to an individual suitor, one cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motion of its wheels.

9. What constitutes sufficient cause cannot be laid down by hard-and-fast rules. In *New India Insurance Co. Ltd. v. Shanti Misra* [(1975) 2 SCC 840] this Court held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression “sufficient cause” should receive a liberal construction. In *Brij Indar Singh v. Kanshi Ram* [ILR (1918) 45 Cal 94 : AIR 1917 PC 156] it was observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In *Shakuntala Devi Jain v. Kuntal Kumari* [(1969) 1 SCR 1006 : AIR 1969 SC 575] a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved,

the application must not be thrown out or any delay cannot be refused to be condoned.

14. Application under Section 5 of the Limitation Act is to be construed liberally so as to do substantial justice to the parties. In the present petition for condonation of delay, the petitioner/State has stated the cause for the delay, which is the sufficient cause.

15. The question as to what would be held to be sufficient cause while considering the application for condonation of delay came up for consideration in the case of *Esha Bhattacharjee*, supra, wherein upon considering the obligation of the Court while dealing with an application for condonation of delay and the approach to be adopted while considering the grounds for condonation, the principles to be applied were summarized by the Hon'ble Supreme Court as under:

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper

spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

21.4. (iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

21.5. (v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6. (vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

21.7. (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. (ix) *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.

21.10. (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. (xi) *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.*

21.12. (xii) *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.*

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

16. In *Katiji*, supra, the Hon'ble Supreme Court held:

"3. *The legislature has conferred the power to condone delay by enacting Section 5 [Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed*

by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

- “1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. **Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.**
3. **“Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.**
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or

on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

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.”

(emphasis supplied)

17. In *Lipok Ao*, supra, at paragraph (15), the Hon'ble Supreme Court held thus:

“15. It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay — intentional or otherwise — is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression “sufficient cause” should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for

explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants."

18. Refusal to condone the delay would result in denying the State in preferring the appeal against the judgment of acquittal. There is no presumption that delay in approaching the Court is always deliberate. As held by the Hon'ble Supreme Court, the

word “sufficient cause” under Section 5 of the Limitation Act should receive liberal construction so as to advance substantial justice.

19. The petitioner/State is not to gain by delay. The reasons are spelt out in the petition. It is trite that if the technical considerations and cause for substantial justice are pitted against each other, the cause for substantial justice has to be sub-served.

20. Applying the aforesaid principles to the case on hand, it would be seen that the present petition seeking condonation of delay spelt out the reasons for the delay in filing the appeal and the reasons specified in that regard could not be held to be insufficient and no want of bona fides could have been imputed to the State. In fact, most of the delay period covers with Covid pandemic and in this regard, the Hon’ble Supreme Court also excluded the delay for the period from 15.3.2020 till 28.2.2022 in Suo-motu Writ Petition (C) No.3 of 2020 dated 10.1.2022 and after excluding the aforesaid period, the Hon’ble Supreme Court fixes the limitation period by saying all persons shall have a limitation period of 90 days from 1.3.2022. The petitioner/State has also filed calculation sheet along with the petition showing the number of days delay. In the given facts and circumstances of the case, this Court is of the view that liberal approach has to be adopted in the present case and the delay has been sufficiently

explained by giving adequate reasons. The present petition ought not to be rejected on some hyper technical reasoning, as contended by the respondent. That apart, the petitioner/State has shown sufficient cause for the delay.

21. For all the reasons stated above and having satisfied with the explanation for the delay, this Court is inclined to condone the delay of 109 days in filing the appeal. Accordingly, the delay of 109 days in filing the criminal appeal is condoned and MC (GCA) No.3 of 2022 is allowed.

22. The Registry is directed to number the appeal if it is otherwise in order and post the matter in motion on 19.10.2023.

ACTING CHIEF JUSTICE

FR/NFR

Sushil