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State vs.upender & Ors.

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Court : Delhi

Decided On : Aug-30-2017

Appellant : State

Respondent : Upender & Ors.

Judgement :

$~1, 2 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Judgment:

30. h August, 2017 CRL.L.P. 275/2014 STATE Through Ms. Radhika Kolluru, APP for the .....

... Petitioner
State with Inspr. Arvind Sharma, P.S. R. K. Puram versus UPENDER & ORS. .....

... RESPONDENTS
Through Mr. Rajender Singh, Advocate for R- 1, 5 and 8. Mr. J.

P. Sengh, Sr. Advocate with Mr. Nikilesh R. , Mr. Navdeep Vain, Ms. Maisha, Mr. Archana Gupta and Ms. Vailashai Tanwar, Advocate for R-4 Mr. Mohd. Talha, Advocate for R-7 + CRL.L.P. 121/2016 RAMPHAL Through Mr. P. K. Dey, Ms. Shreyasi, ...

... Petitioner
versus Chakrborty and Ms. Shilpi Dey, Advocates STATE GOVT. OF NCT OF DELHI & ORS. .....

... RESPONDENTS
Through Ms. Radhika Kolluru, APP for the State with Inspr. Arvind Sharma, P.S. R. K. Puram Mr. Mohd. Talha, Advocate for R-8 Mr. Shakeel Sarwar Wavi, Advocate for R-4/Davinder Sharma Mr. J.

P. Sengh, Sr. Advocate with Mr. Nikilesh R. , Mr. Navdeep Vain, Ms. Maisha, Mr. Archana Gupta and Crl. L.P.275/2014 etc. Page 1 of 12 CORAM: Ms. Vailashai Tanwar, Advocate for R-5 HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE CHANDER SHEKHAR G.S.SISTANI, J.

(ORAL) Crl.L.P. 121/2016 1. We have heard the learned counsel for the parties in detail. Having regard to the testimonies of various witnesses, we are of the considered view that the matter requires consideration.

2. 3. Accordingly, the leave to appeal is allowed. Let it be registered as a criminal appeal. Crl.A. /2017(to be registered) 4.

5. 6.

7. Admit. Learned counsels for the respondents accept notice of admission. Trial Court record be requisitioned. Paper books be prepared.

... RESPONDENTS
shall furnish a personal bond in the sum of Rs.20,000/- each with one surety each of the like amount to the satisfaction of the Registrar (Appellate).

8.

... RESPONDENTS
to appear before the Registrar (Appellate) on 16.10.2017. Crl.M.A.Nos. 6073/2014(delay) and Crl.M.A.6074/2014(delay in refiling) in Crl.L.P.275/2014 9. These two applications are filed by the State seeking condonation of 395 days delay in filing the leave to appeal and 87 days delay in refiling the appeal. The State seeks condonation primarily on administrative reasons. The application seeking condonation of delay Crl. L.P.275/2014 etc. Page 2 of 12 reveals that after the impugned order was passed on 23.08.2012, opinion was given by the APP on

11.09.2012 and the file was marked to the office of PP who then rendered his opinion on 14.09.2012. The PP was of the opinion that the grounds of appeal should be elaborated upon. Thereafter, the APP made the necessary corrections and the file was sent back to the office of PP on 21.09.2012. Thereafter, the file was marked to the office of Commissioner of Police, who appended his opinion on 25.09.2012. The file was returned back to the office of PP on 28.09.2012. Further clarification was sought. After the clarification and additional documents were appended, file was sent to the office of PP on 06.10.2012. The file was marked to Commissioner of Police on 10.10.2012. Thereafter, the file was marked to the DOP on 11.10.2012 and the file was sent to the office of Private Secretary(L&J) on 19.10.2012. The file was thereafter marked to ALA(II) and the ALA(Law & Justice), GNCT of Delhi vide letter dated 09.11.2012 sent the file to the office of DOP. Thereafter, the file was sent to the office of DCP on 20.11.2012. Thereafter, the file travelled to the Legal Cell and then sent to the office of Standing Counsel(Crl) on 17.09.2013 when the file was marked to the Additional Standing Counsel and after the preparation of the leave to appeal, the same was sent for signatures on 07.11.2013 and the file was received back on 19.12.2013.

10. Counsel for the State submits that throughout the period, the file was under active consideration. It is further contended that the State has a strong case on merits, besides the fact that the brother of the victim has also filed a leave to appeal, which is listed today, and after detailed Crl. L.P.275/2014 etc. Page 3 of 12 hearing, the leave to appeal has been allowed. Thus, it is submitted that no prejudice would cause to the respondents and the matter requires consideration.

11. Learned counsel for respondents has vehemently opposed the application seeking condonation of delay. It is submitted that there are no reasonable cogent reasons seeking condonation of delay as the State was well aware about the pendency of Crl.A.1415/2012 which was filed by Ramphal, being the brother of the deceased which was later on registered as Crl.L.P.121/2016. Leaned counsel for the respondents further submits that the application is mechanical in nature.

12. Learned counsel appearing for respondent no.4, Devinder Sharma has placed reliance on the judgment in the case of Dwarka Dass and Others v. State of

Haryana, (2003) 1 SCC204paragraphs 2, 3, 4 and 13. Reliance is also placed on the judgment in the case of Delhi Administration v. Ashok Solomn, 1194 (29) DRJ (DB) where the delay of 12 days in filing of appeal by the State was not allowed by the Court.

13. We have heard the learned counsel for the parties and given our thoughtful consideration to the matter.

14. At the outset, we may note that a leave to appeal has also been filed by the brother of the victim, whereof detailed arguments were heard. We have allowed that leave to appeal and directed registration of a criminal appeal.

15. In the case of Office of the Chief Post Master General and Ors. v. Living Media India Ltd. & Anr, reported at AIR 2012 SC1506 the Crl. L.P.275/2014 etc. Page 4 of 12 Supreme Court has laid stress on the fact that it is high time that a message be sent to the Government bodies that unless there is reasonable and acceptable explanation for the delay, the usual explanation of file being kept pending would not be acceptable. We may further notice that in the case of Office of the Chief Post Master General and Ors. (supra) the delay was more than 427 days. We may also notice that one of the prime reasons for not condoning delay in the aforesaid matter was that even the certified copy was not applied for a period of nearly four months; and there was no explanation for such a lapse.

16. While there is no quarrel with the proposition that in order to succeed in an application filed under Section 5 of the Limitation Act an applicant must satisfy the Court that he was prevented by sufficient cause in filing the appeal within the period of limitation. It has also been held that delay must not be on account of any inaction or negligence on behalf of the appellant. Delay in filing appeals has been a subject matter of decision before the Apex Court in a large number of cases. It has been inter alia held by the Apex Court that Section 5 of the Limitation Act is to be construed liberally so as to do substantial justice to the party. It would be useful to refer to another decision of the Apex Court in the case of State (NCT of Delhi) v. Ahmed Jaan, reported at (2008) 14 Supreme Court Cases 582. Relevant portion of the judgment reads as under:

"11.

"8. The proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency Crl. L.P.275/2014 etc. Page 5 of 12 to be taken in using into account of the cause and shortness of the delay is one of the circumstances the discretion. In N. Balakrishnan v. M. Krishnamurthy (AIR 1998 SC3222 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 been 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) SCC840 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 (PC) it was observed that true guide for a court to exercise the appellant acted with reasonable diligence in prosecuting the appeal. In Shakuntala Devi Jain v. Kuntal Kumari(AIR 1969 SC575 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. the discretion under Section 5 is whether 10. In Concord of India Insurance Co. Ltd. v. Nirmala Devi [(1979) 4 SCC365 which is a case of negligence of the counsel which misled a litigant into delayed pursuit of his remedy, the default in delay was condoned. In Lala Mata Din v. A. Narayanan [(1969) 2 SCC770, this Court had held that there is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is always a question whether the mistake was bona fide or

was Crl. L.P.275/2014 etc. Page 6 of 12 merely a device to cover an ulterior purpose. In that case it was held that the mistake committed by the counsel was bona fide and it was not tainted by any mala fide motive.

11. In State of Kerala v. E. K. Kuriyipe (1981 Supp SCC72, it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependent upon the facts and circumstances of the particular case. In Milavi Devi v. Dina Nath [(1982) 3 SCC366, it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.

12. In O. P. Kathpalia v. Lakhmir Singh [(1984) 4 SCC66, a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In Collector Land Acquisition v. Katiji [(1987) 2 SCC107, a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression sufficient cause is adequately elastic to enable the court 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. This Court reiterated that the expression/every day's delay must be explained does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense, pragmatic manner. 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. There is no presumption that delay is Crl. L.P.275/2014 etc. Page 7 of 12 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. Judiciary is not respected on account of its power to legalise 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. The delay was accordingly condoned.

13. 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. The State which represents 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 of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay was accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In Prabha v. Ram Parkash Kalra (1987 Supp SCC339, this Court had held that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law.

14. In G. Ramegowda v. Spl. Land Acquisition Officer (1988 (2) SCC142, it was held that no general principle saving the party from all mistakes of its counsel could be laid. The Crl. L.P.275/2014 etc. Page 8 of 12 receive a expression sufficient cause must liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the

interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross - purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have a little play at the joints. Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned. Crl. L.P.275/2014 etc. Page 9 of 12 It latitude the functioning of is axiomatic that decisions are 15. taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on 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 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 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 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-a-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 State is an impersonal machinery working through its officers or servants."

The above position was highlighted in State of Nagaland v. Lipok AO and Ors. [(2005) 3 SCC752(SCC PP757760, paras 8 to 15].; Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma [(1996) 10 SCC634; and State of Haryana v. Chandra Crl. L.P.275/2014 etc. Page 10 of 12 Mani [(1996) 3 SCC132. It was noted that adoption of strict standard of proof sometimes fail to protract public justice, and it would result in public mischief by skilful management of delay in the process of filing an appeal."

17. Applying the law laid down by the Apex Court to the facts of the present case, we are satisfied that the State has been able to render a satisfactory explanation for condonation of 395 days delay in filing the present appeal. The respondents have been unable to show that this application lacks bona fide or that there is negligence on the part of the State. We are also satisfied that in case delay is not condoned the same would result in miscarriage of justice.

18. Additionally, as noted above, we are of the view that no prejudice would cause to the respondents herein as the leave to appeal arising out of the same judgment filed by the brother of the victim has been allowed.

19. Accordingly, for the reasons aforesaid, the applications are allowed. Delay in filing the leave to appeal and refiling the appeal is condoned.

20. The applications stand disposed of. Crl.L.P. 275/2014 21. We have heard the learned counsel for the parties in detail. Having regard to the testimonies of various witnesses, we are of the considered view that the matter requires consideration.

22. Accordingly, the leave to appeal is allowed.

23. Let it be registered as a criminal appeal. Crl.A. /2017(to be registered) 24. Admit.

25. Learned counsels for the respondents accept notice of admission. Crl. L.P.275/2014 etc. Page 11 of 12 26. Directions with regard to preparation of paper book have already been issued in the connected matter. G.S.SISTANI, J.

CHANDER SHEKHAR, J.

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