CASE NO.:
Appeal (crl.) 484 of 2005

PETITIONER:
State of Nagaland

RESPONDENT:
Lipok AO & Ors.

DATE OF JUDGMENT: 01/04/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P. (Crl.) 4612 of 2003

ARIJIT PASAYAT, J.

Leave granted.

The State of Nagaland questions correctness of the judgment rendered by a learned Single Judge of the Gauhati High Court, Kohima Bench refusing to condone the delay by rejecting the application filed under Section 5 of the Limitation Act, 1963 (in short the 'Limitation Act') and consequentially rejecting of application for grant of leave to appeal. Before we deal with the legality of the order refusing to condone the delay in making the application for grant of leave, a brief reference to the factual background would suffice

Application for grant of leave was made in terms of Section 378 (3) of the Code of Criminal Procedure, 1973 (in short the 'Code'). A judgment of acquittal was passed by learned Additional Deputy Commissioner (Judicial) Dimapur, Nagaland. The judgment was pronounced on 18.12.2002. As there was delay in making the application for grant of leave in terms of Section 378(3) of the Code, application for condonation of delay was filed. As is revealed from the application for condonation, copy of the order was received by the concerned department on 15th January, 2003; without wasting any time on the same date the relevant documents and papers were put up for necessary action before the Deputy Inspector General of Police, (Head quarters), Nagaland. On the next day, the said Deputy Inspector General considered the matter and forwarded the file for consideration to the Deputy Inspector General of Police (M&P), Nagaland. Unfortunately the whole file along with note sheet were found missing from the office and could not be traced in spite of best efforts made by the department. Finally it was traced on 15.3.2003 and the file was put up for necessary action by the Additional Director General of Police (Headquarter) Nagaland. The said officer opined that an appeal was to be filed on 26.3.2003, and finally the appeal was filed after appointing a special Public Prosecutor. When it was noticed that no appeal had been filed, the Secretary to the Department of Law and Justice, Government of Nagaland got in touch with the Additional General, Gauhati High Court regarding the filing of the appeal and in fact the appeal was filed on 14.5.2003. It is of relevance to note that in the application for condonation of delay it was clearly noted that when directions were given to reconstruct the

file, missing file suddenly appeared in the office of Director General of Police, Nagaland.

In support of the application for condonation of delay, it was submitted that the aspects highlighted clearly indicated that the authorities were acting bonafide and various decisions of this court were pressed into service to seek condonation of delay. High Court, however, refused to condone the delay of 57 days on the ground that it is the duty of the litigant to file an appeal before the expiry of the limitation period. Merely because the Additional Advocate General did not file an appeal in spite of the instructions issued to him, that did not constitute sufficient cause and further the fact that the records were purportedly missing was not a valid ground. It was noted that merely asking the Additional Advocate General to file an appeal was not sufficient and the department should have pursued the matter and should have made enquiries as to whether the appeal had in fact, been filed or not. Accordingly the application for condonation of delay in filing the appeal was rejected and consequentially the application for grant of leave was rejected.

Learned counsel appearing for the appellant\026State submitted that the approach of the High Court is not correct and in fact it is contrary to the position of law indicated by this Court in various cases. In the application for condonation of delay the various factors which were responsible for the delayed filing were highlighted. There was no denial or dispute regarding the correctness of the assertions and, therefore, the refusal to condone the delay in filing application is not proper. It has to be noted that police officials were involved in the crime. The background facts involved also assume importance. As the police officers attached to a Minister had allegedly killed two persons, therefore, the mischief played by some persons interested to help the accused colleagues could not have been lost sight of. There is no appearance on behalf of the respondent in spite of the service of notice.

As noted above a brief reference to the factual aspect is necessary. The background facts of the prosecution version are as followed.

On 29th May, 1999 the five accused/respondents comprised the escort party of a State Cabinet Minister. The case of the Accused/Respondents was that at 5.30 p.m. on 29th May, 1999, the occupants of a Maruti Zen crossed the cavalcade of the Minister and shouted at them. The personal security officer attached to the Minister saw one of the occupants of the car holding a small fire-arm. After dropping the Minister, the escort vehicle while proceeding to another place saw the Maruti Zen and its occupants, who on seeing the police party tried to escape. Meanwhile one of the occupants of the case opened the rear glass and opened fire from his fire-arm. On hearing gun fire, the police party also opened fire but the Maruti Zen escaped and disappeared. Subsequently, the car was discovered with one of its three occupants was found to be already dead and the other two had sustained bullet injuries. Of the two survivors one died subsequently in hospital and another had to have his arm amputated.

The said shoot out incident was investigated by the police and a case under Sections 302/307/326/34 of Indian Penal Code, 1860 (in short 'IPC') was registered against the accused/respondents.

The trial court noted that the ballistic report established that the bullets were fired from the guns of the accused-respondents. A finding was also recorded that the respondent exceeded their power for opening fire, and this constituted misfiescence, but absence of the post-mortem report was held to have vitally affected prosecution case it was also held that the accused persons had fired with AK 47 and M 22

rifles in self defence. Therefore, benefit of doubt was given to them. A pragmatic approach has to be adopted and when substantial justice and technical approach were pilled against each other the former has to be preferred.

The proof by sufficient cause is a condition precedent for exercise of the extraordinary restriction 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 (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 been resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case is 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.

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 (PC) 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 (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.

In Concord of India Insurance Co. Ltd. v. Nirmala Devi (1979 (4) SCC 365) 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 Matu Din v. A. Narayanan (1969 (2) SCC 770), 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 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.

In State of Kerala v. E. K. Kuriyipe (1981 Supp SCC 72), it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependant upon the facts and circumstances of the particular case. In Milavi Devi v. Dina Nath (1982 (3) SCC 366), 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.

In O. P. Kathpalia v. Lakhmir Singh (1984 (4) SCC 66), 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) SCC 107), 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 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.

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 as 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 SCC 339), 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.

In G. Ramegowda, Major v. Spl. Land Acquisition Officer (1988 (2) SCC 142), it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a 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.

It is axiomatic that decisions are 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 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 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-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 Haryana v. Chandra Mani and Ors. (1996 (3) SCC 132); and Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma (1996 (10) SCC 634). 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.

When the factual background is considered in the light of legal principles as noted above the inevitable conclusion is that the delay of 57 days deserved condonation. Therefore, the order of the High Court refusing to condone the delay is set aside.

In normal course, we would have required the High Court to consider the application praying for grant of leave on merits. But keeping in view the long passage of time and the points involved, we deem it proper to direct grant of leave to appeal. The appeal shall be registered and disposed of on merits. It shall not be construed that we

have expressed any merits on the appeal to be adjudicated by the High Court.

Appeal is allowed.