

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.L.P. No.115/2009**

Date of Decision : 12.05.2011

STATE (GNCT) OF DELHI **Petitioner**

Through: Nemo

Versus

OM PARKASH & ORS. **Respondents**

Through: Nemo

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

V.K. SHALI, J. (oral)

1. This is a leave to appeal filed by the State against the judgment dated 26.5.2008 passed by the learned ASJ Karkardooma Court, Delhi in respect of an FIR no.40/2005, under Section 498A/304-B IPC registered by P.S. Khajuri Khas.
2. By virtue of the aforesaid judgment, the learned Sessions Judge has acquitted the accused/respondents by holding that the prosecution has failed to prove beyond reasonable doubt that the accused persons had subjected the deceased to any torture or harassment with a view to demand dowry soon before her death.

3. Along with the leave to appeal, an application under Section 5 of the Limitation Act has been filed for condoning the delay of 145 days after deducting ten days in obtaining the certified copy. The only averment which has been made in the application is that the judgment was delivered on 26.5.2008, which is stated to be illegal and liable to be set aside and quashed.
4. It is stated that after obtaining various legal opinions, a decision was taken to file an appeal on 2.12.2008 and the file was received in the office of the learned counsel on 3.12.2008. Certified copies of the judgment and the statement of witnesses were delivered to the learned counsel on 20.1.2009 and accordingly, the appeal was prepared by the learned APP on the next day and hence by the time the appeal was filed, there was a delay of 145 days. Ten days have been deducted from the number of days delay in obtaining the certified copy. No reply to the application has been filed by the respondent.
5. I have heard the learned counsel for the State and the respondent. I have gone through the record.
6. The learned counsel for the State has contended that the delay was occasioned on account of the time taken in deciding whether to file an appeal or not, as the file had to be processed through various Departments. It has been stated that Apex Court in the case titled **State of Nagaland Vs. Lipok AO** AIR 2005 SC 2191 has observed that while

considering the question of condonation of delay, the Court must take a pragmatic and justice-oriented approach rather than technical view of the words 'sufficient cause' for explaining every day's delay. On the basis of the aforesaid facts and judgment, a prayer, seeking condonation of delay has been made.

7. As against this, the learned counsel for the respondent has relied upon a case titled **UOI & Ors. Vs. Nripen Sarma** 2001 STPL (Web) 157 SC (1) wherein the Apex Court has justified the dismissal of the appeal filed by the State, in the High Court of Delhi wherein delay was not condoned, it was observed that 'sufficient cause' was not shown.
8. It was observed in the said judgment that the delay occasioned in the said case was on account of the fact that the respondents had taken their own sweet time in reaching to the conclusion as to whether an appeal should be preferred against the judgment or not.
9. I have considered the respective submissions and have gone through the record.
10. At the outset, it must be observed that there is no dispute about the fact that Supreme Court in **State of Nagaland** (supra) has clearly observed that although no special indulgence can be shown towards the State, but certain amount of indulgence to the State is not impermissible on account of the fact that in the case of Government, officials

tend to cause delay intentional or otherwise in processing the files. It is also correct that the word 'sufficient cause' shall be considered, in the case of State appeals, with pragmatism and justice oriented approach as observed by the Apex Court.

11. Having regard to the same, one cannot ignore the fact that such an approach has to be observed provided full particulars are disclosed in the application filed by the State seeking condonation of delay and not when the averments in the application are sketchy and without any information. Moreover, it must be borne in mind by order of an acquittal which is passed in favour a person, a vested right is created in his favour on the basis of a judicial finding and that should not be disturbed until cogent reasons are shown. In all such cases, where the acquittal takes place, the prosecution must show that they are acting with utmost dispatch to have their grievance redressed at the earliest rather than going through the red tape where each of the officials takes decision according to their own whims and fancies.
12. The judgment has been delivered on 26.5.2008. Not even a single date has been given as to when the certified copy of the judgment was applied for and when it was obtained. On the contrary, if one goes through the averments made in the application, the certified copies have been applied for after an expiry of four months. This clearly shows that there was complete ignorance on the part of the officials of the State in

obtaining the certified copy within the time permissible to file the appeal. Curiously enough, though the certified copy has been applied after expiry of a period of filing the appeal, yet the period spent in obtaining the said certified copy has been deducted from the total period of delay, which is totally impermissible.

13. It has been stated in the application that after obtaining various legal opinions, a decision was taken on 2.12.2008, the details of the persons from whom the opinion has been obtained, number of days the official took in giving this opinion has not been disclosed at all. Thus, the application is not giving the full details.
14. On the contrary, it has been stated that on 2.12.2008, a decision was taken to file an appeal that is almost after 6½ months from the date of passing of the judgment. Such a callous attitude on the part of the State, in such an important matter where the person has been acquitted in respect of an offence under Section 304B IPC and an offence under Section 498A Cr.P.C. cannot be countenanced. It is further stated that after obtaining the opinion, only certified copy has been applied for. The details have not been given in the application. Thus, in my considered opinion, the judgment which has been relied upon by the State seeking condonation of delay does not come to the rescue of the appellants as the application is devoid of any details and therefore, even in

such a case the delay cannot be condoned as no 'sufficient cause' has been shown.

15. I accordingly, dismiss the application seeking condonation of delay and as the application has been dismissed, there is absolutely no ground to grant the leave to appeal and accordingly, the same is also dismissed.

MAY 12, 2011
RN

V.K. SHALI, J.