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

+ **CRL.L.P. 31/2014**

% *Judgment dated 11th February, 2015*

STATE

..... Petitioner

Through : Mr.Sunil Sharma, APP for the State
along with Inspr. Dheeraj Singh, P.S.
Mayur Vihar.

versus

WAJID

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT (ORAL)

CRL.M.A. 630/2014.

1. This is an application filed by the State seeking condonation of 1381 days' delay in filing the present appeal.
2. The grounds raised in this application, more particularly paras 4, 5, 5A and 6, read as under:

“4. That the filing of the Leave to appeal against the impugned judgment has been delayed on account of many factors. The judgment was pronounced on 10.12.2009 and considerable time was taken in procuring the certified copy of the judgment. After procuring all the documents Public Prosecutor prepared its report recommending filing of appeal against the impugned judgment and sent the file to the Chief Public Prosecutor concerned, and therefore considerable time was taken for discussions on filing of the appeal. Thereafter, the file was forwarded to Director of Prosecution for appropriate legal action for filing of appeal.

5. That after perusal of file by the Director of Prosecution, he

found the case fit for filing the appeal and the file was forwarded to Secretary (Law & Justice). The Secretary (Law & Justice) went through the file and sent the same to Director Prosecution through Deputy Secretary Home Govt. of NCT of Delhi. File was also sent to competent authority, i.e. Lt. Governor Delhi for obtaining approval for filing this appeal.

5 (A) That Director of Prosecution further forwarded the file to Deputy Commissioner of Police, concerned for taking necessary action for filing appeal in Hon'ble High Court. Subsequently file was sent to the Standing Counsel (Criminal) in High Court.

6. That the appeal was drafted and the same is being filed alongwith the supporting affidavit.”

3. An additional affidavit dated 25.3.2014 has also been filed by the Deputy Commissioner of Police, East District, as per which the case, having been found fit for appeal, was sent to Government of NCT of Delhi for approval of the Hon'ble Lieutenant Governor on 16.2.2010. After an approval was received, the file was forwarded to the Office of Director of Prosecution on 29.3.2010. The case file was received back in the office of DCP, East District, on 1.4.2010. Thereafter the case file was sent to Legal Cell on 5.4.2010 and thereafter to the ACP/Kalyan Puri on 6.4.2010. The case file was then sent to the Office of the Standing Counsel. Thereafter another affidavit dated 2.4.2014 was filed by the Additional Public Prosecutor to whom the case was marked.
4. Having perused the present application, we find that this application was made in an extremely casual manner and is devoid of material particulars. We find that not only leave to appeal has been filed with a delay of 1381 days but the Court time has been wasted in filing affidavits at later dates all of which could have been filed at the very first instance.

5. We are conscious of the fact that it has been repeatedly held that the Court must take a liberal approach in considering the applications filed under Section 5 of the Limitation Act seeking condonation of delay provided that the delay has not been caused on account of negligence, inaction, carelessness or for the reasons which are not explained.
6. In ***Mewa Ram (Deceased by L.Rs) & Ors. v. State of Haryana***, reported at AIR 1987 SC 45, it was held that :

“There is no reason for us to grant special leave in these cases which are hopelessly barred by time and there is no justification for condonation of inordinate delay.”

7. The law was also laid down in **P.K. Ramachandran v. State of Kerala & Anr.**, reported at AIR 1998 SC 2276, wherein it has been held that:

“The Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under: Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.”

8. This court in the case of **Lache Ram Vs. Govt. of NCT Delhi through its Secretary, Labour and Municipal Corporation of Delhi** [W.P.(C) No.3641 of 2005 decided on 6.11.2006], made following observations:

“The writ petition was filed with a delay of five years and the ground taken before the Supreme Court was that due to illiteracy and illness of the Secretary of Union, the writ petition could not be filed in time. Supreme Court observed that illiteracy and illness were not of such nature so as to prevent the union from filing the writ petition and dismissed the writ petition on ground of delay and laches. I consider that the present writ petition is also liable

to be dismissed on the ground of delay and latches.”

9. In the case of **D. Gopinathan Pillai v. State of Kerala & Anr.**, reported at AIR 2007 SC 2624 it was held that:

“No reason whatsoever has been given to condone the inordinate delay of 3320 days. It is well-considered principle of law that the delay cannot be condoned without assigning any reasonable, satisfactory, sufficient and proper reason. Both the courts have miserably failed to comply and follow the principle laid down by this Court in catena of cases.”

10. In the case of **Brijesh Kumar & Ors. Vs. State of Haryana & Ors.**, reported at AIR 2014 SC 1612, the Apex Court has held as under:

“11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

13. In State of Karnataka & Ors. v. S.M. Kotrayya & Ors., (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same

cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

14. Same view has been reiterated by this Court in **Jagdish Lal & Ors. v. State of Haryana & Ors.**, AIR 1997 SC 2366, observing as under:—

“Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh’s ratios...Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.”

11. In the case of **Postmaster General & Ors. Vs. Living Media India Limited and Anr.**, reported at (2012) 3 SCC 563, it was held as under :

“29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

12. In the case of **Ramey Vs. M.C.D.**, reported at 134 (2006) DLT 106 (DB), the Court while dismissing an application for condonation of delay has held as under:

“4. Learned counsel for the appellant has drawn our attention to two judgments of the Supreme Court, namely, Collector, ***Land Acquisition, Anantnag and another Vs. Mst. Kastiji and others*** reported as AIR 1987 SC 1353 and ***Balakrishnan Vs. M.Krishnamoorthy*** reported as 1998 (7) SCC 123 wherein it has been held that the court should adopt a liberal approach while disposing of applications for condonation of delay and that the word “sufficient cause” Under Section 5 of the Act should receive a liberal construction so as to advance the cause of substantial justice.

5. We have perused the aforementioned judgments. There is no doubt that it is settled law that as against a technical and pedantic approach of throwing out a party on grounds of delay and laches, ends of justice are better met by rendering a decision on merits.

6. At the same time, we would also like to refer to a judgment of the Supreme Court in the case of ***Salil Dutta v. T.M. and M.C. Private Ltd.*** reported as JT 1993 (4) SC 528, wherein, while distinguishing the decision in ***Rafiq and Anr. v. Munshilal and Anr.*** reported as AIR 1981 SC 1400, it was observed as below:

The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex-parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be

recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition.

7. In the light of the above and in the facts and circumstances of the present case, we are not persuaded to exercise our power of condonation of delay in favour of the appellant. We are not inclined to condone the delay of 1203 days in filing the present appeal as the appellant has failed to furnish any satisfactory Explanation in his application warranting condensation of delay. On the contrary, his application does not inspire any confidence. Admittedly, no complaint has been filed against the Advocate who was allegedly not diligent in pursuing the litigation on behalf of the appellant. Putting the entire blame upon the Advocate and trying to portray as if the appellant was illiterate and poor and hence totally unaware of the nature and significance of the pending proceedings, is quite unacceptable, particularly in view of the fact that the appellant has entered into a contract worth Rs. 20 lacs with the MCD and is, therefore, not only business savvy and worldly wise, but quite capable of taking care of his commercial interests. He is not a rustic ignorant villager hailing from the backwaters who has no knowledge of the legal proceedings and the court procedures.”

13. For the reasons stated above and in view of the law laid down, we find no reason to condone the delay. Accordingly, the present application is dismissed. Consequently leave to appeal also stands dismissed. Even otherwise, we have also examined the judgment passed by the learned trial Court. Although, Mr.Sharma has strenuously argued before this Court that the trial Court has heard but not considered the birth certificate of the victim, yet we have considered this submission of Mr.Sharma and also taken into consideration the statement made by the victim under Section 164 of the Code of Criminal Procedure recorded before the Magistrate, before whom the victim confirmed that she has

married the respondent out of her own free will and she was staying with him voluntarily and also the fact that on medical examination it was found that she was carrying a pregnancy of three months.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 11, 2015

msr