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

DECIDED ON : 15th DECEMBER, 2015

+ **CRL.R.P. 375/2014**

SUSHMA KUMAR Petitioner

Through : Ms.Neena Malhotra, Advocate.

VERSUS

THE STATE & ORS. Respondents

Through : Mr.Amit Gupta, APP with SI
Vishvendra, PS Seemapuri.
Ms.Jaya Tomar, Advocate for R2
along with R2 in person.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.Garg, J. (Oral)

1. Present revision petition has been preferred by the petitioner to challenge the legality and correctness of an order dated 21.03.2014 of learned Addl. Sessions Judge by which application seeking condonation of delay in filing the revision petition was dismissed. The petition is contested by respondents No.2 to 4.

2. I have heard the learned counsel for the parties and have examined the Trial Court records. A case vide FIR No.262/10 under

Sections 498A/406/34 IPC PS Seemapuri was registered under Section 156(3) Cr.P.C. Upon completion of investigation, a charge-sheet was filed against respondent No.2 alone. Respondents No.3 and 4 were put in column No.12. By an order dated 20.11.2012, the learned Metropolitan Magistrate discharged the sole accused Daleep Kumar (Respondent No.2). Aggrieved by the said order, the petitioner preferred Crl.Revision No.24/2014 which was not entertained and application seeking condonation of delay in filing the revision petition was dismissed.

3. It was pleaded by the petitioner that the delay in filing the revision was due to her ignorance of the order dated 20.11.2012 which was passed in her absence and the Investigating Officer did not inform her about the filing of the charge-sheet any time. The revisional court below did not believe the petitioner as her presence along with her counsel was specifically recorded in the order dated 20.11.2012. It is emphasized by the petitioner that she was not present along with her counsel and her presence has been erroneously recorded.

4. Perusal of the Trial Court record reveals that charge-sheet was filed on 25.01.2012 when the Presiding Officer was on leave. Cognizance was taken on 17.03.2012 and Investigating Officer was directed to appear personally in case of non-execution of process for

24.04.2012. On that day, process issued to the respondent was received back unexecuted. Fresh process through Investigating Officer was ordered for 17.07.2012. Daleep Kumar (respondent No.2) put appearance that day and was admitted to bail. Case was adjourned for 25.09.2012 for scrutiny of documents and arguments on charge. On 25.09.2012, bail bonds were furnished and case was adjourned for 20.11.2012 for arguments on charge. Order-sheet does not reflect if 'notice' was ever issued to the complainant for her appearance any time before the Court. No power of attorney in favour of any counsel executed by the complainant is on record. There is some controversy / doubt whether on 20.11.2012 the complainant along with her counsel had appeared to address arguments on charge.

5. Without going into that controversy, in my considered view, the petitioner being the complainant and victim must be given an opportunity to get her revision petition decided on merits and for that reason delay of few days in filing the revision petition must not be an obstacle.

6. In the interest of justice and to enable the petitioner to get the revision petition decided on merits, the delay in filing the revision petition is condoned. Revision petition shall be decided on merits by the

Revisional Court. Crl.R.P.375/2014 is allowed. The parties shall appear before the Revisional Court on 28th January, 2016.

7. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

DECEMBER 15, 2015 / *tr*