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

+ CRL.L.P. 587/2012

% *Judgment dated 22.01.2015*

STATE

..... Petitioner

Through : Mr.Firoz Khan Ghazi, Adv. along with
SI Uma Datt, P.S. Mangal Puri.

versus

VIJAY @ VICKY

..... Respondent

Through : Mr.Siddharth Mittal, Proxy Adv. for
Mr.K. Singhal, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CRL.M.A. 19954/2012

1. This is an application filed by petitioner seeking condonation of 756 days delay in filing the present leave to appeal.
2. Learned counsel for the State submits that delay was on account of *bonafide* reasons and not intentional.
3. We have examined the application seeking condonation of delay filed under Section 5 of the Limitation Act. It may be noticed that the impugned judgment was delivered on 30.08.2010 whereas the present leave to appeal has been filed on 23.11.2012. The application does not explain as to why a certified copy of the judgment was received on 23.10.2010 while the judgment was delivered on 30.08.2010. Moreover, as per this application, the office of the Public Prosecutor sent the file to the Department of Law, Government of NCT, Delhi, for opinion on 7.10.2010. There is also no explanation why the file was not sent after the

judgment was delivered on 30.8.2010. Thereafter it has been stated that on 18.12.2010 the file was received by the Directorate of Prosecution from the Department of Law. There is also no explanation as to why for more than two months there was no action over the file. Again in para 6 of this application it has been stated that on 4.1.2011 the file was received by the SHO, Mangol Puri, for filing the appeal and the file was sent to the office of the Standing Counsel and thereafter the file was sent to the Office of Additional Standing Counsel in the first week of June, 2012. There is no explanation for the delay between 4.1.2011 and June, 2012. Similarly, it has been stated that the file was sent to the concerned DCP for vetting and signing of affidavits in the first week of July, 2012, and the same was returned in the last week of October, 2012. There is also no explanation for this delay as well. An additional affidavit, which has been filed, also in our view does not satisfactorily explain the delay in filing this leave to appeal.

4. In our view, the application and the affidavit does not give reasonable and cogent grounds to condone the delay. The application is casual in nature, lacks material particulars and the grounds for delay cannot be termed as *bonafide*.
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 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.”

7. We may add that the matter has also been examined on merits. We find that the learned trial court has carefully examined the evidence of PW-1 and discussed in detail the contradictions in the testimony of PW-1. The Court has also taken into consideration that the incident occurred at 11.30 in the morning at a shop in a market, which would have ample presence of public persons around the area. As per the testimony of PW-1, on 20.3.2006 she was going to Government Centre of Beautician from her house at about 11.30 a.m. The respondent dragged PW-1 in his shop after putting his hand on her mouth, lowered down the shutter of the shop, and threatened her that in case she would raise an alarm, he would kill her. Thereafter the respondent raped her. PW-1 informed her mother about the incident, who did not disclose these facts to anybody due to public shame on the same day, however on the next day the incident was narrated by her to her father, who disclosed it to the neighbours. PW-1 was then taken to Sanjay Gandhi Memorial Hospital by the police for medical examination.

Her statement was recorded. She deposed that the respondent had a DVD shop. It may, however, be noticed that during cross-examination she could not tell the address of the shop. She also testified that in the past the respondent used to tease and chase her but she had not complained about it to anybody else. She also stated that she did not raise an alarm as the respondent had threatened to kill her. She further stated during cross-examination that when she was pulled inside the shop by the respondent, she fell down on the floor of the shop. The shop had one counter and there were CDs and DVDs lying in the shop. The respondent had kept her in the shop for about half an hour. After removing her clothes, the respondent raped her while keeping her mouth covered with his hand. He had also removed his own clothes. She further stated that she had become unconscious when he was raping her, but she was conscious when he was removing his clothes. PW-1 could not answer as to whether he had any weapon with him or not. She also testified that she did not make any cries even when she was allowed to go home.

8. The trial court had also taken into account that the victim was a major and it was not possible for the respondent to have removed her as well as his own clothes with one hand and cover the mouth of victim with the other hand, while committing the rape. The trial court also found that there were different versions on record regarding the place of incident, which created serious doubts in the case of the prosecution. As per the prosecutrix, the respondent raped her in his shop. There was a counter and CDs and DVDs were lying in the shop.
9. On the other hand PW-15, Inspr. Sanjeeta, I.O. of the case, had stated that the spot was a store type and did not refer either to any counter or CDs or DVDs lying there. In the testimony of the prosecutrix she had stated that the incident took place at 11.30 a.m. during the day and public persons

were coming and going where the shop was situated. As per the testimony of the I.O. there were many other shops adjoining the shop of the respondent and, thus, the story of the prosecution was not found to be natural.

10. In addition thereto, the testimony of the prosecutrix was not corroborated by the medical and forensic evidence on record. The prosecutrix had testified that she was pulled in the shop. She fell down on the floor and despite her resistance the respondent had raped her. In view of this statement, it was natural that the prosecutrix would have received injuries on her body and private parts. However, no such injury was mentioned in her MLC, Exhibit PW-5/A. Even in her testimony, PW-5, Dr. Garima had specifically stated that there was no injury either on the private parts of the prosecutrix or on any other part of the body. The prosecutrix had also testified that at the time of the incident she had resisted and also tried to bite the accused with her nails, however, the MLC of the respondent, Exhibit PW-14/A, did not show any injury. The FSL report also did not corroborate the case of the prosecution.
11. The Apex Court in the case of **Ghurey Lal vs. State of U.P.**, reported at 2008 (10) SCC 450 has laid down the following principles before granting leave to appeal against an order of acquittal:

“1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has 'very substantial and compelling reasons' for doing so.

A number of instances arise in which the appellate court would have 'very substantial and compelling reasons' to discard the trial court's decision. 'Very substantial and compelling reasons' exist when:

- i) The trial court's conclusion with regard to the facts is palpably wrong;

- ii) The trial court's decision was based on an erroneous view of law;
- iii) The trial court's judgment is likely to result in "grave miscarriage of justice";
- iv) The entire approach of the trial court in dealing with the evidence was patently illegal;
- v) The trial court's judgment was manifestly unjust and unreasonable;
- vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc.
- vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached-one that leads to acquittal, the other to conviction-the High Courts/appellate courts must rule in favour of the accused.”

12. Having regard to the law laid down by the Apex Court in the case of ***Postmaster General & Ors.*** (supra) we find no reasons to condone the delay. Further taking into consideration the principles laid down by the Apex Court in the case of **Ghurey Lal** (supra), we do not find that there is any illegality or perversity in the reasoning given in the impugned judgment. Accordingly, application for condonation of delay and criminal leave to appeal petition are dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 22, 2015 msr