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

+ CRL.L.P. 27/2014

STATE

..... Petitioner

Through : Ms.Aashaa Tiwari, APP for the State.
Insp.Rajendra Prasad, SHO, Aman
Vihar.

versus

HARIHAR @ CHITU & ORS

..... Respondents

Through : Mr.O.P. Saxena, Adv. for R-1.
Mr.Azhar Qayum, Adv. for R-2.
Mr.Rajender Chhabra, Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

% **19.04.2016**

CRL.M.A. 604/2014

1. This is an application filed by the appellant seeking condonation of 423 days' delay in filing the present criminal leave to appeal petition.
2. Learned counsel for the petitioner submits that the leave to appeal could not be filed within the time allowed for *bona fide reasons*. Counsel further submits that while dealing with application for condonation of delay the Court must take a liberal view in the matter.
3. Present application has been vehemently opposed by learned counsel for the respondents, who submit that the affidavit filed by the then APP explaining the reasons for delay are not *bona fide*. It has been stated in the affidavit that the leave petition could not be filed within the period of limitation as the file of this case got mixed up with the other files and also citing the illness of the clerk is an afterthought, which is evident from the fact that no such grounds were raised in the application filed by the State seeking condonation of delay. It is also contended that the application is

not *bona fide* and, thus, should be rejected.

4. We have heard learned counsel for the parties and also perused the application seeking condonation of delay. The grounds, as set out in this application, 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 26.07.2012 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.

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

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

5. A perusal of the aforestated grounds would show that the grounds are completely devoid of particulars. No dates have been mentioned as to when the certified copy was applied and when the same was delivered. The grounds also do not give the dates as to when the file was marked and when was the same returned.
6. We may also notice that an additional affidavit has also been filed by the

then APP for the State wherein it has been stated that the judgment was pronounced on 26.7.2012. On 12.10.2012 after passing through ‘*various concerned authorities*’, the file was sent from the office of the concerned DCP to the office of Standing Counsel (Criminal) to file criminal leave to appeal petition. The said file was received in the office of the then APP on 31.10.2012. After the file was received, the clerk of the then APP fell ill and he remained on leave for a period of one week. It is also stated that during this period of one week, file of this case got mixed up with other files in the office of APP due to which the leave petition could not be filed within the time allowed.

7. The law with regard to dealing with application seeking condonation of delay is well-settled. It has repeatedly been held by the Supreme Court of India that a liberal approach should be followed while dealing with such applications, provided the grounds seeking condonation of delay are *bona fide* and the delay is not caused either on account of inaction or carelessness.
8. In the case of ***Postmaster General & Ors. v. 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.”

9. Upon examination of the present application and the affidavits filed, to say the least, the same do not disclose *bona fide* grounds to condone the delay of 423 days’ in filing the present criminal leave to appeal petition. The reasons so stated in the application as also in the affidavits are not only mechanical but are stereotype in nature. We also find merit in the submissions made by the counsel for the respondents that in case the file of this case was misplaced in the office of the then APP and the clerk of the then APP was ill, these grounds would have been urged at the very first instance when along with the criminal leave to appeal petition Crl.M.A.604/2014 was filed. In view of above, we are of the opinion that the delay has not been satisfactorily explained.
10. Accordingly, in the facts of such a case and having regard to the observations made by the Supreme Court in the case of ***Postmaster General & Ors.*** (supra), we are unable to condone the delay. The application is accordingly dismissed.

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11. Criminal Leave to appeal petition stands dismissed in view of the order passed in the application.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

APRIL 19, 2016

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