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

+ **CRL.L.P. 451/2013**

STATE

..... Petitioner

Through : Mr. Rajesh Mahajan, ASC and Mr.
Peeyush Bhatia, Adv.

versus

FAZL-UR-REHMAN @ FAZLU & ANR

..... Respondents

Through : Mr. Anwesh Madhukar, Adv. amicus
curiae for R-1.

Mr. B. B. Sharma, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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02.12.2016

Crl.M.A.13022/2013 (Delay)

By this petition under Section 378 (1) Cr.P.C. petitioner has prayed for grant of leave to appeal against the acquittal of respondent, vide judgment dated 21st August, 2012, passed by the Learned Additional Sessions Judge-01, New Delhi, in Sessions Case No.152/2008 arising out of FIR No.104/2006, registered at police station Special Cell, New Delhi under Section 3 of the Maharashtra Control of Organized Crime Act, 1999.

Present petition has been filed on 2nd August, 2013, that is, after about eleven and half months of the acquittal order. Even certified copy of impugned judgment was not applied within the period of 90 days, as prescribed for filing of leave to appeal against the acquittal. Period of

limitation for filing the petition expired on or about 20th November, 2012. However, certified copy was applied on 30th March, 2013 and was made available to petitioner on 15th April, 2013. Thus, this period cannot be excluded for counting the limitation.

To explain the inordinate delay of more than eight months, no sufficient cause has been disclosed. Plea taken is that on 14th January, 2013, office of Public Prosecutor opined for filing of appeal. File was received in the Directorate of Prosecution on 21st January, 2013 and thereafter, file was sent to Additional Public Prosecutor on 29th January, 2013. On 2nd February, 2013, Additional Public Prosecutor issued compliance certificate and sent the file back to Directorate of Prosecution on 8th February, 2013. On 12th February, 2013, file was sent to the office of the Principal Secretary (Law & Justice), from where file was received back in the office of Directorate of Prosecution on 9th March, 2013. File was sent to the Deputy Commissioner of Police, Special Cell and received there on 18th March, 2013. Thereafter, papers were handed over to Additional Standing Counsel (Criminal). It is alleged in the application that delay was not intentional. It is noted that no explanation was given for the period from March, 2013 till 2nd August, 2013.

Vide order dated 15th January, 2014, Principal Secretary (Law), GNCTD was directed to constitute an enquiry for extraordinary delay of 222 days in filing the petition for leave to appeal and submit report. Report was submitted.

A perusal of order dated 4th April, 2014 shows that court was not satisfied by the enquiry report. Learned Additional Public Prosecutor sought time to file an additional affidavit explaining the details of the persons, who were responsible for the delay in filing the petition and whether the responsibility has been fixed on the said individuals by initiating appropriate action. Order reads as under:-

“2. The enquiry report dated 13th March 2014 submitted by the Principal Secretary (Law, Justice and Legislative Affairs), Govt. of NCT of Delhi has been perused.

3. Para 9 of the enquiry report reads as under:

That from the information furnished by office of Director of Prosecution, Law and Justice Department, Special Cell, Delhi Police and Additional Standing Counsel (Criminal), it is gathered that the delay was occasioned firstly at the end of the office of the Director of Prosecution (including Additional PP and Chief Prosecutor) whose office took 56 days in sending the file to the Law and Justice Department after giving their opinion. Thereafter the delay was at the part of the Special Cell (Delhi Police) and office of Additional Standing Counsel (Criminal) in preparation of the appeal which took about 58 days. Lastly the appeal was filed almost after 66 days of the same being

signed. In these facts and circumstances all stakeholders have been impressed upon to process all cases pertaining to filing of appeals before the Hon'ble High Court of Delhi as expeditiously as possible.

4. The above report fixes no responsibility whatsoever on any individual for the unexplained delay which is evident from the above paragraph. The Court is not satisfied with the enquiry report.

5. The Supreme Court has recently in State of U.P. v. Amar Nath Yadav [decision dated 10th January 2014 in Special Leave Petition (Civil) No. 882 of 2014] reiterated its earlier decision in Postmaster General v. Living Media India Limited (2012) 3 SCC 563 where it was observed as under:

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 bonafide effort, there is no need to accept the usual explanation that the file was kept pending for 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 the Government Departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

6. Ms. Aashaa Tiwari, learned APP for the State urges that since the matter is of a serious nature, the State will file an additional affidavit explaining in detail the persons who are responsible for the delay in filing the petition, and whether the responsibility has been fixed on the said individuals by initiating appropriate action.

7. At her request, adjourned to 27th May 2014 by which the additional affidavit be filed.

8. Order be given dasti.”

In compliance to the above directions, affidavit of Mr. G. P. Singh, Additional Secretary, Department of Home, GNCTD was filed on 26th May,

2014 and the same is on record and a perusal thereof shows that delay of about 8 months has not been justified by sufficient and cogent reasons, inasmuch as, no responsibility of any individual has been fixed. It is stated in the affidavit that acquittal report was prepared by Learned Additional Public Prosecutor on 22nd December, 2012. After the winter vacations, court re-opened on 2nd January, 2013. The Chief Prosecutor (New Delhi) examined the judgment and cleared the file on 14th January, 2013. File was received in the office of Directorate of Prosecution on 15th January, 2013 and was sent to Public Prosecutor (HQ) on 16th January, 2013. File was sent back to office of Directorate of Prosecution on 22nd January, 2013. On 28th January, 2013, the Director of Prosecution sent the file for seeking comments from the Chief Prosecutor. Matter was discussed by the Chief Prosecutor with Additional Public Prosecutor and file was returned back to office of Directorate of Prosecution on 4th February, 2013. File was cleared by the Director of Prosecution on 8th February, 2013 and was sent to Law Department on 11th February, 2013. File was examined by the Department of Law, Justice & Legislative Affairs and recommended for filing of appeal on 22nd February, 2013. Approval of Lt. Governor was obtained on 8th March, 2013 and was file was sent back to the office of Directorate of

Prosecution on 9th March, 2013. Thereafter, it was sent to the Deputy Commissioner of Police, Special Cell on 18th March, 2013 from where it was sent to Standing Counsel (Criminal) on 1st April, 2013. On 15th April, 2013, the draft appeal was sent to Special Cell. In the first week of May, 2013, the queries raised by the Additional Standing Counsel (Criminal) were answered by Special Cell and on 15th May, 2013, the draft appeal was sent to the Office of Special Cell for approval. On 27/28th May, 2013, file was handed over to Additional Standing Counsel (Criminal). Thereafter, petition for leave to appeal was filed on 2nd August, 2013.

It is clear that prompt steps were not taken. No explanation has been given as to why no steps were taken between 21st August, 2012 till January, 2013. It is noted that period of limitation expired on or about 20th November, 2012. It is clear that no steps were taken during this period. It is also noted that there is no explanation in respect of period from 28th May, 2013 till 2nd August, 2013. I am of the view that delay has remained unexplained by cogent and sufficient reasons.

Accordingly, application is dismissed. Consequently, CRL.L.P. 451/2013 is also dismissed as time barred.

A.K. PATHAK, J.

DECEMBER 02, 2016/dk