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

% *Judgment dated: 21st March, 2016*

+ CRL.L.P. 511/2012

STATE

..... Petitioner

Through Ms. Aashaa Tiwari, APP

versus

RAM CHANDER SHAH & ANR

..... Respondents

Through Mr. Krishan Kumar with Ms. Sunita
Arora and Vidhushi Sharma,
Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

Crl.M.A.17812/2012(delay) & CRL.L.P. 511/2012

1. This is an application seeking condonation of 203 days delay in filing the present leave to appeal petition. We may notice that in this case, respondent no.2 has died and respondent no.1 is stated to be residing in Nepal and despite an open handed non-bailable warrants issued to secure his presence, respondent no.1 has not been served.
2. Mr. Krishan Kumar counsel for respondent no.1 submits that respondent no.1 is not aware of filing of the present leave to appeal petition as the same was filed after 293 days approximately and thus, it cannot be said that the respondent is intentionally keeping out of the way for the purposes of accepting notice. Counsel further submits that the application does not disclose sufficient grounds for condoning the

delay.

3. Ms. Aashaa Tiwari, learned APP for the State submits that the delay was on account of the reasons beyond the control of the Department. The delay is sought to be explained by stating that the impugned order was passed on 22.12.2011, the APP gave his report on 12.01.2012 and the file was marked to the Chief Prosecutor, Rohini who gave his opinion on 16.01.2012 and marked the file to the Directorate of Prosecution who then forwarded the file to the learned PP on 24.01.2012 and on 28.01.2012 the file was sent to the Principal Secretary(Law and Justice). Thereafter, after taking approval from the Lt. Governor, the file was again sent to the Directorate of Prosecution and on 20.03.2012 the Directorate of Prosecution sent the file and the same was received by the Standing Counsel in the first week of July, 2012. It is thus contended that the delay was caused due to *bona fide* reason and not on account of any negligence on the part of the petitioner.
4. We have heard the learned counsel for the parties. It has been repeatedly held that courts must be liberal in deciding the application under Section 5 of the Limitation Act, provided that sufficient grounds are shown for the delay. Reading of this application would show that the file was moved from one desk to another desk. What is not understood is as to when the persons dealing with the file were well aware that the leave to appeal is to be filed within 90 days, why the file was moving at such a slow pace and the leave to appeal was not filed within the time allowed. In the present leave to appeal petition, the respondent no.1 has left the country and is stated to be in Nepal. Mr. Krishan Kumar submits that valuable right has accrued in favour of respondent no.1 and even otherwise the leave to appeal is without any

merit. The evidence of last seen is not proved as the witness had turned hostile, in spite of that, the respondent no.1 was in Jail for approximately five years.

5. 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.”

6. On careful reading of the application seeking condonation of delay, we find that the reasons so stated are mechanical and stereotype in nature. Having regard to the observation made by the Supreme Court in the case of ***Postmaster General & Ors***(supra), we find no ground to condone the delay in the present case. The application is dismissed.

7. Consequently, the leave to appeal is also dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MARCH 21, 2016

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