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

Decided on : 16th May, 2017

+ CRL.L.P. 111/2016 and Crl. M.A. 3138/2016

VIQAR AHMED

..... Petitioner

Through: Mr. Shaad Anwar and Ms.
Shobhan, Advocates

Versus

GOVT OF NCT OF DELHI & ANR

..... Respondents

Through: Mr. Akshai Malik, APP for R-1 /
State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. By the petition at hand, the petitioner prays for leave under Section 378(4) of the Code of Criminal Procedure, 1973 (Cr. PC) to be granted to file a criminal appeal to challenge the order dated 03.10.2015 of the court of the Metropolitan Magistrate passed on the file of the complaint case no.93/1/15 whereby his complaint was dismissed for non-appearance, the consequence whereof was that the second respondent who had been summoned by an earlier order stood acquitted.

2. The record has been perused and the learned counsel for the petitioner has been heard at length.

3. In the opinion of this court, these proceedings are an abuse of the judicial process and, therefore, there is no good reason as to why leave should be granted. The reasons may be set out hereafter.

4. The criminal complaint, the revival whereof essentially is sought by the petition at hand, was instituted on 19.05.1998 seeking criminal action against three persons shown in the array, the second respondent herein being shown as the second accused, the others being Mahender Pal Jain (father of the second respondent) and a police official named SI Ved Prakash Jha.

5. The record of the trial court indicates that the petitioner took his own time in adducing evidence in the pre-summoning inquiry under Sections 200, 202 Cr. PC. He examined himself as the first and solitary witness (CW-1) on 12.12.2007, nine years after filing the complaint. This resulted in an order in the nature of one under Section 190 read with Section 204 Cr. PC being passed on 19.03.2013 whereby the second respondent was summoned for offences punishable under Section 323, 506 of the Indian Penal Code, 1860 (IPC). After the summoning order had been passed, the plaintiff did not take effective steps. Eventually, when the presence of the second respondent had been secured, the question of supply of documents persisted which, besides certain other reasons attributable to the second respondent, kept the matter hanging fire. On 05.02.2015, it was noted that though the complainant had indicated readiness to supply the deficient documents, the deficiency had not been made good.

6. Finally on 03.06.2015, supply of documents was completed and the matter adjourned for pre-charge evidence to 09.07.2015. On the said date, the complainant would not appear and the matter was adjourned though also for the reason of absence of the presiding judge.

7. On 19.08.2015, there was no one present for the complainant. The Magistrate was indulgent and issued court notice. On 03.10.2015, exemption was sought on the ground that the petitioner had gone to Pakistan to meet some relative. No documents in support were submitted. The Magistrate was not satisfied and thus declined to grant exemption. Noticeably no other witness was produced or examined. Going by the allegations in the complaint, the incident had occurred within the knowledge of public at large.

8. The present petition was not filed within the period of limitation. In the given facts and circumstances, this court is not satisfied with the prayer for condonation of delay.

9. Thus, the petition being barred and also devoid of substance, it is dismissed.

R.K.GAUBA, J.

MAY 16, 2017

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