

\$~6

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

+ CRL.L.P. 210/2017

STATE (GOVT OF NCT OF DELHI)

..... Petitioner

Through Mr.Kewal Singh Ahuja, APP with SI
Amit Kumar, PS Farsh Bazar.

versus

BHURE

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **13.04.2017**

Crl.M.A. 5929/2017 (Exemption)

Application is allowed subject to just exceptions.

Crl.M.A. 5928/2017 (Delay)

Arguments heard.

The present application has been filed by the State under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay in filing the leave petition.

The leave petition under Section 378(3) of the Cr.P.C. has been filed by the State for the grant of leave to appeal against the judgment dated 30.08.2016 passed by the Court below in Sessions Case No.318/2016 arising out of FIR No.16/2013, under Sections 354/509 IPC and 12 of the POCSO Act, Police Station Farsh Bazar.

In the application for condonation of delay, the ground taken is that after the passing of impugned judgment dated 30.08.2016, the matter was reported to the Chief Prosecutor (Shahdara) who after having discussion with the Additional Public Prosecutor and completing formalities, forwarded the matter to the Directorate of Prosecution then the matter was forwarded to Principal Secretary (L&J). The ground taken causing delay was that there was procedural delay which was beyond the control of the State.

Apparently, there is delay of 121 days in filing the instant appeal. The submission of the learned APP for the State is that the matter took time to take approval from various authorities which caused the delay in filing the appeal. It has been seen in various cases that the State does not prefer appeal within the stipulated time and takes defence of tedious procedural delay in obtaining approval. The State does not have the right to file the appeals at belated stage seeking ground that of a procedural delay. The State is expected to expedite the matter in case they want to prefer against the order/judgment of acquittal or conviction. In the considered view of the Court, no proper explanation has been given by the State which caused the delay in filing the instant appeal.

Vide judgment dated 30.08.2016, the accused/respondent has been acquitted by the trial court while observing that considering the contradictions, inconsistencies and improvements in the testimony of prosecution witnesses, more specifically the testimony of prosecutrix (PW7) and PW1-Sunita and non-examination of material witnesses, the accused has been acquitted while extending him the benefit of

doubt.

Arguments advanced by the learned APP for the State are that the prosecutrix has duly supported the case of the prosecution in her testimony before the Court and even her testimony has been corroborated by PW1-Sunita.

Perusal of record shows that the learned Trial Court did not find the testimony of the prosecutrix reliable. It was found that there are number of contradictions, inconsistencies and improvements in the testimony of the prosecutrix. It was found that PW1-Sunit and PW7 prosecutrix gave contradictory versions in their testimony inasmuch as PW1 had stated that police did not visit her nor she was interrogated by the police. Examination in chief and cross-examination of the prosecutrix shows that there were several material contradictions and improvements in her testimony. When the prosecutrix was confronted with her statement made to the police and her statement was recorded under Section 164 Cr.P.C., several material contradictions were found in her testimony made before the Court.

The legislature was wise enough while enacting Section 378 Cr.P.C. by giving six months time to the State to prefer an appeal against the judgment of conviction or acquittal, as the case may be. The procedural delay as claimed by the prosecution cannot be a ground to condone the delay. The State is expected to file the appeal well within the time prescribed in the statute. If any delay is caused, the person responsible for the same is to be enquired and departmental action is required to be taken against him. Only in

exceptional circumstances, the delay, if any, caused by the State in filing the appeal is to be condoned, that too by explaining the delay of each and every day supported by documentary evidence.

In view of the above mentioned facts and circumstances, this Court is of the considered opinion that the prosecution has failed to make out any ground for leave to file the appeal against the acquittal of the accused/respondent and the same is dismissed being barred by limitation.

Application is accordingly dismissed.

As a result, leave petition bearing CrI.L.P. No.210/2017 is also dismissed being barred by limitation.

P.S.TEJI, J

APRIL 13, 2017
dd