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

+ CRL.L.P. 246/2017

STATE

..... Petitioner

Through Mr.Kewal Singh Ahuja, APP with
ASI Shiv Kumar, PS Chhawla.

versus

PAPPU

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **11.05.2017**

Crl.M.A. 6841/2017 (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(1) of the Cr.P.C. has been filed by the State for the grant of leave to appeal against the judgment dated 30.09.2016 passed by the Court below in Sessions Case FIR No.72/2013, under Sections 363 IPC and 4 of the POCSO Act, Police Station Chhawla.

In the application for condonation of delay, the ground taken is that after the passing of impugned judgment dated 30.09.2016, the matter was reported to the Public Prosecutor who after examining the matter gave his opinion for filing an appeal and thereafter forwarded the matter to various departments for seeking administrative approval.

The ground taken causing delay was that there was procedural delay which was beyond the control of the State.

Apparently, there is delay of 79 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 30.09.2016, the accused/respondent has been acquitted by the trial court while observing that the child victim was major at the time of incident and she had gone with the accused with her consent. The accused/respondent was acquitted while observing that the prosecution has failed to prove its case beyond reasonable doubt.

Perusal of record shows that the most important witness was the child witness. As per her testimony, she herself had gone with the accused. In her cross-examination, the prosecution admitted that the accused had put vermilion and Mangal Sutra to her. During the testimony of father of the prosecution, it came on record that the prosecutrix was about 18 years of age at the time of incident. Though

the case of the prosecution was that the prosecutrix was 13 years of age at the time of incident, but from the evidence and material placed on record, it is apparent that she was major i.e. more than 18 years of age at the time of said incident.

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 CrL.L.P. No.246/2017 is also dismissed being barred by limitation.

P.S.TEJI, J

MAY 11, 2017
dd