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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and order: May 24th 2017

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CRL.L.P. 323/2017

STATE (NCT OF DELHI)

..... Petitioner

Through: Mr. Kewal Singh Ahuja, Additional
Public Prosecutor for the State

versus

JAI PRAKASH & ORS

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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P.S. TEJI, J. (ORAL)

Crl. M.A. No.8868/2017 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

**Crl. M.A. No.8867/2017 (Condonation of delay) & Crl. L.P.
No.323/2017**

1) By this application filed under Section 5 of Limitation Act read with Section 482 of Cr. P.C., the petitioner seeks condonation of delay of 195 days in filing the accompanying petition for seeking leave to appeal under Section 378(1) of Cr. P.C. against the order dated 13.07.2016 whereby the accused have been acquitted from the offence

under Section 354, 354A, 354D, 323, 506 of IPC.

2) Heard the submissions made on behalf of the State.

3) In the application for condonation of delay, the ground taken is that after the passing of impugned judgment, the matter was sent to the various authorities and after passing through various channels the file of the case alongwith opinion was sent to Department of Law, Justice and Legal Affairs. The APP of the trial court gave opinion dated 16.08.2016 that the case was not fit for appeal, to which the Chief Prosecutor (West) has also endorsed followed by the endorsement dated 19.08.2016 of the Directorate of Prosecution. However, after examining the matter in detail, it was considered by the office of the Hon'ble Lt. Governor to file an appeal in the matter. Accordingly proforma for appeal was attached on 02.02.2017 and forwarded to the Directorate of Prosecution and then to the office of the Standing Counsel, Delhi high Court on 07.02.2017. certain documents got translated and due to other personal difficulties of the Public Prosecutor including medical treatment of family member in the month of March, change in roster in the month of April the appeal could not be drafted on time. The ground taken causing delay was that there was procedural delay which was beyond the control of the State.

4) Apparently, there is delay of 195 days in filing the instant appeal. The aforesaid submissions made by the learned APP for the State is that the matter took time to take approval from various authorities and due to change in opinion with regard to filing the

appeal against the impugned judgment by the authorities, which caused the delay in filing the appeal.

5) While dealing with the application on behalf of the State for condonation of delay, this court deems it fit to scrutinise the impugned judgment to find out the merit in the appeal preferred by the State.

6) On perusal of the impugned judgment/order dated 13.07.2016, this court observes that the learned Additional Sessions Judge in para 38 of the judgment recorded that in the cross examination of the prosecutrix conducted by learned defence counsel on 10.11.2015 she had admitted that due to meetings between her and accused Jai Parkash, physical relations were made with her consent. She has also admitted in her cross-examination that she did not raise any alarm or shout for help in November 2012 and on 03.01.2013 when accused Jai Parkash had allegedly beaten her or threatened to defame her. She had also admitted that even in February 2013, when accused Jai Parkash had raped her, she had not shouted for help. This itself shows that there was consent between the parties for having physical relationship. She has also admitted in cross-examination that co-accused Rajan, Sagar and Sajan have never beaten her or have threatened her. More so, the prosecution has not examined the mother of the prosecutrix, who had witnessed the incident of 28.03.2013. Consequently, the learned Additional Sessions Judge has observed that from the testimony of all the prosecution witnesses taken together, no such offence is proved beyond reasonable doubt against the accused. Even the incident dated 02.04.2013 does not prove that accused had any

intention of sexual harassment i.e. physical contact and advances involving unwelcome and explicit sexual overtures or demand or request for sexual favour, repeatedly despite a clear indication of disinterest by prosecutrix, which could fall within the purview of Section 354A and 354D. Ultimately the learned Additional Sessions Judge has acquitted the respondents from the offence with which they were charged.

7) In view of the above facts, this court does not find any illegality or infirmity in the judgment passed by learned Additional Sessions Judge and finds no merit in the appeal.

8) Now coming to the application for condonation of delay, 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.

9) *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

10) 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.

11) Application is accordingly dismissed.

12) As a result, leave petition bearing CrI.L.P. No.323/2017 is also dismissed being barred by limitation.

MAY 24, 2017
pkb

P.S.TEJI, J