

\$~10

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

% *Date of Judgment: 7th September, 2017*

+ **CRL.L.P. 566/2016**

STATE

..... Appellant

Through : Ms.Radhika Kolluru, APP for the
State alongwith SI Ramesh Chand,
PS Nabi Karim

versus

TAMMANE

..... Respondent

Through : Mr.Rajat Srivastava, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

Crl.M.A. 16575/2016 (Condonation of Delay)

1. This is an application filed by the petitioner/State seeking condonation of 119 days' delay in filing the present leave petition. This application is vehemently opposed by the learned counsel for the respondent. It is contended that the delay is unexplained and it is not on account of any *bona fide* reasons.
2. Learned counsel for the petitioner, however, submits that after the order was pronounced on 29.02.2016, the complete file was prepared and forwarded to APP Delhi for his opinion. Thereafter, the file was forwarded to the Chief Prosecutor on 18.03.2016. Thereafter, vide noting dated 29.03.2016 by the Principal Secretary (Law and Justice) approved the file for filing and preparation of an appeal against the order of acquittal. Thereafter, a decision was taken by the Lt. Governor.

3. We have heard the learned counsel for the parties and considered the submissions so made.
4. Paragraphs 2 to 4 of this application set out the reasons for the delay in filing the present leave to appeal. The same are reproduced as under:

“2. That after the pronouncement of order dated 29.02.2016, the complete case file was prepared along with the impugned judgment thereafter the file was forwarded to Ld. APP Delhi for his opinion and the Ld. APP examined the matter in detail and gave his opinion for filing an appeal against the said judgment/order vide its file acquittal report dated 16.03.2016. That thereafter vide file noted 17.03.2016, the office of Director of Prosecution concurred with the opinion of Ld. APP and forwarded the file to the office of Chief Prosecutor on 18.03.2016. That thereafter vide file noting dated 29.03.2016, Principal Secretary(Law and Justice) approved filing of the appeal against the order of acquittal.

3. That thereafter the Law & Justice Ministry, GNCT vide its communication dated 25.05.2016 addressed to Director of Prosecution, GNCT conveyed that the instant matter has been considered by the Hon'ble Lt. Governor and decision is taken to file an appeal against the aforesaid judgment and therefore requested that further steps for filing appeal in this case may be taken.

4. That thereafter the file was sent to Standing Counsel(Criminal), GNCT for filing of appeal on 03.06.2016. Then the case was marked to the undersigned counsel. It is respectfully submitted that office of the Ld.APP took some time to prepare and finalize the present petition after taking necessary instructions from the department.”

5. Perusal of aforesaid grounds would show that after the pronouncement of order on 29.02.2016, the file was pushed from one Branch to another and finally a noting was made for filing an appeal by the Principal Secretary (Law and Justice) on 29.03.2016. Finally, the consent was given by the Lt. Governor and a communication was addressed by the Law and Justice Ministry, GNCT of Delhi on

25.05.2016 to the Director of Prosecution, GNCT conveying the said decision. We are of the view that the file has moved in an extremely casual manner without taking into consideration that the Legislature in its wisdom had enacted a law known as Law of Limitation.

6. Article 114 of the Schedule to the Limitation Act, 1963 provides that an appeal from an order of acquittal by the State will have to be filed within a period of ninety days from the date of the order appealed from. While inserting the provision the Legislature, ofcourse, had the internal administration of the State in mind. We may also notice that previously the limitation period was 6 months, which was consciously decreased to 3 months. The Law Commission of India in its 3rd Report, on which the Limitation Act, 1963 was based and introduced in Parliament, had observed that even this period is too long. The relevant portion reads as under:

“166. Article 157 provided a period of 6 months limitation for an appeal against an order of acquittal. The recent Act amending the Criminal Procedure Code has substituted a period of 3 months for 6 months. We do not propose any alteration of that period though we think that even the present period is too long to enable the State to make up its mind to file or not to file an appeal against an order of acquittal. ...”

नित्यमेव जयते (Emphasis Supplied)

7. We may also notice the following observations of the Apex Court in ***Postmaster General v. Living Media India Ltd., (2012) 3 SCC 563***:

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 the 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.”

(Emphasis Supplied)

8. The same rationale was extended to petitions seeking leave to appeal by a coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in ***State v. Harihar*, 2016 SCC OnLine Del 2354: (2016) 230 DLT (CN A) 12 (DB)** (paragraphs 5-9) while dismissing a petition on the ground of delay as the reasons were mechanical and stereotyped.
9. The Courts must also remember that the very purpose of the law of limitation is exemplified in such appeals. Simply put, the statute of limitation is a statute of repose, peace and justice. It enables the sword of Damocles to be put to rest. The respondent in such appeals has already faced the cumbrances of trial and been exonerated. The presumption of innocence has been strengthened. His mind is put to rest by the expiry of the period. Can the State be then allowed to wake up from its slumber one day and file an appeal? We think not. Unless the State is able to satisfactorily explain the delay, it would not be proper for the Court to condone it.
10. In the present case, the delay, in our view, has not been satisfactorily explained. The attitude of the petitioner is highly casual in nature. There is no explanation for the time taken from 29.03.2016 to

25.05.2016 and from 03.06.2016 to 06.10.2016, when the leave petition was filed.

11. The application is accordingly dismissed.
12. We may also notice that we have carefully perused the grounds of the leave petition on merits and find no infirmity or illegality or any ground to interfere with the order passed by the Trial Court.
13. Accordingly, both the application and the leave to appeal are dismissed.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

SEPTEMBER 07, 2017

// pst