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

+ **CRL.L.P. 620/2016**

STATE

..... Petitioner

Through Mr. Varun Goswami, APP for the
State with SI Dinesh Kumar, PS
Seelampur, Delhi.

versus

RAM LAL @ MALLA

..... Respondent

Through Appearance not given.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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17.01.2017

CRL.M.A. 18116/2016

1. This application has been filed by the applicant seeking condonation of delay of 91 days in filing the present criminal appeal against the order / judgment dated 29th April, 2016.
2. We are satisfied that the petitioner / State had adequately explained the circumstances in which delay of 91 days has occasioned in filing the leave petition.
3. This application is allowed. Delay in filing the present leave petition is, hereby, condoned.

CRL.L.P. 620/2016

4. Record of trial court has been seen and perused.
5. We have heard Mr. Varun Goswami, learned APP for the State as well as learned counsel for the respondent.
6. The State has filed this petition under Section 378(3) of Cr.P.C.

praying for leave to appeal against the acquittal of the respondent therein by the judgement dated 29th April, 2016 passed by Learned ASJ in S.C. No. 44565/2015 for conviction of offences under Sections 366/376/506 of the Indian Penal Code with which he was charged. By the same judgement, the trial court has found the respondent guilty of commission of offences punishable under Sections 363/342 IPC.

7. Perusal of the record of the impugned judgment would show that prior to the trial the following statements of the victim were recorded : -

- (i) As per record, the first statement of the victim under Section 161 Cr.P.C. was recorded on 24th October, 2012 upon her recovery from Distt. Chhattarpur, Madhya Pradesh. In this statement, the victim had not alleged that the respondent had committed any rape with her or had committed any wrong act with her;
- (ii). A second statement of the victim under Section 164 Cr.P.C. was recorded on 25th October, 2012 in the presence of her father wherein the trial court had found that she had made material improvements in her statement alleging that the respondent had committed rape with her and had threatened her to kill her if, she reported the matter to anyone else;
- (iii) A third statement of the victim was recorded on 3rd November, 2012 at the police station by the police regarding her conversation with one volunteer from NGO in the presence of her father. This statement was not placed before the trial court.
- (iv) As per record, a fourth undated statement purportedly under Section 161 Cr.P.C. was recorded wherein the victim had stated

that the respondent had threatened her to commit wrong act with her, if she did not comply with his demands.

8. We may note that in the statement under Section 164 Cr.P.C. recorded on 25th October, 2012, the victim / complainant alleged “CHHEDKHANI (teased)” by the respondent without making allegations of rape. In these circumstances, the trial court has disbelieved the allegations of rape made in one of her statements. When her testimony was recorded on 18th December, 2013 during trial, the victim had completely turned hostile in respect of the offences of rape.

9. In these circumstances, the acquittal of the respondent for commission of offence under Section 376 of IPC cannot be set aside. The prosecution has failed to establish its case beyond reasonable doubt. This criminal leave petition is, therefore, devoid of any legal merits and is hereby rejected.

10. We clarify that we have neither considered either the evidence led by the prosecution on the other charges nor opined on the merits of the trial court judgment with regard to the other charges.

11. Nothing stated herein shall be considered as an expression of opinion on the merits of the case so far as other charges against the respondent are concerned or his conviction for other offences or sentence imposed thereon.

GITA MITTAL, J

ANU MALHOTRA, J

JANUARY 17, 2017/MK