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

% *Date of Judgment: 10th October, 2017*

+ CRL.L.P. 658/2016 and CrI.M.A.19585/2016

THE GOVT. OF NCT OF DELHI Petitioner
Through: Ms.Radhika Kolluru, APP for State.
WSI Anita, PS Paschim Vihar.
versus

MALAY KUMAR GHOSAL & ORS. Respondents
Through: Ms.Nandini Sen, Adv. for
Respondents no.1, 2 and 3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

CrI.M.A.19585/2016 (delay)

1. This is an application filed by the petitioner seeking condonation of 130 days delay in filing this petition.
2. At the outset, we may notice that vide order dated 30.03.2017, limited notice to show cause was issued to the respondents as far as it relates to the charge under Section 498A IPC.
3. Learned counsel for the petitioner has drawn the attention of this Court to paragraphs 3 to 8 of the application wherein reasons for the delay have been explained. It is submitted by the counsel for the State that the judgment was delivered by the trial court on 26.04.2016. Thereafter the Additional Public Prosecutor (APP) obtained a certified copy of the order and forwarded the same along with his opinion on 26.05.2016 to Law Department. Since the file was incomplete, the Law Department returned the file to APP with a request to send a complete file. After receipt of the

complete file and after the opinion was formed, the file was forwarded to the Department of Law, Justice and Legislative Affairs on 02.06.2016 for seeking opinion and necessary permission from the Lt. Governor of Delhi. After the necessary permission was obtained from the Lt. Governor of Delhi, the file was forward to the Director of Prosecution, Delhi High Court, which was received in the office of Director of Prosecution on 13.7.2016 for filing an appeal in the matter. In the last week of September, 2016, the APP was requested to prepare the appeal and file the same in the Court. The then APP prepared the appeal on 20.12.2016 and sent to the concerned department for perusal and approval. The approved appeal was received on 04.12.2016, which resulted in delay of 130 days. It is contended by learned counsel for the petitioner that the delay was not on account of any negligence or inaction, but on account of technical reasons, which were beyond the control of the petitioner. It is further contended that the Courts have taken a liberal view while dealing with applications seeking condonation of delay. It is, thus, prayed that the delay be condoned.

4. The present application is strongly opposed by learned counsel for the respondents. It is contended by the counsel for the respondents that the application does not disclose cogent grounds for condonation of delay. Learned counsel contends that the delay has not been satisfactorily explained. There are large gaps in the movement of the file which has not been explained and which would show that the petitioner was highly negligent and, thus, the delay should not be condoned as a valuable right has accrued in favour of the respondents. Counsel relies on a decision rendered by this Court in CrI.L.P.566/2016 titled as *State vs. Tammane* delivered on 07.09.2017. Reliance is placed on paragraphs 6 to 9, which are reproduced below:

“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, of course, 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. ...”

(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.”

5. Learned counsel submits that the present case is fully covered by the decision rendered by this Court in **Tammane** (*supra*). It is, thus, prayed that the application be dismissed.

6. We have heard learned counsel for the parties and also considered their submissions and examined the grounds set out in paragraphs 3 to 8 of the application.

7. Having regard to the submissions made and taking into consideration the grounds raised in the application seeking condonation of delay in filing the present petition by the applicant, we find force in the submissions made by counsel for respondents that the delay has not been satisfactorily explained. As per the grounds seeking condonation of delay after the judgment was passed on 26.04.2016 the file was in transit from one desk to

another till it reached the office of the Additional Public Prosecutor in the month of September, 2016. The application is silent as to why there was delay in filing the leave petition appeal between September, 2016 to 08.12.2016 when the appeal was filed. There is not even a whisper with regard to the reasons for the delay in filing the leave to appeal post-September, 2016. Resultantly, we find no grounds to condone the delay.

8. The application is accordingly dismissed.

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9. In view of the order passed in CrI.M.A.19585/2016, the leave to appeal petition stands dismissed.

G.S.SISTANI, J

CHANDER SHEKHAR, J

OCTOBER 10, 2017

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