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

% *Date of Judgment: 22nd September, 2017*

+ **CRL.L.P. 552/2017**

SUNNY VERMA @ SHALU

..... Petitioner

Through: Mr.Ravish Roshan and Mr.Kumar
Nikhil, Advocates.

versus

STATE & ORS.

..... Respondents

Through: Ms.Radhika Kolluru, APP for the
State.
Insp.Sanjeev Kumar and SI Samrat
Khatriyan, PS Harsh Vihar.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

CRL.L.P. 552/2017 & Crl.M.A. 15685/2017 (Condonation of Delay)

1. The present leave to appeal has been filed against the judgment dated 01.03.2016. Along with leave to appeal an application seeking condonation of 504 days delay has been filed.
2. Counsel for the petitioner submits that the leave to appeal could not be filed within the time allowed due to bona fide reasons and for reasons beyond the control of the petitioner.
3. We have heard counsel for the petitioner. Before the submission of the counsel for the petitioner can be examined, we deem it appropriate to reproduce the application so filed by the petitioner.

The application reads as under:

"1. That the present application is being preferred by the appellant seeking condonation of delay of 504 days in filing the leave petition.

2. That Memo of Appeal may be read as part and parcel of the present application which are not being repeated herein for the sake of brevity.

3. That the present application is being moved in bonafide in order to seek condonation of 504 days of delay in filing the present leave to Appeal petition.

PRAYER :-

It is therefore, most humbly prayed that this Hon'ble Court may graciously be pleased to allow the present applicant and accordingly further be pleased to condone the delay of 504 days in filing the present Leave to Appeal, in the interest of justice.

Any other relief or reliefs which this Hon'ble Court deems fit and proper may also be passed in favour of appellant."

4. 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)

5. 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)

6. 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.
7. 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.

8. The reading of the application would show that no ground much less sufficient grounds have been shown seeking condonation of delay. The application in our view has been prepared without any application of mind. The same is bereft of any date, any reason and has been made in a highly casual manner. Thus, we find no ground to condone the delay.
9. 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 judgment dated 01.03.2016. Accordingly, the application and the leave to appeal are dismissed.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

SEPTEMBER 22, 2017

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