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

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Date of Judgment: 11th October, 2017

+ CRL.L.P. 589/2017

STATE (NCT OF DELHI)

..... Petitioner

Through: Ms.Radhika Kolluru, APP for the
State with SI Satish Kumar, PS
Aman Vihar.

versus

DHEERAJ

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

Crl. M.A. No.16610/2017 (exemption)

1. Exemption is allowed subject to all just exceptions.
2. Application stands disposed of.

Crl.M.A.16609/2017 (delay)

3. This is an application filed by the State seeking condonation of delay of 205 days in filing the present appeal. The reasons for the delay have been set out in paragraphs 2 to 11 of this application.
4. Learned counsel for the petitioner submits that the delay is not on account of inaction or negligence but for cogent reasons, which have been detailed in the application. She submits that the Courts have taken a lenient view while disposing of applications seeking condonation of delay. Counsel relies upon *Collector Land Acquisition Vs. Katiji*, 1987 (2) SCC 107 and *State of Nagaland V. Lipok*, 2005 (3) SCC 752 in support of her submissions.
5. We have heard learned Additional Public Prosecutor appearing for the State/petitioner.

6. In our view, the application does not disclose sufficient grounds to condone the delay of 205 days in filing the leave to appeal. In this case, the judgment was delivered on 05.12.2016 and the certified copy was prepared on 27.12.2016, which was received by the Department on 02.01.2017. Thereafter, the Additional Public Prosecutor of the trial Court prepared the acquittal report on 07.01.2017 and thereafter, the matter was sent to CP/NW who gave his opinion that the case is not fit for appeal. The same was, however, forwarded to the Chief Prosecutor, Director of Prosecution. Thereafter, the matter travelled up to the Lt. Governor and only reached the office of the learned Additional Public Prosecutor on 12.09.2017. We have in a recent decision in CrI.L.P.566/2016 titled as ***State vs. Tammane*** delivered on 07.09.2017 held as under :-

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.”

7. In our view, the petitioner has not been able to explain the delay satisfactorily. The State which has the benefit of the Law Department cannot be compared to a poor illiterate litigant. The department is well aware that the period of limitation fixed for filing the leave to appeal is 90 days. The application simply discloses as to how the file was sent from one department to another. In the case of **Postmaster General** (*supra*) the usual explanation that the file was kept pending was not found acceptable. Accordingly, we find no ground to condone the delay. The application is dismissed.

8. We have also examined the judgment passed by the trial court and have found no infirmity in the same. The trial court has acquitted the

respondent primarily on the ground that the victim was known to the respondent. They were residing in the same *Gali*. There is unexplained delay in registration of the FIR. There was no injury found on the body of the victim. The hymen was torn prior to the occurrence of incident. The prosecution was also unable to establish that the victim was minor. The trial court also reached the conclusion that the claim of the victim that she had not attained the majority was false.

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9. In view of the order passed in CrI.M.A.16609/2017, the leave to appeal petition stands dismissed.

G.S.SISTANI, J

CHANDER SHEKHAR, J

OCTOBER 11, 2017

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