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

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Judgment delivered on: 30.05.2019

+ CRL.REV.P. 666/2019

SH. RAKESH KUMAR

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. S.K. Dayal, Advocate.

For the Respondent : Ms. Meenakshi Dahiya, APP for the State.
SI Amit Kumar, PS Kalyanpuri.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

Crl.M.A.12045/2019 (exemption)

Exemption is allowed subject to all just exceptions.

**Crl.M.A.12074/2019 (for condonation of delay in filing) &
Crl.M.A.12047/2019 (for condonation of delay in re-filing)**

1. It is contended on behalf of the petitioner that the petitioner is a poor person and was incarcerated and his wife is also uneducated and was not in a position to arrange for funds to engage a counsel and was not aware that she could approach legal aid for filing the petition. Subsequently, she approached the legal aid and the petition has been

filed through legal aid with a delay of 319 days.

2. Issue notice. Notice is accepted by learned APP for the State.

3. Learned APP for the State submits that in view of the fact that the petitioner is in custody, she does not oppose condonation of delay.

4. In view of the above, the applications are allowed and delay in filing and re-filing the petition is condoned.

CRL.REV.P. 666/2019

1. Issue notice. Notice is accepted by learned APP for the State.

2. Since the appeal of the petitioner was dismissed by the appellate court solely on the ground of limitation, with the consent of the parties, the petition, is taken up for hearing today itself.

3. Petitioner has filed appeal, before the appellate court, impugning judgment dated 23.03.2017 and order on sentence dated 19.04.2017, whereby, he was convicted of an offence under Section 392 IPC and sentenced to undergo rigorous imprisonment for a period of 3 years and to pay fine of Rs.5,000/- for the offence under Section 392 IPC and in default to undergo simple imprisonment for a period of 3 months.

4. Petitioner was taken in custody consequent to an application filed by him for surrendering and he, consequently, surrendered

before the Court on 17.11.2017.

5. The Appellate Court, noticing that the appeal was belated by 220 days and also holding that sufficient cause had not been shown, refused to condone the delay in filing the appeal and rejected the same solely on the ground of limitation.

6. Petitioner had taken a plea before the Appellate Court that the petitioner, being a poor person and in custody, was unable to approach either the legal aid or to engage a private counsel, as such, could not file the appeal within time.

7. The Court noticing that petitioner had been represented during trial by a private counsel, disbelieved the contention of the petitioner that he did not have funds to engage a private counsel, held that sufficient cause had not been shown for condoning the delay.

8. In my view, the Appellate Court has committed an error in not condoning the delay. The Trial Court in its order on sentence dated 19.04.2017 has noticed that the petitioner has two minor children besides his wife and old parents and he is the sole bread earner of the family.

9. The fact that the petitioner was represented by a private counsel before the Trial Court would not *ipso facto* imply that he had sufficient funds to engage a private counsel or appropriate legal advice to file an appeal within limitation.

10. It may also be noticed that the petitioner had filed an appeal after he had surrendered before the concerned Court, so delay in filing the appeal would not have benefitted petitioner. Any delay in filing an appeal would be detrimental to a person who is in custody.

11. Clearly the order of the Appellate Court in rejecting the appeal of the petitioner is erroneous and the finding that sufficient cause was not shown by the petitioner in approaching the Appellate Court is not sustainable.

12. Courts have to take a liberal approach, when appeals against conviction are filed, with some delay, by persons who are in custody. Delay does not work to the advantage of the person incarcerated. People who are incarcerated do not have the advantage that a free person has, of approaching a counsel and taking legal advice at one own free will. We live in a society where the families of a poor person in custody and families of those coming from remote areas of the country are not even aware of their legal rights and even if aware, may not have the capacity or resources to approach a counsel for legal advice or approach courts for legal aid. Courts cannot adopt a hyper technical approach, while considering an application seeking condonation of delay filed against conviction by a person in custody.

13. In view of the above, impugned order dated 22.02.2018 of the Appellate Court is set aside. The delay in filing the appeal is condoned. The Appeal of the petitioner is restored to the Court of the

Additional Sessions Judge.

14. The appeal shall be listed before the Sessions Judge, East District, Karkardooma Courts, on 09.07.2019, for appropriate allocation to the concerned Court of Additional Sessions Judge.

15. Petition is allowed in the above terms.

16. Order *Dasti* under signatures of the Court Master.

MAY 30, 2019
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SANJEEV SACHDEVA, J

