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

+ **CRL.L.P. 493/2016**

STATE

..... Petitioner

Through: Mr Amit Gupta, APP for State.
SI Ramphal Singh, PS J.P.
Kalan.

versus

DEEPAK & ORS

..... Respondents

Through: Mr Vinay Kumar Sharma, Mr
Sudeep Sharma and Mr Sumit
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.09.2019

VIBHU BAKHRU, J

CRL.M.A. 14415/2016

1. This is an application filed by the petitioner seeking condonation of a delay of 375 days in filing the present appeal against the judgment dated 11.05.2015, passed by the learned ASJ (Special Fast-Track Court), Dwarka Courts, New Delhi.

2. A plain reading of the application indicates that the delay in filing the appeal has not been sufficiently explained. It is stated that the period of limitation expired on 15.08.2015. However, prior to that on 20.05.2015, the learned APP had issued an opinion that this was not a fit case to file an appeal. The said opinion was forwarded to the Chief Prosecutor, who also endorsed the opinion furnished by learned APP on 02.06.2015. It is stated that case file was, thereafter, sent to

the Department of Prosecution and it was opined not to file an appeal. This opinion was rendered on 04.06.2015.

3. However, thereafter, the records were sent to the Principal Secretary, Department of Law and Justice and were, thereafter, forwarded to the office of the standing counsel (criminal), who opined that it was a fit case of filing of appeal. Thereafter, steps were taken for filing the present appeal.

4. It is relevant to note that approximately two months' time was available for filing the appeal as on 17.06.2015; that is, the date on which the file was sent to the Principal Secretary. However, after the said date, no further details have been provided to justify the inordinate delay in filing the captioned leave to appeal. Merely stating that the file was sent to the Standing Counsel (Criminal) and the appeal was filed after he had opined to do so, plainly, insufficient to seek condonation of such inordinate delay of 375 days. Thus, this Court finds no reason to countenance the delay of 375 days in filing the present appeal.

5. The application is, accordingly, dismissed.

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6. Since this Court had declined to condone the delay in filing the appeal, there is no requirement to examine the present petition. Nonetheless, for the sake of completeness, this Court is also examining the impugned order.

7. The impugned order was passed acquitting the respondents in the case arising from FIR No. 139/2013, under Sections 498A/406/376/354/ 328/506/120B/34 of the Indian Penal Code, 1860 registered with P.S. Jafarpur Kalan. The said FIR was registered pursuant to an order dated 26.11.2013 passed by learned MM, on a complaint filed by the prosecutrix (hereafter referred to as 'Ms. N'). Ms. N had filed a complaint stating that she had married respondent no.1 on 13.07.2013. She had alleged that immediately after her marriage, her mother-in-law (respondent no.5), father-in-law (respondent no.4), her brother-in-law (respondent no.2) and sister-in-law (respondent no.3) started harassing her and taunting her for not bringing a car and enough dowry. She alleged that they used to beat her and she further complained that soon after her marriage, respondent no.2 had come to her bedroom and expressed a desire to sleep with her. Her husband (respondent no.1) also instructed her to please his brother (respondent no.2). She stated that she had resisted the attempt but was beaten by both respondent nos. 1 and 2. Her mother-in-law also instructed her to comply with the wishes of the said respondents.

8. She alleged that on 16.07.2013, respondent no.2 had come into the room, in which Ms. N was present, in a totally naked condition and upon seeing him, Ms. N ran out of the said room but respondent nos. 1, 3 and 5 started beating her and pulled her into the room where respondent no.2 raped her. She claimed that he had torn her clothes and had also bitten her on various body parts. She also alleged that one

day while she was taking a shower, her mother-in-law took away all her clothes and had kept the door of the bathroom ajar. Respondent nos. 1, 2 and 4 had watched her while she was bathing and respondent no.2 had also recorded a video of the same. She alleged that respondent no.2 (her brother-in-law) and respondent no.4 (her father-in-law) had done objectionable acts with her and had asked her to inform her mother to gift them a car and ornaments or otherwise, they would upload an obscene video of her on the internet.

9. She had also made similar allegations of rape against her father-in-law. She claimed that her father-in-law had come into her room one night in a nude condition and torn off her suit as well as pulled the string of her salwar. She stated that her mother-in-law and sister-in-law had also come to the said room. At the same time, her father-in-law did objectionable acts with her and on resisting, her father-in-law, mother-in-law and her sister-in-law (respondent nos. 3 to 5) beat her.

10. She alleged that respondent nos. 1, 3, 4 and 5 used to send her with respondent no.2 in a semi-conscious state. Respondent no.2 used to take her to some place and used to rape her. She had also claimed that one day, respondent no.2 had come into her room totally naked and raped her at knife point.

11. It is material to note that apart from the statement of the prosecutrix, there was no other material to support the statement of the prosecutrix. There was no medical evidence to indicate that she had been raped. There was also no evidence which would clearly establish

that she had informed her family about the offending acts. She had claimed that one on occasion, when she was allegedly raped by respondent no. 2, she sent an SMS to her brother to save her, from the mobile phone of respondent no. 2, which had fallen from his pocket. However, this could not be established by any corroborative evidence. Admittedly, none of the family members of Ms N had come to her aid, which would be the natural course on receiving such a message.

12. The Trial Court did not believe the testimony of the prosecutrix, principally, for the reason that the events as narrated by her seem highly improbable. Further, the same were not consistent with the evidence that was obtained in the case. First of all, the Trial Court found it highly improbable that her brother-in-law would express any desire to sleep with her in the presence of her husband, immediately after their marriage, without her husband objecting to the same. It was noticed that there was no material to indicate that respondent no.1 was unhappy about his wedding to Ms. N.

13. The Trial Court noted that the reception ceremony had been organised by the respondents on 14.07.2013 which had continued till 11:00 p.m. Ms. N's brother, her maternal aunt (*mausi*) along with her daughter had also attended the said reception ceremony. Ms. N had also admitted that respondent no.1 had given her a golden ring on the night of 15.07.2013. This gesture of affection was inconsistent with respondent no.2 permitting his brother to violate his wife, i.e. Ms. N.

14. Ms N had further deposed that respondent no.2 had come into

her bedroom on 16.07.2013, in a nude state. She had stated that she started crying upon seeing him and ran out of her room. But her husband, her mother-in-law and her sister-in-law (respondent nos. 1, 5 and 3) had dragged her back into the room and had asked respondent no.2 to do whatever he wished to do with Ms. N. She stated that thereafter, respondent no.2 had torn her clothes and raped her.

15. Ms N's allegation that she was been subjected to this conduct immediately after her marriage was inconsistent with the photographs produced. Her photograph, which was taken on 16.07.2013 (Ex.PW3/D-6), showed her smiling in a cheerful mood. She had deposed that she had posed for this photograph at the instance of her husband. However, a plain look at the said photographs does not give this impression. In addition, there were other photographs (Ex.PW3/D-7, Ex.PW3/D-8 and Ex.PW3/D-9) which showed Ms. N playing with her sister-in-law's child. These photographs also presented a cheerful picture, which was inconsistent with the allegations made by her.

16. In addition, there were two other photographs (Ex.PW3/D-10 and Ex.PW3/D-11) which showed Ms. N combing her hair. She was smiling in the said photographs. Ms. N had claimed that the said photographs had been taken by respondent no.2. She had deposed that respondent no.2 entered her room all of a sudden and clicked the photograph without her consent. The Trial Court found it difficult to believe that Ms N would be smiling in such a situation. The Trial Court reasoned that a victim of rape would not smile on seeing the

face of her rapist.

17. Ms. N deposed that on 01.08.2013, respondent no.2 had come into her room in an inebriated condition and raped her on knife point. The Trial Court found that on 01.08.2013, respondent no.2 was taken to hospital at about 7:00 p.m. This was inconsistent with Ms N's allegation that respondent no.2 had raped her on that date.

18. This Court is of the view that the Trial Court has carefully evaluated the evidence and has disbelieved the allegations made by Ms. N. This Court finds no infirmity with the said view.

19. It is well settled that unless the Court finds any compelling reasons for setting aside the order of acquittal, interference with the Trial Court's decision of acquittal would not be warranted. In this case, this Court finds no infirmity with the impugned judgment.

20. In view of the above, the present petition is dismissed as being highly delayed, as well as on merits.

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VIBHU BAKHRU, J

SEPTEMBER 16, 2019
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