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

+ **CRL.L.P. 561/2017 & CRL.M.A. 15917/2017**

STATE (NCT OF DELHI)

..... Petitioner

Through: Ms Kusum Dhalla, APP for State with
SI Chaitanya Abhijit, PS Kotwali.

versus

SURAJ PRAKASH

..... Respondent

Through: Mr Dharam Vir Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.10.2019

1. The petitioner has filed the present petition, *inter alia*, seeking leave to appeal against a judgment dated 16.09.2016 passed by the Special Judge – IV (PC Act) CBI, Tis Hazari Courts, Delhi, whereby the learned Sessions Judge had acquitted the respondent of the offences under Sections 279/337/338/304A of the IPC and had allowed the appeal against a judgment dated 13.07.2016 passed by the learned Metropolitan Magistrate.
2. The said proceedings had commenced pursuant to an FIR bearing No.174/2005 under Sections 279/337/338/304A of the IPC, registered with PS Kotwali. The said FIR related to an incident that occurred on 07.05.2005 at about 05:45 a.m. The respondent (hereafter ‘the accused’) was driving a TSR bearing no. DL-1RJ-1037. It is alleged that he was driving the same in a rash and negligent manner and resultantly, had collided with a stationary truck bearing no. DL-1GA-3693. The said TSR was carrying five

passengers. Four out of the five passengers suffered injuries in the accident and one of them succumbed to the same subsequently.

3. One of the passengers had deposed as PW-2. According to his testimony, the respondent was driving the said TSR in a rash and negligent manner and at an excessive speed. He had requested the respondent to drive slowly. However, it is alleged that the accused paid no heed to the said request.

4. The testimonies of the other two passengers (who deposed as PW-6 and PW-11) were not in similar terms. Although PW-6 also deposed that the respondent was driving the TSR in a rash and negligent manner and had been asked to slow down; PW-6's testimony also indicates that a distance of about sixteen to seventeen kilometres had been covered in forty-five minutes. PW-11 also deposed regarding the manner in which the accident had occurred. PW-11 stated that it had occurred as a bus had come from the rear side and had overtaken the TSR; the respondent had veered his vehicle to avoid the accident and, in the process, had collided with the truck in question. This was also a defence raised by the respondent.

5. The learned Metropolitan Magistrate had proceeded on the basis of the testimony of PW-2 and PW-6 and had convicted the respondent. The learned Sessions Judge reversed the said decision as it found that the testimony of PW-2 could not be considered as the accused was not afforded any opportunity to cross examine the said witness. The court found the defence plausible and to also to some extent consistent with the testimony of PW-11. It was also noted that since the distance of fourteen to seventeen kilometres was covered in forty-five minutes, it is reasonable to assume that

the accused was not driving the said TSR at an excessive speed. After evaluating the evidence, the court concluded that the respondent's offence was not established beyond any reasonable doubt. This court does not find the aforesaid conclusion to be unreasonable or arbitrary.

6. Having stated the above, it is important to note that the said decision was rendered on 16.09.2016. However, the present appeal had been filed after an inordinate delay of 265 days. A plain reading of the application indicates that the delay is attributed to sending the files to various department and seeking information. However, no dates and timelines have been provided. It is well settled that the delay has to be explained on a day-to-day basis. This, clearly, had not been done in this case.

7. In view of the above, this Court does not find that the application for condonation of delay is merited. The application is, accordingly, dismissed. The petition is also, consequently, dismissed.

VIBHU BAKHRU, J

OCTOBER 10, 2019
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