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

Judgment reserved on: 08th January, 2020

Judgment pronounced on: 31st January, 2020

+ **CRL.L.P. 31/2018 & Crl.M.A. No.546/2018**

SHRI INDER PAL

..... Petitioner

Through: Mr.R.P. Luthra and Mr.Purshottam
Chopra, Advs

versus

STATE & ORS.

..... Respondents

Through: Ms.Aashaa Tiwari, APP for State
with Insp. Vikram Singh, ASI Anil
Kumar, PS Sangam Vihar
Akhileshwar Jha, Adv. for R- 2 & 3

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

SANGITA DHINGRA SEHGAL, J.

CRL.L.P. 31/2018 & Crl. M.A. No. 546/2018 (Condonation of Delay)

1. The present leave petition has been filed by the petitioner under Section 372 of Cr.P.C. for setting aside the judgment dated 20.12.2010 passed by Additional Sessions Judge, South & South East District, Saket Courts, New Delhi in case S.C. No.01/2008, for the offences punishable under Sections 307/326/34 IPC.

2. The present leave petition has been accompanied with an application seeking condonation of delay of 2495 days in filing the present petition.
3. The counsel for the petitioner contends that the present petition could not be preferred within the stipulated period as the petitioner and his wife were involved and implicated in cross case FIR No.514/2007 and were convicted vide judgment dated 20.12.2010 and sent to jail. The counsel for the petitioner further contends that the leave petition was to be filed by the State, but as it failed to challenge the impugned judgment of acquittal and discharge its duties, the petitioner being aggrieved of the said judgment preferred the present criminal leave petition. The counsel further pleads that the petitioner was released on bail only after the order dated 5.5.2011 passed by the Hon'ble Supreme Court.
4. Per contra, learned counsel for the Respondent No. 2 and 3 argued that the present leave petition is not maintainable as there is an enormous delay of seven years in preferring the leave petition against the impugned judgment of acquittal.
5. The learned counsel for Respondent no. 2 & 3 further argued that the petitioner has failed to give any cogent reason to condone the delay of 2495 days in filing the present leave petition. Learned counsel further contends that the explanation rendered by the petitioner in his application for condonation of delay is unacceptable as the petitioner had preferred an appeal against his conviction in case FIR No. 514/07 within the prescribed period of limitation, however, he failed to prefer the present leave petition within time.

6. He further contends that filing of an appeal by the state in every case of acquittal is not mandatory in law and is only an exception; hence, the present leave petition of the petitioner should be dismissed on his failure to explain the delay of 2495 days.
7. We have heard the learned counsel for the petitioner as well as the respondent no. 2 & 3.
8. At the outset, we deem it appropriate to refer to the explanation provided by the petitioner in his application for condonation of delay. The justification rendered by the petitioner in his application is as under: -

“2. That the appellant could not prefer the appeal within stipulated period as the appellant and his wife were involved and implicated in cross case FIR No. 514/2007 and were convicted vide judgment dated 20.12.2010 and sent to jail. The appellant was released on bail only after the orders dated 05.05.2011 passed by Hon’ble Supreme Court.

3. That the appeal was to be filed by the State, but the State has failed to discharge its duties and obligations to challenge the impugned judgment of acquittal.

4. That however when the Crl. Appeal No. 15/2011 filed by the appellant and his wife was listed before this Hon’ble Court on 27.10.2017, it was observed that no appeal has been filed by the State against the said judgment of acquittal. Hence, the appellant being aggrieved of said judgment is preferring the accompanying appeal.”

9. There is no dispute that the law relating to condonation of delay by the courts is well settled. In ***Lanka Venkateswarlu (D) by L.Rs. vs.***

State of A.P. and Ors. reported in **AIR 2011 SC 1199** the Apex Court has held as under:

“6. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as "liberal approach", "justice oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.”

10. In ***Esha Bhattacharjee vs Management Committee of Raghunathpur Nafar Academy*** reported in **(2013) 12 SCC 649** the Apex Court has laid down the principles related to the condonation of delay which are as follows:

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1 i) *There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

21.2 ii) *The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.*

21.3 iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

21.4 iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

21.5 v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6 vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

21.7 vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8 viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9 ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11 xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12 xii) The entire gamut of facts is to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

11. There is no straight jacket formula applicable in condoning the delay and the court has to apply its judicial mind depending on each case. However, before this exercise is undertaken, the petitioner has to establish that his case falls within the definition of ‘sufficient cause’. It is only after establishing sufficient cause, that the court can look into the question whether the explanation given by the petitioner is satisfactory. Moreover, even though the court should take a liberal approach in condoning the delay to prevent injustice to the bonafide

litigants, it cannot be carried away by the fictitious, fancy claims of the petitioner and ignore the sluggishness of a petitioner in exercising his right to file the leave petition.

12. Applying the law laid down by the Apex Court, in the present case, we are not satisfied with the explanation provided by the petitioner in the present case. The petitioner had almost 7 years to exercise his right to challenge the judgment of the Trial Court but he withheld the same for the reasons best known to him.
13. In terms of the aforesaid discussion, we find no reason to condone the delay of 2495 days in filing the present petition.
14. Consequently, the application for condonation of delay along with the leave petition is dismissed.

SANGITA DHINGRA SEHGAL, J.

MANMOHAN, J.

JANUARY 31, 2020
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