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

+ **CRL.REV.P. 1160/2023 & CRL.M.A. 29596/2023**

STATE

.....Petitioner

Through: Mr. Naresh Kumar
Chahar, APP for the State
with Ms. Nisha Sharma,
Mr. Bhavya Nayyar, Mr.
Ayush Tulsyan, Mr. Utsav
Kataria, Ms. Ankur Kaul
Chandhioke, Mr. Rachna
Katuyar and Ms. Mahima
Singh, Advocates.
SI Chetan, P.S. Begumpur.

versus

RADHEY SHYAM

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

25.07.2024

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1. The present application being CRL.M.A. 29596/2023 is filed under Section 5 of the Limitation Act, 1963 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), seeking condonation of 365 days delay in filing the present revision petition.

2. The present revision petition is filed challenging the order dated 08.04.2022 (hereafter '**the impugned order**') passed by the learned Additional Chief Metropolitan Magistrate ('ACMM') (North West) Rohini Courts, Delhi in Crl. Case No. 2611/2018.

3. By the impugned order, the learned ACMM discharged the accused/ respondent in FIR No. 321/2016, registered at Police

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Station Begum Pur, for offence under Sections 506/509 of the Indian Penal Code, 1860 ('IPC'). The learned ACMM discharged the accused on the ground that there was no sufficient material to frame charges against him.

4. The FIR was registered on a written complaint given by the complainant who alleged that the accused made vulgar gestures towards her. When she objected, he abused her and threatened her of dire consequences.

5. It is the case of the petitioner that the impugned order has been passed in a mechanical manner, despite specific allegations against the respondent in the statement under Section 164 of the CrPC.

6. The learned ACMM has considered the complaint as well as the statement made under Section 164 of the CrPC and held as under:

“To prima facie establish a case u/s 509 IPC, the complainant must elaborate the exact words and gestures in the complaint. It is for the Court to decide as to whether the words or gestures allegedly used by the accused are sufficient to insult the modesty of a woman or not.

*In this case in hand, in her complaint given to the police, complainant admittedly stated that accused started hurling filthy abuses upon her. **She has not mentioned anything specific in her complaint. In her statement recorded u/s 164 Cr.P.C. also, she stated that accused started harassing her in different ways. Again, no specific word was mentioned in the statement u/s 164 Cr.P.C. The ambiguous statements given to the police as well as before a Magistrate are not sufficient to frame charges for the offence u/s 509 IPC.***

*Similarly, to attract criminal liability for the offence U/s 506 IPC, the complainant has to state exact language used by the accused and that the threats actually caused alarm to the victim. **In this case,***



neither the language used by the accused has been mentioned nor the complainant has anywhere alleged that she was alarmed by the threat advanced by the accused. Hence, in view of the observations made by Hon'ble Delhi High Court in case titled as Amitabh Adhar & Anr. Vs. NCT of Delhi & Anr., the offence U/s 506 IPC is also not made out."

(emphasis supplied)

7. The learned ACMM discharged the respondent on the ground that the allegations were ambiguous in nature and consequently insufficient to attract criminal liability under Sections 506/509 of the IPC.
8. The impugned order was passed on 08.04.2022 and the revision petition was filed on 30.10.2023.
9. It is stated that the delay was unintentional and occurred despite the vigilant approach of the State officials. It is also stated that the matter was transferred to the concerned officials but delay was caused in taking the requisite approvals from the various officers.
10. The present petition was filed after more than one and a half year of passing of the impugned order. There is no plausible explanation for such inordinate delay. To add to this, there is not even a whiff of any circumstance which could be analysed by this court in order to arrive at the conclusion that it was beyond the control of the State, and thereby, a sufficient cause which led to delay in filing of the present petition.
11. The ground taken by the petitioner in the application seeking condonation of delay is that time taken for obtaining the requisite approvals and processing the petition through the official channel/hierarchy.
12. The Hon'ble Apex Court has frowned upon following of



such practices by the Government departments. The Hon'ble Apex Court, in the case of **Postmaster General v. Living Media India Ltd. : (2012) 3 SCC 563**, had held that the Government cannot claim to have a separate period of limitation when the Department is possessed with competent persons familiar with court proceedings. The delay cannot be condoned mechanically merely because the Government or a wing of the Government is a party before the Court. The Hon'ble Apex Court had rejected the claim on account of impersonal machinery and bureaucratic methodology of making several notes in view of the modern technologies being used and available.

13. The Hon'ble Apex Court in the case of **State of M.P. v. Bherulal : (2020) 10 SCC 654**, while observing the irony that no action is taken against the officers who sit on files and do nothing under a presumption that the court would condone the delay in routine, held as under:

“6. We are also of the view that the aforesaid approach is being adopted in what we have categorised earlier as “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.



7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.”

14. Therefore, unless a reasonable and acceptable explanation for the delay is provided, the same cannot be accepted. As held by the Hon’ble Apex Court, the Government departments are under such obligation to ensure that they perform their duties with diligence and commitment.

15. To condone the delay of 365 days, it is essential to consider sufficient cause, nature of delay and whether under the present circumstance, such delay can be condoned based upon the arguments made by the petitioner.

16. This Court is of the opinion that the application is bereft of any details for this court to accept that the petitioner was prevented from filing this petition within the stipulated time. In view of the same, this Court finds no credible ground to accede to the petitioner’s request to condone the delay.

17. The application is, accordingly, dismissed.

18. Even otherwise, this Court finds no infirmity in the impugned order passed by the learned ACMM. The impugned order has been passed after considering the allegations of the Complainant in her written complaint and statement under Section 164 of the Criminal Procedure Code, 1973 (‘CrPC’). The learned ACMM found that the allegations which form the basis of offences under Sections 506/509 of the IPC, were in fact, ambiguous in nature, and no criminal liability could be fastened against the accused.

19. Notably, the allegations of the complainant do not disclose



the exact words or gestures made by the respondent but merely state 'vulgar gestures' and 'abuses'. Given the ambiguity of the allegations, it is not possible to ascertain on a *prima facie* basis whether the gestures or words were in the nature of outraging the modesty of a woman and consequently, attract the offence under Section 509 of the IPC.

20. Furthermore, there is no allegation that the complainant was alarmed by the threats of the respondent. It is trite law that for attracting an offence under Section 506 of the IPC, it is necessary that the words used are with the intent to cause alarm to the victim. Mere allegation that the accused threatened the victim with dire consequences is not sufficient to attract the provisions under Section 506 of the IPC.

21. This Court finds that the learned ACMM has rightly discharged the respondent and consequently, there is no reason to interfere with the impugned order.

22. In view of the above, the present petition is dismissed on delay as well as on merits.

AMIT MAHAJAN, J

JULY 25, 2024/MR