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

+ CRL.L.P. 589/2022 & CRL.M.A. 26541/2022

STATE OF GNCTD

.....Petitioner

Through: Mr. Ritesh Kumar Bahri, APP for the
State with Mr. Lalit Luthra, Advocate.

versus

AMIT KUMAR ALIAS SITU

.....Respondent

Through: Mr. U.S. Khatar, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **09.07.2024**

1. This hearing has been done through hybrid mode.
2. The present petition seeking leave to appeal has been filed challenging the judgment dated 23rd December, 2019 by which the Learned Special Court (POCSO), has acquitted the Accused/Respondent in SC No. 6553/2016, arising out of FIR No. 21/2014 under Sections 323/342/451/376/506 of the IPC and Section 6 of the POCSO Act, registered at PS Neb Sarai, New Delhi. The said petition is accompanied by an application seeking condonation of delay under Section 5 of the Limitation Act.
3. The judgment is dated 23rd December, 2019 but as per the application which has been filed by the State seeking condonation of delay, the certified copy is stated to have been received on 29th February, 2020. The appeal was however lodged only on 21st November, 2022. The explanation given in the application is that the file had to move between various authorities, even



perusal of the application would reveal that the learned APP and the Director, Prosecution agreed that the case was not fit for appeal. However, finally, the Assistant Legal Advisor of the Law department disagreed and hence, the matter went to the Hon'ble Lt. Governor and the appeal was decided to be filed. The total condonation of delay sought is for a period of 969 days.

4. A perusal of the Supreme Court judgment in ***Postmaster General & Ors. v. Living Media India Ltd. and Anr.,(2012) 3 SCC 563*** shows that the government bodies, their agencies and instrumentalities have to give reasonable and just explanation for the delay, mere explanation that the file was pending at a certain stage will not be acceptable as a cogent reason. The relevant portion of the judgment is extracted herein below:

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds



everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

5. After having perused the reasons for the delay in filing the present appeal, this Court is of the opinion that following the decided principles of law laid down by the Hon’ble Supreme Court in ***Postmaster General (supra)***, the mere movement of a file is not a sufficient ground for condoning delay.

6. Further, in view of the decisions in ***In Re: Cognizance for Extension of Limitation [Suo Moto Writ Petition (C) No. 3 of 2020, Order dated 10th January, 2022]*** and ***Arif Azim Co. Ltd. v. Aptech Ltd., (2024 SCC OnLine SC 215)***, the period between 15th March, 2020 to 28th February, 2022 would be excluded. Even if the period of Covid from March 2020 till February, 2022 is excluded, the delay is substantial, i.e., from March, 2022 to November,



2022.

7. Under such circumstances, the Court is not declined to condone the delay and accordingly, application seeking condonation of delay is dismissed and accordingly the Leave Petition is also dismissed.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

JULY 9, 2024

bsr/PC/ks