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

+ CRL.REV.P. 446/2024

STATE

..... Petitioner

Through: Mr. Utkarsh, APP for the
State
ASI Sunil Kumar, PS- B.
Nagar

versus

ASHOK NAGPAL & ORS. Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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05.04.2024

CRL.M.A. 10379/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

**CRL.REV.P. 446/2024, CRL.M.A. 10378/2024(for
condonation of delay in filing the petition) & CRL.M.A.
10380/2024 (for condonation of delay in re-filing the petition)**

3. The present petition is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 seeking setting aside of the order dated 08.10.2021 (hereafter '**impugned order**') passed by the learned Additional Chief Metropolitan Magistrate, Rohini in Cr Case 8612/2021 titled as *State v. Ashok Nagpal & Ors.*
4. The application being CRL.M.A. 10378/2024 is filed by State seeking condonation of 568 days delay in filing the present appeal.
5. It is stated that due to spread of COVID-19, which was one of the most unprecedented and unforeseen event having impacted the lives of people globally, there has been delay in



filing the appeal.

6. In addition, there is delay of 74 days in refiling the present petition and curing the defects (CM APPL. 10380/2024).

7. The learned Additional Public Prosecutor for the State submits that the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020 in Re: Cognizance for Extension of Limitation*, had extended the limitation on account of Covid-19 Virus owing to resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

8. The learned Additional Public Prosecutor for the State further submits that the learned Trial Court has erroneously declined to take cognizance of the chargesheet on the ground that the period of limitation for taking cognizance is one year from the date of offence. He submits that the period of limitation has to be counted from the date of registration of the FIR.

9. It is also stated that the learned prosecutor who was to draft and file the appeal was facing certain medical problems during that period.

10. The impugned order was passed on 08.10.2021 and the appeal challenging the same was filed on 16.02.2024.

11. The Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020 in Re: Cognizance for Extension of Limitation*, for the purpose of computing the limitation in respect of any application or any appeal, had directed exclusion of the period from 15.03.2020 to 28.02.2022.

12. In the present case, even if the period 15.03.2020 to 28.02.2022 is excluded for the purpose of calculating delay, still



there is no plausible explanation for the further delay on the part of the appellant. Clearly, there is an inordinate delay in filing the present appeal. 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 appeal. The grounds taken by the appellant in the application seeking condonation of delay is two-fold – firstly, that the delay has arisen in bona fide circumstances with no fault on the part of the appellant since earnest efforts were made at various stages to finalise the appeal and secondly, that the appeal has to be processed through official channel/hierarchy which further causes delay.

13. 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.

14. The Hon'ble Supreme 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.”

15. 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.

16. To condone the delay of 568 days in filing the appeal, 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.

17. The learned Trial Court by the impugned order refrained from taking cognizance of the offence under Section 188 of the



IPC punishable with maximum imprisonment of six months since the offence was allegedly committed in April, 2020. The statutory period of limitation for taking cognizance in relation to offence attracting maximum imprisonment for a term not exceeding one year, is one year.

18. Further period of more than three years has elapsed since passing of the impugned order. Admittedly, no cognizance can be taken at this stage for an offence attracting punishment of six months which was allegedly committed in April, 2020.

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

20. The application is, accordingly, dismissed.

21. Consequently, the appeal is dismissed as well.

AMIT MAHAJAN, J

APRIL 5, 2024
“SS”