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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.L.P. 570/2024, CRL.M.A. 35295/2024 & CRL.M.A.
35296/2024

STATEPetitioner
Through: Mr. Utkarsh, APP for the
State.
SI Atul Prabhakar (P.S.
Okhla Industrial Area).

versus

MANOJ KUMAR & ORS.Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
26.11.2024

1. The present leave to appeal is filed against the judgment dated 18.02.2020 (hereafter '**impugned judgment**') passed by the learned Additional Sessions Judge ('**ASJ**'), South East District, Saket Courts, New Delhi in Session Case No. 2428/2016 in FIR No. 762/2014.
2. By the impugned judgment, the learned ASJ acquitted Respondent Nos. 1-3 of the offences under Sections 329/387/325/34 of the Indian Penal Code, 1860 ('**IPC**').
3. The State has also filed an application, that is, CRL.M.A. 35296/2024 under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 950 days in filing the present leave to appeal.
4. The brief facts of the present case are that an information about a quarrel was received at Police Station Okhla and the

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same was diarised as DD No. 27PP. The FIR was registered on a complaint given by one Sanjay Kumar Yadav. It is alleged that on the night of 12.10.2014, the complainant was doing the work of repairing the damaged telephone line of Tata Company alongwith one Shailesh and his younger brother Abhishek. It is alleged that at 1:20 PM, accused Ravi alongwith one boy approached the complainant and started demanding money from him. It is alleged that thereafter when the complainant expressed his inability to pay the money, accused Ravi and his associate threatened the complainant of dire consequences and left the spot.

5. Subsequently, it is alleged that at about 1:30 PM, accused Ravi alongwith his associates, armed with wooden stick and hockey, again approached the complainant. It is alleged that thereafter accused Ravi hit the complainant on his back with a hockey and also exhorted his associates to hit the complainant. It is alleged that co-accused Narayan hit the complainant on his hand with a wooden stick, and the complainant thereafter fell down on the road. It is further alleged that the co-accused Manoj hit the complainant with a *danda* after the complainant fell on the road. The accused persons fled from the spot after beating the complainant.

6. Chargesheet was thereafter filed after investigation and the respondents were charged for offences under Sections 329/387/34 of the IPC, and in the alternative, they were charged under Sections 325/34 of the IPC.

7. The learned ASJ, by impugned judgment acquitted the respondents of the charged offences.

8. The impugned judgment dated 18.02.2020 has been challenged by the State belatedly in November, 2024. Clearly,

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there has been an inordinate delay of 950 days in filing the present petition.

9. It is well settled that each day of the delay is required to be explained. No worthy reasons have been pleaded in the application seeking condonation of delay that would warrant this Court to condone the delay. The application mentions that the judgment was delivered on 18.02.2020, and the certified copy, though applied for on the same day, was received on 27.02.2020. The application thereafter mentions that the file was in process in various departments and was received in the office of the Standing Counsel (Crl.) on 31.08.2020. Subsequently, the file was marked to one Additional Public Prosecutor of this Court on 07.09.2020, and thereafter remarked to other Additional Public Prosecutor on 22.06.2022. Subsequently, the application mentions that the file was remarked to other Additional Public Prosecutor on 28.06.2022, and finally on 18.10.2022 the file was again remarked for preparing the appeal and filing of the same.

10. It has been stated that since few documents of the trial court record were missing, the original paper book was called. Thereafter, the affidavits were sent to the concerned DCP for obtaining the signature, and the same were received on 14.11.2024. Except as aforesaid, the only other reason that has been stated is that the Hon'ble Supreme Court had extended the period of limitation from 15.03.2020 till 28.02.2022.

11. Even if, the benefit of the judgment passed by the Hon'ble Apex Court is given to the prosecution, this Court cannot lose sight of the fact that there has been a delay of 950 days in the filing of the present appeal.

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 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.”

14. Therefore, unless a reasonable and acceptable explanation for the delay is provided, the same cannot be condoned. 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. As noted above, no worthy reason is pleaded so as to entitle the application for condonation of delay being allowed.

16. Insofar as the merits of the case are concerned, the respondents have been acquitted by the learned ASJ while specifically noting that the prosecution case had been substantially weakened owing to various discrepancies and contradictions.

17. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the case of ***Maharashtra v. Sujay Mangesh Poyarekar : (2008) 9 SCC 475*** held as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of



acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”

(emphasis supplied)

18. The learned Additional Public Prosecutor for the State submits that the impugned judgment is based on conjectures and surmises and is liable to be set aside. He submits that the learned ASJ failed to appreciate the evidence in a proper manner, and take into consideration the statement of the witnesses in the light of the facts and circumstances of the present case.

19. He submits that the learned ASJ failed to appreciate that the complainant has fully supported the case, and has remained consistent during cross-examination. He submits that the fact that the complainant suffered injury at the hands of the accused persons is further corroborated from the medical evidence.

20. He submits that specific allegations about the commission of the offence was made by the complainant, and the testimony of the injured witness ought to be relied upon unless there are strong reasons to reject the same.

21. *In arguendo*, he submits that the contradictions/omissions pointed out are only trivial in nature, and not such so as to materially affect the core of the case of the prosecution.

22. In the present case, the prosecution examined 9 witnesses, the material witnesses being the complainant, his brother – Abhishek Yadav, and Shailesh. It was noted that the complainant, while in his complaint had stated that at about 1:20 PM, accused Ravi accompanied by one other person had approached the complainant, in his examination in chief, the

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complainant deposed that at about 1:20 PM only accused Ravi came there.

23. PW5- Shailesh, deposed that on 12.10.2014, he was working in Okhla Phase-II of repairing of TATA telephone company wire line, and that at about 1:30 PM, accused Ravi along with another person came there, met the complainant, discussed something with the complainant, and left from there. Accordingly, as observed by the learned ASJ, there existed contradictions in the deposition of the complainant and that of Shailesh in regard to the number of persons who came to the complainant in the first instance.

24. The complainant further deposed that he was working for laying the Telephone lines of TATA Company when accused Ravi came there, objected to the work and also demanded a sum of ₹10,000/- from the complainant for doing work in the area. PW5- Shailesh, in his deposition, stated that he was hearing the conversations between the complainant and the accused persons, however, as rightly noted by the learned ASJ, if Shailesh was in fact hearing the conversation, he must have heard about the demands of money by the accused persons. However, PW5 did not depose anything about the demand of money being made by the accused persons from the complainant.

25. It was noted that as per the version of the complainant, money was demanded only by accused Ravi. However, as per the version of the brother of the complainant, that is PW4- Abhishek, all the accused persons demanded money from the complainant.

26. The learned ASJ noted that while the complainant, and PW5-Shailesh referred to two incidents, PW4-Abhishek, referred to only one incident. It was noted that PW4-Abhishek nowhere



deposed about the first visit of the accused Ravi to the complainant and the subsequent demand of money.

27. It was further noted that PW4-Abhishek, the brother of the complainant was present at the spot when the incident of beating happened. However, as noted by the learned ASJ, the brother of the complainant did not make any attempt to save his brother from the alleged beatings inflicted by the accused persons. Accordingly, in the light of such unnatural conduct depicted by PW4-Abhishek, the learned ASJ noted that his testimony could not be relied upon.

28. From a perusal of the record, it is apparent that there are several discrepancies and contradictions in the story of the prosecution.

29. It is well settled that the testimony of an injured witness is accorded a special status in law, and should be relied upon provided that the same is without major contradictions [Ref: ***Abdul Sayeed v. State of Madhya Pradesh : (2010) 10 SCC 259***]. However, from a perusal of the record, it is apparent that there are several inconsistencies and contradictions in the case of the prosecution. In view of the aforesaid discussion, this Court is of the opinion that the State has not been able to establish a *prima facie* case in its favour and no credible ground has been raised to accede to the State's request to condone the delay or to grant leave to appeal in the present case.

30. The leave petition along with the pending applications for condonation of delay are dismissed in the aforesaid terms.

AMIT MAHAJAN, J

NOVEMBER 26, 2024/‘Aman’

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