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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 346/2022 & CRL.M.A. 13831/2022**

STATE

.....Petitioner

Through: Mr. Sunil Kumar Gautam,
APP for the State.
SI Kuldeep Bhati, PS I.P.
Estate.

versus

KRISHAN

.....Respondent

Through: Mr. D.S. Patil, Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
03.04.2025

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1. The present leave petition is filed against the order dated 25.10.2016 (hereafter '**impugned order**'), passed by the learned Appellate Court, in Criminal Appeal No. 54994/2016.
2. By the impugned order, the learned Appellate Court set aside the judgment on conviction dated 19.08.2016 and order on sentence dated 15.09.2016, passed in case arising out of FIR No. 94/2001, registered at Police Station I.P. Estate.
3. By judgment on conviction dated 19.08.2016, the learned Trial Court convicted the respondent for the offence under Section 420 of the Indian Penal Code, 1860 ('**IPC**') and acquitted co-accused Prabhu Dayal. By order on sentence dated 15.09.2016, the learned Trial Court sentenced the respondent to undergo simple imprisonment for a period of four years and to pay a fine of ₹10,000/-, and in default of payment of fine, to

further undergo simple imprisonment for a period of six months.

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4. The State has also filed application, that is, CRL.M.A. 13831/2022 under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 2090 days in filing the present leave petition.

5. The brief facts of the case are as under:

5.1. It is the case of the prosecution that the respondent had secured a job in Delhi Police on 12.11.1984 on the basis of a forged certificate. It is alleged that the respondent had forged the matriculation certificate of his brother, namely, Bal Krishan, by editing out the name on the certificate to read as his own name. It is alleged that this was done by the respondent by erasing the word 'Bal' and adding 'Kumar' after 'Krishan'. The father of the respondent— co-accused Prabhu Dayal, who was serving as an Assistant Sub-Inspector, was alleged to have played an active part in the conspiracy by standing as a surety for the respondent. The brother of the respondent was placed in Column 2 of the Chargesheet and declared as a proclaimed offender.

5.2. The entire offence is alleged to have come to light during the course of investigation of a case registered by the CBI against Bal Krishan. That case was registered at the instance of the Registrar of Supreme Court after it was detected that Bal Krishan had filed a forged certificate regarding his being in custody in a Special Leave Petition before the Supreme Court, in relation to another FIR.

5.3. The learned Trial Court, by the judgment on conviction dated 19.08.2016, convicted the respondent for the offence under Section 420 of the IPC. It was observed that while there was nothing to show complicity of the co-accused Prabhu in the

commission of the offence, however, even though the original

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certificate was not placed on record, it appeared that the respondent had secured the job by furnishing a manipulated certificate, which was sufficient to constitute the offence of cheating. It was also observed that the evidence on record fell short for establishing the offence of forgery.

5.4. The learned Appellate Court, by the impugned judgment, set aside the conviction of the respondent by observing that the learned Trial Court had relied upon documents which were not proved in accordance with law and the chain of circumstances required to convict the respondent remained incomplete.

5.5. Initially, the State challenged the impugned judgment before this Court in a revision petition, being, CRL.REV.P. 9/2018. This Court, by order dated 06.05.2022, dismissed the petition with liberty to file an appeal. It was noted that the correct course of action for the State in challenging a decision of acquittal was to file an appeal after obtaining leave of Court.

5.6. Thereafter, the State preferred the present leave petition.

6. At the outset, the learned counsel for the respondent has vehemently opposed the condonation of delay application preferred by the State. He submits that the revision petition was also filed belatedly and the State has furnished no proper explanation for the delay apart from vague assertions of administrative issues. He further submits that the cause for each day of delay ought to be explained and the intent of the State is to just keep the litigation alive for years.

7. The learned Additional Public Prosecutor ('APP') submits that the major portion of the delay was on account of the ill conceived revision petition and the present petition was filed

shortly after dismissal of the revision petition.

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8. It is well settled that each day of the delay is required to be explained. The application seeking condonation of delay mentions that the judgment was delivered on 25.10.2016, and subsequently, the counsel prepared the appeal on receipt of the file. It is stated that the concerned department was approached for requisite approval without wasting any time, however, the delay was caused due to administrative delays in the department. A passing mention is also made to the order passed by the Hon'ble Supreme Court directing extension of limitation on account of surge in Covid-19 cases.

9. 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.

10. 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

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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.”

11. 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 obliged to ensure that they perform their duties with diligence and commitment.

12. The impugned judgment has been clearly challenged by the State belatedly. In the present case, no sufficient reason is pleaded in the application which would entitle the petitioner for condonation of delay. While the learned APP has improved upon the explanation in the application by pointing out the time spent in pursuing the revision petition, it cannot be ignored that the same was filed only on 03.01.2018, that is, more than an year after passing of the impugned judgment on 25.10.2016. There is no specific averment as to why it took the State one year to prefer the revision petition. Rather, there is no mention of the revision petition at all in the application seeking condonation of delay.

13. Standard and mechanical explanation is pleaded in the application that the delay was not deliberate and was caused due

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to administrative issues. No ~~recent~~ reasons have been given to explain the delay for the Court to accept that the petitioner was prevented from filing the petition within the period of limitation. Lackadaisical attitude of officials and inefficiency of the State mechanism alone cannot be deemed to be sufficient reason to warrant condonation of delay.

14. Insofar as the merits of the case are concerned, the conviction of the respondent has been set aside by the learned ASJ by specifically noting that the chain of circumstances against the respondent remained incomplete and taking note of the various deficiencies in the case of the prosecution.

15. The learned APP submits that the impugned judgment is based on conjectures and surmises and is liable to be set aside.

16. He submits that there are no major contradictions in the evidence of the prosecution witnesses so as to materially affect the core of the case of the prosecution.

17. He submits that the testimony of PW2 (Retired Principal, DAV Public School), who had proved the attendance register of the school by showing that Bal Krishan had passed the matriculation exam in the year 1981, was not appreciated. He submits that the name of the respondent was not found in the attendance register.

18. He submits that the learned Appellate Court also failed to appreciate the testimony of PW-5 who had produced the original gazette of result of the matriculation examination for the year 1981, in which the name of Bal Krishan was mentioned on Pg no. 473 against roll no. 719617 and the date of birth was 27.04.1964.

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19. He submits PW-19 (Govt. Examiner) also found

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manipulation in the gazette on the basis of which the duplicate matriculation certificate was issued. He submits that the reports given by the expert made mention of a number of factors. He submits that admittedly, the respondent was the beneficiary of the manipulation.

20. He submits that the learned Appellate Court did not appreciate that there are two formal gazettes, one kept at the board and one kept in the library. He submits that the manipulation was done in the gazette kept at the board, on the basis of which the duplicate matriculation certificate was issued, which was revealed when it was compared to the gazette kept in the library.

21. 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 ***State 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

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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)

22. In the present case, the prosecution had examined twenty-three witnesses to prove its case. Out of these, the learned Appellate Court particularly discussed the evidence of PW-2 (Principal of DAV Public School), PW-3 (Assistant, Haryana Education Board, Bhiwani), PW-4 (Assistant, Haryana Education Board, Bhiwani), PW-5 (Principal of DAV High School), PW-7 (Clerk, Haryana Education Board), PW-16 (Investigating Officer) and PW-19 (Government Examiner).

23. It is argued that the learned Appellate Court has failed to properly appreciate the evidence of PW2, PW5 and PW19.

24. A bare perusal of the impugned judgment shows that the said argument is without merit. As noted above, the learned Appellate Court passed a well-reasoned order after extensively pondering the evidence of the said witnesses and giving due deference to the same.

25. First, as far as the evidence of PW2 is concerned, the learned Appellate Court duly noted that while PW2 had proved the certificate issued in the name of Bal Krishan (Ex. PW2/A), whereby it was certified that Bal Krishan, having roll no. 719617

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certificate was issued by PW2 admittedly on the basis of the attendance register (photocopy exhibited as Ex. PW2/2 and original as Ex. PW16/D), which mentioned the name of Bal Krishan against the admission no. 9163, but made no mention of the roll no. 719617. As rightly appreciated, the prosecution did not produce any material, like the admit card, to show that the roll no. 719617 was allotted by the Haryana Board to Bal Krishan or to show any co-relation between the admission no. 9163 of Bal Krishan with the concerned roll number. In the absence of any material to show correlation, the certificate by itself cannot be deemed to show that Bal Krishan was attributed the roll no. 719617, especially when the same was based on the attendance register which does not reflect the roll number.

26. It was also noted that PW2, during cross examination, had deposed that he could not say whether the respondent had appeared in the matriculation examination since the records were burnt. PW2 thus categorically admitted that he was unaware whether the respondent had studied in the School in class 10th at the relevant time due to non-availability of record.

27. It is also argued that the respondent's name is not there in the attendance register. The learned Appellate Court has aptly addressed the same by taking exception to the production of the attendance register which only pertained to Section 'D'. It was noted that Ex. PW16/D evidences that there were other Sections in Class 10 in the School as there were mentions of transfer of students amongst the Sections, however, the other attendance registers were not placed on record. Due to the same, the prosecution failed to establish beyond reasonable doubt that the

respondent had not studied in 10th class in the concerned school

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at the relevant time.

28. Insofar as the evidence of PW5 is concerned, it is argued that it has not been appreciated that PW5 had produced the original gazette. The learned Appellate Court noted that while PW5 had stated that he had brought the original gazette of the result (Ex. PW5/A) in his examination-in-chief, however, during cross-examination, he stated that he could not say as to which gazette he had brought on that day. PW5 further volunteered that the same may be from the library. Given the shifty stance of PW5, there is no infirmity in the observation of the learned Appellate Court that he was unaware as to whether he had produced the original gazette before the Court or not.

29. One of the factors that heavily influenced the learned Trial Court to convict the respondent was a communication dated 20.08.1998 (Ex. PW-5/C) which was sent from the Haryana Education Board to the then DSP, CBI. The said communication was sent when CBI had initiated inquiry against Bal Krishan. The learned Appellate Court while dealing with the exhibited letters, being, Ex. PW5/C to Ex. PW5/H, noted that the same had not been proved by PW5 as he was neither the author of the said letters and nor could he identify the signatures or names of the persons who had written the said letters. It was thus rightly noted that the prosecution had not proved the said letter in accordance with law and merely putting exhibit marks on the document does not tantamount to the document being proved. The learned Appellate Court rightly discarded the same. It is also relevant to note that the prosecution has not sought to challenge the said aspect before this Court and the argument has been limited to the

production of the original gazette by PW5, which has already

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been dealt with above.

30. The learned Appellate Court discussed the evidence of PW3, PW4 and PW7, who were working in the Haryana Education Board. It was noted that while PW3, who had issued the duplicate certificate in the name of the respondent, had been declared to be hostile by the prosecution, he had stated during his cross examination that the name of the respondent was available in the secondary gazette. PW3 had further denied that the name of Bal Krishan was present against the concerned roll number in the matriculation gazette and stated that it was instead the name of the respondent which was present there. PW4, who was also declared to be hostile, had deposed during cross examination that there were two gazettes and the public had no access to the gazette in the office. It was noted that from the testimony of PW7, it was clear that Ex. PW5/A is from library whereas Ex. PW6/DA, in which the name of the respondent was mentioned, was the duplicate gazette. It was noted that none of the prosecution witnesses could say that forgery had been committed in which gazette. It is pertinent to note that the investigation suffers from grave infirmities as there is no mention as to how the respondent was allegedly able to execute the plan and manipulate one of the gazettes.

31. As far as the reports of the handwriting expert (Ex. PW19/A and Ex. PW19/B) are concerned, PW19 in his evidence supported the contents of the report and mentioned the discrepancies found. The learned Trial Court found that there were glaring variations in the gazette registers and relied upon the reports of the expert. The learned Appellate Court found that

reliance on the reports was erroneous as PW19 was a simple

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handwriting expert rather than a forensic scientist, who could tell which page was inserted subsequently. It is not disputed that PW19 was a handwriting expert. The prosecution failed to establish the credibility of the expert in giving observations of such a nature and has not refuted that PW19 was a handwriting expert.

32. Apart from the non-appreciation of the aforesaid witnesses, the prosecution has raised no other ground to challenge the impugned judgment.

33. From a perusal of the record, it is apparent that there are severe infirmities in the case of the prosecution and the learned Appellate Court has rightly noted that the prosecution has failed to establish its case beyond reasonable doubt. Amongst other factors, the learned Appellate Court was also weighed by the fact that although the original of the forged certificate was allegedly seized by the IO, however, the same was not placed on record. It is pertinent to note that PW9, who was called to prove the original recruitment form of the respondent, deposed that at the time of recruitment, the original matriculation certificate of the respondent was taken on record and no such report of tampering was made at the time of verification. It was noted that the prosecution did not bring on record any witness to establish that the real date of birth of the respondent was not 27.04.1964, as mentioned by him at the time of applying for the job and in the matriculation certificate furnished by him. It was also noted that no investigation was carried out in this regard and no evidence was produced to substantiate Ex. PW11/B1 (note dated 11.09.2000) as per which the admission register maintained by

the Government middle school, Khetiawas shows the birth date

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of the respondent to be 26.09.1984 instead.

34. In light of all the facts, the learned Appellate Court rightly concluded that the prosecution had failed to establish that the respondent was not studying in Class 10th by producing the attendance registers of the other Sections and also failed to bring any clinching evidence to show that the concerned roll number belonged to Bal Krishan instead of the respondent.

35. 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.

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

AMIT MAHAJAN, J

APRIL 3, 2025

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