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

+ **CRL.L.P. 1/2018 & CRL.M.A. 4/2018, CRL.M.A. 6/2018**

STATE OF NCT OF DELHI

.....Petitioner

Through: Mr. Pradeep Gahalot, APP
for the State with ASI
Devender Singh, Parvi
Officer Traffic; ASI
Jagdish Chander, Kalkaji
Circle Traffic and Insp.
Monika, Kalkaji Circle.

versus

GANGA SINGH

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

27.03.2025

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1. The present leave petition is filed against the judgment dated 17.01.2017 (hereafter '**impugned judgment**'), passed by the learned Additional Sessions Judge ('**ASJ**'), South East District, Saket Courts, New Delhi, in Criminal Appeal No. 204652/2016.

2. By the impugned judgment, the learned ASJ set aside the judgment on conviction dated 17.05.2016 and order on sentence dated 23.05.2016, passed in CC No. 178/2015.

3. By judgment on conviction dated 17.05.2016, the learned Trial Court convicted the respondent for the offence under Section 185 of the Motor Vehicles Act, 1988 ('**MV Act**'). By order on sentence dated 23.05.2016, the learned Trial Court sentenced the respondent to pay a fine of ₹2000/- and to undergo simple imprisonment for a period of 6 days, and in default of

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payment of fine, to further undergo simple imprisonment for a period of 20 days.

4. The State has also filed an application, that is, CRL.M.A. 4/2018 under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 205 days in filing the present leave petition. Another application, being, CRL.M.A. 6/2018 has also been filed by State seeking condonation of 11 days in re-filing the petition.

5. The brief facts of the present case are that on 09.11.2015, the respondent was allegedly driving a vehicle in an intoxicated state. It is alleged that at about 9:22 PM, when the respondent was coming from the side of Savitri Cinema and going towards Modi Mill, he was stopped by Traffic Police officials, who tested the respondent with breath analyser as he was smelling of alcohol. It is alleged that 199.2mg/100 ml of alcohol contents were found in the respondent's blood, which is significantly higher than the permissible limit, due to which, the respondent was challaned for the offence under Section 185 of the MV Act.

6. The learned Trial Court, by the judgment on conviction dated 17.05.2016, convicted the respondent for the offence under Section 185 of the MV Act on the basis of the evidence of the prosecution witnesses— two police officers who had stopped the respondent and conducted the breath analyser test on him.

7. The learned ASJ, by the impugned judgment, set aside the conviction of the respondent by observing that there were material lacunae in the testimonies of the prosecution witnesses as well as the documents relied upon by the prosecution, including, stereo typed alco-meter report, which did not carry the signature of the challan officer and the respondent. It was found



that the same casts a doubt on the veracity of the reading in view of the infirmity in the adopted procedure.

8. The impugned judgment has been challenged by the State belatedly. Clearly, there has been an inordinate delay of 205 days in filing the present petition.

9. 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 17.01.2017, and the certified copy was received on 28.10.2017. The application fails to mention as to when the State applied for a certified copy. The application mentions that the impugned judgement was put up before Senior officers to ascertain whether it is a fit case to file an appeal, and the delay was caused due to procedural aspects as the file was sent to various authorities which consumed reasonable amount of time. It is stated that it was only on 10.10.2017 that the Law Department, GNCT, Delhi opined that the case is fit for filing a criminal appeal.

10. 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.



11. 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.”

12. 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.

13. In the present case, no sufficient reason is pleaded in the application which would entitle the petitioner for condonation of delay. Standard explanation is pleaded in the application that the delay was not deliberate and was caused due to procedural requirements. No cogent 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 prosecution case had been substantially weakened owing to glaring contradictions in the evidence of the prosecution witnesses and infirmities in the procedure followed.

15. 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 that to prove an offence under Section 185 of the MV Act, all that is to be seen is whether the accused had a blood alcohol level over the permissible limit of 30 mg/100 ml and a test of breath analyser is sufficient to show the same.

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 further submits that it is not mandatory to furnish any certificate of training by the Training Branch and in fact, no such certificate is issued to the traffic officers either.

18. 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 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)

19. In the present case, the prosecution had examined two witnesses to prove its case, being, PW1 (Ct. Daya Ram) and PW2 (SI George Masih).

20. PW1 deposed that he had stopped the respondent as he was smelling of alcohol and taken him to PW2, who conducted the breathalyser test on the victim.

21. PW2 deposed that he had seen the respondent at a distance of about 10-15 feet and he seemed to be under the influence of alcohol. He further stated that a fresh pipe was used for testing



the respondent and he did not sign the printout of the test of breath analyser although he had filled the particulars in his handwriting.

22. The learned Appellate Court has passed a well-reasoned order after appreciating the testimonies of the aforesaid witnesses and the evidence. It was noted that PW2 was silent about the calibration certificate of the machine used to test the respondent and he had failed to mention the outside limit of reading of alcohol meter. It was further noted that while PW2 had stated he had been imparted training to handle and operate the alcohol meter, however, no certificate issued by any authority in this regard was placed on record.

23. It has been argued that no such certificate is issued and the same is not necessary either. It is pertinent to note that the learned Appellate Court has not discarded the testimony of PW2 on account of absence of any training certificate.

24. Rather, it is primarily the absence of any certificate regarding the alcohol meter's functionality and the doubt created in relation to the alcohol meter reading due to the same not being signed by the respondent or the challaning officer, that led the learned Appellate Court to conclude that the prosecution had not been able to prove its case against the respondent beyond reasonable doubt.

25. It was noted that no assertion had been made by the prosecution that the alcohol meter was ISI marked and that coupled with the lack of any certificate regarding the alcohol meter's functionality casts a doubt on the authenticity of the readings of the meter. It was noted that such meters don't give 100% accurate reading and there is bound to be some error to the



tune of 10% to 20%.

26. It is submitted that the margin of error cannot be to the tune of +/-20% and the same ranges between +/-5% to +/-10%. Even if that be so, the range of margin of error shows the extent of error that is to be expected in the reading of a testing device that is functioning properly. In the absence of any certificate verifying the credibility of the alcohol meter, as noted by the learned Appellate Court, there is nothing on record to show that the device was functioning properly, and the error was limited to the aforesaid extent, when the respondent was tested.

27. Moreover, as noted by the learned Appellate Court, the alcohol meter reading (Ex. PW2/A) carried print out of the reading obtained from the printer but the remaining particulars on the same were left blank and filled in pen. The said document is the only evidence which shows the alleged alcohol reading of the respondent at the time of the incident as he was not subjected to any medical examination to ascertain the alcohol contents in his blood at the relevant time. The reading did not bear the signature of PW2, who was the challaning officer, or the respondent. The learned Appellate Court rightly noted that the same casts a serious doubt on the authenticity of the reading, especially since it was practice of the traffic police officials to obtain signatures of the person who has been tested on the alcohol reading.

28. While it is argued that a breath analyser test is sufficient to prove the offence under Section 185 of the MV Act, however, in the present circumstances, significant doubt has been created on the authenticity and veracity of the alcohol reading. It is the duty of the prosecution to establish the credibility of the reading of the breath analyser test, if the same is relied upon to prove the



offence.

29. Another factor that weighed the learned Appellate Court in acquitting the respondent was that PW2 had acted contrary to the adopted practice and guidelines of Commissioner of Delhi Police for people who are caught drunk driving as no arrangements were made for the respondent to be sent home safely by calling anybody from his family or arranging a private vehicle.

30. The learned Appellate Court also noted that the prosecution witnesses had contradicted each other in respect of the number of other officers on duty wherein while PW1 stated that it was only him and PW2 on duty, PW2 deposed that 3-4 other constables were also on duty. None of the other constables were cited or examined as a witness.

31. 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.

32. 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.

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

AMIT MAHAJAN, J

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