

**HIGH COURT OF JAMMU, KASHMIR & LADAKH
AT JAMMU**

CRM(M) No. 201/2026

Pushpa Raina and another Appellant(s)/Petitioner(s)

Through: Mr. Anil K. Verma, Adv.

vs

Sonam Billawaria and another Respondent(s)

Through: Ms. Zoya Bhardwaj, Adv.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

31.08.2026

1. The petitioners, through the medium of instant petition, has challenged order dated 12.02.2026 passed by the learned 2nd Additional Sessions Judge, Jammu (for short the appellate court), whereby the application filed by the petitioners seeking condonation of delay in filing the appeal against order dated 11.04.2025 passed by the Judicial Magistrate 1st Class (City Judge), Jammu (hereinafter to be referred as the trial Magistrate), has been dismissed and consequently, the appeal has also been dismissed.
2. I have heard learned counsel for the parties and perused the record.
3. It appears that an application came to be filed by respondent No. 1 against the petitioners and respondent No. 2 under section 12 of the Protection of Women from Domestic Violence Act, 2005(for short the DV Act) before the Court of the learned trial Magistrate. Upon appearance of the petitioners before the trial Magistrate, they filed an application for dropping of the proceedings against them. The said application was dismissed by the learned Magistrate in terms of order dated 11.04.2025.

Against the said order, the petitioners filed an appeal under section 29 of the DV Act before the learned appellate court. Since the appeal was filed beyond the prescribed period of limitation, the petitioners also filed an application seeking condonation of delay in filing the appeal.

4. In their application, the petitioners pleaded that petitioner No. 2 has undergone surgery and he could not travel to Jammu for appending his signatures on the documents, to be filed in the court, as a result of which, the appeal could not be filed within the statutory period of 30 days. It was also pleaded that due to ill health of petitioner No. 2, he could not visit his counsel for imparting instructions in connection with taking further action in the matter and it was only on 06.06.2025 that the petitioners were able to contact their counsel, who advised them to obtain certified copy of order dated 11.04.2025 passed by the learned trial Magistrate, whereafter the courts were closed for summer vacation and the certified copy could be made available only on 01.07.2025. It was also pleaded that after obtaining the certified copy of the order, some time was consumed for preparing the appeal, which resulted in delay in filing the same.
5. The application was contested by respondent No. 1 herein by filing her reply. In her reply, respondent No. 1 contended that the medical record annexed with the application depicts that petitioner No. 2 was discharged from hospital on 28.06.2024, which is more than one year prior to filing of the appeal and there was no medical record to show that petitioner No. 2 was unable to travel on account of his ill health. It was also contended that the medical record annexed with the application is contrary to the pleadings.

6. The learned appellate court, after hearing the parties and after analysing the material on record, came to the conclusion that the application of the petitioners does not disclose sufficient cause, which prevented them from filing appeal within the prescribed time of limitation. Accordingly, the application has been dismissed in terms of impugned order dated 12.02.2026.
7. The petitioners have challenged the impugned order on the grounds that the learned appellate court has failed to appreciate the fact that petitioner No. 2 had undergone surgery of L3, L4 and L5 and it was difficult for him to even stand straight for at least six months. It has been further submitted that petitioner No. 2 was required to undergo follow up treatment for over three months, which constituted a sufficient cause for condoning the delay in filing the appeal. It has been contended that the substantial justice should always prevail upon technicality, but the learned appellate court has taking a very technical and narrow view of the matter while considering the application of the petitioners for condoning the delay in filing the appeal. It has also been contended that there is a delay of only 54 days in filing the appeal, as such, the learned appellate court was required to take a lenient view of the matter, while considering the application of the petitioners.
8. Section 5 of the Limitation Act governs the condonation of delay for filing an appeal. As per this provision, an appeal may be admitted after prescribed period of limitation, if the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. The expression “sufficient cause” must receive a

liberal interpretation so as to advance cause of substantial justice rather than blocking cases over minor technicalities. The test whether there was sufficient cause for a litigant, which prevented him in approaching the court within the prescribed period or limitation is, whether the litigant has acted with due diligence. In case, it is shown that there is gross negligence or lack of good faith on the part of the litigant, it would not constitute a sufficient cause. It has to be borne in mind that the condonation of delay is not guaranteed simply because delay is short or that the litigant has a meritorious case. An application for condonation of delay has to be tested on the basis of the validity of the explanation for the delay and not on the basis of the length of delay or merits of the case.

9. The Supreme Court in the case of **Thirunagalingam v Lingeswaran and another, 2025 INSC 672** has, while analysing the legal position as regards condonation of delay in filing of proceedings before the court, held as under:

“31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32. Further, this Court has repeatedly emphasized in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.”

10. In light of the aforesaid legal position, let us now turn to the facts of the present case. The impugned order has been passed by the learned trial Magistrate on 11.04.2025. The appeal came to be filed by the petitioners along with application for condonation of delay before the learned appellate court on 30.07.2025. The period of limitation for filing the appeal under section 29 of the DV Act is 30 days. Thus, the appeal is admittedly delayed by more than one and half months. The explanation tendered by the petitioners for filing the appeal belatedly is that petitioner No. 2 had undergone surgery and he could not travel for Jammu for appending his signatures on the documents, to be filed before the court. To support his contention, petitioner No. 2, has placed on record medical record. As per the medical record, petitioner No. 2 had undergone surgery on 24.06.2024, whereafter he was discharged from Sir Ganga Ram Hospital, New Delhi on 28.06.2024. The petitioner No. 2 has also placed on record other medical record, which shows that he has undergone follow up treatment at Delhi during the months of June, 2024 and September, 2024. However, petitioner No. 2 has not placed on record any medical record to show that he had been undergoing treatment in connection with any kind of ailment during the year 2025. Therefore, there is no material on record to support the assertion of the petitioners that petitioner No. 2 was suffering from ailment of such a serious nature as would have prevented him from travelling to Jammu for the purpose of signing documents, to be filed in the court.
11. The appellate court, while noticing these aspects of the matter, has rightly come to the conclusion that the petitioners have remained knowingly

negligent and silent over the matter and have taken refuge under surgery of applicant No. 2 (petitioner No. 2 herein), which he had undergone more than a year before filing of the appeal. It has also been noted by the learned appellate court that in fact, the memo of appeal has been signed by applicant No. 1 (petitioner No. 1 herein) and not by applicant No. 2. Since petitioner No. 1 was not suffering from any disability, as such, the petitioners cannot take refuge under the ailment of petitioner No. 2 for explaining the delay in filing the appeal.

12. It is a settled law that the High Court while exercising its powers under section 528 BNSS, would not generally interfere with an order passed by a criminal court, unless the same is grossly erroneous and suffers from perversity. In the present case, the impugned order passed by the learned appellate court is neither perverse nor does the same suffer from any illegality.

13. For all what has been said, analysed and discussed hereinabove, the petition lacks merit and is dismissed accordingly.

(SANJAY DHAR)
JUDGE

Jammu
31.08.2026
Rakesh PS

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No