

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.117 OF 2015

1. Mr. Anthony Johnson

S/o W. Johnson,

Major of age, married

Working in Indian Army

Indian Nation.

2. Mr. W. Johnson, Major of age

Both R/o Ilppakunam II,

Kasthampadi, Post Polur Taluka,

TV Malai, Dist. Tamil Nadu

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Petitioners

Versus

1. Mrs. Kavita Glory

D/o Mr. Lourdhadnan

Major of age, Married,

R/o C/o.Lourdhanathan,

Quarter No.273/8, Defence Colony,

Bambolim Camp, Bambolim.

2. State of Goa,

Through, Public Prosecutor, Panaji

Respondents.

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Mr. Ganesh R.Naik, Advocate for the petitioners.

Mr. E.P. Heredia, Advocate for the respondent no.1.

Ms. M. Pinto, APP for the respondent no.2.

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Coram : K.L. WADANE, J

DATED: 15/10/2015.

Oral Judgement :

Heard Mr. Naik, learned counsel for the petitioner, Mr. E. Heredia, learned counsel for the respondent no.1 and Ms. M. Pinto, the learned Additional Public Prosecutor for the respondent no.2.

2. Rule. Rule returnable forthwith. Heard by consent of the parties. The learned counsel appearing for the respective parties waive notice.

3. This is a criminal writ petition filed by the petitioners seeking to quash and set aside the order passed by the Additional Sessions Judge, Panaji on 13.4.2015 by which the application of the petitioners for condonation of delay has been dismissed in default. Hence, the present Writ Petition.

4. Brief facts of the case may be stated as under:-

The petitioner no.1 is working as Hawaldar in the Indian Army. The petitioner no.2 is the Senior Citizen and resides out of Goa. The respondent no.1 is legally wedded wife of the petitioner no.1. The respondent no.1 filed a complaint under the Protection of Women from Domestic Violence Act, 2005. That petition is partly allowed by the Judicial Magistrate First Class. The petitioner preferred an appeal

before the Sessions Judge along with application for condonation of delay. The application for condonation of delay is dismissed, as the petitioner and his Advocate were absent on 13.4.2015, and on the ground that several opportunities were given to the petitioners. According to the petitioners, the Advocate has not informed the date in the matter and their Advocate inadvertently mentioned the date in his diary is 27th April, 2015 instead of 13th April, 2015. The ground/contention raised by the petitioners is supported by the affidavit of the Advocate of the petitioners, who represented the petitioners in the Sessions Court. Copy of the relevant extract of diary is also produced on record.

5. Therefore, this Court is satisfied that due to inadvertent mistake committed by the Advocate, the petitioners and their Advocate were unable to attend the Court and this is a good ground to set aside the order under challenge.

6. Hence, the writ petition is allowed and the order dated 13th July, 2015 passed by the Additional Sessions Judge, Panaji, is hereby set aside and the petition for condonation of delay is restored to the file of Additional Sessions Judge, Panaji, subject to the costs of Rs. 2000/- to be paid to the respondent no.1. The parties are directed to remain

present before the learned Sessions Judge, Panaji on 3rd November, 2015 at 10.30 a.m. and the learned Sessions Judge shall dispose of the application in accordance with law.

7. Rule is made absolute in the aforesaid terms.

K.L.WADANE, J

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