

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 139 OF 2014
IN
CRIMINAL REVISION APPLICATION (ST.) NO. 177 OF 2014

Mrs. Subha Mukund Pillai and another Applicants

Vs.

1. Mr.Mukund K.P Pillai @ Kabeer Ahmed
2. State of Maharashtra Respondents

Mr.Rahul R.Pandit with Mr.Premanand R.Torne, Advocate for Applicants.

Mr.N.M.Ansari i/b Mr.Rahimtulla M.Momin, Advocate for Respondent No.1.

Mr.A.R.Patil, APP for Respondent No.2 – State.

CORAM : R. G. KETKAR, J.
DATE : 27th FEBRUARY, 2015

P.C. :

. Heard Mr.Rahul R.Pandit, learned Counsel for the applicants, Mr.N.M.Ansari, learned Counsel for respondent No.1 and Mr.A.R.Patil, learned APP for respondent No.2.

2. By this application, the applicants – wife and daughter have prayed for condoning the delay of 429 days caused in filing the revision application.

3. In support of this application, Mr.Pandit submitted that by the judgment and order dated 21/05/2012, the learned Judicial Magistrate, Vashi allowed the application Exhibit 5 in Criminal Misc. Application No. 50 of 2010 filed under section 23 of the Protection

of Women from Domestic Violence Act 2005 (for short 'Act') for interim maintenance and directed the respondent No.1 herein to pay separate maintenance of Rs.20,000/- to applicant No.2 – Riya from the date of the order and to pay regularly before 10th day of each month. Respondent No.1 was directed to pay Rs.50,000/- towards expenses for committing domestic violence to the applicants.

4. Mr.Pandit submitted that aggrieved by this order, respondent No.1 preferred Criminal Appeal No. 96 of 2012 before the Sessions Court, Thane. During the pendency of the appeal, order dated 21/05/2012 was not stayed. By the judgment and order dated 20/11/2012, the learned 2nd Additional Sessions Judge, Thane allowed appeal and set aside the order relating to payment of expenditure of Rs.50,000/-. The learned Sessions Judge modified the order of the learned Magistrate and directed the respondent No.1 to pay separate maintenance of Rs.5,000/- per month to applicant No.2 – Riya from the date of the application before the learned Magistrate and to pay the same regularly on or before 10th of each month. The Sessions Court further directed to clear the arrears of amount within two months after adjusting amount of Rs.10,000/- already deposited by the first respondent in the appeal. Respondent No.1 was directed to pay costs of Rs.10,000/- to applicant No.1 herein.

5. On the other hand, Mr.Ansari submitted that during the pendency of the appeal, the learned Sessions Judge stayed the order passed by the learned Magistrate on 25/06/2012 subject to the respondent No.1 depositing Rs.10.000/- in the Court and go on depositing the said amount every month during the pendency of the appeal. He submitted that accordingly, respondent No.1 was depositing the amount in the Thane Court from 25/06/2012 onwards. In short, he submitted that respondent No.1 complied the condition imposed in the order dated 25/06/2012 by depositing the amount @ Rs.10000/- per month in the Sessions Court. After the appeal was decided, respondent No.1 has been paying Rs.5,000/- per month and is not in arrears. He, therefore, submitted that no sufficient cause is made out by the applicants for condoning the delay.

6. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the learned Magistrate allowed the application Exhibit 5 and directed the respondent No.1 to pay separate maintenance of Rs.20,000/- to applicant No.2 – Riya from the date of the order. Respondent No.1 preferred appeal before the Sessions Court and by the order dated 25/06/2012, the order passed by the learned Magistrate was stayed subject to depositing Rs.10,000/- per month by respondent No.1. It is not in dispute

between the parties that respondent No.1 has complied the order dated 25/06/2012. It is also not in dispute that applicants have withdrawn the amount so deposited by the respondent No.1 in pursuance of order dated 25/06/2012.

7. In the application, the applicants have pleaded ground of financial difficulty. It is asserted that applicant No.1 is unemployed and that it was difficult for her to approach an advocate for filing Revision Application before this Court. The question is whether the grounds set out by the applicants in paragraphs 7 & 8 constitute a sufficient cause. Though the learned Magistrate has awarded maintenance @ Rs.20,000/- per month to applicant No.2 Riya, the said order was stayed by the learned Sessions Judge subject to the respondent No.1 depositing Rs.10,000/- per month in the Sessions Court. Respondent No.1 has complied that order and the applicants were withdrawing the amount of Rs.10,000/- per month. As noted earlier, the learned Magistrate had awarded maintenance of Rs.20,000/- to applicant No.2. As against that amount, applicants were receiving Rs.10,000/- per month. Applicant No.1 is unemployed. Having regard to the fact that applicants have claimed maintenance of Rs.30,000/- per month and that they are getting Rs.10,000/- per month for both, I do not find that Rs.10,000/- are sufficient for maintaining themselves. In other words, the ground of financial difficulty set out in paragraphs 7 & 8 of the application

constitutes a sufficient cause. I am satisfied that delay deserves to be condoned, having regard to the fact that controversy in dispute namely applicants are claiming maintenance amount from respondent No.1 as also having further due regard to the fact that while considering application for condonation of delay, the Court has to adopt pragmatic approach as laid down by the Apex Court in the case of *State of Nagaland Vs. Lipok AO*, (2005) 3 SCC 752 wherein it is held by the Apex Court that what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The expression "sufficient cause" should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

8. In view thereof, I am more than satisfied that the applicants have made out a sufficient cause for condoning the delay. Hence, the application is allowed in terms of prayer clause (a). Office is directed to register the Revision Application, if it is otherwise ready.

9. List the Revision Application for admission on 11/03/2015.

(R. G. KETKAR, J.)