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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2273 OF 2015

Mr. Dipen Talakshi Furia & Anr.

..Petitioners

Vs.

State of Maharashtra & Anr.

..Respondents

Mr. Hegde Gopalkrishna R. for Petitioners.

Ms. Riddhi Shah for Respondent No.2.

Mr. H.J. Dedhia, APP for Respondent No.1-State.

CORAM: A.S. GADKARI, J.

DATE : 29th June 2015.

P.C.

Heard learned Counsel for the respective parties.

2 By the present petition filed under Article 227 of Constitution of India, , the petitioner no.1, husband, has challenged the order dated 18.4.2015 passed by the Additional Sessions Judge, Borivali Division at Dindoshi, Greater Mumbai in Misc. Application No.4 of 2015 thereby rejecting the said Application for condonation of delay of 96 days in preferring the criminal appeal against the order dated 5.9.2014 passed by the learned Magistrate in an Application No.3628/SS2013 filed under the

provisions of Protection of Women from Domestic Violence Act.

3 The respondent no.2-wife has filed an Application for interim maintenance under the Protection of Women from Domestic Violence Act. The learned Trial Court by its order dated 5.9.2014 granted interim maintenance at Rs.2000/- per month till the disposal of the main case i.e. C.C. No.3628/SS/2013.

4 Feeling aggrieved by the order dated 5.9.2014, the petitioner-husband preferred an appeal in the Court of Additional Sessions Judge, Greater Mumbai, Borivali Division, Dindoshi. While preferring the said appeal, a delay of 96 days has occurred. The petitioner-husband filed Misc. Application No.4 of 2015 for condonation of said delay. The Additional Sessions Judge by impugned order dated 18.4.2015 rejected the said Application for condonation of delay. The learned Counsel appearing for the petitioners submitted that the delay of 96 days is not intentional or deliberate and is caused for the reasons mentioned in the Application No.4 of 2015. The learned Counsel for the petitioners further submitted that if the delay is not condoned, the petitioner will have a meritorious matter without being heard on its own merits. He therefore urged before this Court

that delay of 96 days caused in preferring appeal may be condoned and appeal may be heard on its own merits. The learned Counsel for the petitioners in support of his contention, has relied on the celebrated judgment of the Hon'ble Supreme Court in the case of the ***Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. [AIR 1987 SC 1353]***. The Supreme Court in the said judgment has laid down the principles governing the delay in filing proceedings before the Appellate Court. He also relied upon the judgment of the Supreme Court in the case of ***N. Balkrishnan Vs. M. Krishnamurthy [(1998) 7 SCC 123]***.

5 The learned Counsel for the respondent no.2, per contra, vehemently opposed the present petition and submitted that the reasons mentioned in the Misc. Application No.4 of 2015 for condonation of delay are vague and are not supported by any other evidence. She contended that the Trial Court has otherwise also granted meager amount and the petitioner-husband is bound to pay the same. She further submitted that the present petition is filed only with a view to harass the respondent no.2. She lastly submits that the present petition may be dismissed with exemplary costs.

6 I have perused the record made available before me. I have also perused the aforesaid judgments relied upon by the learned Counsel for the petitioners. After taking into consideration the principles and ratio laid down by the Hon'ble Supreme Court in the case of the ***Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors.*** and after reading the pleadings in the said Application for delay, I am satisfied that the delay of 96 days in preferring appeal filed by the petitioners is required to be condoned in the interest of justice. The condonation of delay shall be subject to imposition of costs which is quantified at Rs.5000/-. The petitioner-husband shall pay the costs of Rs.5000/- to the respondent no.2 within a period of two weeks from today. If the said costs is paid by the petitioner-husband, the respondent no.2 to acknowledge the same. The petitioner to produce the said acknowledgement before the Court of Additional Sessions Judge, Greater Mumbai, Borivali Division, Dindoshi. The learned Additional Sessions Judge to accept the appeal and proceed with the same on its own merits.

7 The Writ Petition is allowed in the aforesaid terms.

(A.S. GADKARI,J.)

