

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Writ Petition No. 1342 of 2015

District : Aurangabad

Mohd. Afroz s/o. Mohd. Rafiq,
Age : 25 years,
Occupation : Nil,
R/o. H-5-22-54,
New Gulmandi Road,
Aurangabad,
District : Aurangabad.

.. Petitioner.

versus

1. The State of Maharashtra.

2. Ayesha Kausar w/o. Mohd. Afroz,
Age : 21 years,
Occupation : Household,
R/o. H.No. 1-13-66,
Shahabazar, Aurangabad,
District : Aurangabad.

.. Respondents.

.....

Mr. Sushant B. Choudhari, Advocate, for the petitioner.

Mr. D.V. Tele, Addl. Public Prosecutor, for respondent no.1.

Mr. Syed Yaseen, Advocate, for respondent no.2.

.....

CORAM : N.W. SAMBRE, J.

DATE : 15TH MARCH 2016

COURT'S ORDER :

1. The present respondent - wife, who is educated up to 10th Standard, preferred an application under the provisions of the Domestic Violence Act 2005, which came to be allowed by an order passed by the learned Judicial Magistrate (F.C.) [12th Court], Aurangabad, on November 22, 2014, directing that the petitioner to pay an amount of Rs. 1,000/- per month towards maintenance, Rs. 1,000/- towards house rent with other ancillary reliefs. The petitioner thereafter preferred an appeal questioning the said finding, which is informed to have been pending.

2. It is claimed by the petitioner - husband that against the order of payment of maintenance referred supra, passed by the Magistrate, an appeal was carried seeking enhancement, before the learned Sessions Judge. The said proceedings since were delayed by about 62 days, an application for condonation of delay, being Criminal Misc. Application No. 51/2015, was filed which came to be allowed by order dated September 18, 2015, passed by the Addl. Sessions Judge, Aurangabad. as such, the present petition.

3. Mr. Choudhari, the learned Counsel for the petitioner would submit that the delay of 62 days is unexplained and the learned Addl. Sessions Judge has committed an error in ordering condonation of delay, particularly in the background of cause cited in the application. He submits that the respondent cannot blame her Advocate. Her conduct qua the other proceedings like that of execution of the order of Magistrate speaks of her knowledge about the legal proceedings, particularly about availability of the remedy. He would then submit that this Court in the

case of *Vasant Vithal Gawand Vs. Shantaram Tukaram Gawand (since deceased) by his L.Rs. Prakash Shantaram Gawand & others*, reported in *2016(1) Mh.L.J. 89*, has already taken a view that in case if a person is educated and aware about the legal rights, just by blaming Advocate, he cannot claim condonation of delay. He has invited attention of this Court to paras 9, 10 and 11 of the said judgment.

4. Mr. Syed Yasin, the learned Counsel for respondent no.2 - wife would submit that the delay of 62 days is very much explained as the remedy of enhancement was not known to her being a lady educated only up to 10th Standard in absence of any special knowledge of law. According to him, the delay of 62 days, particularly in the background of the social object of the statute, was rightly condoned and sought dismissal of the petition.

5. It is required to be noted that the order of condonation of delay, as is passed by the learned Addl. Sessions Judge, is based on discretion vested in it which is exercised after considering the factual matrix as was brought before it. It is to be noted that the appeal of the present petitioner against the order of Magistrate is already pending adjudication. The delay, as is ordered to be condoned in a proceedings initiated by the respondent, gives her right to exercise the statutory remedy of appeal / revision seeking enhancement. The object, with which the statute confers such right on the wife, is required to be taken into account and, in my opinion, the learned Addl. Sessions Judge was right in exercising the discretion by ordering condonation of delay. The reliance placed by the learned Counsel for the petitioner, in the case of *Vasant*

Vithal Gawand (cited supra), if appreciated in the background of above, it is to be noted that in the said case, there was delay of more than one year and the person who sought condonation of delay was an educated and well to do. In the present case, the same does not appear to be the factual matrix. Rather there is no prejudice to the present petitioner when his own appeal is pending which can be heard along with the appeal preferred by the respondent. As such, no case for interference in exercise of extraordinary jurisdiction under Articles 226 or 227 of the Constitution is made out.

6. In the result, the Petition fails and the same is dismissed.

(N.W. SAMBRE)
JUDGE

.....