

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4054 OF 2015

Anil Vasant Patil		Petitioner
vs.		
Leena Anil Patil & Anr.		Respondents

Mr. Abhijeet A. Joshi, Advocate for the petitioner.
Mr. R.A.Shaikh i/b. Mr. Mohd. M. Khan for respondent No.1.
Ms.A.T.Jhaveri, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 3rd August, 2016.

P.C.

1. Heard. Rule. Rule made returnable forthwith with the consent of the parties.
2. The petitioner herein questions the validity and legality of the order dated 14.9.2016 passed by the Sessions Court vide order dated 14.9.2015, thereby rejecting the application seeking condonation of delay in filing an appeal challenging the order of grant of interim maintenance by the Judicial Magistrate, First Class, Pimpri, below Exhibit 5 in Criminal Application No.177 of 2012. It is the contention

of the petitioner that the notice issued to the petitioner under the provisions of the Protection of Women from Domestic Violence Act, 2005 was served upon him after the decree of divorce was passed. The petitioner had no knowledge of the pendency of the said petition and thereafter, interim maintenance was granted which was challenged by filing an appeal along with the application seeking condonation of delay. The delay was for 114 days.

3. The learned appellate Court had recorded a finding on the basis of the Roznama that the Advocate appearing for the petitioner herein was directed to file vakalatnama within 7 days. The learned appellate Court has also opined that there is no plausible explanation for the inordinate delay in filing the appeal. An appeal is the statutory right of a litigant. It is a matter of record that notice was received by the petitioner after the decree of divorce was passed, although the proceedings were filed earlier. It cannot be said that the petitioner herein had deliberately kept himself away from the proceedings under the provisions of the Domestic Violence Act.

4. It is a matter of record that the petitioner is residing in the

United Kingdom and therefore, it was not possible for the petitioner to approach the Court at the given first instance. The petitioner cannot be punished for the negligence of the Advocate engaged by him and it is, in these circumstances, that the delay deserves to be condoned. The learned appellate Court i.e. the Addl. Sessions Judge, Pune, shall reconsider the application seeking condonation of delay on sympathetic ground and after condoning the delay, shall hear the appeal on merits and pass appropriate orders in accordance with law.

5. The learned counsel for the petitioner has placed on record a chart showing that the petitioner has been paying to the respondent the maintenance which was granted by the Family Court and it appears that the same is paid upto 24.7.2016. The payment of grant of maintenance and arrears shall be considered by the appellate Court in accordance with law.

6. Petition is allowed in terms of prayer clause (b). Rule is made absolute in the above terms. Petition stands disposed of.

(SMT. SADHANA S.JADHAV, J.)