

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 928 of 2017

Smt. Pramila, W/o. Deshpal Kashyap, Aged About 30 Years, R/o. Kumharpara Narayanpur, P.O., Thana, Tah. & Distt. Narayanpur (C.G.).

---- Applicant

Versus

1. Deshpal Kashyap, S/o. Late Sampat Kashyap, Aged About 31 Years, Shikshak Panchayat Shashkiya Madhamik Shala Khoshalnar Vikaskhand Bhairumgarh, P.O., Thana & Tah.- Bhairumgarh, Distt. Bijapur (C.G.).
2. Hari Shanker Kashyap, S/o. Late Sampat Kashyap, Aged About 36 Years, R/o. Chirhipara Narayanpur, P.O., Thana, Tah. & Distt. Narayanpur (C.G.)

---- Respondents

For Applicant : Mr. Hemant Kumar Mishra, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

04.10.2017

Heard

1. The instant criminal revision is filed against the order dated 28.08.2017 passed by the Court of Sessions Judge Kondagaon (C.G.) wherein an appeal preferred by the applicant under Section 29 of the Protection of Women from Domestic Violence Act, 2005 was dismissed on the ground that it is barred by 13 days.
2. Learned counsel for the applicant would submit that the appellate Court failed to appreciate the grounds stated in the application moved under Section 5 of the Indian Limitation Act wherein it was stated that due to mistaken legal advise, the appeal was filed beyond time and inadvertently on the legal advise it was presumed to be within time. Therefore, the client cannot be suffered for the mistake of the counsel and the appeal may be restored back to be decided on merits.
3. Perusal of the order dated 28.08.2017 would show that at the admission stage threshold it was dismissed on the ground that the

appeal was barred by time. Perusal of the application, which is filed as Annexure A-6, would show the reasons have been stated that on the legal advise wrong calculation was made and inadvertently the appeal was filed beyond the period of time and it is stated that it is the counsel who committed mistake. The said application is supported by an affidavit of the applicant.

4. Perusal of the order would show that mistake has been passed over to the counsel who during the argument admitted the fact that calculation mistake was done. Therefore, taking into the facts, condoning the delay would advance the cause of justice and if the delay is not condoned, it would defeat the very purpose of claiming the substantial justice. The said proposition is also reiterated in case of ***Santosh Kumar Pandey v. Smt. Ananya @ Anvaya Pandey*** reported in ***2013(1) C.G.L.J. 482***. Considering the same, the order dated 28.08.2017 is set aside and the delay in filing the appeal is condoned. The appeal is remitted back to the Sessions Court to adjudicate it on merits.
5. In view of the above, the instant criminal revision is allowed.

Certified copy, as per rules.

Sd/-
(Goutam Bhaduri)
Judge