

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C. NO.2267 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the order, dated 24.07.2017 in CrI.M.P.No.2144 of 2017 in Criminal Appeal passed by the Metropolitan Sessions Judge-cum-I Addl. District and Sessions Judge, Visakhapatnam dismissing the application filed under Section 127 Criminal Rules of Practice to condone delay of 266 days in preferring the appeal on the ground that copy application in C.A.No.23366 of 2016 was filed on 4.11.2016 which was struck on 28.04.2017 for non-payment of fee and that the advocate filed another C.A.No.10500 of 2017 and that he came to know that the appeal is not filed in time, but there was delay of 266 days which is neither wilful nor wanton.

2. Learned Judge without recording any finding as to condonation of delay, concluded that the order under appeal is not appealable since it is an interim order. But, as seen from Section 29 of the Protection of Women from the Domestic Violence Act, 2005, shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later. The provision is not clear whether an appeal lies against final order or interim order. But, the order passed by the court below is appealable to the Sessions Court within 30 days irrespective of the nature of the order and the appeal is maintainable. But, the appellate Court without deciding the real controversy, adverted to maintainability of the appeal unnecessarily. Therefore, the order passed by the appellate Court is hereby set aside while remanding the matter to the appellate Court to reconsider the application for condonation of

delay of 266 days in filing the appeal setting aside the order passed by the appellate Court regarding maintainability of the appeal while permitting the parties to raise such objection and if such objection is raised, the court is at liberty to record its findings about the maintainability of the appeal during hearing of the main appeal.

3. With the above direction, the revision case is disposed of at the stage of admission.

Miscellaneous petitions, if any, pending in this case shall stand closed.

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M.SATYANARAYANA MURTHY, J

DATE: 09-08-2017

ccm



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