

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2304 of 2017

JUDGMENT:

This criminal revision case, under Sections 397 and 401 of Cr.P.C., is filed challenging the order, dated 13-07-2017 in CrI.M.P.No.1951 of 2017 passed by the Metropolitan Sessions Judge-cum-I Additional District and Sessions Judge, Visakhapatnam, whereby the Court dismissed the petition filed under Rule 127 of Criminal Rules of Practice to condone the delay of 169 days in preferring the appeal against the interim order, dated 05-12-2016 in D.V.C.No.01 of 2015.

The petitioners herein filed petition to condone delay of 169 days in preferring appeal against the interim maintenance order passed by the Chief Metropolitan Magistrate, Visakhapatnam, in D.V.C.No.01 of 2015. But the appellate Court instead of deciding the application to condone delay, under Rule 127 of Criminal Rules of Practice, held that no appeal is maintainable against the orders passed under Section 23 (2) of Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act') and finally at the end of paragraph No.7 concluded that as no appeal is maintainable the delay of 169 days cannot be condoned in preferring the appeal as there is no good cause.

But, the order under challenge, regarding maintainability of appeal, etc., against the order passed under Section 23 (2) of the Act, is illegal and the Metropolitan Sessions Judge is not supposed to pass such an order and at best he is required to decide whether the petitioners made out sufficient cause to condone delay, which prevented them from filing appeal i.e., a cause beyond their reasonable control. Instead of recording such finding, the Court below recorded a finding about the maintainability of the appeal itself. Therefore, the order under challenge in Cr1.M.P.No.1951 of 2017 is set aside, remanding the matter to the Metropolitan Sessions Judge, Visakhapatnam, for fresh disposal, after affording reasonable opportunity to both the parties.

With the above direction, the Criminal Revision Case is allowed, remanding the matter to the Metropolitan Sessions Judge, Visakhapatnam, for fresh disposal, after affording reasonable opportunity to both the parties and dispose of the same, in accordance with law

The Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

August 18, 2017

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