

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.2089 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C questioning the legality and propriety of the order in CrI.M.P.No.528 of 2017 dated 12.06.2017 passed by the Metropolitan Sessions Judge, Cyberabad, Ranga Reddy District, at L.B. Nagar, refusing to condone delay of 38 days in filing an appeal against an order passed in D.V.C.No.31 of 2014 granting interim maintenance of Rs.50,000/- per month.

The only ground urged before the Trial Court is that the petitioner while working at U.S.A., could not pursue the matter for obtaining certified copies of the order within time, though the order was pronounced on 22.11.2016 and dismissed the petition only on the ground that the petitioner failed to make out sufficient cause to exercise discretionary power under Section 5 of Limitation Act to condone delay of 40 days in filing the petition.

The petitioner admittedly filed copy application and obtained certified copy with a delay of 38 days. But, Section 29 of The Protection of Women From Domestic Violence Act, 2005 (D.V.C. Act), deals with limitation for filing an appeal against any order passed by the Magistrate under the Act. According to Section 29 of D.V.C. Act, appeal lies 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. But, the petitioner did not disclose the details of

service of order copy either on the petitioner himself or to the person aggrieved, but conveniently filed copy application and obtained certified copy with delay of 38 days. The limitation for filing appeal would not start from the date of obtaining certified copy giving benefit of Section 12 of Limitation Act, but only from the date of service of order on any of the parties whichever is later. The Appellate Court also did not examine the same in proper perspective and simply dismissed the petition on the ground that the petitioner failed to make out sufficient cause to exercise discretion under Section 5 of Limitation Act.

As there is a specific provision under the D.V.C Act, which prescribed limitation for filing appeal and its starting point of limitation, the Court has to examine the delay with reference to Section 29 of Limitation Act and pass appropriate orders. But, the Appellate Court did not advert to Section 29 of D.V.C Act. and passed order. Hence, I find that it is a fit case to set-aside the matter and remand the matter to the Metropolitan Sessions Judge, Cyberabad, Ranga Reddy District at L.B. Nagar to decide whether appeal is in time or not with reference to Section 29 of D.V.C Act and pass appropriate orders within 10 days from the date of receipt of this order.

In the result, the criminal revision case is allowed.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:06.10.2017
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