

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2949 OF 2014

Nikhil Ravansidh Housnoor (Jadhav) & Ors. ...Petitioners

Versus

Yogita Nikhil Housnoor And Anr. ...Respondents

Mr.Kishor S. Patil for the Petitioner.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 19th MARCH 2018

P.C.

1. The present Writ Petition arises out of an order dated 19th June 2014 passed by the Adhoc Additional Sessions Judge, Solapur, thereby rejecting the application praying for condonation of delay in an appeal against the judgment and order passed by the Judicial Magistrate First Class in Criminal Miscellaneous Application No.13 of 2011 dated 09th October 2012. By the said order passed by the JMFC, the applicant-wife who had instituted the proceedings was permitted a shared accommodation and the respondent-husband was restrained from disturbing her possession over one room and also directed to pay an amount of Rs.3,000/- as maintenance amount from the date of application. It is this order which was assailed in an appeal before the Additional Sessions

Judge, Solapur. In the application preferred before the Additional Sessions Judge, the applicant had stated the reasons which is reproduced below :

“That, the applicant No.1 was prosecuting the case of the lower Court. He also attended the lower Court for prosecution of the same. However, the Family Court is established at Solapur in the month of October 2012. This fact was well known to the applicants because they had some other proceedings in the Family Court. As such, it was the impression of the applicant No.1 that this matter also will be transferred to the Family Court and obviously, will be decided there only. Due to this impression, he waited for transfer notice of the case for a certain period. Thereafter, in the month of January 2013, he went to the Family Court and inquired regarding the matter. He was told there that, the work of issuance of transfer notices is going on and therefore the applicants was required to wait for receipt of transfer notice of this proceedings.

But abruptly on 13/03/2013, the police of Salagar Vasti Police Station came to the residence of the applicants and called them to comply with the order under appeal passed by Judicial Magistrate, F.C. Solapur. That time only, the applicants came to know the regarding the decision of the case.”

2. When the matter was heard by the Additional Sessions Judge, he was of the opinion that there is no sufficient cause shown to condone the delay. The Court was more impressed by the reason that the husband had failed to pay the maintenance amount as ordered by the JMFC and approximately an amount of Rs.1,54,000/- is due. The Court also did not find substance in the

reasoning given in the application and noted that the applicants and counsel remained absent and therefore, the Magistrate was left with no alternative then to provide some redressal to the wife. In these peculiar circumstances the impugned order sets out that the no case is made out for condonation of delay as no sufficient cause was shown.

3. This Court on 03rd December 2014 was pleased to issue notice to the respondents and had also stayed the order passed by the learned Magistrate which was against the petitioner directing him to provide shared accommodation and to pay an amount of Rs.3,000/- as a maintenance amount.

The record reveals that the respondent No.1 was duly served but he has not put an appearance nor has engaged any counsel. When a fresh notice came to be issued in the year 2016 the respondent No.1 came to be again served but as on today there is no appearance.

4. The learned counsel for the petitioner would submit that the marriage between the petitioner and the respondent No.1 was solemnized in April 2008 and since then the respondent-wife is residing away from the matrimonial house and though she had

instituted the proceedings for Restitution of Conjugal Rights, the same came to be dismissed and the order has attained finality, Thereafter, the petitioner has also instituted proceedings for dissolution of marriage on the ground of nullity in respect of which the Family Court Appeal is pending in this Court.

5. The order which is impugned do not take into consideration the circumstances which are narrated in the application, giving sufficient justification for condonation of delay in not filing the appeal within the stipulated period of limitation. The interest of justice would be better served if the delay is condoned, since there is a sufficient cause shown by the applicant as he was in a state of doubt where he was not aware as to what would be the course of proceedings, on establishment of the Family Court at Solapur and this confusion resulted into a delay. The delay being *bona fide*, is condoned in the interest of justice and the Additional Sessions Judge is directed to proceed with the matter on it's merit and is also directed to workout for an amicable settlement in the matter, in view of the dead marriage between the parties.

6. For the aforesaid reasons the impugned order is quashed and set aside. The matter is remanded back to the

Additional Sessions Judge, Solapur who would conclude the proceedings pending before it by affording opportunity to the respondents, within a period of four months from date of this order.

7. The Writ Petition is disposed of.

(SMT.BHARATI H. DANGRE, J.)