

Anand

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

WRIT PETITION NO. 240 OF 2018

Cawas Pirojshaw Sukheswala .Petitioner

Vs.

Smt. Shernaz Cawas Sukheswala & anr. .Respondents

Mr. R. M. Pandiwala i/b. Ms L. P. Kharawa, Advocate, for the Petitioner
Smt. Shernaz Sukheswala, Respondent No. 1-in-person present
Mr. H. J. Dedhia, APP, for the Respondent No. 2 – State

CORAM : REVATI MOHITE DERE, J.

DATE : 05.02.2018

P.C.

. Heard learned counsel for the Petitioner and the
Respondent No. 1 who appears in person.

2. By this Petition, the Petitioner has impugned the Order dated 27.11.2017 passed by the learned Additional Sessions Judge, Greater Bombay below Misc. Appln. No. 1400 of 2017 filed in an Appeal preferred by the Respondents herein, by which the learned Judge was pleased to condone the delay of 197 days caused in filing the Appeal.

3. Learned counsel for the Petitioner submitted that no sufficient cause was shown by the Respondent No. 1 for condoning the delay of 197 days. He submitted that the reasons set out in the Misc. Application (condonation of delay) were not bonafide and not borne out from the records of the case. He submitted that the first reason given by the Respondent No. 1 that she had certain medical problems is not borne out from the fact, as the Respondent No. 1 was attending the proceedings in other Courts during the said period. He further submitted that even financial difficulties cannot be considered as a reason for condoning the delay.

4. Learned counsel for the Petitioner has relied on the Judgment of the Apex Court in the case of *Banarsidas and others Vs. State of Uttar Pradesh and others*, reported in 1956 S.C. 520.

5. The Respondent No. 1 opposed the Petition and submitted that no interference was warranted. She submitted that due to financial difficulties and due to her jaw problem, she could not file the Appeal in time. She submitted that the delay caused in filing the Appeal was neither deliberate nor intentional and as such was rightly condoned by the Appellate Court.

6. Perused the papers as well as the impugned Order.

7. The Respondent No. 1 had filed an Application under Section 12 of the Protection of Women from Domestic Violence Act alongwith an Application for interim maintenance and other reliefs. As the Respondent No. 1's prayer for interim maintenance was rejected, the Applicant applied for certified copies of the said impugned order on 30.11.2016 and received the same on 05.12.2016. Due to certain medical problems and financial difficulties, the Respondent No. 1 could not file the Appeal in time and as such there was a delay of 197 days in filing the Appeal in the Sessions Court. Hence, the Respondent No. 1 filed a Misc. Application seeking condonation of delay of 197 days caused in filing the Appeal. The delay caused in filing the Appeal can neither be said to be deliberate nor intentional. If the delay is not condoned, the Respondent No. 1 will suffer irreparable loss, whereas no prejudice would be caused to the Petitioner. There was sufficient cause to condone the delay. The learned Sessions Judge has rightly condoned the delay. No interference is warranted in the impugned order.

8. Accordingly, the Petition is dismissed.

(REVATI MOHITE DERE, J.)