

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

CRIMINAL WRIT PETITION NO. 832 OF 2016

Mukhtar Ismail Shaikh

... Petitioner

Vs.

Mrs. Nilofar Mukhtar Shaikh & Ors.

... Respondents

...

Mr. Shivraj Kunchge I/b Saima Ansari for the Petitioner.

Mr. A.A.Siddique I/by A.A. Siddique for the Respondent No.1.

Ms. P.N. Dabholkar, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd AUGUST, 2018.

P.C.

1. The petitioner had preferred an appeal before the Sessions Court challenging the order dated 26th March, 2015 passed by the Court of learned Metropolitan Magistrate 57 Court, Kurla Mumbai in Case No.66/DV/2014 thereby directing the petitioner to pay an amount of Rs.25,000/- to Respondent herein towards maintenance from the date of filing of application under Section 12 of Domestic Violence Act. The petitioner was also restrained and prohibited from causing any act of domestic violence to the applicant under Section 18 of the said Act and also restrained from dispossessing the applicant from shared household. The petitioner was also further directed to pay an amount of Rs.5,00,000/- towards compensation.

2. In pursuant to that the petitioner had approached the Sessions Court by preferring an appeal. Since, there was a delay of 200 days in preferring an appeal, an application for condonation of delay was preferred. The said application was rejected by the appellate Court vide order dated 8th February, 2016.

3. According to the petitioner, the trial Court had passed an exparte order and hence the petitioner was not aware about the impugned order and thus there was a delay in preferring an appeal. In the application for condonation of delay, the petitioner had also stated that he was suffering from illness and had left for Ramzan Haj. He returned back in September, 2015 and thereafter preferred an appeal. In the circumstances, there was delay of 200 days in preferring the said appeal. Learned Sessions Judge do not find this explanation satisfactory and has refused to condone the delay. Thereafter, the petitioner has filed this petition on 23rd February, 2016 which is pending in this Court.

4. Taking into consideration the explanation tendered in the interest of justice, the delay can be condoned. The Court cannot take hyper technical view while deciding an application for condonation of delay. In the interest of justice and with a view to

give an opportunity to the petitioner to challenge the impugned order passed by the trial Court which according to him by an ex parte order, the delay ought to be condoned. Learned counsel for the respondent, however made a grievance that the petitioner is in arrears of maintenance and he has not complied the order of the trial Court. The counsel for the petitioner on instructions submits that petitioner has been paying regular maintenance, however the lumpsum amount of Rs.5,00,000/- as directed by the trial Court has not been paid by the petitioner. Petitioner intends to challenge the said order before the Sessions Court. The statement made by the counsel for the petitioner is disputed by the counsel for the respondent.

5. Be that as it may be, without going through the merits of the case, the issue relating to arrears as well as interim order are concerned, the appellate Court would take into consideration all these aspects while taking the the appeal on merits and challenging the interim relief which preferred by the petitioner. Hence, I pass the following order.

ORDER

- (i) Criminal Writ Petition is allowed;

- (ii) Impugned order dated 8th February, 2016 rejecting the application for condonation of delay is set aside. The delay is condoned;
- (iii) The trial Court is directed to hear the appeal on merits and decide the same in accordance with law;
- (iv) All issues are kept open in this writ petition;
- (v) Criminal Writ Petition No. 832 of 2016 stands disposed of.

Sachidanand
Kuttan Nair

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by Sachidanand
Kuttan Nair
Date: 2018.08.06
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(PRAKASH D. NAIK, J.)