

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.176 OF 2016
IN
CRIMINAL REVISION APPLICATION ST.NO.216 OF 2016
WITH
CRIMINAL REVISION APPLICATION ST.NO.216 OF 2016

Noorjaha Asim Jamadar & Anr .. Applicants
Versus
Asim Salauddin Jamadar & Anr .. Respondents

...

Mr.Mandar Limaye for the applicants.

CORAM: SMT.BHARATI H. DANGRE, J

DATED : 20th MARCH 2018

P.C:-

1 Criminal Application No.176 of 2016 is taken out seeking condonation of delay of 1 year 21 days in filing the Criminal Revision Application, challenging the order dated 12th December 2014 passed by the Judge, Family Court, Kolhapur, thereby awarding maintenance to the applicant-wife from the date of order.

 Heard the learned counsel for applicant. Perused the application praying for condonation of delay. The reasons for condoning the delay are stated in paragraph nos.6 and 7 of the said application. The reasons appear to be bonafide and hence in the interest of justice, the delay needs to be condoned. The delay is accordingly condoned.

Criminal Application No.176 of 2016 stands disposed of. On condoning the delay, Criminal Revision Application is also taken for hearing.

2 Learned counsel for the applicant invited my attention to the order passed by the Judge, Family Court, Kolhapur in Petition E.No.2 of 2013. The said application has been filed by the applicant seeking maintenance @ Rs.1500/- per month to the applicant and her minor son aged 2 years under Section 125 of the Code of Criminal Procedure, 1973. On consideration of the matter in great detail, the Judge, Family Court, allowed the said petition and after recording the reasons, justifying the payment of maintenance of Rs.1500/- to the petitioner nos.1 and 2, directed the maintenance to be paid from the date of the order i.e. 12th December 2014. Paragraph 33 of the said order deals with the aspect as to whether the amount of maintenance is to be awarded from the date of application or from the date of passing of the award. The Judge, Family Court in paragraph no. 33 takes note of the fact that the petition was filed in the year 2006 and was pending before the Court for more than 7 years. It is also observed that amendment of the petition was sought and then the matter was prolonged for filing say on the amendment application and thereafter, time was also sought for filing evidence affidavit on three occasions, and therefore, the matter remained pending before the Court for a long time on account of the conduct of the petitioner. By considering the said circumstances to be just and proper, the Judge, Family Court, awarded maintenance from the date of the order. Learned counsel for the petitioner would argue that in normal course, the maintenance ought to have been

awarded from the date of the application, and the reasons stated in paragraph no. 33 cannot be said to be sufficient so as to justify the deviation from this procedure and granting maintenance from the date of the order and not from the date of application. He would invite my attention to sub-section(2) of Section 125 of the Code of Criminal Procedure which reads thus :

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.”

Perusal of the said sub-section would reveal that any allowance towards maintenance or interim maintenance to be payable under Section 125 of the Code of Criminal Procedure shall be payable from the date of the order or if so ordered, from the date of application for maintenance or interim maintenance, as the case may be. Then, it is the discretion of the Court to grant the amount of maintenance either from the date of the order or from the date of application. When it is permissible for the Court to grant maintenance from either of these dates in any of these situations, the Court would be duty bound to record the reasons. At this stage, it would be relevant to refer to sub-section (6) of Section 354 of the Code of Criminal Procedure which reads thus:

“Every order under Section 117 or sub-section (2) of Section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision”.

Perusal of Section 354 of sub-section (6) of the Code of Criminal Procedure would reveal that every order which is made under Section 125 or under the other provisions mentioned in the said sub-section, shall contain the point or points for determination, to the decision thereon and the reasons for such decision. Whenever the Magistrate decided to award maintenance either from the date of application or from the date of the order, he must record his reasons for doing so. The Hon'ble Apex Court in the case of ***Jaiminiben Hirenghai Vyas & Anr. Versus Hirenghai Rameshchandra Vyas & Anr.***¹ held that while passing an order awarding maintenance under Section 125, by referring to sub-section (2) of Section 125 of the Cr.P.C, it is permissible for the Magistrate to pass an order either granting maintenance from the date of application or from the date of order by recording reasons and the said reasons can be then subjected to judicial review since giving reasons to *sine qua non*, reflecting the decision making process.

3 In such circumstances, in any contingency, when the Court decides to award maintenance either from the date of application or from the date of the order, it is duty bound to record reasons and paragraph 33 of the impugned order records such reasons. Learned counsel for the petitioner is not able to point out that the said reasons are so perverse which would call for interference at the instance of this Court.

¹ 2015 2 SCC 385

In such circumstances, there is no merit in the Criminal Revision Application and the same is dismissed.

(BHARATI H. DANGRE, J)