

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

CRIMINAL WRIT PETITION NO.1547 OF 2018

Moh. Salim Fateh Mohd. Ansari & Ors. .. Petitioners

Vs.

Mrs.Altamash salim Ansari & Anr. .. Respondents

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Mr.P.M. Khankar, Advocate for the Petitioners.
Ms.Savita M. Yadav, Advocate for Respondent No.1.
Mr.A.R. Patil, APP for the Respondent No.2- State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 13, 2018.

P.C. :

The applicant is aggrieved by order dated 31st January, 2018, passed by the Sessions Court dismissing the application for condonation of delay in preferring the Appeal against the order of maintenance passed by the trial Court under the provisions of Domestic Violence Act, 2005.

2 The petitioner was directed to pay maintenance of Rs.3,500/-, as monthly expenses for maintenance to wife from the date of application till disposal of main application. The said order was challenged by preferring Appeal. There was a delay of

about 73 days in preferring the application. In the said application for condonation of delay, it was stated that the applicant was not in a position to engage the lawyer and unable to approach the Court on account of financial constraints. Learned Sessions Judge rejected the application on the ground that there is no proper explanation.

3 Learned counsel for the petitioner submitted that on account of non payment of maintenance, distress warrant was issued against the petitioner and he was required to undergo civil imprisonment. It is submitted that on account of financial difficulty, he could not engage the advocate which has resulted in delay in preferring the Appeal before the Sessions Court. *Per contra*, the learned counsel for the respondent – wife submitted that there was no reason assigned in the application for condonation of delay. The petitioner has not complied the order of the trial Court and has not paid the maintenance amount. Hence, the order of the Sessions Court may not be set aside.

4 Taking into consideration the submissions advanced by both the parties and in the light of the grounds raised in the application, and the submissions made by the learned counsel for

the petitioner, an opportunity is required to be given to the petitioner to challenge the order on merits.

5 In the circumstances, I pass the following order:

:: ORDER ::

- (i) Criminal Writ Petition No.1547 of 2018, is allowed;
- (ii) The order dated 31st January, 2018, passed by the Sessions Court dismissing the Miscellaneous Application No.155 of 2018, for condonation of delay is set aside. The delay stands condoned;
- (iii) The Sessions Court is directed to decide the Appeal in accordance with law;
- (iv) Parties are directed to appear before the Sessions Court on 2nd July, 2018;
- (v) Writ Petition stands disposed of accordingly.

(PRAKASH D. NAIK, J.)