

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL APPLICATION (APPR) NO. 79 OF 2019
in
Criminal Revision Application No. _____ of 2019.

(Sachin Vishnuji Saynere vs. Sau. Kalyani Sachin Saynere)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. N. M. Kolhe, Advocate for the applicant.
Shri. P. S. Raut, Advocate for non-applicant.

CORAM : Manish Pitale J
DATED : July 31, 2019

This Court has issued notice on 10.06.2019 on the application for condonation of delay, as well as revision application. The delay in the present case is 82 days and the reason given in the application is that the Family Court had proceeded *ex parte* against the applicant and therefore, he was unaware about the impugned order passed by the Family Court. It was claimed that as soon as the applicant was aware about the impugned order, he made efforts to collect the documents and that thereafter immediately moved this Court.

(2) Although the present application is opposed by the learned counsel appearing for the non-applicant, inter-alia, on the ground that complete copy of the application has not been served on him, this court is of the opinion that the delay of 82 days in approaching this Court, deserves to be condoned for the reasons stated in the application.

(3) Accordingly, this application is allowed and the delay is condoned.

Criminal Revision Application No. _____/2019.

Heard learned counsel for the parties.

(2) The principal ground raised in the present application while challenging the impugned Judgment and order dated 10.09.2018 passed by the Family Court is that since the applicant was proceeded *ex parte*, he could not place on record the correct facts, insofar as, his source of income is concerned, leading to erroneous order passed by the Family Court. It was submitted that the applicant had cogent documents to demonstrate that his monthly income was only Rs.5000/- p.m. and that therefore, the impugned order directing the applicant to pay monthly maintenance at Rs.5000/-p.m., to the non-applicant was wholly unsustainable.

(3) In this regard, the learned counsel for the applicant invited attention of this Court to certain documents, including the acknowledgement card of the notice sent by registered post acknowledgement due by the Family Court. It was submitted that the notice allegedly sent by the postal authorities, was never received by the applicant and that therefore, the Family Court wrongly proceeded *ex parte* against the applicant.

(4) The learned counsel appearing for the non-applicant submitted that the documents and material on record justified the approach adopted by the Family Court in proceeding against the applicant and in any case cogent reasons were given by the Family Court while quantifying the monthly maintenance payable to the non-applicant.

(5) A perusal of the material on record, particularly the

aforesaid acknowledgment card shows that an the endorsement has been made therein that the applicant was not found at his address when attempts were made to serve the packet containing the notice. Thereafter, intimation was given by the postal authorities to the applicant regarding the said packet containing the notice, but it appears that the applicant did not respond to the same. It is relevant that the address stated on the said notice and the packet sent to the applicant is the correct address of the applicant and it is not denied by him. Considering the said facts, the submissions made on behalf of the applicant that he could not be said to be at fault, cannot be accepted. Consequently, the order dated 24.01.2018 passed by the Family Court at Amravati directing that the matter shall proceed *ex parte* against the applicant cannot be found fault with.

(6) In any case, a perusal of proviso to Sub-Section (2) of Section 126 of the Code of Criminal Procedure shows that if the applicant did have any genuine grievance about service of notice to him, he could have moved an application within three months before the Family Court for setting aside the order to proceed *ex parte* against him, which could have been granted by the Magistrate subject to terms and conditions, including imposing costs. The applicant chose not to avail of the said remedy and has approached this Court by way of present revision application.

(7) This court is of the opinion that although the material on record does not justify the grievance sought to be raised by the applicant regarding the Family Court having proceeded *ex parte* against him, considering the fact that the applicant has placed certain documents before this Court pertaining to his monthly

income, it would be in the interest of justice that the applicant is granted an opportunity to prove the veracity of such documents before the Family Court. This would be subject to such objections that the non-applicant may raise against the documents sought to be produced by the applicant. But, in the facts and circumstances of the present case, this court is of the opinion that if such an opportunity is to be granted to the applicant, it has to be on specific terms and conditions, so that the non-applicant is also not put to any inconvenience.

(8) In view of the above, the present revision application is partly allowed in the following terms :-

(A) The impugned Judgment and order passed by the Family Court on 10.09.2018 is quashed and set aside and the matter is remanded back to the Family Court for fresh consideration after giving an opportunity to the applicant to produce documents.

(B) The Family Court shall give proper opportunity to the non-applicant to demonstrate that such documents are either not genuine or not believable.

(C) The applicant shall clear all the arrears payable to the non-applicant in terms of the impugned Judgment and order (monthly maintenance of Rs.5000/-) within a period of 08 weeks from today.

(D) The non-applicant is permitted to withdraw Rs.25000/- (Rupees Twenty Five Thousand only) deposited by the applicant before the Family Court.

(E) The applicant shall continue to pay maintenance to the non-applicant at Rs.5000/- p.m. from August 2019 till the disposal of the petition by the Family Court, upon remand by this Court.

(F) The Family Court shall finally dispose of the aforesaid petition, which has been remanded by this Court, within a period of six months from today.

(G) It is made clear that if the applicant fails to pay the entire arrears to the non-applicant within the aforesaid period of eight weeks, the present order shall cease to operate.

(H) The payments being made by the applicant in terms of the present order, shall be subject to the final judgment and order that may be passed by the Family Court in pursuance of the matter being remanded by this Court.

(I) It is made clear that if the applicant fails to abide by the above terms and conditions imposed by this Court, the present order shall stand recalled and the impugned Judgment and order dated 10.09.2018 passed by the Family Court shall stand revived.

(J) Parties to appear before the Family Court on 06.08.2019.

The revision application is disposed of in above terms.

(JUDGE)