

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.2289 of 2019
and Crl.M.P.No.1513 of 2019

M.Twinkle Amala

... Petitioner

Vs.

1. D.Antony Muthu Thangaraj

2. D.Juliet Ammal

3. L.James

..Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in M.P.No.8944 of 2018 in Crl.A.SR.No.9806 of 2018 by the Principal Sessions Court, Chennai dated 10.10.2018.

For Petitioner : Mr.S.B.Viswanathan

For Respondents : Ms.Auxilia Peter

O R D E R

By an order dated 06.03.2014 passed in M.C.No.3848 of 2011, at the instance of the petitioner herein, the learned 18th Metropolitan Magistrate, Saidapet, Chennai had passed protection orders including orders for maintenance at the rate of Rs.10,000/- per month. The petitioner herein had sought for filing an appeal against this order with a delay of 1517 days which came to be allowed by the impugned order dated 10.10.2018, which is under challenging in the present petition filed by the petitioner. The reason adduced by the respondent herein in the petition to condone the delay to the effect that, pursuant to the orders passed in M.C.No.3848 of 2011, he had filed an application to set-aside the order, which came to be dismissed by the trial Court as against him. The petitioner had filed an appeal before the Sessions Court in Criminal Appeal No.186 of 2014 which was also dismissed. In the revision filed against this order before the High Court, an observation was made to the effect that if there is any grievance in the order passed by the

trial Court, the remedy available to the petitioner is to file an appeal under Section 29 of the Protection of Women from Domestic Violence Act. This order of the High Court was passed on 30.06.2017. In the background of these observations, the petitioner had filed an application seeking to condone the delay in filing the appeal against the order passed in M.C.No.3848 of 2011.

2.The learned counsel for the petitioner assailed the impugned order stating that the reasons given by the respondent cannot be accepted. Since the respondent had not chosen to follow the proceedings as per the Act, but to proceed before different forums. He would also submit that the reasons assigned are not "sufficient cause" to condone the delay.

3.The learned counsel for the respondent on the other hand submitted that the delay was caused owing to the further adjudication by the Court in the petitions filed as against the original order passed in M.C.No.3848 of 2011 and ultimately, when the Court observed that the remedy available to the petitioner is only to file an appeal, they had preferred as appeal with condone delay petition. During the course of such proceedings, the delay had occurred. He further submitted that there was sufficient cause to condone the delay.

4.It is not in dispute that as against the original order passed in M.C.No.3848 of 2011, the respondent herein had been challenging the same by seeking to set-aside the order and thereafter, an appeal before the Sessions Court was also preferred. As such, it cannot be said the respondents herein were keeping idle after the orders in MC was passed. In view of the observations made by the High Court in the revision that necessitated the respondent herein to file an appeal with the petition to condone the delay, such cause could be termed as sufficient cause. Further more, the powers vested with the trial Court to condone the delay are discretionary in nature and the scope of interference with such a discretion is limited.

5.Hence, I do not find any valid reasons to interfere with the impugned order and accordingly, the criminal original petition stands dismissed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

ssr

To

1.The Principal Sessions Judge, Chennai.

+1 CC to M/s. Auxilia Peter, Advocate sr 82169.

+1 CC to Mr.S.B.Viswanathan, Advocate sr 82047

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SPD(CO)
SP(23/10/2019)