

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Application No. 581 OF 2018

Shahmohammad Khudadaad Pathan	...Applicant
<i>Versus</i>	
Tasslim Shahmohammad Pathan And Ors	...Respondents

....
Mr. Abhijeet J. Kandarkar, Advocate for the Applicant.
Mrs. S.S. Kaushik, APP, for the Respondent – State.
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CORAM : SARANG V. KOTWAL, J.

DATE : 14th FEBRUARY, 2020

PC.

1. This application is filed by the Applicant under Section 482 of Cr.PC. challenging the orders passed by the Judicial Magistrate, First Class and the Sessions Court. Respondent Nos.1 to 3 have preferred proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as, 'D.V. Act') against the Applicant.

2. Respondent Nos.1 to 3 have filed Criminal Miscellaneous Application No.852/2015 in the Court of Judicial

Magistrate, First Class, Cantonment Court, Pune. Respondent No.1 is the wife of the applicant. Respondent Nos.2 and 3 are the minor children of the couple. In her application filed under Section 12 of the D.V. Act, Respondent No.1 has mentioned different allegations against the Applicant, which according to her amounted to domestic violence. Respondent Nos.2 & 3 are the minor daughters of the couple. Respondent Nos.1 to 3 have claimed various reliefs against the Applicant. This application was filed on 19.9.2016.

3. Thereafter, Respondent Nos.1 to 3 filed an application under Section 23 of the D.V. Act in the said proceedings for interim reliefs. Respondent Nos.1 to 3 had prayed for directions to the Applicant to pay Rs.15,000/- per month for their maintenance and they had also claimed protection for the property at Kondhwa (Khurd) City Survey No.56, Sub-Division 4/2/12 at Pune.

4. The Applicant filed his reply to this application under Section 23 of the D.V. Act and contested the reliefs claimed by Respondent Nos.1 to 3.

5. The learned Magistrate, vide his order dated 14.11.2016, was pleased to direct the Applicant to pay an amount of Rs.8,000/- per month to Respondent Nos.1 to 3 for their interim maintenance from the date of filing of the application. There were other directions issued for clearance of the arrears. The aforesaid property was also protected by issuing order to the Applicant restraining him from creating any obstruction or third party interest in the said property.

6. The Applicant did not take any immediate steps to challenge this order and preferred Appeal before the Court of Sessions, Pune belatedly. There was delay of 327 days in filing that Appeal. Therefore, the Applicant preferred Criminal Misc. Application No.402/2017 for condonation of delay. The Appeal was filed on 6.11.2017.

7. The learned Additional Sessions Judge, Pune, vide his order dated 17.2.2018, rejected the Applicant's application for condonation of delay in preferring the Appeal before the Court of Sessions at Pune.

8. I have heard Shri Abhijeet Kandarkar, learned Counsel for the Applicant. With his assistance, I have perused the impugned orders.

9. The Applicant has stated in his application for condonation of delay in preferring the Appeal, that, he got the knowledge of the order passed by the learned Magistrate on 1.11.2016 for the first time. He has further stated in his application that he was suffering from economical problems and was unable to file appeal within the prescribed statutory limit. Apart from these two statements, there is absolutely no averment in the application for condonation of delay justifying filing of the Appeal belatedly.

10. It is important to note that the applicant had contested the application filed by Respondent Nos.1 to 3 under Section 23 of the D.V. Act and thereafter the order was passed on 14.11.2016. Therefore, the Applicant cannot claim ignorance about passing of the order. Though there is apparent inconsistency in his stand that he got to know about the order on 1.11.2016 and in fact the order was passed on 14.11.2016,

but that only emphasises his casual approach.

11. In any case, the proceedings are still going on in the Court of Judicial Magistrate, First Class, Cantonment Court, Pune. The order was only an interim order. The amount of interim maintenance is certainly not too high for the maintenance of Respondent Nos.1 to 3. The learned Additional Sessions Judge has given sufficient reasons for declining to allow the application for condonation of delay.

12. Considering all these aspects, I am not inclined to interfere with the impugned orders. I find no merit in the application. Hence, Criminal Application is dismissed.

(SARANG V. KOTWAL, J.)

Deshmane (PS)