

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.2678/2018**

**BHASKAR MANI                                ....        PETITIONER**

**VERSUS**

**NEENA BHATNAGAR W/O  
BHASKAR MANI & ANR.                .....        RESPONDENTS.**

**.....**

Mr.Nagendra S. Dube, Advocate for the Petitioner.

Mr.S.V.Gavand, APP for the State.

Mr.Sanjay Bhatia for respondent no.1.

**.....**

**CORAM        : A. M. BADAR, J.**

**DATE: 7TH FEBRUARY 2020.**

**P.C.:**

1.                By this petition, the petitioner/original respondent in application under Section 12 of the ‘Protection of Women from Domestic Violence Act, 2005 (to be referred as the ‘D.V.Act’ for short) filed by respondent no.1 herein, is challenging order rejecting his application for condonation of

delay in preferring an appeal under Section 29 of the D.V. Act. Order dated 20.4.2018 passed by the learned Additional Sessions Judge is thus, sought to be challenged in the present petition.

2. Heard learned counsel appearing for applicant/original respondent/husband. He drew my attention to the application for condonation of delay and more particularly, on page 58, 60 and 61 thereof. With the aid of documents filed alongwith instant petition, it is urged that the petitioner had lost his job and he was required to be re-located to the U.S.A. It is further argued that the petitioner had suffered financial difficulties after passing impugned order as would be reflected from his bank statements. It is further argued that the petitioner had applied for getting job at least on 30 occasions but he was not successful in getting the job. Therefore, in submission of learned counsel for the petitioner, the impugned order is illegal.

3. As against this, by relying on paragraph 9 and 23 of the impugned order, learned counsel for the respondent herein/aggrieved person argued that no sufficient cause was shown in preferring the appeal and therefore, the learned appellate court has rightly rejected the application for condonation of delay.

4. I have considered the submissions so advanced and also perused the material placed on record.

5. It is well settled that the court is required to adopt liberal and pragmatic approach in considering the application for condonation of delay, in the light of principle that primary function of the court is to adjudicate the disputes on their own merits rather than to prefer technicality of law. However, at the same time, it is the duty of the applicant seeking condonation of delay to establish sufficient cause for not preferring appeal within the period of limitation. What

matters is not length of delay but sufficiency of cause. Therefore, let us examine whether sufficient cause is demonstrated by the petitioner herein for getting the delay condoned.

6. In a proceedings under Section 12 of the D.V. Act, initiated by the respondent herein, interim order came to be passed on 28.4.2014. By this interim order under Section 23 of the D.V.Act, the learned trial Magistrate has awarded maintenance of Rs.20,000/- p.m. and rent of Rs.5,000/- p.m. to the aggrieved person and original respondent was injuncted from committing domestic violence on her. This interim order was sought to be challenged by preferring an appeal under Section 29 of the D.V.Act. As there was delay, the appeal came to be accompanied by application for condonation of delay. It is reported that appeal alongwith application for condonation of delay came to be lodged on 10.10.2017. It is thus clear that, there is delay of about 3 ½

years in preferring the appeal challenging interim order.

7. It is faintly urged that, Section 29 of the D.V.Act provides that an Appeal can be filed within 30 days from the date on which order passed by the learned Magistrate is served on the aggrieved person or respondent. It is thus, tried to be impressed that, the order was actually served on the petitioner on 8.2.2017 and as such there is delay of only 6 months in lodging the appeal. Such contention can not be accepted because it was for the petitioner to approach the court for getting a copy of order and more particularly, certified copy of order dated 28.4.2014 granting interim maintenance. It was sought to be demonstrated that though all efforts were made by the petitioner immediately after passing order on 28.4.2014 by the learned trial Magistrate, he could get a copy thereof on 8.2.2017. No such efforts are pleaded in the application for condonation of delay. Rather it is clear that no such efforts were made to collect certified

copy of order sought to be impugned in the appeal by present petitioner. In this back drop, the learned Additional Sessions Judge has noted the fact that on the very next day of passing the impugned order i.e. 29.4.2014 on behalf of present petitioner, application came to be moved before learned Metropolitan Magistrate for suspension/alteration and recalling of order dated 28.4.2014. It is further noted in the impugned order that, on 25.6.2014, there was another application by the petitioner before the learned Metropolitan Magistrate for staying order dated 28.4.2014. Thus, in absence of reliable material to demonstrate that despite efforts made by the petitioner, order which was sought to be impugned was not provided to him, it can not be said that as the order was supplied to him on 8.2.2017 there is delay in lodging the appeal.

8. It is thus, clear that the delay in lodging the appeal was of about 3 ½ years. Reason which remains now

is that of loss of employment and financial constraint of the petitioner. Those are held to be not constituting sufficient cause by the learned Additional Sessions Judge. This aspect is dealt with by the learned Additional Sessions Judge in paragraph 23 of the impugned order. Reasoning so given can not be said to be perverse or illegal. Discretionary order of refusal to condone the delay is perfectly justifiable and it can not be said that discretion so exercised is perverse or illegal.

9. In the result, petition is devoid of merits and therefore, dismissed.

**(A. M. BADAR, J.)**

