

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

CRIMINAL REVISION APPLICATION NO. 133 OF 2022

HIMMAT BHAGWAN KUWAR

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Applicant : Mr. Savale Amit S

APP for Respondent No.1/State : Mr. S. B. Narwade

Advocate for Respondent Nos. 2 & 3 : Mr. D. R. Markad

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CORAM : KISHORE C. SANT, J.

DATE : 23rd SEPTEMBER 2022.

Per Court :

Heard. both the parties. The matter is taken up for final disposal at the stage of admission by consent of the parties.

1. The Applicant/Husband has challenged the order passed by the learned Additional Sessions Judge, Dhule dated 15.03.2022 in Criminal Miscellaneous Application No. 5/2020. The application was for condonation of delay of 27 months that was caused in challenging

the order passed by the learned Judicial Magistrate First Class (Court No.3), Shirpur in Criminal Miscellaneous Application No. 63/2013 dated 07.08.2017. Vide this order, the learned J.M.F.C. had allowed the application filed under the provisions of Domestic Violence Act and directed the present Applicant/Husband to pay Rs.1000/- per month from the date of application to Respondent No.1/Wife and Respondent No.2/Son. The learned Advocate submits that the Applicant could not get the knowledge of the order passed in Criminal Miscellaneous Application No.63/2013 in time. It is his specific case that Applicant/Husband was facing two proceedings one under D.V. Act. And another complaint bearing R.C.C. No.179/2013 that was filed against the husband under Section 494 of the Indian Penal Code (IPC for short). He has produced on record copies of Roznama in both the proceedings.

. From the record, it is seen that both the cases were pending before the same Court. Initially, the dates in both the cases were same. Later on, different dates were given. However, the Applicant/Husband could not get the knowledge of this fact. It is stated that later on his Advocate told him that the Criminal Miscellaneous Application No.

63/2013 is already dismissed and he need not attend the said case, when as a matter of fact the Criminal Misc. Application No.63/2013 was very much pending. Today, during the course of hearing, he has produced on record the copy of Roznama in Criminal Misc. Application No. 63/2013 to show that almost from July, 2016 practically on all the dates, the Applicant, Respondent and their Advocates were absent. Ultimately on 07.08.2017, the proceeding of Cri. Misc. Application No.63/2013 was disposed of and even on that day, the Advocates and parties were absent.

2. It is this order the Applicant carried to the Court of learned Sessions Judge, Dhule. As there was no knowledge to Applicant, he could not challenge it earlier. It is his specific case that he got the knowledge of the order dated 07.08.2017 only when he was served with a notice in the execution proceedings filed by the Wife and when he had been to the Court to attend the date in another proceeding i.e. R.C.C. No.179/2013.

3. The learned Sessions Judge dismissed his application by order dated 15.03.2022 observing that when the proceedings were in the same Court and when the Applicant was very much attending one of the proceedings regularly, it cannot be believed that he had no knowledge of the proceedings in the other case. He observed that it cannot be believed that his Advocate would tell his client, not to come to Court and attend the case. It is observed that the Applicant /Husband is vigilant person. For this reason, the learned Additional Sessions Judge, Dhule dismissed his application. It is this order of disposal of application, the Applicant has assailed in this Criminal Revision Application.

4. The learned Advocate for the Applicant submits that considering the facts on record and specifically that since he had no knowledge of the order passed in Criminal Misc. Application No.63/2013, he could not challenge it earlier. It is only on 07.11.2019, he received a knowledge of the order and immediately thereafter in the month of January, 2020 he filed Criminal Misc. Application alongwith an appeal. He submits that the delay is not intentional. He was not to gain any

advantage by not preparing the appeal within time.

5. Mr. Markad learned Advocate (appointed) for Respondent Nos. 2 & 3, submits that the learned Sessions Court has properly appreciated the facts and by way of his judgment, the application is dismissed and no interference is called for. He states that from the record, it is seen that the Applicant/Husband has not paid the amount of arrears of maintenance in spite of order. On merits, he submits that the amount of Rs.1000/- towards maintenance is awarded by the learned trial Court. He submits that even the Wife is not in position to come to this Court and to engage the lawyer. Considering that in the alternative, he submits that if the Revision Application is allowed, the Husband be put to heavy costs as he is not depositing the amount.

6. Considering the facts of the case, the following order is passed.

ORDER

- (i) The Criminal Revision Application is allowed, subject to depositing of at least 50% of the amount of arrears of the maintenance, pursuant to the order dated 07.08.2017 passed by

the learned J.M.F.C. (Court No.3) Shirpur in Criminal Misc. Application No.63/2013.

- (ii) Subject to the payment of the delay, the judgment and order dated 15.03.2022 passed by the learned Sessions Judge, Dhule in Criminal Miscellaneous Application No.5/2020 is quashed and set aside.
- (iii) No order as to costs of this Criminal Revision Application.
- (iv) With these, the Criminal Revision Application is disposed of.

[KISHORE C. SANT, J.]

Najeeb.