

GHUGE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 6433 OF 2021

Dashrath Mahadev Dolare	... Petitioner
V/s.	
Anita Dashrath Dolare And Anothers	... Respondents

**WITH
CRIMINAL WRIT PETITION NO. 6442 OF 2021**

Dashrath Mahadev Dolare	... Petitioner
V/s.	
Anita Dashrath Dolare And Anothers	... Respondents

Mr. Vijay Killedar for the Petitioner.
Mr. Anand S. Kulkarni for the Respondents
Mr. S.S. Pednekar, APP for Respondent No.6/State.

CORAM : AMIT BORKAR, J.

DATED : 06TH OCTOBER, 2022.

P.C:-

1. By Criminal Writ Petition No.6433 of 2021 the petitioner-husband is challenging order passed in Miscellaneous Application No.149 of 2019 rejecting application for condonation of delay challenging order dated 22nd December, 2015 passed by 9th J.M.F.C. Solapur in Criminal Miscellaneous Application No.1983 of 2014 under the provisions of Domestic Violence Act.

2. In Writ Petition No.6442 of 2021 petitioner is challenging order in Miscellaneous Application No.150 of 2019 rejecting application for condonation of delay in filing revision against Judgment and Order passed by Judicial Magistrate First Class Solapur, in Miscellaneous Criminal Application No.943 of 2012 dated 29th July, 2013 granting maintenance under the provisions of Section 125 of Code of Criminal Procedure, 1973.

3. Miscellaneous Application No.943 of 2012 filed under section 125 of the Code of Criminal Procedure was allowed, directing husband/petitioner to pay an amount of Rs. 5,000/- per month from 3rd October, 2022.

4. Respondent No.1-Wife thereafter instituted proceedings under the provisions of the Protection of Woman from Domestic Violence Act, 2005 bearing Miscellaneous Application No.1983 of 2014 which was partly allowed by the learned Magistrate directing the husband to pay additional amount of Rs.4,000/- and Rs.1,000/- towards House Rent Allowance (H.R.A). The petitioner challenged both the orders by filing Revision before the learned Sessions Court which were partly allowed by order dated 9th April, 2018.

5. The petitioner, therefore, approached the learned Magistrate for modification of the order of maintenance in both the proceedings. The said application was rejected on 11th

August, 2017. Aggrieved thereby, the petitioner filed two Revision Applications before the Sessions Court which were partly allowed. Respondent No.1-Wife, therefore, filed two Criminal Writ Petitions which were allowed by this Court. The petitioner, therefore, challenged the order of this Court by filing Special Leave to Appeal (Criminal) No.10806/2019 and 10807/2019 which were disposed of by granting liberty to approach appropriate authority.

6. In pursuance of the said liberty, the petitioner filed Revision Applications alongwith application for condonation of delay. The learned Sessions Judge by the impugned order rejected both the applications on the ground that the petitioner failed to furnish sufficient cause for condonation of delay. The said order of refusal to condone delay is the subject matter of present petition.

7. The learned advocate for the petitioner, on instructions from the petitioner, states that he has instructions to press Criminal Miscellaneous Application No.149 of 2019 as the scope of revision would be to consider consolidated amount maintenance in view of judgment of Apex Court in the case of **Rajnesh V. Neha** reported in (2021) 2 SCC 324.

8. On perusal of the events referred above, it appears that there were two orders passed by the learned Magistrate; one under the provisions of section 125 of Code of Criminal

Procedure and second under the provisions of Domestic Violence Act. It is well settled now that the Court has power to grant maintenance under both statutes, after considering quantum of maintenance granted earlier in favour of wife.

9. In the facts of the case, it appears that the petitioner approached the Apex Court in a proceeding arising out of application for modification of grant of maintenance. By order dated 5th December, 2019 the Apex Court permitted to withdraw the Special Leave Petition with liberty to approach appropriate authority. The applicant thereafter filed application bearing Criminal Miscellaneous Application No.149 of 2021 on 19th December, 2019. It, therefore, appears that the petitioner having filed appropriate proceeding within two weeks, the learned Revisional Court ought to have taken into consideration effect of the proceeding instituted by the petitioners and respondent arising out of application for modification of maintenance.

10. I am, therefore, satisfied that the petitioner has made out sufficient cause for condonation of delay in filing Miscellaneous Criminal Application No.149 of 2019. Hence, following order.

- (a) Miscellaneous Criminal Application No.149 of 2019 is allowed;
- (b) The learned Revisional Court shall Consider the Revision Application of the petitioner on merits in the light

of the law laid down by Apex Court in the case of **Rajnish V. Neha** reported in (2021) 2 SCC 324;

(c) The parties are at liberty to furnish their calculations about the arrears of maintenance before the Revisional Court. The Revisional Court shall adjudicate upon the amount of arrears of maintenance and if it comes to the conclusion that the petitioner is required to pay arrears, an order to that effect shall be passed and it is only after the arrears of maintenance are paid by the petitioner, the revision of the petitioner shall be entertained on merits.

(d) If the Appellate Court comes to the conclusion that there are no arrears to be paid by the petitioner, the learned Revisional Judge shall decide the Revision arising out of Miscellaneous Criminal Application No.149 of 2019 on merits.

11. The Statement of the learned advocate for the petitioner, on instructions of the petitioner who is present in the Court, that he has instructions not to press Miscellaneous Criminal Application No.150 of 2019 is accepted.

12. Both the Writ Petitions are disposed of in above terms.

(AMIT BORKAR, J.)