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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: October 11, 2022

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CRL.M.C. 267/2019, CRL.M.As. 1129/2019 (Stay) & 20531/2022

ATUL SAXENA

..... Petitioner

Through: Mr. M.K. Gahlaut, Advocate.

versus

STATE NCT OF DELHI AND ANR

..... Respondents

Through: Mr. Raghuvinder Varma, APP for
State.

CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

1. The present petition is file under section 482 Cr.P.C to impugn the order dated 18.12.2018 passed by the court of Ms. Savitri, ASJ-03, Shahdara District, Karkardooma Courts, Delhi in CA no. 136/2018.
2. It is reflecting from the record that the respondent no. 2 filed a petition under section 12 of Protection of Women from Domestic Violence Act, 2005 in which the petitioner was one of the party. The respondent no. 2 is stated to be the sister-in-law of the petitioner.
3. The Court of Ms. Babita Puniya, M.M (Mahila Court), Karkardooma Courts, Shahadra vide order dated 26.02.2018 restrained the respondents of that petition including the present petitioner till further orders from dispossessing or disturbing possession of the aggrieved i.e. the respondent no. 2 from shared household bearing no. B-196, First floor, Surajmal Vihar, Delhi without following due process of law and the interim maintenance was also awarded in favor of the respondent no. 2.

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4. The petitioner being aggrieved by the said order filed a criminal appeal bearing no. 136/2018 titled as **Atul Saxena V Roma Kumar** which was dismissed by the court of Ms. Savitri Chaudhary Attri , ASJ-03, Shahadra District, New Delhi vide order dated 18.12.2018 on the ground of delay which is observed as under:

It is settled law that every day's delay has to be explained to the satisfaction of court before it can be condoned. In the case at hand, no such circumstance as would convince the court to condone the delay has been pleaded nor has the delay of each day been explained to my satisfaction. I, therefore, dismiss the application and refuse to condone the delay. Consequently, the appeal also stands dismissed.

TCR along with copy of this order be sent back to Id. trial court and appeal file be consigned to record room.

5. The petitioner being aggrieved, file the present petition to impugn the order dated 18.12.2018 on the grounds as mentioned in the present petition.

6. It is a settled proposition that the disputed between the concerned parties be decided on merits and the criminal appeal should not have been rejected on the ground of delay. After considering all facts, the order dated 18.12.2018 is set aside and the criminal appeal is remanded back to the concerned Court of ASJ-03, Shahadra District, New Delhi with the direction to decide the appeal on merits. The delay if any, in filing the appeal bearing CA no. 136/2018 is condoned subject to the cost of Rs. 25,000/- to be paid to the respondent no. 2 before the concerned Appellate Court on the next date of appearance.

7. The concerned parties are directed to appear before the Court of Ms. Savitri, ASJ-03, Shahadra District, and New Delhi/Successor Court on 01.11.2022 at 02:00 PM for further directions.

8. The present petition alongwith pending applications, if any, stands disposed of.

(SUDHIR KUMAR JAIN)
JUDGE

OCTOBER 11, 2022/sk/m

