

05.09.2023
Item No.78
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

**C.R.R. 1961 of 2023
with
CRAN 1 of 2023
with
CRAN 2 of 2023
with
CRAN 3 of 2023**

In the matter of : **Sri Robin Kumar Saha** ... Petitioner.

Mr. Kalyan Bandopadhyay, Sr. Adv.,
Mr. Dwaipayan Basu Mallick,
Mr. Arkaprava Sen,
Mr. Rahul Kumar Singh ... For the Petitioner.

Mr. Soubhik Mitter,
Ms. Rajnandini Das,
Mr. Karan Bapuli ... For the Opposite Party No.1.

The present revisional application has been preferred challenging the order dated 12.05.2023 passed by learned District and Sessions Judge (in-charge), Alipore, South 24-Parganas in Criminal Appeal No. 112 of 2023 wherein an application under Section 5 of the Limitation Act was preferred for condoning the delay for preferring the appeal in connection with the order passed by learned Judicial Magistrate, 9th Court, Alipore in Case No. AC-1289 of 2022.

Mr. Bandopadhyay, learned senior advocate appearing for the petitioner submits that the petitioner was never served with a notice and an order under Section 23 was passed under the provisions of the Protection of Women from Domestic Violence, 2005. It has also been submitted that the quantum which was decided was directed to be paid from the date of filing of the application. It has also been pointed out

that an execution case has subsequently been filed during the pendency of the appeal.

Mr. Mitter, learned advocate appearing for the opposite party no.1 opposes the contentions raised by Mr. Bandopadhyay, learned senior advocate for the petitioner.

I have considered the totality of the circumstances and I find that the appeal is awaiting admission before the learned Sessions Judge, Alipore, South 24-Parganas. In fact, date was fixed for the respondent to participate in the application for condonation of delay. It has been informed that the next date has been fixed on 16.10.2023. The learned Sessions Judge, Alipore, South 24-Parganas or any Judge-in-Charge of the sessions court who would be taking up appeal matters would consider the issue relating to condonation of delay and would dispose of the same by 24.11.2023.

Till the issue relating to Section 5 of the Limitation Act is disposed of on 24.11.2023, the execution proceedings being Misc. Execution Case No. 237 of 2023 before the learned Judicial Magistrate, 9th Court, Alipore be stayed.

If the learned sessions court is of the opinion that the appeal is to be admitted, in that case the learned appellate court will take into account as to whether a quantum towards maintenance or 25% of the arrears which have accrued before the learned trial court would be a condition precedent for stay of the order before the learned trial court in seisin of AC Case No. 1289 of 2022. If such an order is passed, the same would be without rights and prejudice to the parties regarding the maintainability of the application under Section 12 of the

Protection of Women from Domestic Violence Act and/or consequential reliefs prayed in the said application.

It has been pointed out by Mr. Mitter, learned advocate for the opposite party no.1 that another appeal has been preferred being Criminal Appeal No. 120 of 2023. Let both the appeals be tagged together and heard one after the other. The same can be disposed of by a common order.

With the aforesaid observations, the revisional application being CRR 1961 of 2023 along with the connected applications is disposed of.

Department is directed to communicate this order to the learned trial court.

Parties would also be at liberty to bring in advance to the notice of the learned Sessions Judge in seisin of the appeal.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)