

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

CRIMINAL REVISION APPLICATION NO.65 OF 2015

Tararani @ Yogita W/o Naresh Koli,
Age 32 years, Occu. Nil,
R/o Plot No.167, Ganesh Colony,
Jalgaon.

... **Applicant.**

Versus

1. The State of Maharashtra,
2. Naresh S/o Madhukar Koli,
Age 37 years, Occu. Service,
3. Sunita W/o Naresh Koli – Deleted.
4. Madhukar S/o Vana Koli,
Age 65 years, Occu. Pensioner,
5. Sushila W/o Madhukar Koli,
Age 59 years, Occu. Household,
6. Rekha D/o Madhukar Koli,
Age 28 years, Occu. Service.

Res.Nos.2 to 6 R/o Plot No.201,
Building No.5-A,
New Panchdip Society, Manish Nagar,
Kalwa, District Thane.

7. Kalpana @ Sunanda W/o Pandharinath Shirsath,
Age 39 years, Occu. Household.
8. Pandharinath S/o Nathhu Shirsath,
Age 43 years, Occu. Service,

Res.Nos.7 & 8 R/o Pankaj Nagar,
Chopada, District Jalgaon.

... **Respondents.**

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Advocate for Applicant : Mr. Patankar Himanshu A.
APP for Respondent No.1-State : Mr. S. P. Sonpawale.

Advocate for Respondent No.2 : Mr. A. D. Ostwal.
Respondent No.3 – Deleted.
Advocate for Respondent Nos.4, 5 & 6 : Mr. Jadhav K. D.
Advocate for Respondent Nos.7 & 8 : Mr. M. R. Bhokarikar.

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CORAM : S. G. MEHARE, J.

RESERVED ON : 15.03.2023

PRONOUNCED ON : 19.04.2023

JUDGMENT :-

1. The applicant/wife takes exception to the order of the learned Additional Sessions Judge, Jalgaon rejecting the application for condonation of delay in Cri.M.A.No.30 of 2012, dated 17.01.2015.

2. The applicant had filed an application under the Protection of Women from Domestic Violence Act before the learned Chief Judicial Magistrate, Jalgaon, which was dismissed on 24.12.2010. The applicant had impugned the said order along with an application for condonation of 14 months and a week delay in preferring the appeal before the Sessions Court.

3. The learned Additional Sessions Judge, Jalgaon, did not satisfy with the reasons for the delay and dismissed the application.

4. Heard the respective learned counsels at length.
5. Learned counsel for the applicant has argued that the learned Additional Sessions Judge did not appreciate the fact that the applicant was unable to approach the Court, and the reasons were sufficient to condone the delay. A liberal view ought to have been taken by the learned Additional Sessions Judge. The husband has been remarried, and respondent No.2 is his second wife. He argued that a liberal has to be taken as the matter goes to the roots of the right of an abandoned woman to have maintenance and other reliefs under the Domestic Violence Act.
6. Per contra, the learned counsel Mr. Otswal, as usual, filed a long reply with a chart of dates and twenty case laws and strongly opposed the application. He would submit that the reasons for the delay were not sufficient. It was a deliberate delay. Therefore, the impugned order is legal and correct.
7. Perused the reply and the case laws. The law on condonation of delay is well settled. The law does not provide any enlargement of the limitation period that has been

prescribed. The existence of a sufficient cause is a condition precedent for the exercise of the discretion by the Court for condonation of delay. Discretion to condone the delay should be based not on the length of the delay but on sufficient and satisfactory explanation. The bald statement with no reasons for non-intimidation of impugned order is not a considerable ground. Considering these principles, the Court is of the view that it would not be appropriate to discuss each and every case law cited by the respondent. He further argued and pointed out that another Hindu Marriage Petition between them was pending in the same Court premises. The applicant used to attend that petition for collecting the amount as directed by the Court. In the said petition, on various dates the learned counsel for the applicant was also present. Therefore, it cannot be believed that she could not file the appeal in time. The reasons assigned for the delay were not only insufficient or inappropriate but far away from the requirement of law under Section 5 of the Limitation Act. The sufficient cause was not pleaded in the application. Therefore, the impugned order is legal, proper and correct. That apart, her right would not affect as tried to be argued by the learned counsel for the applicant for the reasons that she is already getting the maintenance from respondent No.1. Since she was collecting the amount

deposited by respondent No.1 in the Court, it cannot be believed that due to financial crisis, she could not file an appeal in time. The copy of the impugned judgment was immediately delivered to her on the date of the delivery of the impugned judgment. Therefore, she did not need to wait till she got the certified copy. In short, he has argued that the grounds mentioned in the application were insufficient to believe that it was beyond her control that she could not prefer the appeal in time.

8. The applicant did not deny that on the day of delivering the impugned Judgment, the copy was supplied to her free of cost. Therefore, it was possible for her to prefer the appeal. The other reason for the delay, she explained, was that her father died on 30.01.2011. Hence, she was in grief. Thereafter, she left her native place for quite some time and was under financial crisis. Hence, she could not approach the Court in time. In such a way, there was a delay of 14 months and a week in preferring the appeal.

9. The documents placed on record by the husband/respondent No.1 reveal that during the said period, she used to go to the Court to collect the maintenance amount in another

case pending in another Court in the same Court premises. Therefore, it cannot be accepted that she had a financial crisis.

10. The learned Additional Sessions Judge has correctly observed that she did not assign the reason for her stay out of the city of Jalgaon. The burden was on her to prove that there was a sufficient cause for not preferring the appeal in time. She was to explain to the Court satisfactorily that the reasons assigned by her were reasonable and sufficient.

11. Considering her conduct, supported by the fact that she was attending another petition between her and her husband in the same Court premises, it appears that the reasons for the condonation of delay were not sufficient and reasonable. The reasons assigned by the learned Additional Sessions Judge, Jalgaon, appear legally correct and proper. In view of that matter, the revision application does not survive. Hence, the following order:

ORDER

- (i) Criminal Revision Application stands dismissed.
- (ii) No order as to costs.
- (iii) Rule stand discharged.

- (iv) Record and Proceedings of Criminal M.A. No.30 of 2012 be returned to the learned Adhoc District Judge-1 and Additional Sessions Judge, Jalgaon.

(S. G. MEHARE, J.)

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vmk/-