

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1235 OF 2017

SATAYYA VIRAYYA PEDAPALLIWAR
VERSUS
STATE OF MAHARASHTRA AND ANOTHER

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Mr. S.B. Choudhari, Advocate for Petitioner
Mr. S.N. Morampalle, APP for Respondent No.1
Mr. B.K. Gaikwad, Advocate for Respondent No.2

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CORAM : R. M. JOSHI, J.
DATE : JULY 31, 2023

PER COURT :

. The petitioner takes exception to the legality of order dated 14.07.2017 passed by the Additional Sessions Judge, Aurangabad in rejecting Criminal Misc. Application No.46 of 2015 whereby the petitioner had sought condonation of delay caused in filing of the appeal against order dated 11.09.2013 passed in Criminal Misc. Application No. 256 of 2012 filed under the provisions of Protection of Women from Domestic Violence Act, 2005 (For short, 'D.V. Act').

2. It is the contention of petitioner that he got married to

respondent no.2 on 20.06.2010. It is further stated that his son was detected with blood cancer and died on 15.03.2012. According to the petitioner, the respondent no.2 filed application seeking orders under Sections 18, 19 and 20 of the D.V. Act. It is his contention that the learned Judicial Magistrate First Class had passed order to proceed matter further without say of the petitioner. Thereafter by passing order dated 11.09.2013 it was held that the respondent no.2 has proved causing of domestic violence against her. It is further directed by said order that the respondent no.2 is entitled for the maintenance of Rs.1500/- per month. Against the said order, after lapse of period of 1 year and 4 months appeal under Section 29 of the D.V. Act was sought to be filed by the petitioner before the learned Sessions Court. By passing impugned order, the learned Additional Sessions Judge has refused to condone the delay. There is no dispute about the fact that the petitioner is father-in-law of respondent no.2. There is further no denial of the fact that marriage between petitioner's son Anil and respondent no.2 was solemnized on 20.06.2006. Respondent No.2 claims that during the illness of her husband her parents have spent Rs.1,40,000/- by obtaining loan. It is alleged by respondent no.2 that after receiving the loan amount petitioner and others forcibly drove

her out of matrimonial home. There is specific averment in the plaint that petitioner has 20 to 25 Are irrigated land and house at Solapur which is let out. It is further contention that petitioner earns Rs.80,000/- to Rs.90,000/- per month. The respondent no. 2 had sought maintenance of Rs.15,000/- per month with other reliefs. The petitioner and in-laws failed to appear in the said proceeding and hence same was decided *ex parte*.

3. It is pertinent to note that the contention of the petitioner has gone unchallenged for want of any reply being filed by the petitioner. It is also relevant to note that apart from the right to claim maintenance from petitioner, further contention of the respondent no. 2 about he having more sufficient means of income. In the light of these facts, the order was passed by learned Magistrate directing respondent no.2 to be paid maintenance of Rs.1500/- per month.

4. No doubt, it is settled position of law that as far as possible dispute between the parties is decided on merit in spite of its rejection on technicalities. However, that does not mean that party can be permitted to prefer an appeal belatedly, without sufficiently explaining cause of delay. The respondent no.2 after death of her

husband was required to move an application under the DV Act seeking relief of maintenance. The petitioner in spite of service of notice of the said proceeding remained absent. Thus, there is reason to believe that the petitioner was not inclined to oppose the application.

5. Apart from this, perusal of the application for condonation of delay shows that no specific reasons are set out in the application to justify non-preferring of appeal within the period of limitation.

6. Having regard to the nature of relief sought by respondent no.2 and the apparent deliberate / intentional act on the part of the petitioner firstly in not filing say to the application and thereafter not preferring appeal in time, disentitles him for seeking condonation of delay. Perusal of the impugned order shows that the learned Additional Sessions Judge has recorded reasons for rejection of the application. Having regard to the facts and circumstances of the case, there is no perversity in the impugned order. Hence the following order:

ORDER

- (i) Criminal Writ Petition stands dismissed.

[R. M. JOSHI]
JUDGE

GGP