

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

CRIMINAL WRIT PETITION NO.1644 OF 2017

Aparna Subhash Virkar ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

Mr. Yogesh B. Dandekar, Advocate, for Petitioner.
Mr. Santosh G. Shirsat, Advocate, for Respondent Nos. 1 & 2.
Mr. Arfan Sait, APP, for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 3rd AUGUST 2023

PC :

1. In this Writ Petition, the Petitioner has challenged the order dated 20th February 2017, passed in Criminal Appeal No.426 of 2016, passed by the Additional Session Judge, Thane. By the impugned order, the learned Judge, rejected the Petitioner's Application for condonation of delay of 153 days in filing the Appeal.

2. The Petitioner was the original Complainant in Miscellaneous Application No.0300204 of 2010, before the Chief Judicial Magistrate, Thane. Those proceedings were filed under

Sections 18 to 22 of the Protection of Women from Domestic Violence Act, 2005 (for short “D.V. Act”). The learned Magistrate dismissed those proceedings vide his order dated 11th January 2016. The Petitioner sought to challenge that order by way of Appeal before the Sessions Court. There was delay of 153 days in approaching the Sessions Court. Therefore she made Application for condonation of delay. That Application was dismissed by the impugned order.

3. Heard the learned Counsel for both the parties.

4. Learned Counsel for the Petitioner submitted that and it is also reflected in the order that the main ground canvassed by the Petitioner for condonation of delay was that; she was a senior citizen and at the time of passing of the impugned order, she was 68 years of age and that she was suffering from Diabetes and hyper tension. It took her some time to appoint an Advocate. The learned Judge did not find favour with these arguments and rejected the Application for condonation of delay. Learned Counsel for the Petitioner submitted that she had made out

sufficient grounds for condonation of delay.

5. Learned Counsel for the Respondent Nos. 1 and 2 objected for granting relief to the Petitioner on the ground that the impugned order was a well reasoned order and therefore there was no reason to interfere with the same.

6. I have considered these submissions. The dispute is between the Petitioner as a mother, the Respondent No.1 as a son and the Respondent No.2 as daughter-in-law of the Petitioner. It is an unfortunate dispute and it is the case of the Petitioner that she is rendered homeless because of the acts of the Respondent Nos. 1 and 2. The D.V. Act is a beneficial legislation and it should be liberally construed to protect the helpless aggrieved persons. Therefore, though the learned Magistrate has rejected the Petitioner's complaint, she deserves one chance to challenge the said order on merits by preferring an Appeal.

7. Therefore, in the interest of justice and for the reasons submitted on behalf of the Petitioner, I am inclined to allow this Petition and condone the delay in filing the Appeal before the

Sessions Court. It is also important to note that the present Petition is pending before this Court since 2017 and now the Petitioner has crossed the age of 70. In view of the pendency of the Petition before this Court, the delay in filing the Appeal pales in comparison. For for all these reasons, the Petition deserves to be allowed.

8. Hence, the following order:

O R D E R

- i) The delay of 153 days in preferring the Appeal before the Court of Sessions Thane, challenging the order dated 11th January 2016, passed by the Chief Judicial Magistrate, Thane in Miscellaneous Application No.0300204 of 2010, is condoned.
- ii) The Registry of the Thane Sessions Court shall process the Appeal further.
- iii) Learned Additional Sessions Judge, Thane shall decide the Appeal preferred by the Petitioner on merits.

- iv) All the Contentions raised by both the parties, on the merits of the matter are left open to be decided in the Appeal. The Appeal shall be decided in accordance with law.
- v) The Appeal is expedited.
- vi) With these observations, the Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)