

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

CRIMINAL WRIT PETITION NO. 2683 OF 2023

Amit Mulchand Anwani

..Petitioner

Versus

Kanak Amit Anwani @

Nikita Sureshlal Hinduja & Anr.

..Respondents

Ms. Minal Chandnani i/b. Jaiwant S. Chandnani Associates for
Petitioner.

Mr. Kumar Ghind for Respondent No.1.

Mr. A.R.Patil, APP for State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 4 AUGUST 2023

PC :

1. The respondent No.1 (in this petition) as the complainant, has preferred the proceedings under the Protection of Women from Domestic Violence Act before the 2nd J.M.F.C., Ulhasnagar, vide PWDVA No.3 of 2020. The learned Magistrate, by way of interim order dated 19.01.2023 directed the petitioner herein who is the complainant's husband to pay rent of Rs.2000/- p.m. from the date of application till further orders. He was also

directed to pay the interim maintenance of Rs.5000/-p.m. from the date of application till further orders. This order was sought to be challenged by the petitioner before the Additional Sessions Judge, Kalyan. He preferred Criminal M.A.No.46 of 2023 for condonation of delay in preferring the appeal. In that application, conditional order was passed on 19.05.2023. The said order is challenged in this petition.

2. Heard Ms. Minal Chandnani, learned counsel for the petitioner, Shri. Kumar Ghind, learned counsel for the Respondent No.1 and Shri. A.R.Patil, learned APP for the State/Respondent No.2.

3. By the impugned order, learned Additional Sessions Judge observed that the delay was not more than a week. The first appellate court is expected to dispose of every matter on merits rather than throwing it on threshold on the technicalities without touching the merits. He further observed that, it being a matrimonial matter, it needed to be dealt with more sensitivity. He further observed that the complainant should be sufficiently

protected. Observing this, he passed the following operative order:

“1. The delay stands condoned subject to condition that petitioner husband shall clear at least 50% amount towards arrears of maintenance within two months from the date of order without fail.

2. The appeal be marked with register number.

3. Failure to comply the order shall have its own consequences.

4. Learned counsel for the petitioner submitted that, 50% amount of the arrears could not be paid within that period, therefore, the order has operated itself and the petitioner is deprived of proceeding with his appeal before the sessions Court. She submitted that, as of today, the arrears stand to Rs.2,60,000/-. The petitioner is willing to deposit Rs.1,00,000/- within a period of one month.

5. Learned counsel for the complainant submitted that there has to be some check if the amount is not deposited by the petitioner.

6. Considering this request, on such payment, at least for a few days the complainant will have some amount with her. As

observed by the Additional Sessions Judge, the Appeal can be decided on merits.

7. Considering this background, the following order is passed:

O R D E R

- i) The Petitioner is directed to deposit Rs.1,00,000/- before the Trial Court within a period of one month from today.
- ii) The complainant is permitted to withdraw that amount immediately, which would be subject to the outcome of the Appeal.
- iii) On such payment, the delay in filing the Appeal stands condoned.
- iv) The office of the Sessions Court, Kalyan shall process the Appeal further.
- v) The Appeal shall be decided expeditiously.
- vi) If the amount is not deposited as mentioned in this order within the prescribed period, the complainant is at liberty to take appropriate proceedings in accordance with law.

- vii) For a period of four weeks the execution proceedings are stayed.
- viii) The parties are at liberty to obtain further orders from the Sessions Court regarding execution during pendency of the Appeal.
- ix) With these observations, the petition is disposed of.

(SARANG V. KOTWAL, J.)