



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 24 OF 2024

PETITIONER

: Amol Samadhan Ingle,
Aged about 35 years, Occu. Nil,
through his Natural guardian father,
Mr. Samadhan Bajirao Ingle
Aged 68 years, Occu. Retired,
R/o Deshmukh Colony, Gudadhi Road,
Akola, Tq. & Dist. Akola.

VERSUS

RESPONDENTS

: 1] Sau. Utpala Amol Ingle,
Aged 31 years, Occu. Service,
C/o Ramesh Parasram Kharat,
R/o Indira Nagar, Krushi Nagar, Akola
Tq. & Dist. Akola.

2] State of Maharashtra, thru. D.G.P., Akola

Mr. A.P. Bhuihar, Advocate h/f Mr. D. S. Patil Advocate for the
petitioner.

Mr. Hariom V. Dhage, Advocate for respondent no.1

Mr. P. P. Pendke, A. P. P. for respondent no.2

CORAM : G. A. SANAP, J.

DATED : SEPTEMBER 10, 2024.

ORAL JUDGMENT

1. **RULE.** Rule made returnable forthwith. Heard finally by
the consent of the learned advocates for the parties.

2. In this petition, the correctness of the order dated 01.09.2023, passed by learned Additional Sessions Judge, Akola, in Misc. Criminal Application No. 178/2022, is questioned, whereby the prayer for condonation of delay was rejected.

3. The petitioner is the husband and respondent no.1 is the wife. The respondent/wife has filed the proceedings before the learned Judicial Magistrate First Class, Akola, under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “the D.V. Act” for short), being Misc. Criminal Application No. 1369/2020 against the petitioner/husband and others. In the said proceedings, she applied for the order of interim maintenance. Learned Magistrate vide order dated 01.09.2022 partly allowed the said application and directed the petitioner to pay interim maintenance @ Rs.3,000/- (Rupees Three thousand only) per month to the wife.

4. The petitioner being aggrieved by this order, preferred an appeal under Section 29 of the D.V. Act before the Sessions Court. There was delay of 23 days in filing the appeal. The petitioner, therefore, made an application for condonation of delay. The principle

ground stated in the application seeking condonation of delay was that he was suffering from mental illness. He was under the treatment of a Doctor. In order to substantiate this contention, he had produced on record the prescription issued by a Psychiatrist. It is stated that on account of his illness, he could not prefer the appeal in time. The wife did not file reply to the said application. Learned advocate for the wife argued the application without filing reply.

5. Learned Additional Sessions Judge, on consideration of the material, held that the evidence on record is not sufficient to establish that the husband was suffering from mental illness. The learned Judge ultimately rejected the application. This order is challenged in the present petition.

6. I have heard Mr. A. P. Bhuibhar, learned advocate holding for Mr. D.S. Patil, learned advocate for the petitioner, Mr. Hariom Dhage, learned advocate for respondent no.1 and Mr. P. P. Pendke, learned Additional Public Prosecutor for respondent no.2/State. Perused the record and proceedings.

7. On going through the record, I am satisfied that the

reasons stated in the application, in support of the prayer for condonation of delay, are just, proper and reasonable. On the basis of the reasons stated in the application, supported by the documentary evidence, the husband has made out a case for condonation of delay. The wife even did not file the reply and oppose the application. The learned Additional Sessions Judge appears to have adopted a very technical approach in the matter. It needs to be stated that time and again, it has been held that the Court has to adopt a liberal approach while deciding the applications for condonation of delay. The party, having a grievance against the order affecting his substantive right, cannot be non-suited by rejecting the application for condonation of delay. In my view, therefore, in this case, the learned Judge by rejecting the application for condonation of delay, has denied the right of redressal of the grievance of the husband by way of an appeal.

8. Learned advocate for the wife submits that the husband has not paid the maintenance till date. Learned advocate submits that if this Court is inclined to grant the prayer for condonation of delay, then the petitioner may be directed to deposit the entire arrears within the stipulated time. Learned advocate for the husband submits that the husband may be directed to deposit 50% of the arrears.

9. I have given thoughtful consideration to the submissions. On the basis of the material placed on record, I am satisfied that a case is made out for condonation of delay. The order passed by the learned Additional Sessions Judge cannot be sustained.

10. Accordingly, the Criminal Writ Petition is allowed.

(a) The order dated 09.01.2023, passed by learned Additional Sessions Judge, Akola in Misc. Criminal Application No. 178/2022, is quashed and set aside.

(b) Misc. Criminal Application No. 178/2022 filed by the petitioner for condonation of 23 days delay, in filing appeal against the impugned order passed by the Magistrate, is condoned.

(c) The petitioner/husband shall deposit the entire arrears of maintenance within a period four weeks from today before the Appellate Court.

11. Rule is made absolute in the aforesaid terms. The petition stands disposed of.

(G. A. SANAP, J.)