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Crl.M.P.No.13010 of 2023
in
Crl.R.C.SR.No.40135 of 2023

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M. NIRMAL KUMAR, J.

This petition is filed to condone the delay of 278 days in filing the above Criminal Revision Petition.

2. The petitioner, who is the estranged husband of the respondent, suffered an *ex-parte* order in the maintenance case in M.C.No.233 of 2016 dated 30.09.2021, directing the petitioner to pay a sum of Rs.10,000/- per month towards maintenance. Thereafter, the petitioner filed Crl.M.P.Nos.212 and 213 of 2022 for setting aside the *ex-parte* decree passed in M.C.No.233 of 2016. The Lower Court, by order dated 05.08.2022, allowed both Crl.M.P.Nos.212 and 213 of 2022 imposing costs of Rs.2,000/- to be paid by the respondent to the petitioner on or before 17.08.2022. Aggrieved against the said order, the petitioner had filed the present revision on 09.08.2023 with a delay of 278 days.



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4.The petitioner had filed a divorce petition in H.M.O.P.No.4522 of 2014 and later withdrew the same on 05.08.2015 and agreed to reunite with the respondent, without seeking leave of the Court to file petition with similar



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prayer. Thereafter, the respondent was brutally assaulted by the petitioner and a case was registered on 06.10.2015. After completion of investigation, charge sheet filed and the same on file in C.C.No.1547 of 2017. In the meantime, the petitioner again filed a divorce petition in H.M.O.P.No.4571 of 2015 and the same was dismissed, for non prosecution on 11.02.2021. The petitioner is appearing before the Lower Court in the criminal case regularly. He had cross examined the respondent in detail, putting forth all the facts with regard to the matrimonial proceedings and now the petitioner claiming that he is not aware about the status of the Family Court proceedings due to Corona pandemic, is not proper. Hence, the learned counsel for the respondent objected for condonation of delay. He further submitted that the petitioner is due and arrears to the tune of Rs.9,10,000/-. If the petitioner is aggrieved by the order of the maintenance case he should have challenged the same before the Lower Court but chosen to file this petition. The petitioner to show his bonafide, if he is willing to make some payment of arrears of maintenance amount, the delay can be considered.



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5.The learned counsel for the petitioner stoutly opposed the same. He even questions the marriage and relationship between the petitioner and the respondent. He further submitted that the respondent is living adulterous life, hence, she is not entitled for maintenance. He further submitted that previous counsel, not informed about the conditional order passed by the Lower Court. The petitioner is earning only Rs.15,000/- per month, out of which, he has to maintain himself, his mother and her medical expenses. Further he is firm that he will not pay even a single pie to the respondent.

6.Considering the submissions made and on perusal of the materials, the contentions of the petitioner with regard to the conduct and character of the respondent are to be raised before the Lower Court and not before this Court. Further, the order under Section 126 of Cr.P.C. cannot be challenged on that ground. Unless the petitioner set asides the original maintenance case thereafter let in evidence, the same cannot be considered. Though the petitioner had raised very many grounds orally, nothing seems to be substantiated with any materials. In view of the petitioner not complying the Lower Court order and the reason given for condonation of delay not



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acceptable, this Court is not inclined to entertain this petition.

7. Accordingly, this Criminal Miscellaneous Petition is dismissed.

18.01.2024

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