



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 675 OF 2024

- 1] Sushma Vijaykumar Patil
Age 46 yrs., Occ. Service,
At present r/o Adarsh Nagar,
Plot no.98, Nawapur,
Tq. Nawapur, Dist. Nandurbar
 - 2] Digvijay Vijaykumar Patil
Age 21 yrs., Occ. Education
 - 3] Vibhavari Vijaykumar Patil
Age: 24 yrs., Occ. Education,
Petitioner no.2 and 3
r/o Kasturba Nagar,
Plot no.56, In front of Jaihind
Post Office, Wadibhokar,
Deopur, Dhule
- ... PETITIONERS**

VERSUS

Vijaykumar Vanji Patil
Age 53 yrs., Occ. Service,
r/o Kauthal, Tq. And Dist. Dhule
at present r/o Z.P. School,
Nawanagarmotha, Akkalkuwa,
Tq. Akkalkuwa, Dist. Nandurbar

... RESPONDENT

....

Mr. S. P. Sonpawale, Advocate for the Petitioners
Mr. Nilesh N. Desale, Advocate for the Respondent

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 31.01.2025

ORDER :-

1. Rule. Rule made returnable forthwith. With consent of the parties, heard finally at the state of admission.
2. By the present Petition, the Petitioner prayed to quash and set aside the order dated 01.02.2024 passed by the learned Judge, Family Court, Dhule, below Exh.21 in Misc. Criminal Application No.9 of 2023, whereby refused to condone the delay of 4 months 26 days caused while lodging application for restoration of Petition E No.75 of 2019 to its original stage.
3. It is not in dispute that on 30.11.2022, the learned Judge, Family Court, Dhule, passed an order below Exh.1 in Petition E -75 of 2019 and dismissed the Petition on ground that the Petitioners were remained absent in-spite of repeated call, till 4.45 p.m. and no application was filed on record. Thereafter, the Petitioners moved an application bearing Misc. Criminal Application No. 9 of 2023 and prayed for condonation of delay of 4 months 26 days along with the application for restoration of original Petition. However, on 01.02.2024, the learned Judge, Family Court, Dhule, passed the impugned order and refused to condone the delay and to restore the Petition.

4. It is well settled principle of law that, the litigant should not be deprived from receiving substantial justice merely on the technicality. In case-in-hand, it *prima-facie* appears that the Petitioners had filed Petition E-75 of 2019 under Section 125(1) of Code of Criminal Procedure, claimed maintenance for her minor children, but said Petition was dismissed on 30.11.2022 for want of prosecution. It has come on the record that, due to certain personal exigencies the Applicant could not institute the Application for restoration of Application under Section 125 of Code of Criminal Procedure within the stipulated period and delay of 4 months and 26 days caused, which has been sufficiently explained by the Petitioners. Therefore, considering the aim and object of Section 125 Cr.P.C., for extending the financial assistance, the delay caused in filing an Application for restoration of Application and the grounds set out in the Application in restoration Application appears to be justifiable and explanatory, but the learned Judge, Family Court, refused to condone the delay by taking higher technical approach, which is not justifiable, but it is liable to quash and set aside.

5. In view of above, the impugned order dated 01.02.2024 is hereby quashed and set aside. The order of dismissal of Application

under Section 125 Cr.P.C., dated 30.11.2022, on Exh.1 in Petition E - 75 of 2019, passed by the learned Judge, Family Court, Dhule, is hereby quashed and set aside. The delay of 4 months 26 days is hereby condoned. Petition E-75 of 2019 is hereby restored to its original stage.

6. The Writ Petition is allowed. Accordingly, Rule is made absolute.

[Y. G. KHOBRAGADE, J.]

SMS