

ORDER BELOW EXH. 1 IN Criminal Misc. Appeal No.33/2022
(CNR No.MHOS110007242022)

The applicant Nitesh Ramchandra Shirke has filed present application for condonation of delay in preferring an appeal against the judgment and order passed by learned Judicial Magistrate, F.C., Washi (hereinafter referred to as 'the learned Magistrate') in P.W.D.V. Application No. 16/2020 on 01.02.2022.

2. It is the case of the applicant that opponent nos.2 to 4 had filed P.W.D.V. Application No.16/2020 against him under the provisions of Protection of Women from Domestic Violence Act, 2005. The learned Magistrate pleased to allow the application and directed him to pay monthly maintenance to the tune of Rs.3,000/- each to opponent nos.2 to 4. The learned Magistrate also directed him to pay an amount to the tune of Rs.10,000/- to opponent no.2 within three months from the date of order towards compensation. Being aggrieved and dis-satisfied by the impugned judgment and order passed by learned Magistrate, he preferred an appeal but there is delay of 8-months and 12-days in preferring the said appeal.

3. It is the case of the applicant that the proceeding of P.W.D.V. Application No.16/2020 proceeded ex parte against him. He was not aware about the impugned judgment and order passed by the learned Magistrate. When, he received notice of execution petition filed by opponent no.2 for recovery of maintenance, he came to know about the impugned judgment and order. After receiving the notice immediately, he applied for the certified copies of the impugned judgment and order and

after receiving certified copies of papers, he filed the appeal, but, there is delay of 8-months and 12-days in filing the appeal. The said delay is not deliberate and intentional, but, because of the aforesaid reason the delay was caused. Hence, it is prayed by the applicant that the said delay be condoned.

4. The opponent no.1 State resisted the application by filing say on overleaf of the application. It is stated that the reason given by the applicant in the application is not true and correct. The applicant has not given explanation of day to day delay in the application. Hence, it is prayed that the application be rejected.

5. The opponent no.2 resisted the application by filing say vide exh.8. She stated in the say that the reason assigned in the application is not true and correct. The applicant though duly served with the notice of the application, deliberately remained absent before the learned Magistrate. The learned Magistrate rightly appreciated the evidence adduced by her and rightly allowed the application. She further stated that the applicant has moved present application with malafide intention to deprive her from enjoying fruits of the order. The maintenance to the tune of Rs.1,61,500/- is outstanding towards the applicant. As he failed to pay the maintenance amount to her, she is facing starvation. She has no independent source of income. Hence, it is prayed by opponent no.2 that the application be rejected. Alternatively she also prayed that if the Court allowed the application, in that circumstances costs of Rs.10,000/- be imposed upon the applicant and he be directed to pay outstanding maintenance amount to the tune of Rs.1,61,500/- to her.

6. The opponent no.5 also filed her say vide Exh.12. She has stated that she has noting to do with the application filed by applicant and she prayed to decide the application on merit.

7. Heard the learned advocate Shri S.D. Shinde for the applicant, learned APP Shri P.P. Gade for the opponent no.1-State, learned advocate Shri R.V. Mote for opponent no.2 and learned advocate Shri S.S. Patil for the opponent no.5.

8. Shri Shinde made his submissions on the line of averments made in his application, whereas, learned APP Shri Gade, the learned advocate Shri Mote and learned advocate Shri Patil have made their respective submissions on the line of averments made in their respective say.

9. Admittedly, there is delay of 8-months and 12-days in preferring appeal against impugned judgment and order passed by the learned Magistrate. Definitely, the said delay is an inordinate delay. It is important to take into account that the application is supported by the affidavit of applicant, wherein, he specifically stated about the cause of delay. Considering the reason of delay assigned by the applicant, there is no reason to disbelieve him. Furthermore, it is pertinent to note that the applicant has challenged the legality of impugned judgment and order passed by learned Magistrate. Therefore, the impugned judgment and order are required to be scrutinized within the four corners of the law. It is settled principle of law that while deciding the application for condonation of delay, the Court should adopt pragmatic approach instead of pedantic

approach. In view of above, I am of the opinion that the applicant has made out prima facie case for condonation of delay caused in preferring appeal against impugned judgment and order. Hence, I pass the following order.

-ORDER-

1. The application is allowed.
2. The delay of 8-months and 12-days caused in preferring an appeal against the impugned judgment and decree, passed by learned Magistrate in P.W.D.V. Application No.16/2020 on 01.02.2022 is hereby condoned, subject to costs of Rs.5,000/- to be paid to the opponent no.2 within one month from the date of this order.
3. On payment of costs to opponent no.2, the appeal be registered as per rule.
4. In case of any default on the part of the applicant, in paying costs to opponent no.2, the application shall stand automatically rejected.

(S. R. Ugale)

Additional Sessions Judge,
Bhoom

Date :- 27.02.2023

CERTIFICATE

I affirm that, the contents of this P.D.F. file judgment/ order are same, word to word, as per the original Judgment.

Name of Stenographer	--	P. V. Golhe, Stenographer(Grade-1)
Court	--	District Court-1 & Additional Sessions

		Court, Bhoom
Date	--	27.02.2023
Order signed by the Pre- siding Officer on	--	27.02.2023
Order uploaded on	--	28.02.2023