

(2014) 04 KAR CK 0227
In the Karnataka High Court
Case No : Crl. P. No. 1118/2012

Vikram B. Mittadhar

APPELLANT

Vs

Ananthalakshmi

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Protection of Women From Domestic Violence Act, 2005 — Section 12, 29, 29(3)

Citation : (2014) 04 KAR CK 0227

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : G. Vikram, Advocate for the Appellant; A. Ram Mohan, Advocate for the Respondent

Judgement

S.N. Satyanarayana, J.—The appellant in Crl. Appeal No. 675/2011 on the file of Fast Track (Sessions) Judge, Bangalore (FTC No. VI), has come up in this proceeding challenging the order dated 01.12.2011 in dismissing his application filed in I.A.I. u/s 5 of the Limitation Act and consequently, dismissing I.A. II and the said appeal.

2. Admittedly, petitioner herein, appellant in Crl. A. No. 675/2011 was 1st accused in Crl. Misc. No. 308/2011 on the file of Metropolitan Magistrate Traffic Court-II, Bangalore, initiated by the respondent herein, complainant, u/s 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the D.V. Act"). Admittedly, petitioner herein is the husband and respondent herein is the wife. Petition, which is filed by the wife in Crl. Misc. No. 308/20.11 came to be allowed by order dated 20.08.2011, wherein the learned Magistrate ordered for payment of maintenance to the wife at Rs. . 5,000/- per month from the date of petition and during her life time as also a sum of Rs. . 50,000/- as compensation. The said order was challenged by the 1st accused, petitioner herein, in Crl. A. No. 675/2011. It is submitted that since the said appeal was filed beyond the period of limitation, application in I.A.I. was filed

seeking condonation of delay.

3. The learned Sessions Judge, having heard the counsel for appellant (petitioner herein) and respondent-wife, has come to the conclusion that since Section 29 of the D.V. Act stipulates the period of limitation for preferring an appeal against the order of the learned Magistrate, the application, I.A.I. filed by petitioner herein under the provisions of Section 5 of the Limitation Act was not maintainable. Accordingly, the said application was dismissed and consequently, appeal is also dismissed. Being aggrieved by the same, the present petition is filed seeking to set aside the said impugned order dated 01.12.2011.

4. Learned counsel appearing for petitioner relied upon the judgment rendered by the coordinate Bench of this Court in the matter of Sri. K.M. Revanasiddeshwara Vs. Smt. K.M. Shylaja, , wherein it is held that the provisions of Section 29(3) of the D.V. Act would not operate as a bar for filing application u/s 5 of the Limitation Act and to seek condonation of delay, if any, in filing an appeal u/s 29 of the Act. Based on the said ratio, the said matter was decided by the coordinate Bench of this Court.

5. Relying upon the judgment of the coordinate Bench of this Court in K.M. Revanasiddeshwara's case (supra), the present petition is allowed. The order dated 01.12.2011 passed by the Fast Track (Sessions) Judge, Bangalore (F.T.C. VI) on I.A.I. in Crl. A. No. 675/2011 is hereby set aside and I.A.I. is allowed and Crl. A. No. 675/2011 is restored to the file of the Fast Track Court-VI and the matter is remitted back to the Court of Fast Track Court-VI with a direction to decide the appeal on merits. While doing so, it is observed that the lower appellate Court shall take into consideration the amount withdrawn by the respondent, wife, in the interregnum period out of the amount deposited by the petitioner herein and adjust the same as against the maintenance amount/compensation that may be ordered in the said proceedings.

6. Parties in Crl. A. No. 675/2011, who are petitioner and respondent herein, are directed to be present before the Fast Track Court-VI on 21/04/2014 on which day, the said criminal appeal shall be called. Liberty is reserved to the petitioner herein to make an application for interim order before the Fast Track Court-VI on that day.