



2026:KER:76578

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

THURSDAY, THE 1ST DAY OF OCTOBER 2026 / 9TH ASWINA, 1948CRL.REV.PET NO. 830 OF 2026

AGAINST THE ORDER DATED 09.03.2026 IN CRMP NO.224 OF 2025 OF ADDITIONAL DISTRICT & SESSIONS COURT-II, MAVELIKKARA ARISING OUT OF THE ORDER DATED 05.12.2024 IN MC NO.29 OF 2022 OF JUDICIAL MAGISTRATE OF FIRST CLASS - II, MAVELIKKARA

REVISION PETITIONER/APPELLANT/RESPONDENT:

ANILKUMAR
AGED 51 YEARS
S/O. BHARGAVAN NAIR, ANITHA BHAVANAM,
LSPO NOORANADU, NOW WORKING AS OVERSEER AT KSEB,
KATTANAM, PIN - 690504

BY ADV. SHRI.ATHUL POULOSE

RESPONDENTS/RESPONDENTS/PETITIONERS & STATE:

- 1 ANITHA KUMARI
AGED 45 YEARS
D/O. BHARGAVI AMMA, ANITHA BHAVANAM, LSPO NOORANADU,
MAVELIKKARA, NOW TEMPORARILY RESIDING AT CHANDRA
BHAVANAM, LSPO NOORANADU, PIN - 690504
- 2 ABHIRAM A NAIR
AGED 18 YEARS
REPRESENTED BY MOTHER 1ST RESPONDENT, ANITHA KUMARI,
ANITHA BHAVANAM, LSPO NOORANADU, MAVELIKKARA, NOW
TEMPORARILY RESIDING AT CHANDRA BHAVANAM, LSPO
NOORANADU, PIN - 690504
- 3 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI, PIN - 682031

SR.PP-SRI.NAVAS V.A

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28.09.2026, THE COURT ON 01.10.2026 DELIVERED THE FOLLOWING:

**"C.R."****ORDER**

This Criminal Revision Petition is directed against the order dated 09.03.2026 in Crl. M.P. No. 224/2025 on the file of the Additional Sessions Court-II, Mavelikkara, whereby the petition filed by the revision petitioner seeking condonation of the delay in filing an appeal against the order in M.C. No. 29/2022 dated 05.12.2024 on the file of the Judicial First Class Magistrate Court-II, Mavelikkara, was dismissed.

2. Notably, the said petition for condonation of delay was initially allowed by the learned Additional Sessions Judge, vide order dated 17.12.2025, on condition that the revision petitioner shall deposit 50% of the maintenance amount before the jurisdictional Magistrate within one month from the date of the order. However, the revision petitioner could not comply with the said condition within the stipulated time. Consequently, the petition was dismissed for non-compliance with the said direction.

3. The case of the revision petitioner, in brief, is as follows:

The revision petitioner is the respondent in M.C. No. 29/2022 on the file of the Judicial First Class Magistrate Court-II, Mavelikkara, instituted by his wife seeking various reliefs under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the PWDV Act'). The said M.C. was allowed by the learned Magistrate, and the revision petitioner



was directed to pay maintenance of Rs.5,000/- per month to his wife, besides granting protection and residence orders. Aggrieved by the said order, the revision petitioner preferred an appeal with a delay. The learned Additional Sessions Judge-II, Mavelikkara, vide order dated 17.12.2025 in Crl. M.P. No. 224/2025, condoned the delay, subject to the condition that the revision petitioner shall deposit 50% of the maintenance amount before the jurisdictional court within one month. The revision petitioner could not comply with the said condition as he had met with an accident and sustained serious injuries. Accordingly, he filed a petition seeking extension of time for complying with the condition. Along with the said petition, he produced medical records evidencing the injuries sustained by him and his inability to comply with the direction within the stipulated period. However, the learned Additional Sessions Judge, without considering the circumstances pleaded by the revision petitioner, dismissed the petition for condonation of delay on the ground of non-compliance with the condition imposed earlier. Aggrieved by the said order, the present Criminal Revision Petition has been filed.

4. Though notice in the revision petition was served on the 1st and 2nd respondents, neither of them entered appearance.

5. Heard Sri. Athul Poulose, the learned counsel appearing for the revision petitioner, and Sri. Navas V. A., the learned Senior Public Prosecutor, and perused the records.



6. The learned counsel for the revision petitioner contended that the petition seeking condonation of delay was dismissed by the learned Additional Sessions Judge without properly considering the fact that the revision petitioner was not in a position to raise the amount directed to be deposited as a condition for condoning the delay. According to the learned counsel, while exercising jurisdiction under Section 5 of the Limitation Act, 1963, the appellate court could not have insisted upon the payment of a portion of the maintenance amount awarded under the impugned order as a condition for condoning the delay. It was further contended that the direction of the learned Additional Sessions Judge to deposit 50% of the maintenance amount as a condition precedent for condoning the delay is contrary to the principles governing an application under Section 5 of the Limitation Act. According to the learned counsel, while considering an application for condonation of delay, the Court is required to determine whether the applicant has established sufficient cause for not preferring the appeal or application within the prescribed period. Therefore, according to the learned counsel, a direction to deposit 50% of the maintenance amount as a condition for condoning the delay could not have been imposed, and the consequential dismissal of the petition for non-compliance with such condition is liable to be set aside.

7. While considering the contentions raised, it is necessary to bear in



mind that the jurisdiction exercised while considering an application for condonation of delay stands on a different footing from the jurisdiction exercised while considering an application for stay of execution of the impugned order. In an application under Section 5 of the Limitation Act, the primary question to be considered is whether the applicant has established sufficient cause for the delay. If sufficient cause is established, the Court may condone the delay. While doing so, if the Court is of the opinion that the delay has caused inconvenience or prejudice to the opposite party, it may, in appropriate cases, impose reasonable costs to compensate the opposite party for such inconvenience or prejudice. However, such costs must bear a reasonable nexus to the delay and the prejudice, if any, occasioned thereby.

8. In the present case, the order passed by the learned Additional Sessions Judge itself would indicate that the delay was not considered on the touchstone of whether sufficient cause had been established. Instead, the delay was condoned subject to the condition that the revision petitioner shall deposit 50% of the maintenance amount. Thereafter, on account of non-compliance with the said condition, the petition was dismissed.

9. A direction to deposit a portion of the amount awarded under the impugned order as a condition for condoning the delay cannot ordinarily be justified. Such a condition falls outside the scope of consideration under Section 5 of the Limitation Act. The right of appeal, being a statutory right,



cannot ordinarily be fettered by imposing a condition requiring the appellant to pay a portion of the amount awarded under the impugned order as a prerequisite for condonation of delay. If sufficient cause for the delay is established, the delay has to be condoned, with or without costs, depending upon the facts and circumstances of the case. When the delay has caused inconvenience or prejudice to the opposite party, the Court is certainly entitled to impose reasonable costs while condoning the delay, so as to compensate the opposite party for such inconvenience or prejudice.

10. Therefore, this Court is of the view that the learned Additional Sessions Judge was not justified in directing the revision petitioner to deposit 50% of the maintenance arrears as a condition for condoning the delay. At the same time, it was open to the appellate court to impose reasonable costs while condoning the delay, having regard to the inconvenience or prejudice, if any, caused to the opposite party on account of the delay.

11. However, a direction to deposit a particular percentage of the arrears of maintenance, or even the entire arrears, may be justified in an appropriate case when the Court is considering an application for stay of execution or enforcement of the impugned order. Such a consideration stands on an entirely different footing from an application for condonation of delay. While considering an application for condonation of delay, however, imposing such a condition as a prerequisite for condoning the delay would amount to



placing an undue fetter on the statutory right of appeal. As already stated, while considering an application under Section 5 of the Limitation Act, the Court has to determine whether sufficient cause has been shown for the delay. But a condition requiring payment of a portion of the amount awarded under the impugned order cannot ordinarily be imposed as a condition precedent for condonation of delay.

In the result, the criminal revision petition is disposed of, and the impugned order is set aside. The learned Additional Sessions Judge-II, Mavelikkara, is directed to consider the application for condonation of delay afresh, in the light of the principles stated above, and pass appropriate orders in accordance with law.

Sd/-
JOBIN SEBASTIAN
JUDGE

ANS



APPENDIX OF CRL.REV.PET NO. 830 OF 2026

PETITIONER ANNEXURES

Annexure 1

**TRUE PHOTOCOPY OF THE ORDER DATED 17.12.2025
IN CRL.MP.NO.22/2025 PASSED BY THE ADDL.
SESSIONS JUDGE-II, MAVEIKKARA**