

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.374 OF 2018
IN
CRIMINAL WRIT PETITION NO.951 OF 2018**

Medha Mayuresh Naik	.. Applicant
Vs.	
Sadanand Naik & Ors.	.. Respondents

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Mr.Hitesh Vyas, Advocate for the Applicant.

Mr.Ajinkya Udane i/b. Mr.Sanjay Bhajwani, Advocate for original petitioners.

Mr.A.R. Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 8, 2018.

P.C. :

This application is preferred for seeking clarification of order dated 13th August, 2018, passed by this Court in Criminal Writ Petition No.951 of 2018. The said petition was dismissed as withdrawn. The said order was passed in the light of the submissions advanced by the counsel for the petitioners seeking permission to withdraw the petition.

2 Present applicant is the original respondent in Criminal Writ Petition No.951 of 2019 (hereinafter referred as original respondent). She had preferred an application under Domestic Violence Act before the concerned Court being Criminal Application No.567 of 2017, which is pending before the competent Court. Petitioners in Criminal Writ Petition No.951 of 2018 (hereinafter referred to as original petitioners) had preferred an application challenging the maintainability of Criminal Miscellaneous Application No.567 of 2017, vide Exhibit-20 before the trial Court. The said application was dismissed on 29th September, 2017. The said order dated 29th September, 2017, was challenged before this Court in Criminal Writ Petition No.951 of 2018.

3 Learned advocate for the original respondents submitted that the application under the Domestic Violence Act was prosecuted before the trial Court. Affidavit of evidence was also filed by the present applicant and the matter was posted for further chief-examination, cross-examination and, subsequently, the said matter is ready for final hearing before the lower Court. It is also submitted that prior to that the trial Court had dealt

with the application for interim relief preferred by the original respondent, which was allowed and the said order dated 14th February, 2018, was challenged by the original petitioner before the Sessions Court by preferring an Appeal, which is pending.

4 Criminal Writ Petition No.951 of 2018 came up for hearing before this Court. Both the parties were heard and the matter was posted for passing orders on 8th August, 2018. At the request of learned advocate for the original petitioners, the matter was than adjourned to 13th August, 2018, for passing orders. Request was made by the advocate at the instance of arguing counsel and it was also indicated that the petitioners will withdraw the petition. In view of that, the matter was adjourned to 13th August, 2018. On that day, learned counsel for the petitioners sought permission to withdraw the petition. Permission was granted and the petition was disposed of by order dated 13th August, 2018. In pursuant to that the original petitioners had preferred an application before the Appellate Court where the Appeal preferred by the original petitioners challenging the petition was pending and sought amendment in that Appeal. In the said application for amendment, it was stated that the High Court by order dated 13th August, 2018, has

granted leave to withdraw criminal Writ Petition keeping all issues in the petition including issue of maintainability open. In the said application, amendment is also sought to add the paragraphs to the Appeal Memo that, in pursuant to the order of the High Court dated 13th August, 2018, passed in Criminal Writ Petition No.951 of 2018, applicants are impugning the order dated 29th September, 2018 below Exhibit-20 in Criminal Miscellaneous Application No.567 of 2017, passed by the learned Magistrate. In the said application, it is also stated that in view of liberty granted by the High Court it may be just and necessary to grant leave to amend, as prayed, to give effect to the order of the High Court dated 13th August, 2018.

5 Learned counsel for the applicant/original respondent submits that the original petitioners are misinterpreting order dated 13th August, 2018, and, with a view to delay the proceedings before trial Court further preferred an application for amendment. It is also submitted that the Appellate Court had insisted that the applicants/original respondents shall file an undertaking that they would not proceed with the proceedings pending before the trial Court. It is submitted that in the situation the applicants were constrained to file such undertaking before

the Appellate Court. In the aforesaid circumstances, this application is preferred seeking clarification in respect to order dated 13th August, 2018. It is contended by the counsel for the applicant that the petition was withdrawn as during the course of arguments, the Court had indicated that the proceedings before the trial Court has already proceeded and during the pendency of the said proceedings, interim relief has been granted to the applicant/original respondent, and, as to how in such circumstances, the present petition where the issue of maintainability has been raised, can be entertained. It is submitted that in order to avoid the adverse order, the petition was withdrawn and, in the circumstances, the order dated 13th August, 2018, was passed.

6 Learned counsel for the respondent/original petitioner submitted that vide order dated 13th August, 2018, this Court had specifically stated that all the issues raised in the petition including the issue of maintainability are kept open. In view of the said order, since the Appeal challenging the order is pending before the Sessions Court, original petitioners had preferred an application for amendment.

7 It is pertinent to note that the petitioners in Criminal Writ Petition No.951 of 2018, had approached this Court challenging the order passed by the learned Magistrate dated 29th September, 2017, rejecting the application preferred by the original petitioners, challenging the maintainability of the proceedings. Both the parties were heard extensively. Although trial Court had proceeded with matter and separate appeal was preferred challenging interim order, the petition was argued on merits and when it was posted for passing order, it was withdrawn. At the request of the advocate for the petitioners, the petition was withdrawn. The Court has not indicated that the petitioners were granted liberty to challenge the order dated 29th September, 2017, by amending Appeal and shall raise the issue before the Appellate Court. Thus, this Court has not granted any liberty to the petitioners to raise the said issue before the Appellate Court, otherwise, there would have been specific direction in the order dated 13th August, 2018. It is pertinent to note that main proceedings were pending before trial Court. Be that as it may be, the original petitioner has apparently preferred an application for amendment of the Appeal Memo and has now sought to challenge the order dated 29th September, 2017.

Appellate Court may deal with the application independently without interpreting the order dated 13th August, 2018, as granting liberty to the original petitioners to raise such an issue before the Appellate Court. Criminal Application No.374 of 2018, stands disposed of.

(PRAKASH D. NAIK, J.)