

nsc.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.579 OF 2018**

Durga Rupraj Naidu	...Applicant
Versus	
Ankur Vishal Naidu and Ors.	...Respondents

Mr. A.D.Sarwate, for the Applicant.

Mr.Kishor Walanju, Appointed Advocate, for the Respondent Nos.1 and 2.

Ms. P. P. Shinde, A.P.P for the Respondent No.5- State.

CORAM : REVATI MOHITE DERE, J.

DATE : 8th NOVEMBER, 2019

P.C. :

1. Learned Counsel for the Respondent Nos.1 and 2 raises a preliminary objection. He submits that the documents i.e. Will on which the applicant relies, was not produced either before the trial Court or before the Appellate Authority and as such it is not open for them to produce the same for the first time in this Court. He submits that the said Will was produced only after the impugned order dated 3rd May, 2017, was passed by the Appellate Authority, in Review Application which was dismissed on the ground of maintainability.

2. Learned Counsel for the Respondent Nos.1 and 2 submits that it is always open for the applicant to file an appropriate application under Section 25 of the Domestic Violence Act, before the trial Court, which can be decided by the trial Court, on its own merits, in accordance with law.

3. In view of the preliminary objection raised by the learned counsel for the Respondent Nos.1 and 2, learned counsel for the applicant seeks leave to withdraw this application, with liberty to file an appropriate application under Section 25 of the Domestic Violence Act, in view of the document on which he proposes to rely i.e. Will of the applicant's late husband.

4. Application is accordingly disposed of as withdrawn with liberty as prayed.

5. If an application is filed by the applicant under Section 25 of the Domestic Violence Act, the learned trial Judge to decide the same expeditiously, on its own merits, in accordance with law. All contentions of both the parties are kept open.

6. High Court Legal Services Committee to award fees of the learned Appointed Advocate for Respondent Nos.1 and 2, as per Rules.
7. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.