

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919 CRIMINAL WRIT PETITION NO.752 OF 2019

**RAMDEO CHINTAMAN BADGUJAR
VERSUS
VAISHALI RAMDEO BADGUJAR AND OTHERS**

Mr. Mohit Shah, Advocate h/f Mr. S. P. Brahme,
Advocate for the petitioner
Mrs. R. P. Gaur, APP for the respondent/State
Mr. G. S. Rane, Advocate for the respondent No.2

CORAM : N. R. BORKAR, J.

DATE : 16-11-2021

P. C.

. This petition takes an exception to the order dated 25-02-2019, passed by the learned Additional Sessions Judge, Amalner in Criminal Appeal No. 28 of 2017.

2. The respondent No.1 herein filed an application under the Provision of Protection of Women From Domestic Violence Act for various reliefs against the present petitioner. The application for amendment was moved at Exh.60. The learned Magistrate rejected the said application by order dated 26-09-2017.

3. The appeal was filed against the said order of the learned Magistrate dated 26.09.2017. In appeal the order passed by the learned Magistrate came to be set aside and consequently the application moved by respondent No.1 for amendment was allowed. The order of appellate Court is impugned in this petition.

4. I have heard learned counsel for the petitioner and learned counsel for the contesting respondent No.1.

5. The learned counsel for the petitioner submits that the appeal under Section 29 of the Act against the order rejecting the application for amendment was not maintainable. It is submitted that the issue of maintainability was raised before the learned Additional Sessions Judge. It is submitted that the learned Additional Sessions Judge, however, took a wrong view of the matter and on the basis of judgment of the Hon'ble Apex Court which was not on the point of maintainability has held that the appeal is maintainable. It is submitted that the learned Additional Sessions Judge thus erred in entertaining the appeal on merit and setting aside

the order of learned Magistrate. In support of the submission the learned counsel for the petitioner has relied upon the judgment of this court reported in 2009 (1) Bombay CR (Cri.) 845 in the case of Abhijit Bhikaseth Auti Vs State of Maharashtra and others.

6. On the other hand learned counsel for the contesting respondent No.1 submits that the amendment application was rejected on erroneous ground by the learned Magistrate. It is submitted that the learned Additional Sessions Judge entertained the appeal on the basis of Judgement of Hon'ble Apex Court in the case of Kunapareddy @ Nookala Shanka Balaji Vs Kunapareddy Swarna Kumari and Anr reported in 2016 STPL 3827 SC.

7. It is further submitted that the appellate court has recorded valid reasons for allowing the application and no exception is taken to the order of appellate Court on merits. It is submitted that considering the facts and circumstances, the order of appellate Court which is not assailed on merit may not be interfered with in writ jurisdiction. Accordingly, it is submitted that the petition be

dismissed.

8. Admittedly the issue of maintainability of appeal was raised before the appellate court. Even the judgment of this court in the case of *Abhijit Auti (supra)* was cited before the appellate court. This court in the said Judgment has held :

22. As held by the Apex Court in the case of Central Bank of India (*supra*) and Shankarlal Aggarwal (*supra*), an appeal under Section 29 will not be maintainable against the purely procedural orders such as orders on application for amendment of pleadings, orders refusing or granting adjournments, order issuing witness summons or orders passed for executing the orders passed under the said Act etc.

9. In view of judgment of this court in the above case, the appeal filed by the respondent No.1 was not maintainable. The order impugned passed by the appellate court thus cannot be sustained. The submission that the order of appellate Court on merit, legal and valid is inconsequential. Hence, the following order is passed.

ORDER

- i. The petition is allowed.
- ii. The order impugned is set aside.
- iii. The respondent No.1 is, however, at liberty to challenge the order of learned Magistrate dated 26.09.2017 by filing appropriate proceedings, if she wishess to.

[N. R. BORKAR, J.]

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