

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

**INTERIM APPLICATION NO. 1946 OF 2022
IN
CRIMINAL WRIT PETITION NO. 770 OF 2021**

Abhay Kamlakar Sakhale

Applicant

Versus

Dhanashree Abhay Sakhale @
Dhanashree R. Gurav and another

Respondents

Mr. Abdul Bari Khan, Advocate for Applicant.

Ms. Rajashree Gurav, Advocate for Respondent No.1.

Mr. A. R. Patil, A.P.P. for the State-Respondent.

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CORAM : PRAKASH D. NAIK, J.

DATE : 4th JULY, 2022

PC.

1. This Interim Application is preferred in Criminal Writ Petition No. 770 of 2021 with Interim Application No. 819 of 2021. The said petition with Interim Application were disposed of by order dated 20.06.2022.

2. In this application, the applicant (respondent No.2 in Criminal Writ Petition No.770 of 2021) has urged that the

order dated 20.06.2022 passed by this Court in the aforesaid proceedings be kept in abeyance or may be modified.

3. Learned Advocate for the applicant in the present application and respondent No.2 in Criminal Writ Petition No. 770 of 2021 submitted that order dated 20.06.2022 was passed by this Court without affording opportunity of being heard to the applicant herein due to false averment made by the advocate appearing for respondent No.1 in this application and petitioner in Criminal Writ Petition No. 770 of 2021. The Advocate had falsely testified by way of affidavit of service claiming service of notice to the other side informing the matter to be on board. The advocate had served the e-mail to an unknown e-mail claiming to be that of the advocate of the present applicant. The advocate had also claimed to have served the notice via WhatsApp to the advocate of the present applicant. Neither the advocate for the applicant herein received any e-mail from the advocate for original petitioner nor was any service made to him at his office. The advocate for the original petitioner was fully aware of the address of the

advocate for applicant herein but chose to deliberately avoid serving the notice to the office of the advocate to keep them in dark about the directions and circulation of the matter in this court. The Filing Department of this Court had not informed the advocate for applicant herein about the date of circulation or order. The Filing Department mentioned to be an error of the NIC which in turn mentioned it to be a technical error. The grievance has been filed with the Registrar (Judicial-I), Appellate Side, High Court in that regard. The applicant herein has been unduly targeted, harassed and caused to great loss of livelihood, personal liberty. This is done to extract wrongful arrears of maintenance by way of direct deduction from salary. The original petitioner has made false averment in the petition as well as in the Interim Application. The applicant herein/respondent No.2 in the original petition has filed affidavit in reply which would show that the claims of the petitioner are false. The advocate for the original petitioner has acted in contravention of Rule 4 of Bar Council of India. Original petitioner has initiated several

proceedings. He relied upon the affidavit in reply filed in Writ Petition No. 770 of 2021 and refers to Exhibit-I in his reply. The applicant herein has so far paid approximately an amount of Rs. 34 lacs to the petitioner. Advocate representing the original petitioner is also appearing as Special Public Prosecutor in the present proceeding before the Lower Court. The conduct of the advocate is objectionable. It is submitted that applicant herein/respondent No.2 is not liable to pay an amount of Rs.1,13,114/- to the original petitioner towards reimbursement. The applicant herein has parted huge amount to the original petitioner which is evident from the document annexed to the reply. There no arrears of maintenance.

4. Learned advocate for the respondent No.1 in this application and petitioner in Criminal Writ Petition No. 770 of 2021 has filed detailed affidavit in reply opposing prayers in this application. It is submitted that the submissions of the applicant herein are false. Affidavit of service was filed when the petition and interim application were heard by this Court.

The advocate for respondent herein has served the advocate for applicant in this application vide WhatsApp and e-mail. The submissions of applicant herein about the payment of the amount as claimed is not correct. Writ Petition No. 770 of 2021 and Interim Application No. 819 of 2021 were listed before this Court on 13.06.2022. The advocate for the present applicant (respondent No.2 in Original petition) was not present. The Court heard the petitioner's advocate and the proceedings were directed to be listed on 20.06.2022 for passing order. Even on that day, advocate for the applicant herein was not present. The appearance of advocate representing applicant herein was shown on the board. It is further submitted that the petition and the Interim Application were earlier heard by this Court on 12.04.2022. Both the sides had advanced arguments and the advocate for the original petitioner had sought time to argue in re-jointer and hence the proceedings were adjourned to 21.04.2022. On account of change in assignment, the matter could not be heard by this Court. However, after change in assignment proceedings

were listed before this Court. Thus, it cannot be said that the advocate for the applicant herein was not heard. The claims of the original petitioner are fortified by averment made in the petition and the interim application. The original petitioner has filed affidavit in reply opposing the present interim application. In the affidavit in reply, the respondent No.1 herein has denied the submissions of applicant made in this application. This application is not maintainable in law. The original petition and the Interim Application are disposed of by this Court. The prayers in this application cannot be granted.

5. It is pertinent to note that Criminal Writ Petition No. 770 of 2021 and Interim Application No. 819 of 2021 were initially heard by this Court on 12.04.2022. After the arguments were advanced by both the sides, the advocate for original petitioner wanted to argue in rejoinder and hence proceeding were adjourned to 21.04.2022. Thereafter, there was change in assignment. After Change in assignment and since the proceedings pertain to assignment of this Court, the

proceedings were circulated before this Court on 13.06.2022. The name of the advocate representing the applicant herein/original respondent No.2 in original petition was shown on board. After hearing the arguments of the advocate for the original petitioner, the matters were adjourned to 20.06.2022 for passing order. Even on that day, the advocate representing the applicant herein was not present hence, the Court proceeded to pass order disposing of the proceedings. On 20.06.2022, the affidavit in reply filed by the applicant herein/respondent No.2 in the original petition was on record. Order dated 12.04.2022 passed by this Court refers to the fact that submissions of learned counsel for the petitioner and the respondents were heard. Learned counsel for the applicant/petitioner seeks to argue in rejoinder and hence petition/application were adjourned to 21.04.2022. On 13.06.2022, the advocate for the original petitioner was heard. None appeared for the respondent No.2 in the said matters. The appearance representing respondent No.2 was shown on the board. Advocate for the petitioner submitted

affidavit of service indicating that notice of hearing was given to the respondent No.2. Affidavit dated 10.02.2022 was taken on record. The proceedings were adjourned to 20.06.2022 for passing order.

6. Assuming that intimation about circulation is disputed or the Department has not intimated the applicant's advocate about listing of matters, the fact remains that the advocate's name was displayed on board. The matter was earlier heard. The reply of respondent No.2 was taken into consideration. Criminal Writ Petition No.770 of 2021 with Interim Application No. 819 of 2021 are already disposed of finally vide order dated 20.06.2022. Since the petition and interim application are already disposed of. The said order cannot be kept in abeyance or recalled, no case is made out for modification. Hence, the prayer in this application cannot be granted.

ORDER

Interim Application No. 1946 of 2022 is rejected.

(PRAKASH D. NAIK, J.)