



2024:UHC:7350

Judgment Reserved on: 28.11.2025

Judgment Delivered on: 23.12.2025

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No.557 of 2024

Sanjeev Agarwal

.....Applicant

Vs.

State of Uttarakhand & Another

....Respondents

Presence: Mr. Pankaj Singh Chauhan, learned counsel for the Applicant.
Mr. Rakesh Negi, learned Brief Holder for the State.
Mr. Ayush Kumar Agarwal, learned counsel appearing through V.C.

Hon'ble Ashish Naithani, J

The present Criminal Miscellaneous Application has been filed under Section 482 of the Code of Criminal Procedure by the Applicant, Sanjeev Agrawal, seeking interference with the order dated 01.02.2024 passed by the learned Judicial Magistrate 1st, Dehradun, in Misc. Case No.97 of 2020 (Parul Agrawal v. Sanjeev Agrawal). By the said order, the learned Magistrate issued a recovery warrant for an amount of ₹5,69,167/-, purportedly towards arrears of interim maintenance payable under the Protection of Women from Domestic Violence Act, 2005.

2. The challenge in the present application is confined to the legality and propriety of the recovery order dated 01.02.2024, and the manner in which the recovery proceedings were conducted by the court below. The Applicant does not, in these proceedings, assail the original orders granting interim maintenance, but questions the issuance of coercive recovery without adequate opportunity of hearing and without adjudication of objections regarding the calculation of arrears.

3. The Applicant and Respondent No. 2 are husband and wife. Their marriage was solemnized on 01.12.1996 in accordance with Hindu rites and customs. Three children were born from the wedlock. It is not in dispute that the parties have been living separately since the year 2017.

4. On 24.05.2018, Respondent No. 2 instituted proceedings under Sections 12, 17, 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005, before the learned Magistrate at Dehradun. Along with the main application, an application under Section 23 of the Act seeking interim maintenance was also filed.

5. By order dated 08.08.2019, the learned Magistrate directed the Applicant to pay a sum of ₹ 25,000/- per month as interim maintenance to Respondent No. 2 from the date of filing of the application.

6. The said order was carried in appeal by both parties. The Criminal Appeal preferred by the Applicant was dismissed, while the appeal preferred by Respondent No. 2 was partly allowed by the learned Additional Sessions Judge, Dehradun, by judgment dated 05.12.2019, whereby the interim maintenance was enhanced to ₹ 30,000/- per month.

7. Subsequent to the appellate judgment, disputes continued between the parties regarding compliance with the maintenance orders. Proceedings were initiated from time to time, including earlier proceedings under Section 482 Cr.P.C, which came to be dismissed by this Court by order dated 27.12.2023.

8. Thereafter, Respondent No. 2 initiated recovery proceedings before the learned Judicial Magistrate, alleging non-payment of maintenance and claiming arrears. In those proceedings, the learned Magistrate passed the

impugned order dated 01.02.2024, issuing a recovery warrant for ₹ 5,69,167/- against the Applicant.

9. Aggrieved by the issuance of the recovery warrant, the Applicant has approached this Court invoking its inherent jurisdiction under Section 482 CrPC, contending that the impugned order was passed ex parte, without proper opportunity of hearing, and without adjudication of objections relating to the calculation of the alleged arrears.

10. Learned counsel for the Applicant submitted that the impugned order dated 01.02.2024, issuing a recovery warrant of ₹ 5,69,167/-, was passed in clear violation of the principles of natural justice. It was argued that on the date fixed before the learned Magistrate, the Applicant could not appear due to unavoidable circumstances, and an exemption application was moved through counsel, yet the court below proceeded ex parte to issue a coercive recovery order.

11. Learned counsel contended that the recovery order does not reflect any application of judicial mind to the question of computation of arrears. According to learned counsel, payments made by the Applicant pursuant to interim orders passed by this Court, as well as other payments made earlier, were not taken into account, and the amount claimed by Respondent No. 2 was accepted mechanically.

12. It was further urged that the recovery of maintenance, particularly when disputed on the ground of calculation, requires adjudication and cannot be reduced to a summary or ministerial exercise. Learned counsel submitted that the impugned order, having been passed without determination of objections and without hearing the Applicant, results in serious civil consequences and, therefore, warrants interference by this Court to prevent abuse of the process of law.

13. Learned counsel for Respondent No. 2 opposed the application and submitted that the maintenance orders passed by the courts below, as affirmed and enhanced in appeal, have attained finality. It was argued that the Applicant has been consistently irregular in payment and that the recovery proceedings were initiated only after repeated defaults.

14. Learned counsel for Respondent No. 2 submitted that the Domestic Violence Act is a beneficial legislation intended to secure timely monetary relief to an aggrieved woman. That prolonged non-compliance defeats the very object of the statute. It was contended that the learned Magistrate acted within jurisdiction in issuing the recovery warrant and that no case for interference under Section 482 Cr.P.C is made out.

15. Learned Brief Holder appearing for the State supported the stand of Respondent No. 2 and submitted that the impugned order was passed in exercise of lawful authority vested in the Magistrate for enforcement of maintenance orders, and that inherent jurisdiction should not be invoked merely because the Applicant disputes the amount claimed.

16. This Court has considered the rival submissions and has carefully examined the record. At the outset, it is necessary to reiterate that the inherent jurisdiction under Section 482 CrPC is of a limited nature and is not intended to function as an appellate or revisional forum. Interference is warranted only where continuation of proceedings or an impugned order results in abuse of the process of the court or failure of justice.

17. There is no dispute before this Court regarding the existence or validity of the interim maintenance orders passed under the Protection of Women from Domestic Violence Act, nor is the entitlement of Respondent No. 2 to seek enforcement of those orders under challenge. The controversy in the present application is confined to the manner in

which the recovery proceedings culminated in the issuance of the recovery warrant dated 01.02.2024.

18. The power to enforce maintenance orders, including by issuance of recovery warrants, undoubtedly vests in the Magistrate. However, such power is not mechanical in nature. Where the person against whom recovery is sought raises a dispute regarding the computation of arrears, or asserts payment pursuant to interim judicial directions, the Magistrate is required to apply judicial mind and record satisfaction as to the correctness of the amount claimed.

19. The impugned order dated 01.02.2024 does not disclose any consideration of the Applicant's objections or any determination of the precise arrears payable after accounting for payments already made. The order merely proceeds on the premise that the amount claimed by Respondent No. 2 is recoverable, without recording reasons or calculations supporting such a conclusion.

20. Equally significant is the fact that the recovery warrant was issued ex parte. While absence of a party does not, by itself, vitiate proceedings, issuance of a coercive recovery order involving substantial monetary liability, without affording effective opportunity of hearing, cannot be treated as a routine procedural step.

21. This Court also takes note of the fact that during the pendency of the present proceedings, interim orders were passed directing the Applicant to continue payment of monthly maintenance, and the record indicates compliance with those directions. In such circumstances, it becomes all the more necessary that any claim of arrears be freshly examined after due adjustment, rather than enforced through a summary recovery warrant.

22. The Domestic Violence Act is beneficial legislation, and its objectives must be advanced. At the same time, enforcement mechanisms under the statute must conform to basic procedural safeguards. Expediency cannot override the requirement of fairness, particularly when the consequences of recovery proceedings are coercive in nature.

23. In the considered view of this Court, the impugned order dated 01.02.2024 suffers from procedural infirmity inasmuch as it was passed without adjudication of objections relating to the computation of arrears and without affording the Applicant an effective opportunity of hearing. Permitting such an order to stand would result in a miscarriage of justice.

24. In view of the reasons recorded hereinabove, this Court is of the considered opinion that the impugned order dated 01.02.2024 passed by the learned Judicial Magistrate 1st, Dehradun, in Misc. Case No. 97 of 2020 (Parul Agrawal v. Sanjeev Agrawal) cannot be sustained in law.

ORDER

Accordingly, the order dated 01.02.2024, whereby a recovery warrant for an amount of ₹ 5,69,167/- was issued against the Applicant, is set aside.

It is clarified that this Court has not expressed any opinion on the merits of the rival claims regarding entitlement or quantum of maintenance, and all such issues shall remain open to be considered by the court below.

The Criminal Miscellaneous Application stands **allowed** to the extent indicated above.

(Ashish Naithani, J.)
23.12.2025

Arti
ARTI SINGH