

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 112 OF 2015

BHIMRAO SHAMRAO SONOWANE

V/S

USHA @ POONAM BHIMRAO SONOWANE

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Mr. P.B.Patil, Advocate for the Petitioner.

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CORAM : V.M.DESHPANDE, J.

DATE : 4TH FEBRUARY, 2015

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PER COURT :

1. The present Writ Petition is taken against the Order dated 26/12/2014 passed by the learned Judicial Magistrate First Class, Chalisgaon, district Jalgaon below Exh. 11 in Criminal Misc. Application No. 737/2014, whereby the learned Magistrate has rejected the application for stalling the nonailable warrant.

2. Heard Mr. P.B.Patil, the learned counsel for the petitioner in extenso. With his able assistance, I have gone through the impugned order.

3. The present respondent is the wife of the petitioner. Their relations are not disputed. She was required to take proceedings against the present petitioner in the year 2013 for maintenance under the provisions of the Protection of Women from Domestic Violence Act, 2005. The said proceedings were registered as Criminal Application 718/2013. The said proceedings were culminated in favour of the respondent/wife on 30/07/2014 and the learned Magistrate directed the petitioner to pay maintenance @ ₹ 2,000/- [Rupees Two Thousand only] per month to the respondent from 29/09/2013.

4. The learned counsel for the petitioner fairly submitted that though the Appeal is filed against the said order, however, no stay is granted by the learned appellate Court in favour of the petitioner.

5. Thus, when the order granting maintenance was

not stayed, the petitioner is under obligation to pay the maintenance as directed by the learned Magistrate. Admittedly, the petitioner is in arrears of payment of maintenance.

6. Since the petitioner was not paying the maintenance as directed by the learned Magistrate, the respondent/wife was required to take another proceedings for recovery of maintenance amount. The proceedings are registered as Criminal Application No. 737/2014. Copy of the said application is at page No. 10 of the compilation. The said application shows that the arrears are to the extent of ₹ 42,000/- [Rupees Forty Two Thousand only]. The petitioner has not disputed the said aspect also. According to the petitioner, the notice of the said recovery proceedings was not served on him and, therefore, he filed an application on 26/12/2014 for cancellation of non bailable warrant, which was issued by the learned Magistrate on 14/11/2014.

7. It is to be noted that the petitioner has not challenged the issuance of non bailable warrant before any superior Court. On the contrary, he appeared before the

learned Magistrate and has submitted that the notice of recovery proceedings was not served on him.

8. Since the petitioner himself has appeared before the learned Magistrate in recovery proceedings, there is no question of any further notice. Thus, he has knowledge of the filing of the proceedings against him regarding recovery of maintenance amount. Further, it is also not disputed by the petitioner that he is in arrears of ₹ 42,000/- [Rupees Forty Two Thousand only]. Even during the course of the hearing, this Court has asked the learned counsel for the petitioner, as to whether the petitioner is ready to deposit ₹ 42,000/-. The learned counsel, after taking instructions from his client, submitted that his client is not ready to deposit the said amount.

9. Since the petitioner himself has appeared on his own in the recovery proceedings, it does not lie in the mouth of the petitioner that he is not having the notice of the recovery proceedings.

10. In that view of the matter, the order dated

26/12/2014 passed by the learned Magistrate is just and legal.

The present Writ Petition is required to be rejected and accordingly it is dismissed.

[V.M.DESHPANDE, J.]

KNP/Cr. W.P. 112.2015