

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2594 OF 2015

Nitin Suresh Chavan
Age 37 years, Occ: Service
R/o Plot No.36, Shahu Nagar,
Bhadgaon Road, Chalisgaon,
Taluka Chalisgaon, Dist. Jalgaon.

.. Applicant

Versus

1. Sau. Minal w/o Nitin Chavan,
Age 29 years, Occu: Business
2. Rajeshree d/o Nitin Chavan
Age 4 years, Occu: Nil,(Minor under
guardianship of respondent No.1)

Both R/o C/o Shri Yashwant Keshav Gurav
47, Sarswati Nagar, Wagheshwari Paitha,
Nandurbar, Taluka & Dist. Nandurbar.

... Respondents

Mr. Rahul B. Bagul, Advocate for the applicant
Mr. U. H. Bhogle, APP for the State.

CORAM : T. V. NALAWADE ,J.

DATE : 13th July, 2015

PER COURT :

1. The proceeding is filed to challenge the order made by the learned Judicial Magistrate, First Class, Nandurbar in Misc. Cri. Application No.180/2013. The application was filed by the present applicant for relief of stay to the maintenance proceedings filed by present respondent under section 125 of Criminal Procedure Code. The application is rejected by the learned JMFC. The Revisional Court has also dismissed the revision filed against the order made by the JMFC.
2. Heard learned counsel for the applicant.
3. Learned counsel for the applicant placed reliance on the observations made by this Court (Aurangabad Bench) in **2009(1) Bom.**

C.R. (Cri.)799 (Vijaykumar Gundappa Shetkar Vs.Bhagyawati Vijaykumar Shetkar & ors.). In that case, when the maintenance was granted by the JMFC under section 125 of the Cr.P.C. husband filed proceedings for divorce and in that proceedings order of interim maintenance was made by the Civil Court. Then the proceeding was filed for recovery of arrears of maintenance and some orders like warrants were issued by the Magistrate. In view of the fact of the matter, this court hold that husband was paying interim maintenance in other proceeding, civil proceeding and so criminal proceedings in the circumstances ought to have been stayed. This proceeding is of altogether different nature.

Provisions of Section 125 of the Cr.P.C. itself shows that while granting maintenance, the criminal Court is expected to consider the maintenance order, if any, made by Civil Court in favour of the applicant. That stage is not yet reached. Though in the proceedings filed under section 9 of the Hindu marriage Act by husband where maintenance is granted @1500/- and Rs.1000/- in favour of wife and daughter respectively, due to this circumstance, the proceedings filed under section 125 Cr.P.C itself cannot be stayed. The object behind the proceedings under section 125 Cr.P.C is to see that the destitute woman gets immediate relief by filing such proceedings. At the most, the learned JMFC is required to consider the amount which the wife and daughter are already receiving due to the order of Civil court. Thus, no merits are found in the present application and there is no need to issue notice to other side.

4. In the result, criminal application stands dismissed.

(T. V. NALAWADE, J.)

JPC