

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

Criminal Application No. 4794 of 2014

Namdeo @ Bappasaheb s/o. Raghunath Mule,

Age : 30 years,

Occupation : Agriculture,

R/o. Bhoggaon, Ghansavangi, Gondi,

Ambad, District : Jalna.

.. Applicant.

versus

1. Kaveri w/o. Namdeo Mule,
Age : Major,
Occupation : Household,
R/o. Jategao, Taluka : Gevrai,
District : Beed.

2. Abhijeet s/o. Namdeo Mule,
Age : Minor,
Under guardianship of
respondent no.1,
Kaveri w/o. Namdeo Mule,
Age : Major,
Occupation : Household,
R/o. Jategao, Taluka : Gevrai,
District : Beed.

.. Respondents.

.....

*Mr. R.D. Bhise, Advocate, holding for
Mr. S.V. Natu, Advocate, for the applicant.*

.....

CORAM : A.M. BADAR, J.

DATE : 4TH MARCH 2015

PER COURT :

1. Heard the learned Counsel for the applicant and perused the documents placed on record.
2. The applicant, who suffered order of maintenance under Section 125 of the Code of Criminal Procedure, 1973, by this application, is praying for quashing and setting aside the warrant of attachment of property issued for recovery of amount of maintenance payable to respondents.
3. The learned Counsel appearing for the applicant submitted that the respondents have filed a Civil Suit being Regular Civil Suit No. 227/2006, for partition of the property which is, in fact, belonging to the applicant. He further submitted that during the pendency of that suit, the applicant has filed an application for conducting DNA test of respondent no.2. However, during the pendency of that suit, respondents have filed an application seeking maintenance and the same was allowed. According to the learned Counsel for the applicant, as the applicant was unable to pay the said amount, the application for recovery of amount of maintenance came to be filed. That application came to be allowed and thereby warrant of recovery came to be issued. This order, passed during pendency of the Civil Suit, in submission of the learned Counsel for the applicant, is *per se* illegal and therefore needs to be quashed and set aside.
4. Undisputedly, an application for grant of maintenance filed under Section 125 of Cr.P.C., by respondents, came to be allowed and the

applicant was directed to pay maintenance of Rs. 700/- per month to respondent no.1, and that of Rs. 500/- per month to respondent no.2. It is not in dispute, that Rs. 32,000/- are in arrears towards maintenance. It is seen that respondents had filed an application under Section 125(3) of Cr.P.C., with a prayer to issue warrant for levying the amount due towards maintenance in the manner provided for levying fine and that application came to be allowed by the learned Judicial Magistrate (F.C.), Ambad, District Jalna. As the amount of maintenance was not paid by the applicant and as the impugned order was passed by following due procedure prescribed by law, we see no infirmity in the action taken by the learned Judicial Magistrate (F.C.), in issuing warrant of attachment for recovery of the maintenance amount from the applicant.

5. For the foregoing reasons, the Application is rejected.

(A.M. BADAR)
JUDGE

.....