

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.144 OF 2016**

Shri Kavindraprasad Prajapati
s/o. late Diwakarprasad Prajapati
32 years of age, married, Indian National,
C/o. Rjeshwar Kini, Flat No.8,
Gulmohar Society, Spine road,
Sector 16, Chikali, Pradhikaran,
Pune – 411214.

.... Petitioner

V/s

1. Smt. Chetna Sushilkumar Prajapati,
Daughter of Shri Sushilkumar Prajapati,
30 years of age, Housewife.

2. Miss Ishanvi Kavindra Prajapati,
Aged 3 years,
Being minor through her natural
Guardian, applicant No.1,
Both r/o. H.No.327/10, Peri Bhat,
Old Goa, Tiswadi Goa.

3. State of Goa,
Through its Public Prosecutor,
Panaji-Goa

....Respondents

Shri Samir Taleigaonkar, Advocate for the Petitioner.
Shri Ryan Menezes, Advocate under Legal Aid Scheme for Respondent
No.1.

CORAM : C.V. BHADANG, J.

DATE : 20th MARCH, 2017

ORAL JUDGMENT :

Rule made returnable forthwith. The learned Counsel for the
respondent no.1 waives service. Heard finally by consent of the parties.

2. The respondent no.1 has been granted maintenance under Section 125 of the Code of Criminal Procedure against the petitioner. The learned Magistrate by an order dated 4/04/2016 has directed issuance of warrant of arrest against the petitioner for nonpayment of the maintenance. The impugned order would show that the application Exhibit 14 filed by the first respondent was allowed, while application Exhibit 25 filed by the petitioner for stay was dismissed. The petitioner challenged the order of the learned Magistrate before the learned Sessions Judge in Criminal Revision Application No.51/2016. The learned Sessions Judge has dismissed the Criminal Revision Application by judgment and order dated 18/08/2016 which brings the petitioner to this Court.

3. It is undisputed that during the pendency of this petition the petitioner has cleared entire arrears of maintenance up to March, 2017. The learned Counsel for the petitioner in all fairness states that the petitioner shall not press the relief as claimed in application Exhibit 25 and restrict his challenge to the order issuing warrant. In view of the fact that the entire arrears are cleared of, the impugned order issuing warrant will have to be set aside. In such circumstances, the following order is

passed :

ORDER

- (i) The petition is allowed.
- (ii) The impugned order issuing warrant against the petitioner is hereby set aside.
- (iii) Rule is made absolute in the aforesaid terms.

C.V. BHADANG, J.

NH