

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO.4716 OF 2015
WITH
WRIT PETITION NO.4717 OF 2015**

Mubarak Gulab Nadaaf

...Petitioner

Vs.

1. Alvina alias Shabana Mubarak Nadaaf,
2. Ms. Saaquib Mumbarak Nadaaf,
3. The State of Maharashtra.

... Respondents

.....

Mr. Tanaji Mhatugade for the Petitioner in both writ petitions.
Mr. Ranjeeth Patil for the Respondents in both writ petitions.

.....

**CORAM : G.S. KULKARNI, J.
DATE : JANUARY 17, 2018.**

P.C. :

1. Heard Mr. Mhatugade, learned counsel for the petitioner, and Mr. Patil, learned counsel for the respondents.
2. At the outset, learned counsel for the petitioner would agree that prayers made in writ petition no.4717/2015, are substantially the same as made in writ petition no.4716/2015, in regard to the challenge to the order dated 28.9.2015 passed by the learned Judicial Magistrate First Class, Sangli in Criminal Miscellaneous Application No.437/2014, which is also the challenge as made in prayer Clause 'A' of Writ Petition No.4716/2015. Thus the learned counsel for the parties have made

submission in Writ Petition No.4716/2015.

3. Respondent no.1-wife alongwith respondent no.2 minor daughter had filed an application before the court of learned JMFC, Sangli under section 125 of Cr. P.C., being Criminal Miscellaneous Application No.466/2010 claiming award of maintenance of Rs.10,000/- per month each for respondent nos.1 and 2 each. By the impugned order dated 9.9.2014, the learned JMFC, Sangli allowed the application in the following terms:

“1) The application is partly allowed.

2) The opponent is directed to pay a monthly maintenance allowance of Rs.7000/- (Rupees Seven Thousand Only), to applicant no.1 and Rs.3000/- (Rupees Three Thousand Only) to applicant no.2 from the date of this application.

3) The opponent is further directed to pay an amount of Rs.1000/- (Rupees One Thousand Only) to applicant no.1 towards the costs of this application.

4) A copy of this judgment be supplied to applicant no.1 free of cost.

5) The opponent be notified with this order on court motion.”

4. The petitioner is in the employment of the District Court at Satara, in the capacity of a Stenographer. Learned Trial Judge has observed that on a notice which was issued to the petitioner on the said petition of the respondent under section 125 of Cr. P.C., the petitioner in a systematic manner had avoided service of the notice. When the Bailiff of the court had met the petitioner to serve the notice, he avoided to receive the notice. A discussion on the report of the Bailiff

is made in paragraphs 8 and 10 of the impugned order passed by the learned JMFC, Sangli. It is also observed by the learned JMFC, that the petitioner being a Stenographer working at Civil Court at Koregaon, District Satara, was well conversant with the legal procedure and methods by which he could delay the proceedings. It is also recorded that the petitioner thus smartly avoided to accept the court notice and opted to remain absent in the court. The court thus proceeded ex-parte against the petitioner.

5. Learned Trial Judge considering the material which was placed on record as also the fact that the petitioner is an employee of the District Court at Satara and was earning salary of Rs.30,000/- per month, as clear from the information received under the Right to Information Act, by the respondents and placed on record of the Trial Court, proceeded to award monthly maintenance of Rs.7000/- to respondent no.1 and Rs.3000/- to the minor daughter.

6. The petitioner thereafter moved Criminal Miscellaneous Application No.437/2014, praying for setting aside the order passed by the learned JMFC, Sangli awarding the maintenance on the ground that the order was ex-parte and a second application being Criminal Miscellaneous Application No.414/2014 (Exh.8 and 9) was filed seeking stay of the recovery proceedings initiated by respondent nos. 1

and 2 under the order dated 9.9.2014 passed by the learned JMFC, Sangli. By an order dated 28.9.2015, learned JMFC, Sangli, rejected the said application of the petitioner holding that no ground was made out to grant such prayers. Against the said order dated 28.9.2015, the petitioner has approached this court.

7. I have heard Mr. Mhatugade, learned counsel for the petitioner and Mr. Patil, learned counsel for the respondents. Mr. Mhatugade has principally has made submissions, which were urged and canvased by the petitioner before the learned JMFC in the application on which the impugned order dated 28.9.2015 has been passed and the petitioner's grievance on award of maintenance under the order dated 9.9.2014. It is submitted that the order dated 9.9.2014 is an ex-parte order and opportunity ought to have been granted to the petitioner to place on record and defend the application of the respondents for award of maintenance. It is submitted that observations of the court with regard to the petitioner avoiding the court service are not correct. It is submitted that the impugned order passed by the learned JMFC, be set aside by permitting the petitioner to appear before the learned trial Judge and contest on merits the respondent's application under Section 125 of Cr. P.C..

8. On the other hand, Mr. Patil, learned counsel for the respondents has supported the order dated 9.9.2014 passed by learned JMFC, Sangli awarding the maintenance and the impugned order dated 28.9.2015 passed by the learned JMFC. It is submitted that the conduct of the petitioner was writ large from the observations as made by the learned Trial Judge and the petitioner can have no justification to approach this court in the present proceedings by invoking the jurisdiction under Article 227 of the Constitution and seek interference in the impugned order dated 28.9.2015.

9. Having heard the learned counsel for the parties as also having perused the orders dated 28.9.2015 and 9.9.2014 passed by the learned JMFC, Sangli, I am not persuaded to accept the submissions as urged on behalf of the petitioner. It is clear that the petitioner is well versed with the procedure of the court, as observed by the learned trial judge. The petitioner willfully avoided to accept the service of the court notice, of the proceedings. There is no challenge to the report of the Bailiff except the bald averments that an opportunity ought to have been granted to the petitioner to contest the proceedings. It needs to be noted that the application of the respondent seeking maintenance was filed on 28.9.2015, the proceedings being summary in nature, the adjudication of the same could not have been delayed except for the

different tactics as adopted by the petitioner by avoiding service of notice. Ultimately, it took four long years for the court to proceed in the matter and ultimately in the circumstances as noted by the learned trial judge, the learned trial judge decided the respondent's application for maintenance ex-parte, also in detail recording the entire conduct of the petitioner of avoiding the notice.

10. There is no dispute in regard to the amount of monthly income being received by the petitioner as also his employment on the establishment of the District Court, Sangli. In my opinion, the petitioner who is working as a stenographer and who is admittedly receiving a salary of Rs.30,000/- and allowances cannot contend that amount of Rs.7000/- awarded by the learned JMFC to be paid to the respondent no.1-wife and Rs.3000/- to the minor daughter, is unreasonable. There is no material by which such sum as awarded can be said to be unreasonable in the facts and circumstances.

11. Thus there is no infirmity in the order as passed by the learned JMFC, Sangli rejecting the application of the petitioner for setting aside of the said order dated 9.9.2014.

12. In the circumstances, the petition would not warrant any interference. It is accordingly rejected. In view of the rejection of the petition no.4716 of 2015, nothing survives in petition no.4717 of 2015

and same also stands rejected.

13. It needs to be noted that in pursuance of the order dated 22.2.2016 passed by this court, an amount of Rs.3,00,000/- was deposited by the petitioner before the Trial Court being 50% of the amount of arrears, the same was withdrawn by the respondent. In the further order dated 11.10.2017, this court has recorded a statement as made on behalf of the petitioner that he would deposit an amount of Rs.1,80,000/- in this court within four weeks in four equal installments. It was observed that in the event, petitioner fails to deposit the said amount, there shall be attachment of salary. The respondent was permitted to apply for attachment of salary for recovery of the said amount in case of default by the petitioner.

14. It is informed by the learned counsel for the respondents that petitioner has defaulted and had not deposited amount of Rs.1,80,000/-, this court therefore by a further order dated 20.11.2017 recorded that in view of failure of the deposit of the said amount, interim order stood vacated and granted the respondent liberty to recover the arrears by attaching the salary. It is stated that the respondent has already taken out appropriate proceeding for attachment of salary before the Trial Court. Learned counsel for the petitioner states that the order dated 28.11.2017 is challenged by the

petitioner by approaching this court and the proceedings are pending.

15. As the present petitions stand dismissed and as interim orders passed earlier stand vacated by the order dated 28.11.2017, nothing further remains to be done in this regard.

16. Petitions are dismissed with costs.

(G.S. KULKARNI, J.)

order is corrected as per speaking to minutes of the order dated 16.04.2018.