

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1212 OF 2021

(Roshan Mahadeo Kadabe, Nagpur Vs. Shilpa Purushottam Dongare, Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Y.Y. Humne, Advocate for the applicant.

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**CORAM : M.S. SONAK &
PUSHPA V. GANEDIWALA, JJ.
OCTOBER 29, 2021.**

Heard Mr. Humne, learned counsel for
the applicant.

2] According to us, the very institution of
this application might amount to an abuse of the
process and therefore, we feel obliged to dismiss this
application with costs.

3] Mr. Humne contends that the
proceedings under the Protection of Women from
Domestic Violence Act, 2005 (“**D.V. Act**”) are required
to be nipped in the bud and quashed because it is the
case of the applicant that his wife has eloped with his
cousin and therefore, is not entitled to maintain
proceedings under the D.V. Act.

4] We have perused the application made
by the non-applicant under the provisions of the D.V.
Act. On perusal of the same, we cannot say that the

essential ingredients for maintaining such an application are absent. As regards the applicant's counter allegation, Mr. Humne pointed out that the same has already been raised in the reply. We have no reason to believe that the same will not be examined by the Competent Court in the pending proceedings. But based on such an untested allegation, no case is made out for quashing of proceedings in exercise of our inherent powers under Section 482 of the Code of Criminal Procedure.

5] Mr. Humne then points out that the application has been made for taking action against the non-applicant for alleged perjury. Again, without going into this issue on merits, it appears to us that attempts are being made by the applicant to avoid compliance to the order dated 12/02/2020 by which he has been directed to pay interim maintenance to the non-applicant.

6] Mr. Humne admits that the order dated 12/02/2020 has not been appealed against. He further submits that the application has been made for recall of this order. All this indicates that the applicant is taking out several proceedings, *prima-facie*, to avoid payment of any maintenance in terms of the order dated 12/02/2020. This is despite the fact that there is no interim relief based on which the applicant can avoid payment of such maintenance.

7] To our query as to whether the applicant, without prejudice to his rights will pay arrears of maintenance to the non-applicant, Mr. Humne no doubt, on instructions, submits that the applicant is quite poor and therefore unable to pay. The alleged poverty of the applicant has not prevented him for instituting not only the present proceedings but also several other proceedings to virtually stall the compliance with the order for payment of maintenance. Such an applicant, cannot be indulged and based on some unilateral allegations, the proceedings before the Competent Court under the D.V. Act cannot be quashed.

8] Accordingly, we dismiss this application with costs of Rs.10,000/-.

9] The Registry to send a copy of this order to the learned Judicial Magistrate First Class, Court No.2, Kamptee where Miscellaneous Criminal Case No. 245/2018 is pending, so that the learned Judicial Magistrate can ensure that the applicant herein pays or deposits this costs of Rs.10,000/- (rupees ten thousand) before any applications taken out by this applicant are proceeded further.

10] The applicant is also directed to place a copy of this order before the learned Judicial

Magistrate First Class, Court No.2, Kamptee at the earliest.

(PUSHPA V. GANEDIWALA, J.)

(M.S. SONAK, J.)

Sumit