

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

CRIMINAL WRIT PETITION NO. 105 OF 2019

Shaikh Rukmoddin Rajboddin

.. Petitioner

Versus

Irshad Rukmoddin Shaikh and another

.. Respondents

Mr. Vinod M. Vibhute, Advocate for the Petitioner.

Mr. M. B. Kolpe, Advocate for Respondent Nos. 1 and 2.

CORAM : KISHORE C. SANT, J.

DATED : 10th MARCH, 2023.

P. C. :-

. Heard learned advocates for the parties. Taken up for final disposal by consent of the parties.

2. The petitioner has filed the petition challenging an order passed by the learned Judge, Family Court, Osmanabad dated 17.12.2018 thereby rejecting the application of the petitioner. The application was for cancelling the recovery warrant issued by the learned Court for recovery of the maintenance amount which on that day is stated to be Rs. 1,40,500/- (Rs. One Lakh Forty Thousand Five Hundred only). The main ground of the petitioner is that, in view of proviso to sub section 3 of section 125 of the Code of Criminal Procedure (for short "Cr.P.C.") the warrant cannot be issued for recovery of the amount beyond one

year whereas, the execution proceeding was filed for recovery of the amount for period of almost ten years. It is further ground that, in the year 2008 the wife had filed recovery proceeding that was dismissed for default. However, instead of restoring the said proceeding the wife has filed fresh proceeding in the year 2018. Learned advocate for the petitioner submits that, it was necessary for the learned Family Court to consider the application. The learned Family Court, however, failed to appreciate the proviso to sub section 3 of section 125 of the Cr.P.C. and has committed mistake by rejecting the application.

3. Learned advocate for the respondents opposes the petition by relying upon the judgment of the Hon'ble Apex Court in the case of **Poongodi and another Vs. Thangavel** reported in **(2013) 10 SCC 618**. In that case, the High Court had set aside the recovery warrant in view of provision to sub section 3 of section 125 of the Cr.P.C. The Hon'ble Apex Court was pleased to set aside the order passed by the High Court observing that the provisions of Section 125 of the Cr.P.C. are a piece of beneficial legislation. Further, the husband was directed to clear the amount of arrears within a period of six months from the date of order.

4. In view of the above position, it is seen that, the learned Family Court has rightly passed the impugned order and no interference is called for.

5. Learned advocate for the petitioner at this stage makes a request that at least recovery warrant issued to the petitioner be cancelled.

6. Looking at the application filed before the learned Family Court, no particulars of the recovery warrant are found. However, in the writ petition particulars are given that is the order passed on application below Exh. 5 and 13 in ER No. 15/2018. This request can be entertained only if the petitioner deposits the remaining amount of the maintenance as on the date of issuing recovery warrant which is stated to be Rs. 1,40,500/- (Rs. One Lakh Forty Thousand Five Hundred only). It is informed that, out of this amount the petitioner had deposited Rs. 56,000/- (Rs. Fifty Six Thousand only) in this Court in one time. The respondents have withdrawn Rs. 36,000/- (Rs. Thirty Six Thousand only) out of the said amount. The remaining amount lying in this Court be remitted to the learned Family Court, Osmanabad with liberty to respondents to withdraw the said amount without any formal application, if the husband pays remaining amount of Rs. 84,000/- (Rs. Eighty Four Thousand only) within a period of four (04) weeks from today.

7. With this, the writ petition stands disposed off.

(KISHORE C. SANT, J.)

PS.B.