

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

CRIMINAL WRIT PETITION NO. 1496 OF 2022

Vishal Pandharinath Rathod .. Petitioner

Versus

Anita Vishal Rathod @
Anita Nanu Pawar and another .. Respondents

Mr. Ravindra B. Ade, Advocate for the Petitioner.
Mr. S. B. Solanke, Advocate for Respondent Nos. 1 and 2.

**WITH
CRIMINAL WRIT PETITION NO. 616 OF 2022**

Vishal Pandharinath Rathod .. Petitioner

Versus

Anita Vishal Rathod and another .. Respondents

Mr. Atul B. Hawale, Advocate for the Petitioner.
Mr. S. B. Solanke, Advocate for Respondent Nos. 1 and 2.

CORAM : KISHORE C. SANT, J.

DATED : 30th MARCH, 2023.

P C. :-

. Heard.

2. A challenge in this petition is to the judgment and order dated 04.10.2022 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Appeal (P.W.D.V.A.) No. 65/2021 wherein,

appeal preferred by the petitioner came to be rejected. The appeal was filed against an order passed by the learned 15th J.M.F.C., Aurangabad thereby directing to issue recovery warrant for an amount of Rs. 4,78,000/- by allowing the application Exh. 95 filed by respondent-wife. The main ground agitated in the petition is that the issuance of recovery warrant is a drastic step and the respondent-wife has some other remedy to execute the orders.

3. After hearing for some time, learned advocate for the petitioner on instructions made an offer that the petitioner is ready to pay Rs. 10,000/- per month towards maintenance and the arrears of maintenance. The recovery warrant was issued for an amount of Rs. 4,78,000/-, however, as on today, as per the report received from the Court below pursuant to order passed by this Court, the amount is Rs. 5,84,000/- in proceeding P.W.D.VA. No. 114/2015 and Rs. 2,35,000/- in Criminal M. A. No. 1423/2014. It comes to total Rs. 8,19,000/-. Considering that, the total amount of maintenance per month is Rs. 8,500/- and towards arrears only Rs. 1,500/- is offered by the husband will be totally disproportionate taking into consideration the amount of arrears.

4. This Court sympathetically considered the case of the petitioner, however, the petitioner is not ready to give any better offer than this.

This Court finds that, offer is not practically and rightly is not accepted even by the respondent-wife.

5. Therefore, this Court considering the matter on merits finds that, in recovery proceeding the learned Trial Court has rightly passed an order after giving opportunities to the petitioner-husband. The learned Sessions Court has also considered the case properly. Though the petitioner relies upon the judgment of the Hon'ble Apex Court in the case of Rajnish Vs. Neha and another in Criminal Appeal No. 730 of 2020 wherein, the Hon'ble Apex Court has given guidelines as below :

“The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Section 51, 55, 58, 60 read with Order XXI”

6. The same is also considered by the learned Sessions Court. The wording shows that, the order of decree of maintenance **may be** enforced like a decree of a Civil Court.

7. It is the submission of learned advocate for the petitioner that the orders of maintenance be executed in the manner as provided under Order XXI of the Code of Civil Procedure.

8. This Court finds that, there is no substance in the argument as that is only one of the most available recovery of amount of maintenance that certainly cannot be taken to bar the remedy under the Protection of Women from Domestic Violence Act or under Section 125 of the Code of Criminal Procedure.

9. Thus, this Court finds that, no case is made out to call for interference.

10. The parties submit that Criminal Writ Petition No. 616/2022 has become infructuous.

11. Thus, both the criminal writ petitions are disposed off in above terms.

(KISHORE C. SANT, J.)

P.S.B.