

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

CRIMINAL APPLICATION (APL) NO.396 OF 2018

Prashant s/o Bindraprasad Dixit
Aged about 43 years, R/o P.H. Nagar, Ramala
Dam Old Power House, Udday Road,
Chandrapur.

...APPLICANT

---VERSUS---

1. Shalini w/o Prashant Dixit
Aged about 33 years
2. Ku. Kanad D/o Prashant Dixit
Minor through natural guardian Non-applicant
no.1

Both R/o C/o Dr. Lohiya, R/o Seloo, Taluka
Seloo, District Wardha

...NON-APPLICANTS

Shri Dheeraj Kanwale, Advocate for applicant.

CORAM : G.A. SANAP, J.
DATE : JANUARY 06, 2023.

ORAL JUDGMENT :

1. Heard the learned advocate for the applicant. Non-applicants though served are absent.
2. In this revision, the challenge is to the order dated 09.04.2018 passed in Miscellaneous Criminal Application No.13 of 2017 below Exhibit-18 by the learned Judicial Magistrate First Class, Seloo, whereby the learned Magistrate was pleased to reject the application made by the applicant for cancellation of distress

warrant for recovery of maintenance in the divorce proceedings. It appears that as per the order dated 16.01.2018 passed in P.W.D.V. Appeal no.29 of 2017 by the learned Additional Sessions Judge, Wardha, the applicant was directed to pay ₹2,00,000/- to the non-applicant/wife including the payment made earlier and he was further directed to continue to deposit 50% of the amount awarded by the trial Court towards maintenance till the decision of the appeal.

3. Learned advocate for the applicant submits that in the distress warrant additional amount has been claimed. The amount of ₹2,00,000/- would include the amount of maintenance, which was already paid.

4. Perusal of the order would show that the learned Additional Sessions Judge dated 16.01.2018 has not clarified the actual amount due and payable on the date of the order of 16.01.2018. It appears that therefore the learned Magistrate has calculated the amount mentioned in distress warrant. In view of this, the order passed below the application Exhibit-18 needs to be set aside. The order is accordingly set aside.

5. The application for cancellation for distress warrant be restored to the file and heard and decided the same finally.

6. It is necessary to state that since the order dated

16.01.2018 passed by the learned Additional Sessions Judge is not clear and specific with regard to the quantum of the actual amount, the applicant would be liable to pay, liberty is granted to the applicant to apply before the learned Additional Sessions Judge, Wardha in P.W.D.V. Appeal no.29 of 2017 for seeking clarification of this part of the order. If the applicant applies for clarification of the order and for issuance of specific directions, the learned Additional Sessions Judge shall dispose of the said application within ten days by granting an opportunity of hearing to the non-applicant/wife. After specific clarification of this order, the wife would be entitled to apply for distress warrant afresh by stating the actual amount.

7. Learned advocate submits that applicant has deposited 50% of the amount of the maintenance in terms of the order dated 16.01.2018.

8. His statement is accepted. However, liberty is granted to the wife to place on record the actual statement of arrears paid/not paid, as per the order dated 16.01.2018.

The application stands disposed of.

JUDGE