



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

914 CRIMINAL WRIT PETITION NO. 246 OF 2025

Asmita Avinash Umale
Age-32 years, Occu-Household,
R/o. C/o. Priya S. Padame,
Plot No. C 125 & 126, Flat No.25-B-301
Shivaji Nagar, Gulmohar Arch,
Dist. Aurangabad

...PETITIONER

VERSUS

Avinash Madhukar Umale,
Age-34 years, Occu- Police Constable,
R/o. 177 Bn, CRPF, Amargarh Sopore,
Dist. Baramulla, State Jammu & Kashmir
Pin Code 180001

...RESPONDENT

Mrs. Nayana Patil, Advocate for the petitioner

CORAM : ABHAY J. MANTRI, J.

DATE : 11th DECEMBER, 2025

ORAL JUDGMENT :

1. Heard the learned Advocate for the petitioner.
2. No one is appeared for the respondent.
3. Perused the impugned order and record.
4. By this petition the petitioner /wife is challenging the order dated 21-01-2025 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Appeal No. 93/2024 whereby confirmed the order dated 23-03-2023 passed below Exh.67 in

PWDVA No.55 of 2021 by the learned Judicial Magistrate First Class, Aurangabad (for short '*the learned Magistrate*') whereby rejected the application of the petitioner striking off the defence of the respondent on the ground of failure to pay the interim maintenance amount and disobeying the order of the courts.

5. The learned advocate for the petitioner vehemently contended that since the beginning, the respondent has not complied with the order of the learned Magistrate as well as this court and thereby failed to pay the maintenance to the petitioner. Therefore, the petitioner is entitled to seek a remedy of striking off the defence of the respondent. The learned Magistrate, as well as the learned Additional Sessions Judge, have erred in observing that the salary of the respondent is attached. The amount of Rs. 16,500 per month is being deducted from his salary, and therefore, it would not be appropriate to strike off the defence of the respondent. She further argued that the finding recorded by the courts below is contrary to the mandate laid down in Rajnish Vs Sneha (2021) 2 SCC 324. She drew my attention to para 118 and 120 and submitted that in view of the observation of the Hon'ble Apex Court, the court is empowered to strike off the defence of the respondent for non-compliance with the order. Accordingly, she urged that the petition be allowed.

6. Having heard the learned advocate for the petitioner and gone through the record at the outset, it appears that the learned Magistrate vide order dated 25-10-2021, an interim maintenance amount of Rs. 8000/- was granted to the petitioner. Against the said order, the petitioner has preferred the appeal before the learned Sessions Court. The learned Sessions Court partly allowed the appeal and directed the respondent to pay interim maintenance of Rs. 16,500/-. However, the respondent failed to comply with the said order. Therefore, the petitioner has filed an application seeking a direction to the respondent to pay the arrears of Rs. 3,55,000/-. However, the application was rejected by the learned Magistrate because Rs. 16,500/- was deducted from the respondent's salary. Against the said order, the petitioner has preferred an appeal before the learned Additional Sessions Judge, who confirmed the order, observing that the respondent has willfully disobeyed the order for maintenance. It would not be appropriate to strike off the defence.

7. The learned Magistrate, as well as the learned Additional Sessions Judge, have not considered the law laid down in the case of Rajnesh (Supra). I would like to reproduce paragraphs 118 and 120 as follows:

Striking off the Defence

118. (i) Some Family Courts have passed orders for striking off the defence of the respondent in case of non-payment of

maintenance, so as to facilitate the speedy disposal of the maintenance petition. In *Kaushalya v Mukesh Jain*⁶⁴, the Supreme Court allowed a Family Court to strike off the defence of the respondent, in case of non-payment of maintenance in accordance with the interim order passed.

120. iii) *The Punjab & Haryana High Court in Mohinder Verma v Sapna*, discussed the issue of striking off the defence in the following words :

“8. Section 24 of the Act empowers the matrimonial court to award maintenance pendente lite and also litigation expenses to a needy and indigent spouse so that the proceedings can be conducted without any hardship on his or her part. The proceedings under this Section are summary in nature and confer a substantial right on the applicant during the pendency of the proceedings. Where this amount is not paid to the applicant, then the very object and purpose of this provision stands defeated. No doubt, the remedy of execution of a decree or order passed by the matrimonial court is available under Section 28A of the Act, but the same would not be a bar to striking off the defence of the spouse who violates the interim order of maintenance and litigation expenses passed by the said Court. *In other words, striking off the defence of the spouse not honouring the court's interim order is the instant relief to the needy one instead of waiting endlessly till its execution under Section 28A of the Act. Where the spouse who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to adopt time-consuming execution proceedings for realising the amount. The court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it, showing its helplessness in its instant implementation. It would, thus, be appropriate even in the absence of any specific provision to that effect in the Act, to strike off the defence of the erring spouse in exercise of its inherent power under Section 151 of the Code of Civil Procedure read with Section 21 of the Act rather than to leave the aggrieved party to seek its enforcement through execution as execution is a long and arduous procedure.* Needless to say, the remedy under Section 28A of the Act regarding execution of decree or interim order does not stand obliterated or extinguished by striking off the defence of the defaulting spouse. Thus, where the spouse who is directed to pay the maintenance and litigation expenses, the legal consequences for its non-payment are that the defence of the said spouse is liable to be struck off.”

8. Bare perusal of the above, it appears that the Hon'ble Apex Court has categorically held that if the husband fails to pay the maintenance in accordance with the orders passed by the courts, then his defence is liable to be struck off. It also observed that even if the

execution proceeding is going on in those circumstances, there is no bar to striking off the defence that violates the interim order of maintenance and litigation expenses passed by the said courts. In the case at hand, it appears that the respondent failed to comply with the interim orders passed by the learned Magistrate and the learned Sessions Court. Therefore, in view of the above mandate, the petitioner is entitled to seek a remedy of striking off the defence of the respondent.

9. The learned advocate for the petitioner further pointed out that the order dated 16-10-2025 of this court in the connected Criminal Writ Petition No. 40/2025, filed by the respondent, and submitted that the observations made in the said order itself indicate that the respondent was in arrears of maintenance. She further submitted that the respondent failed to deposit the arrears amount. Therefore, the said petition was dismissed by order dated 16-10-2025.

10. Thus, it appears that the respondent is in arrears of payment of maintenance to the petitioner. Therefore, in view of the mandate laid down in the Rajesh (supra), I am of the opinion that the petitioner is entitled to seek relief of striking off the defence of the respondent.

11. As a result, the petition is allowed. The impugned order dated 21-01-2025 was passed by the learned Additional Sessions Judge, Aurangabad, in Criminal Appeal No. 93/2024, and the order dated 23-03-2023 was passed below Exh. 67 in PWDVA No.55 of 2021 by the learned Judicial Magistrate First Class, Aurangabad, are hereby quashed and set aside. The application Exh. 67 in PWDVA No. 55/2021 is hereby allowed. The defence of the respondent is hereby struck off.

12. Inform the learned Magistrate accordingly.

13. Needless to clarify that the connected writ petition No.40/2025 filed by the respondent is already dismissed by this court vide order dated 16-10-2025.

[ABHAY J. MANTRI, J.]

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