



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

CRIMINAL WRIT PETITION NO. 1038 OF 2023

Durgesh Kautik Mandole

.. Petitioner

Versus

Dipali W/o Durgesh Mandole and others .. Respondents

Shri Surendra V. Suryawanshi, Advocate for the Petitioner.

Ms. Ashwini Lomte, Advocate for the Respondent Nos. 1 and 2 –
appointed.

Shri S. M. Ganachari, A.P.P. for the Respondent No. 3.

CORAM : SHAILESH P. BRAHME, J.

DATE : 02ND APRIL, 2025.

FINAL ORDER :

. Heard both sides finally. This petition is directed against orders dated 05.04.2023 and 30.06.2023 passed below Exhibit Nos. 6 and 9 respectively by Judicial Magistrate First Class Court No. 1 Dhule in Criminal M. A. No. 77 of 2023.

2. The petitioner has suffered order dated 14.12.2022 passed by the Judicial Magistrate First Class, Dhule in Cri. M. A. No. 701 of 2019 U/Sec. 12 of the Protection of Woman from Domestic Violence Act, 2005. He did not prefer appeal against that. The respondent No. 1 - wife filed application U/Sec. 125(3) of the Code of Criminal Procedure bearing Cri. M. A. No. 77 of 2023. On 23.01.2023, notice to other side was issued by the Executing Court, which was returnable on 03.03.2023. The petitioner did

not receive the notice and there was remark of await service on the returnable date, hence the matter was posted to 05.04.2023. On 05.04.2023 also the petitioner did not appear because he did not receive the notice. He was not aware of the notified date. Without ascertaining the fact as to whether petitioner is served with the notice or not, mechanically on 05.04.2023 order was passed by the learned Executing Court below Exhibit 06 issuing distress warrant. Thereafter on 30.06.2023 arrest warrant was issued below Exhibit 09.

3. The grievance of the petitioner is that both the orders are against the principles of natural justice. Without examining as to whether the petitioner was served with the notice or not, impugned orders were passed. Those orders are perverse because no reasons are assigned.

4. Learned counsel Ms. Lomate appearing for the respondent Nos. 1 and 2 submits that as the petitioner failed to pay arrears. She tenders on record application Exhibit 08, which was submitted on 04.05.2023. She also tenders on record affidavit in reply disclosing that the petitioner is defaulter.

5. The roznama of the proceeding, which is produced on record indicates that on 05.04.2023 the petitioner was not served and he was not aware of the notified date. No objective scrutiny was made by the Presiding Officer before passing impugned order below Exhibit 06. The order below Exhibit 06 is of two

words, which is against the provisions of law. The perversity is apparent on the face of record. Consequently, order passed below Exhibit 09 issuing arrest warrant is also of three words order and vulnerable. Both impugned orders are unsustainable. I am inclined to relegate the parties to the executing Court.

6. In the mean time, the petitioner deposited Rs. 2,00,000/- in this Court, which was even withdrawn by the respondent No. 1. Under these facts and circumstances, I find that present petition deserves to be allowed partly. I therefore, pass following order.

O R D E R

A. The criminal writ petition is allowed partly.

B. Impugned order dated 05.04.2023 below Exhibit 6 and order dated 30.06.2023 below Exhibit 09 passed by the Judicial Magistrate First Class Court No. 1, Dhule in Criminal M. A. No. 77 of 2023 are quashed and set aside.

C. The Presiding Officer dealing with Cri. M. A. No. 77 of 2023 shall reconsider application Exhibit 06 on its own merits after extending opportunity of hearing to the petitioner. All points are kept open.

D. The petitioner and the respondent No. 1 shall remain present before the Executing Court on 17.04.2025.

E. The petitioner shall continue to pay monthly maintenance to the respondents.

[SHAILESH P. BRAHME J.]

bsb/April 25