



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

19 CRIMINAL WRIT PETITION NO. 1296 OF 2023

Tejpal S/o Vilas Dongre,
Age: 28 years, Occu. Business,
R/o. Ganesh Nagar, Thoratwadi,
tq & Dist. Beed.

....PETITIONER

VERSUS

1. Komal W/o Tejpal Dongre,
Age: 28 years, Occu: Housewife.
2. Tejpurva D/o Tejpal Dongre,
Age: 6 years, Occu: Education,
U/G of her mother ie., Respondent No.1,
R/o. Near New Mandha, Bamanwadi,
Tq & Dist.-Beed.

....RESPONDENTS

....
Mr. Datta A. Madake, Advocate for the Petitioner
Mr. Gautam J. Pahilwan, Advocate for the Respondents
....

CORAM : Y. G. KHOBRADE, J.

DATE : 10.03.2025

ORAL JUDGMENT:-

1. In view of order dated 09.07.2024, the Mediator furnished mediation failure report. It is taken on record and marked as Exhibit "X" for identification.
2. Rule. Rule made returnable forthwith. With consent of both the sides heard finally at the stage of admission.

3. By the present Petition, the Petitioner takes exception to the order dated 12.08.2023 passed by the learned Sessions Judge, Beed below Exh.17 in Criminal Appeal No.33 of 2023, thereby issued warrant of arrest against the petitioner.

4. The Petitioner is the husband of Respondent No.1 and the Respondent No.2 is their minor child.

5. On face of record it appears that, the Respondents were instituted a proceeding under Section 12 of the Protection of Women from Domestic Violence Act alleging that on 22.07.2015, the marriage between the present Petitioner and the Respondent No.1 was solemnized as per the customs and rites prevailing in their society. Out of their matrimonial relations they blessed with one child i.e., Respondent No.2. The Respondent no. 1 alleged that her husband Petitioner raised domestic violence against her provided u/s 3 of the D.V. Act. On 13.03.2023, the learned Judicial Magistrate First Class passed the Judgment and directed the present Petitioner-husband to pay Rs.5,000/- to the Respondent No.1 and Rs.2,000/- to the Respondent No.2 towards maintenance from the date of filing of the Application i.e., 12.12.2017. It is further directed the petitioner to pay compensation of Rs.50,000/- and Rs.5,000/- towards the litigation cost to the Respondent no. 1 wife.

6. Being aggrieved by said Judgment, the Petitioner-husband filed Criminal Appeal No.33 of 2023 under Section 23 of the D.V. Act as well Exh.4 an application for stay to the effect and operation of the judgment and order dated 13.03.2023 passed in Misc. Criminal Application No.1523 of 2017. The Petitioner filed Exh.13 Pursis stating that, he is ready to deposit remaining amount of maintenance till 31.07.2023 and to deposit maintenance amount of Rs.5,000/- per month from the day of filing of pursis.

7. On 02.05.2023, the learned Appellate Court passed an order below Exh.4 which reads as under:

:ORDER:

1) In terms of pursis Exh.13 application Exh.04 is allowed as follows:

i) Appellant to clear outstanding amount on or before 31st July 2023.

ii) Appellant shall pay Rs.5,000/- per month to the respondent no.1 from 1st May, 2023 till disposal of the appeal.

2) Inform the learned trial court accordingly.

3) Application Exh.04 disposed off.

8. On 07.08.2023, the Respondents are filed Exh.17 application and prayed for issuance of warrant for outstanding amount of Rs.3,17,000/-. On 12.08.2023, the learned Appellate Sessions Court passed the order below Exh.17 and issued warrant of arrest against the

Petitioner, hence, this petition.

9. No doubt, on 06.09.2023, this Court issued notice to the Respondent-wife and granted stay in terms of prayer clause-E on conditions that, the Petitioner shown readiness to deposit amount of Rs.1,25,000/-within a period of two weeks. Accordingly, the Petitioner deposited amount of Rs.1,25,000/- before the Appellate Court in Criminal Appeal No.33 of 2023. The fact of deposit of said amount not denied by the Respondent.

10. Needless to say that, as per the Judgment dated 13.03.2023 passed by the learned Judicial Magistrate First Class in Misc. Cri. Application No.1523 of 2017, the petitioner is under obligation to pay total amount of Rs.7,000/- per month to the Respondent Nos. 1 & 2 from the date of application i.e. from 12.12.2017 till passing of this order i.e. for 86 months, which comes to Rs. 6,02,200/- (Rs. 7,000/- X 86 months). The petitioner-husband deposited Rs. 1,25,000/- towards arrears of maintenance before the learned Appellate Court.

11. Needless to say that, though the Petitioner has filed Cri. Appeal No.33 of 2023 challenging the Judgment dated 13.03.2023, however, as on today, said Judgment is neither modified nor stayed by the learned Appellate Court. Therefore, the Petitioner-husband is under

obligation to comply with the judgment passed by the learned Magistrate. The Petitioner-husband appears to be bodily able person, therefore, contention raised by the Petitioner that, he has no source of income cannot be considered.

12. Section 28 of the DV Act provides that all the proceedings under the DV Act shall cover under Code of Criminal Procedure. Sub-Section 2 of Section 28 of the DV Act provides that, the Judicial Magistrate shall apply own procedure for disposal of an application under Section 12 or under Sub-Section 2 of Section 23 of the Act. Section 128 of the Cr.P.C., provides for enforcement of order of maintenance.

13. Indeed, the Respondent-wife has already filed proceeding bearing Misc. Cri. Appln No.537 of 2023 under Section 128 of Cr.P.C., for execution of Judgment dated 13.03.2023 passed by the learned JMFC in DV proceeding.

14. In case-in-hand, on 02.05.2023, the learned Additional Sessions Judge, Beed passed the order holding that, the Appellant-husband has to clear outstanding amount on or before 31.07.2023 and shall pay Rs.5,000/- per month to the Respondent No.1 from 01.05.2023 till disposal of the Appeal.

15. It is a matter of record that, on 07.08.2023, the Respondent-wife filed Exh.17 and prayed for issuance of warrant for recovery of arrears of maintenance of Rs.3,17,000/- against the Petitioner-husband. However, the learned counsel appearing for the Respondent fails to point out under what provisions of Cr.PC., the application for issuance of arrest warrant against the petitioner is maintainable. On 12.08.2023, the learned Additional Sessions Judge passed the impugned order below Exh.17 in Cri. Appeal No.33 of 2023 and issued warrant of arrest against the petitioner without recording any reason but only passed the order and issued Warrant of Arrest. Therefore, impugned order is illegal, bad in law, hence, needs to be quashed and set aside.

16. Needless to say that, the Appellate Court under Section 29 of the D.V. Act is not the executing Court. Since, the learned Appellate Court has passed the conditional order on 02.05.2023. Therefore, it is necessary on part of the Respondent-wife to file appropriate application in the proceeding initiated under Section 128 of the Cr.PC.. Since, the learned Sessions Court is not empowered to execute the Judgment and order passed under Sec. 12 of the D. V. Act, therefore, to my mind, impugned order of issuance of arrest warrant against the petitioner is not sustainable in eyes of law, hence, it is liable to be quashed and set

aside. Accordingly, the impugned order dated 12.08.2023 of issuance of arrest warrant as against the petitioner is quashed and set aside. Accordingly, rule is discharged. No order as to costs.

[Y. G. KHOBRAGADE, J.]

HRJadhav