

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 1036/2024

(Sunil Dikondwar Vs. Meena Sunil Dikondwar & anr.)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. S. V. Bhutada, Advocate for petitioner.
 Mr. J. Topale, Advocate for respondents.

CORAM: M. M. NERLIKAR, J.

DATED : 26/11/2025.

Heard the learned counsel for the petitioner and respondent.

2. The order dated 16.12.2024 passed by the learned Judicial Magistrate First Class, Court No.1, Pulgaon in Other Miscellaneous Case (OMC) No. 15/2020 below Exh. 22, wherein the learned Magistrate has issued arrest warrant against the petitioner for recovery of Rs.2,19,000/- which amount is outstanding towards arrears of maintenance.

3. The Miscellaneous criminal application was filed under Section 125(3) of the Code of Criminal Procedure ("Code") by the wife for recovery of maintenance of Rs.2,41,650/- against the petitioner-husband. Thereafter, in that, application at Exh.22 was filed by wife for issuance of non-bailable warrant against the husband for recovery of Rs.2,19,000/-. Accordingly, the impugned order of issuance of arrest warrant for recovery of Rs.2,19,000/- was passed by the learned Magistrate.

4. I have heard learned counsel for petitioner as well as the learned counsel for respondent. The learned counsel for respondent submits that the original application under Section 125 of the Code was filed by wife for maintenance of herself and the child. The said proceedings was finalized and the learned Judicial Magistrate First Class in Miscellaneous Criminal Case No.58/2009 was pleased to grant Rs.5000/- for wife and Rs.4000/- for child on 31.10.2014. Against that order, husband has filed Criminal Revision Application 3/2015 wherein the revision was partly allowed and maintenance granted to the wife was set aside, however the maintenance granted to the child was maintained. Against this, wife approached this Court by filing Criminal Application No.864/2016, wherein this Court 'Admitted' the criminal application.

5. This Court by an interim arrangement directed with the consent of both the parties that the husband would pay Rs.14,000/- per month which is to be deducted from the salary of the husband. He submits that when this interim arrangement was made, the wife ought not to have filed application under Section 125(3) of the Code for recovery of maintenance amount, when the fact remains that the entire amount as per the order of this Court was already deducted and no arrears is pending as per this interim arrangement. He submits that filing of Exh.22 for issuance of non-bailable warrant is against the principle of law and submits that when the main application touching the subject is pending before this Court, the wife ought

not to have filed the application under Section 125(3) of the Code as well as the application at Exh.22. He further submits that by passing the impugned order, the Trial Court has committed gross error and conveniently ignored the fact, that the husband has filed the reply to Exh. 22 disclosing all these facts and also placed on record the order passed by this Court before the learned Judicial Magistrate. However, without going into the said fact, the non-bailable warrant was issued against the petitioner and therefore prayed to allow the petition.

6. On the other hand, the learned counsel for the respondent submits that petitioner is in huge arrears of Rs.2,19,000/-, therefore, the wife was constrained to file application under Section 125(3) of the Code for recovery of the arrears of amount. He submits that when the petitioner failed to pay the arrears, therefore the wife has constrained to file Exh.22 for issuance of non-bailable warrant, therefore he supports the impugned order.

7. After hearing both the parties, it appears that application under Section 125 of the Code was allowed on 31.10.2014 and the Judicial Magistrate First Class was pleased to grant Rs. 5,000/- to the wife and 4,000/- to the son. It further appears that the said order was challenged by the husband by filing criminal revision application No. 3/2015, which was partly allowed by setting aside the order of maintenance against the wife, however, it was maintained against the child. Aggrieved by the said order, wife approached this Court by filing Criminal Application No. 864/2016, wherein this Court was pleased to 'Admit'

the said application and passed the following order:-

“Both the learned counsel agree that from the salary of the present non applicant Rs.12,000/- is attached and that the applicant is getting the said amount by way of maintenance to the son and by way of arrears.

In view of the above, it is my considered view that in addition to Rs.12,000/-, which the applicant is getting directly from the salary of the present non applicant, the applicant is entitled to Rs.2,000/- per month more from the non applicant. The learned counsel for the non applicant-husband submits that necessary directions be issued to his employer i.e. Forest Department, State of Maharashtra to deduct Rs.2,000/-in addition to the deduction of Rs.12,000/- per month during the pendency of the present application. Hence, the applicant will be entitled to Rs.14,000/- per month directly from the employer of the present non applicant for which non applicant no.1 has no objection.”

8. After perusal of the order, it appears that this Court as an interim arrangement has directed with the consent of the parties to deduct Rs.14,000/- from the salary of the petitioner. Accordingly, it further appears from the record that till February 2023, the amount of

Rs.14,000/- per month was deducted from the salary, however in the month of March, 2023, Rs.13,150/- was deducted. It appears that in the month of March, 2023, the petitioner retired, therefore, after April 2023 till February 2024 lesser amount was paid i.e. Rs. 9,000/- per month. It appears that Rs. 41,000/- was paid by cheque and even from April 2023 to February 2024, Rs.9,000/- was paid by cheque. A statement is made by the learned counsel appearing for petitioner that every month he has paid Rs.9,000/- till today.

9. Considering the above factual background, the wife ought not to have filed the application under Section 125(3) of the Code, when this Court has made an interim arrangement, then such an application is in-fact is misconceived for the reason that it is for the petitioner or the respondent to get the application filed before this Court i.e. Criminal Application No. 864/2016 finally decided. Without doing that, the wife has approached the Magistrate by filing application under Section 125(3) of the Code.

10. From the record, it appears that there are no arrears, therefore there is no question of filing of application under Section 125(3) of the Code. However, the learned Magistrate not only entertained the said application, but also passed the order at Exh.22 by directing recovery of Rs.2,19,000/- by issuing non-bailable warrant against the husband. In-fact, the husband has filed the reply giving all the details including the order

passed by this Court which was placed on record. However, the Trial Court has conveniently ignored the entire fact. When this Court has made an interim arrangement of payment of Rs.14,000/- per month with the consent of the parties, then no application should have been entertained by the Court, unless the Criminal Application No. 864/2016 is decided finally.

11. In view of above, the order dated 16.12.2024 passed by the learned Judicial Magistrate First Class, Court No.1, Pulgaon in Other Miscellaneous Case (OMC) No. 15/2020 below Exh. 22 does not sustain in law and is hereby quashed and set aside on the condition that since April 2023 till today, the petitioner has paid Rs.9,000/-. However, the High Court in its order has observed that Rs.14,000/- should be deducted from the salary account, meaning thereby, husband is required to pay Rs.14,000/- as an interim arrangement, therefore, the petitioner has paid Rs.5,000/- less since April 2023.

12. The learned counsel for petitioner submits that he is ready to pay Rs.5000/- which is pending as arrears from April 2023 till today and he will deposit the same with the Trial Court.

13. Further, it was pointed out by the learned counsel for the petitioner that Rs. 50,000/- was deposited in this proceedings as per the direction of this Court. After roughly calculating the amount of difference, the petitioner is having arrears of Rs.1,85,000/-, however, as directed by this Court while issuing notice, the petitioner has deposited

Rs.50,000/-, if from Rs.1,85,000/-, Rs.50,000/- is deducted, remaining amount is of Rs.1,35,000/-. The petitioner makes a statement that he will deposit Rs.1,35,000/- before this Court within a period of four weeks.

14. The respondent-wife is at liberty to withdraw the amount of Rs.,135,000/- to be deposited by the petitioner within four weeks, so also, Rs.50,000/- which was already deposited by the petitioner in this Court.

15. The petition stands disposed of in above terms.

(M. M. NERLIKAR, J.)