



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

CRIMINAL WRIT PETITION NO. 514 OF 2025

Rajkumar S/o Shankarrao Dhande,
Aged about 38 Years, Occ. Private,
R/o 83, Sanjay Nagar, In front of
Hasanbag Police Chowki, Near
Hanuman Mandir, Nandanwan
Nagpur-440024.

PETITIONER

Versus

1. State of Maharashtra,
Through Sr. Police Inspector,
Nandanwan Police Station, Nagpur.

2. Vaishali Rajkumar Dhande,
Age 34 Years, Occ. Pvt. Job,
C/o. Keshavrao Hatwar
K.D.K. College Road, Beside Shiv
Mandir, Gali No.-13, Nandanwan,
Nagpur-400024.

RESPONDENTS

Mr. S.T. Chavhan, Advocate for the Petitioner.
Mr. A.J. Gohokar, APP for the Respondent No.1/State.
Mr. A.C. Khadse, Advocate for the Respondent No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 31st JULY, 2025.

ORAL JUDGMENT :-

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by the consent of learned Counsel appearing for the respective parties.

3. By this Writ Petition, the Petitioner has challenged the order passed by the Principal Judge, Family Court, Nagpur directing the present Petitioner to suffer simple imprisonment for the period of one week for each month default, and since there is default of 45 months maintenance, he is sentenced to suffer simple imprisonment for the period of 45 weeks. It is further clarified that the Respondent if pays the entire or part maintenance amount, his sentence shall be reduced accordingly.

4. The facts of the case appears to be that, the present Petitioner and Respondent No.2 are the husband and wife. The Petitioner filed divorce Petition No. A-1163/2019 under Section 13(1)(i) of the Hindu Marriage Act, 1955 on the ground of cruelty before the Family Court, Nagpur, whereas the Respondent No.2/wife filed Petition No. A-1221/2019 under Section 9 of the Hindu Marriage Act for restitution of conjugal

rights. She has also filed Petition No. E-508/2019 under Section 125 of the Code of Criminal Procedure, 1973, seeking maintenance. The divorce Petition and Restitution Petition were dismissed holding that both the parties do not wish to cohabit. In Petition No.E-508/2019 the permanent maintenance was granted at the rate of Rs. 6,000/- per month to the Respondent/wife replacing the interim maintenance of Rs. 5,000/- per month. Therefore, the recovery Petition No. 169/2024 was filed for arrears of Rs.3,47,000/- by the Respondent before the Family Court, Nagpur and the notice was served to the Petitioner, as the Petitioner has not deposited the amount, and therefore, he was arrested by the Police by executing the arrest warrant and produce before the Family Court, Nagpur. As per the contention of the Petitioner, despite the depositing the amount of Rs. 12,000/- on the same day, the Family Court without affording a hearing sentenced the Petitioner to 45 weeks simple imprisonment through a single order.

5. Heard learned Counsel for the Petitioner, who submitted that the marriage was solemnized on 05.03.2018 and due to difference opinion they started residing separately,

thereafter various Petitions were filed between them and the permanent alimony was granted to the present Respondent No.2 at the rate of Rs.6,000/- per month under Section 125 of Cr.PC.. He further submitted that an execution application covering 47 months of alleged arrears was filed in 2024, which is not permissible.

6. He invited my attention to the provisions of Section 125 Sub section (3) of Cr.PC, which reads as under:

“125(3) “If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.”

7. Learned Counsel for the Petitioner submitted that thus in view of the first proviso warrant cannot be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due. Thus, he submitted that, the consolidated application for 45 months is not permissible, and therefore, the order passed by the Family Court is illegal and liable to be quashed and set aside.

8. In support of his contention he placed reliance on the decision of the Hon'ble Apex Court in the case of ***Shantha @ Ushadevi & Anr. Vs. B.G. Shivananjappa decided on 06.05.2025, reported in AIR 2005 SC 2410***, wherein the Hon'ble Apex Court has observed as under:

"To appreciate the question whether the bar of limitation under the proviso to Section 125(3) is attracted in the light of the facts of the present case, a reference to the said provision is necessary:

"If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such (allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,) remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:”

9. He further placed reliance upon the decision of ***Shahada Khatoon And Ors. Vs. Amjad Ali And Ors. decided on 07.04.1999, reported in 2000(1) ALD(CRI) 305***, wherein it is held that by no stretch of imagination the Magistrate can be permitted to impose sentence for more than one month. In that view of the matter the High Court was fully justified in passing the impugned order and we see no infirmity in the said order to be interfered with by this Court. The appeal accordingly fails and is dismissed.

10. Admittedly, in the present Petition the Respondent No.2/wife has filed the application for recovery of the maintenance amount for the period of 45 months, which is a consolidated application, which is not permissible under Section 125(3) of Cr.P.C. The language of Sub-section (3) of Section 125 of Cr.P.C is quite clear and it circumscribes the power of the Magistrate to impose imprisonment for a term which may extend to one month or until the payment, if sooner made. This power of the Magistrate cannot be enlarged and therefore the

only remedy would be after expiry of one month, for breach of non-compliance of the order of the Magistrate, the wife can approach against to the Magistrate for similar relief.

11. In view of the above observations by the Hon'ble Apex Court, in the present Petition also the learned Family Judge has not considered the provisions under Section 125(3) of Cr.PC and the proviso thereunder and convicted the present Petitioner for more than one month. In view of this provision, the Respondent No.2/wife is at liberty to file another application for each default and the said application cannot be filed for more than a period of 12 months.

12. In view of that, the Writ Petition is **allowed**.

13. The order passed by the Principal Judge Family Court, Nagpur sentencing the present Petitioner to suffer simple imprisonment for a period of one week for each month default, and since there is default of 45 months maintenance, he is sentenced to suffer simple imprisonment for the period of 45 weeks, is hereby quashed and set aside. The Respondent No.2/wife is at liberty to file a separate applications for 11 months.

14. Rule is made absolute in the above terms. No costs.
15. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte