

M.C.C. No.134/2019.

Sau. Shahala -Vs- Mohd. Shakil

CNR No. MHAK070006882019.

Order below Exh.18

(Passed on 30<sup>th</sup> June, 2020)

1. Perused the application, say filed on the overleaf of the application and record of the case.

2. Heard.

3. Learned advocate for the applicant argued that interim maintenance is granted to the applicant. N.A. no.1 is in arrears of Rs.30,000/- (Rs. Thirty Thousand Only) as interim maintenance payable by him from 03/07/2019 to 03/01/2020. Thus, he prayed for issuance of arrest warrant against N.A. no.1 for recovery of the amount.

4. Learned advocate for the N.A. no.1 strongly opposed the application and argued that N.A. no.1 is visiting and providing maintenance to applicant. N.A. no.1 has preferred an appeal against the order of grant of interim maintenance. Order of maintenance is not enforceable under the Domestic Violence Act. Procedure of the Cr.P.C. is required to be followed. No warrant can be issued against N.A.no.1.

5. It is a matter of record that N.A. no.1 is directed to pay Rs. 5,000/- (Rs. Five Thousand Only) p.m. from the date of the application i.e. 03/07/2019. N.A. no.1 has not paid any amount to applicant. Therefore, it is clear that, N.A. no.1 is not following the directions of this Court. This Court needs to look after towards the financial problems of applicant as she has not been getting any interim maintenance amount. N.A. no.1 has not obtained any stay from Hon'ble Appellate Court till this date. There is nothing available on record to show the same.

7. Learned advocate for the N.A. no.1 in support of his contentions has relied on authority viz. Manoj Anand vrs. State of U.P. & Anr., II (2012) DMC 740, wherein it has been observed by Hon'ble Allahabad High Court that power under Section 31 of Act not available to Magistrate to implement order of maintenance passed under Section 23.

8. However, with due respect to the authority, it is necessary to mention that facts and circumstances mentioned therein are different from the present case. Therefore, the said authority is not helpful for the N.A. no.1. It is well settled that while enforcing the order of interim maintenance under Section 23 of the Act, the procedure laid down in the Cr.P.C. is to be followed. Thus, there appears no bar if distress warrant is issued instead of directly issuing arrest

warrant against N.A. no.1. Hence, I hereby pass the following order.

**Order**

1] Issue distress warrant against N.A. no.1 for recovery of interim maintenance amount of Rs. 30,000/- (Rs. Thirty Thousand Only) subject to P.F.

Balapur

Date 30/06/2020

(N.P. Talnikar)

Judicial Magistrate (F.C.)

Balapur.

## Certificate

I affirm that the contents of this P.D.F. file are same word for word as per original order.

Name of Steno : S.M.Rothe.

Court Name : Jt. C.J.J.D. & J.M.F.C., Balapur.

Date : 30/06/2020.

Signed by Presiding

Officer on : 30/06/2020.

Uploaded on : 30/06/2020.

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