


MHKO150003212022 	<u>ORDER PASSED BELOW EXH. 1 and 12 in</u> <u>Cri.M.A. No. 60/2022</u> (Lilatai Chothe vs. Vinayak Chothe)
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The present proceeding is filed for recovery of maintenance amount. The applicant has produced affidavit and extract of Khate No. 339 with 7/12 extract of Gat No. 304 which shows that, the Gat No. 304 which is in the name of non-applicant Vinayak Bhairu Chothe situated at Village Gajargaon, Tal. Ajara, Dist. Kolhapur is immovable property of non applicant. According to applicant, the non applicant has failed to obey maintenance order of this court which is passed in Cri.M.A. No. 110/2016. Therefore, applicant prayed recovery of maintenance amount.

2. The non-applicant failed to file his say.

3. On perusing the record it appears that, this court has passed order in Cri. M. A. No. 110/2016. This court has granted monthly maintenance of Rs. 4,000/- per month to applicant from the date of that application against the non applicant. The non-applicant has not paid maintenance amount. Therefore, the applicant has prayed recovery of maintenance amount from 01.09.2021 to 31.07.2022 that is 11 months maintenance amount. On calculating 11 month, the maintenance amount is Rs. 44,000/-. The total unpaid amount is Rs. 44,000/-. The non applicant has not paid amount of Rs. 44,000/- till today. The applicant has filed her affidavit in support of her contention.

4. The **Honorable Bombay high court (NAGPUR BENCH)** in **Criminal Writ Petition No-305/ 2014 Mr. Sachin s/o Suresh Bodhale Vs Sau. Sushma w/o Sachin Bodhale** held as under;

“6. In my considered opinion, the procedure laid down under Section 125(3) of the Code of Criminal Procedure for getting compliance of the orders passed by the Magistrate under Section 125(1) of the Code will have to be followed for executing the orders passed by the Magistrate under Section 20 (Monetary Reliefs) of the Protection of Women from Domestic Violence Act, 2005. The reliefs available under Section 125(1) (a) of the Code of Criminal Procedure are analogous to the reliefs available under Section 20 of the Protection of Women from Domestic Violence Act, 2005. The procedure for getting compliance of the order passed under Section 125(1) of the Code of Criminal Procedure is available under Section 125(3) of the Code of Criminal Procedure, which runs 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. *The procedure for levying of fines is available under Section 421 of the Code of Criminal Procedure as under :-*

"421. Warrant for levy of fine - When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may –

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter:"

8. *Thus there is absolutely clear provision under the Code of Criminal Procedure, which lays down as to how the amount of maintenance, final or interim, is to be recovered. The Magistrate, in my opinion, could not have issued non-bailable warrant directly. He should have followed the procedure laid down in sub-section (3) of Section 125 and Section 421 of the Code of Criminal Procedure. In the scheme of Code of Criminal Procedure, in the first place, the Magistrate was under obligation to issue a warrant for levy of the amount by attachment and sale of any movable property. The other remedy available was to issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter. The Magistrate could have sentenced the petitioner 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 might extend to one month or until payment if sooner made.

9. *As such the first option available to the Magistrate was to issue a warrant for levying fine. If whole of the amount was recovered by adopting the procedure under Section 421 of the Code of Criminal Procedure, the question of putting the defaulter in prison did not arise. In case amount was not recovered or part of it was recovered and part of it was not recovered, then the question would have arisen as to how much sentence should be imposed on the defaulter as per the provision laid down in the Code of Criminal Procedure. The stage of issuing warrant comes only after sentencing and not before that.”*

5. The non applicant is not paid maintenance amount or no any record available which is shows that he has paid maintenance amount. Other hand, applicant is stated that, non applicant has not paid maintenance amount and she filed her affidavit.

6. On perusing record it appears that, the immovable property is available of non applicant. The applicant has produced affidavit and Khate No. 339 with 7/12 extract of Gat No. 304 which shows that, the Gat No. 304 which is in the name of non-applicant Vinayak Bhairu Chothe situated at Village Gajargaon, Tal. Ajara, Dist. Kolhapur. Therefore, in my view it is necessary to issue warrant to the Collector of the District Kolhapur, State Maharashtra, authorizing him to realize the maintenance amount that is Rs. 44,000/- as arrears of land revenue from the immovable property of the non applicant. Hence, I pass following order,

: O R D E R :

1. Issue warrant u/section 421 of Criminal Procedure Code to the Collector of the District Kolhapur authorizing him to realize the maintenance amount which is granted to applicant in Cri.M.A. No. 110/2016 of amount that is Rs. 44,000/- (Rs. Fourty Four Thousand only) as arrears of land revenue by attaching and by selling of Gat No. 304 which is in the name of non-applicant Vinayak Bhairu Chothe situated at Village Gajargaon, Tal. Ajara, Dist. Kolhapur.
2. The immovable property of non-applicant is in the name of Vinayak Bhairu Chothe that is Gat No. 304. The non-applicant is owner of property mentioned in 7/12 extract Gat No. 304. Therefore, the collector of District Kolhapur is directed to proceed against property of Gat No. 304 which is in the name of non-applicant Vinayak Bhairu Chothe situated at Village Gajargaon, Tal. Ajara, Dist. Kolhapur.
3. The applicant is directed to supply copy of order passed in Cri.M.A. No. 110/2016 and copy of 7/12 extract of Gat No. 304 for compliance.
4. The warrant be issued accordingly along with copy of this order and 7/12 extract of Gat No. 304.
5. Concern clerk comply accordingly.

Date: 22/08/2023.

(S.P. Jadhav)
Judicial Magistrate F. C. Ajara.