

ORDER BELOW EXH.15 IN Cri.M.A.No.170/2021.

(CNR No.MHNS160012542021)

01. This is an application moved on behalf of applicant for issuance of arrest warrant against non-applicant through concerned Dy.S.P. It is contended that, this proceeding has been filed for recovery of maintenance amount and the outstanding recovery amount is Rs.47,000/-. Non-applicant has not paid ordered amount on each and every date of the case. Non-applicant is misleading the court by filing multiple applications. Non-applicant has paid only Rs.5000/- during the course of proceeding. The warrant issued against non-applicant can not be executed. Applicant and her daughter are facing the problem of starvation. Hence, prayed to allow the application.

02. Per contra, this application is strongly resisted and replied that, present application is not maintainable in the eyes of law. Applicant has failed to comply D/W warrant. Present application is not in view of provisions of Section 127 of Cr.P.C. and finally prayed to reject the application.

03. At the outset, before moving to the factual matrix, it is imperative to consider the settled law in respect of issue involved in the application. The applicant has relied on the case law namely **Sagar Sudhakar Shendge Vs. Naina Sagar Shendge** and others, decided on 04.04.2013 in W.P.No.236/2013 and non-applicant has relied on case law namely **Sachin Suresh Bodhale Vs. Sushma Sachin Bodhale**, decided on 06.05.2014 in W.P.No.305/2014. The settled law emerged from the above authorities can be summarised that, in such kind of the cases Magistrate should follow the procedure laid down in Sub Section 3 of Section 125 and Section 421 of Code of Criminal Procedure. In the scheme of Code of Criminal Procedure, in the first place, the Magistrate is under obligation to

issue warrant for levy of amount by attachment and sale of the movable property. The other remedy available is to issue warrant to Collector authorising him to realize the amount as a arrears of the land revenue from the movable or immovable property of the defaulter. If whole of the amount is recovered by adopting the procedure under Section 421 of Code of Criminal Procedure, the question of putting the defaulter in prison does not arise. Where husband breached the order of maintenance passed under the provisions of Protection of Women from Domestic Violence Act, in view of Section 28 of said Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 & 23 and offences under Section 31 shall be governed by the provisions of Code of Criminal Procedure and therefore in view of Section 125 of Cr.P.C., upon failure to pay maintenance and committing the breach of the order of maintenance, Magistrate will be entitled to issue warrant and that warrant would be for levy the amount as a fine. In view of Sub Clause (a) Section 421 of Cr.P.C., the Magistrate can issue the warrant for levy of the amount by attachment and sale of the movable property belonging to defaulter or issue warrant to Collector as stated above. For such warrant, Form No.19 of the Cr.P.C. would be applicable. If even after such warrant is issued for attachment and sale and accordingly property is attached and sold but yet the maintenance amount remains unpaid, the Magistrate under the later part of the Section 125(3) would sentence the husband for such amount up to for one month. It means after execution of warrant for levying an amount of maintenance due as levying a fine is executed, Magistrate may sentence husband. Form No.18 under Cr.P.C. which requires to show order directing imprisonment can not be made applicable before Form No.19 which requires attachment and sale of his movable property.

04. In the light of above observation and settled law, I move

towards factual matrix in the present matter. This matter came to be filed under Section 125(3) of Cr.P.C., in view of execution of interim maintenance order passed in Cri.M.A.No.47/2020 on 15.09.2021. In view of Section 125 this application came to be filed well within limitation as prescribed. Since, this proceeding being filed under Section 125(3) of Cr.P.C., this Court can not directly issue non-bailable warrant. But, in view of above settled law, present record shows that, distress warrant has been issued previously in view of Section 421 of Cr.P.C. Yet the procedure contemplated for distress warrant not being completed, therefore, in view of above settled law, unless and until such warrant is issued for attachment and sale of the property of defaulter, no warrant of arrest can be issued for imprisonment for unpaid amount of maintenance. Having regard to prayer in this application, applicant has prayed for arrest of non-applicant. Hence, for want of fact discussed above, this application in view of above settled law deserves to be rejected. Resultantly, I pass following order :

ORDER

1. Application is hereby rejected.
2. Applicant to adopt procedure contemplated under Section 421 of Code of Criminal Procedure before proceeding towards steps for arrest of non-applicant.

Date: 03.12.2022.
Place: Chandwad.

(Sunil B. Mane)
Judicial Magistrate F.C.,
Chandwad.