

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 1575 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the Civil Judge?

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PANKAJBHAI GURJIBHAI CHAUDHARI - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR MP SHAH for Applicant(s) : 1, MS. KRUTI M SHAH for Applicant(s) : 1,
 MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
 None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/08/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India the petitioner has prayed

for an appropriate order quashing and setting aside order dated 13.04.2007 passed by the learned J.M.F.C., Valod in Maintenance Recovery Application No. 2 of 2007 and the order dated 03.08.2007 passed by the learned Additional District and Sessions Judge, Vyara, District - Surat in Criminal Revision Application No. 9 of 2007.

2. Respondent Nos. 2 and 3 had preferred Maintenance Recovery Application No. 2 of 2007 before the learned J.M.F.C., Valod under Section 125(3) of the Criminal Procedure Code. It was stated in the said application that the petitioner had paid Rs.400/- + Rs.300/- from 10.04.2002. However, he had not complied with the final order, therefore, they had demanded Rs.1,02,400/-, and in case of default, it was prayed to send the petitioner to jail. It appears that learned J.M.F.C., Valod, allowed the said application and directed to issue warrant in Form No. 19, Schedule - II of the Criminal Procedure Code for recovery of the dues against the petitioner by 13.04.2007. Being aggrieved and dissatisfied with the order passed by the learned J.M.F.C., Valod dated 13.04.2007 in issuing warrant against the petitioner,

the petitioner preferred Criminal Revision Application No. 9 of 2007 in the Court of learned Additional District & Sessions Judge, Vyara, District-Surat. The learned Additional District & Sessions Judge, Vyara by order dated 03.08.2007 dismissed the said Revision Application. Being aggrieved and dissatisfied with both the aforesaid orders, the petitioner preferred present application under Article 227 of the Constitution of India for the aforesaid reliefs.

3. Ms.Shah, learned Advocate appearing on behalf of the applicant has submitted that both the Courts' below have materially erred in issuing warrant against the petitioner.

4. At the outset, it is required to be noted that the order of maintenance against the petitioner and in favour of respondent Nos. 2 and 3 has been confirmed by this Court *vide* order dated 21.03.2006 passed in Criminal Misc.Application No. 857 of 2004 and the petitioner is directed to pay maintenance of Rs.1200/- per month only, which is also not paid by the petitioner - husband.

5. Under the circumstances, when on non-payment application was submitted for recovery, impugned orders are passed; and that warrant is issued, it cannot be said that the learned trial Court has committed any error and consequently any error has been committed by the Revisional Court in confirming the said order. This petition is filed under Article 227 of the Constitution of India. No jurisdictional error much less than law has been pointed out and/or is shown to have been committed by both the Courts' below. Under the circumstances no case is made out to exercise powers under Article 227 of the Constitution of India. Hence, this petition is required to be dismissed and accordingly it is dismissed.

[M.R.Shah, J.]

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