

Form No.HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT**

WP No. 69574 of 2020

Jabran Mustafa

vs

Judge Family Court etc.

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
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01.01.2021	Mirza Kazim Ali Baig, Advocate for petitioner. Mr. Adeel Ahmad Kamran, Assistant Attorney General and Sardar Qasim Hassan Khan, AAG. M/s. Nasrullah Khan Babar, Ch. Muhammad Shahid Iqbal, Ch. Muhammad Naseer and Faisal Anwar Minhas, Advocates. (Amici curiae).
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Through this constitutional petition, the petitioner, who is the brother and was attorney of the judgment debtor (Ghulam Murtaza) in the family suit filed by respondent Nos. 2 to 5/decree holders, has called in question orders dated 21.10.2020 and 09.12.2020 respectively, whereby due to non-service of warrants of arrest of the judgment debtor, at the request of the decree holders/respondents, warrants of arrest of the present petitioner in execution proceedings of decree passed by the Judge Family Court have been issued and the application of the petitioner for cancellation of warrants of arrest against him has been dismissed and he has been summoned through non-bailable warrants to appear in said court on 04.01.2021.

2. It is contended by the learned counsel for the petitioner that as the petitioner was neither a judgment debtor nor stood as surety or guarantor for him, therefore,

issuance of warrants of his arrest, initiating recovery proceedings against him were not justified.

3. It is observed that it is not a case wherein warrants of arrest have been simplicitor issued against the petitioner for this Court to treat the same as an interlocutory order to look into its legality rather in the present case vide impugned order dated 09.12.2020 the learned executing court while dismissing the petitioner's application for cancellation of warrants of arrest, issued against him, has refused to recall its earlier order dated 21.10.2020 by application of its mind to the facts of the matter pending before it and placing reliance on judgment of the Supreme Court reported as **Muhammad Pervez vs. Mst. Nabila Yasmeen and 2 others** (2004 SCMR 1352), which in the opinion of this Court is a "decision given" on the afore referred application/objection petition of the petitioner against execution of decree, hence, amounts to a final decision, therefore, the said order is appealable before the appellate court in terms of Section 14 of the Family Courts Act, 1964. Reliance in this behalf may also be placed on the judgment reported as **Rahim Bukhsh vs. Mst. Shehzadi and others** (2018 CLC 1789), wherein it has been held that dismissal of an objection petition is an appealable order.

4. As regards the question whether the facts of the petitioner's case are distinguishable from the facts in the afore referred reported case (2004 SCMR 1352) is concerned, the same can be taken into consideration by the appellate court, in case any appeal is filed before it.

5. For what has been discussed above, in view of availability of alternate remedy, this petition is *dismissed* as premature and not maintainable. However, the

petitioner, if advised, is at liberty to approach the appropriate forum for redress of his grievance.

(MUZAMIL AKHTAR SHABIR)
JUDGE

*Naveed**

Approved for reporting:

WP No. 69574 of 2020
Dated 01.01.2021.