

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.195 OF 2014

Chandresh Padmakar Joshi .. Applicant

Versus

Sau Anuja Chandresh Joshi
and another .. Respondents

Mr.A.D.Kasliwal, Advocate for the applicant.

Mr.R.G.Joshi, Advocate for respondent Nos. 1 & 2.

CORAM : SMT.SADHANA S. JADHAV,J.

DATED : 07.04.2015

PER COURT :-

1. Heard respected counsel. The applicant herein is the respondent in Misc. Application No.144 of 2013 pending before the Family Court at Aurangabad. The respondent herein has filed an application under Section 125 of Criminal Procedure Code, seeking maintenance from present applicant for herself and for her child. During pendency of the said application the respondent herein had also filed an application seeking interim maintenance during pendency of the main proceedings. The interim application is at Exh.4/1. The learned Family Court after

considering the rival submissions has passed an order on 01.08.2014 granting interim maintenance in favour of the respondent. The Family Court has been pleased to grant interim maintenance of Rs.2,000/- in favour of the respondent-wife and Rs.5,000/- towards interim maintenance of his son. The amount of maintenance was to be paid from 08.07.2013. The applicant herein is challenging the said order.

2. The learned counsel for the applicant submits that the respondent has stated in her main application that on 20.12.2008 the applicant herein had driven her out of the house after assaulting her and since then has refused to maintain her. At the time, when she was driven out the house, she was carrying pregnancy. At matured stage on 28.08.2009 she had given birth to a baby boy. She had informed the petitioner that she has given birth to his son. However, he had refused to visit the mother and child. Since then she has been staying with her parents. According to the learned counsel for the applicant the respondent has not stated in the application as to how she maintained herself and her son since 2009. According to the learned counsel for the applicant the main proceedings were pending and there was no sufficient reason for filing the interim application and deciding the same during the pendency of the main

application. The learned counsel further submits that the applicant is drawing a salary of Rs.20,000/- per month. That he has to pay EMI towards his home loan. He has to maintain his parents and therefore an amount of Rs. 7,000/- would be exorbitant.

3. As against this, learned counsel for the respondent submits that the respondent herein has specifically stated that she and her son were neglected by the present applicant. The learned counsel for the respondent has drawn attention of this Court to written say filed by the petitioner, wherein he had gone to the extent of even denying paternity of the child. The learned counsel for the applicant submits that it is misconstrued by the respondent that he has denied the paternity. All that is stated is he had no knowledge of birth of his son. In any case this would amount to neglecting the wife and child. The petitioner was fully aware that when she was driven out of the house she was carrying pregnancy at a matured stage and it was incumbent upon him to enquire about her health and welfare of the child.

4. It would not befit a father even to raise a contention that the respondent has not stated as to how she maintained herself from 2009 to 2014. All these are

disputed facts. The main petition is pending. The respondent and her son would be entitled to 1/4th of the income of the petitioner. In view of this, this court is inclined to modify the order passed by the Family Court dated 1st August, 2014. The order stands modified as follows:

5. The learned counsel for the applicant submits that the child is hardly five years old and that an amount of Rs.5000/- would be exorbitant for the maintenance of the minor child. It is further made clear that the present arrangement is made only during the pendency of the main application and the learned Family Court shall decide the application on its own merits without being influenced either by the observations or by the order passed by this Court. The Revision application is partly allowed and stand disposed of.

ORDER

1. Revision application is partly allowed.

2. The order passed by the Family Court below Exh. 4/1 in petition E-144/2013 is modified as follows.

3. During pendency of the main petition filed under Section 125 of Criminal Procedure Code the petitioner herein shall pay maintenance of Rs. 2000/- to respondent-wife and Rs.3000/- for the son.

4. The modified order shall be implemented and executed from 7th April, 2015 and shall not have any retrospective effect.

6. The learned counsel for the applicant seeks time to deposit the entire arrears, if any. Four weeks time is granted for depositing the arrears in the Family Court from today.

7. Criminal Revision Application is disposed of.

[SMT. SADHANA S. JADHAV,J.]