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

**CRIMINAL REVISION APPLICATION NO. 89 OF 2016**

Subhash s/o Ramkisan Gaikwad,  
Age: 40 years, Occu: Labourer,  
R/o Hari Nagar, Behind Railway Colony,  
Purna, Tq. & Dist. Parbhani

..APPLICANT

VERSUS

1. Sushila w/o Subhash Gaikwad,  
Age: 36 years, Occu: Household,  
R/o Bharat Nagar, Plot No. 45,  
Garkheda Parisar, Aurangabad
2. Shanka d/o Subhash Gaikwad,  
Age: 12 years, Occu: Student
3. Ashu s/o Subhash Gaikwa,  
Age: 10 years, Occu: Student

Respondent Nos. 2 & 3 are minors  
U/g. Of real mother i.e. Respondent No. 1

4. The State of Maharashtra

..RESPONDENTS

Mr A. A. Khan, Advocate for applicant;  
Ms. R. P. Gaur, Addl. Public Prosecutor for respondent No. 4

**CORAM : N.W. SAMBRE, J.**

**DATE : 5th April, 2016**

**ORAL ORDER :**

The learned Principal Judge, Family Court, Aurangabad, by judgment and order dated 1<sup>st</sup> January, 2015, directed present applicant to pay maintenance of Rs. 4,000/- p.m. to the respondent No. 1 and Rs. 3,000/- p.m. to the respondent No. 2 and 3 each i.e. total Rs. 10,000/- p.m. from 30<sup>th</sup> November, 2013. The said order is questioned before this Court

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on the ground that the said order was passed by the learned Principal Judge of Family Court, without giving opportunity to defend the case sought to be put forth by the applicant.

2. Learned Counsel appearing on behalf of the applicant would submit that the income of the applicant was wrongly appreciated and as such, sought indulgence of this Court. According to him, the learned Family Court has ordered payment of exorbitant maintenance.

3. With the assistance of the learned Counsel appearing on behalf of applicant, I have perused the memo of revision with that of the order passed by the learned Family Court awarding maintenance. It is required to be noted that the applicant appears to have been served with the Court summons in Petition No. E-258 of 2013, initiated before the Learned Family Court, Aurangabad and he has chosen not to appear in the said proceedings. Upon perusal of the pleadings in the memo of revision, there is no statement noticed which shows that the Court summons in the proceedings before the learned Family Court was not served on the applicant.

4. It is then required to be noted that the evidence of the respondent – wife was considered by the learned Family Court and upon appreciation of the same, noted that the applicant is getting income of Rs. 8,000/- p.m. towards rent and around Rs. 30,000/- p.m. from his profession.

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5. In my opinion, though the learned Family Court has considered the material placed before it and reached to the conclusion that income of the applicant was between Rs. 30,000/- to 40,000/- p.m., nothing by way of documentary evidence or otherwise is brought on record by the present applicant to disbelieve the same.

6. Though it is brought to the notice to this Court that the applicant is paying maintenance of Rs. 2,000/- p.m. to respondent No. 1 – wife and Rs. 1,000/- p.m. each to the children, the same, in my opinion, ought to have been considered before awarding maintenance.

7. For the reasons stated hereinabove, in my opinion, no case for interference is made out. However, it is made clear that it will be open for the present applicant to approach before the competent Court for seeking modification of order passed in the proceedings under the Protection of Women from Domestic Violence Act for adjustment, on the ground of maintenance qua the maintenance ordered by the learned Family Court.

8. With the above liberty, present revision fails and stands dismissed.

**(N.W. SAMBRE, J.)**

sjk