

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1239 OF 2018

Gajanan Shamrao Shelke,
Age: 29 years, Occu: Labour,
R/o Konad, Tq. Jafrabad,
Dist. Jalna **Petitioner**

Vs.

1. Rukhman Gajanan Shelke,
Age: 27 years, Occu: Tailoring,
R/o: C/o Yadavrao Barku Bansode,
Jawakheda (Theng), Tq. Jafrabad,
Dist. Jalna.
2. Payal Gajanan Shelke,
Age: 7 years, Occu: Nil,
Under the guardianship of Resp. No.1,
R/o: C/o Yadavrao Barku Bansode,
Jawakheda (Theng), Tq. Jafrabad,
Dist. Jalna. ... **Respondents**

Mr. Amol M. Salok, Advocate for the Petitioner.
Mr. Jiwan J. Patil, Advocate for the Respondents.

CORAM : MANGESH S. PATIL, J.
DATE : 10.01.2019

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith.
Learned advocate for the respondents waives service of rule. With the
consent of both the sides the matter is heard finally at the stage of
admission.

2. The application of the respondents under Section 125 of the Cr.P.C. for maintenance was rejected by the J.M.F.C. Being aggrieved they had preferred criminal revision. By the impugned order the learned Additional Sessions Judge allowed the revision and awarded maintenance.

3. However as can be seen, though the petitioner had participated in hearing of the revision on the previous dates, on 09.08.2018 his learned advocate could not remain present and the matter was heard and the impugned judgment was delivered *ex parte*. It is apparent that an opportunity of being heard was not extended to the petitioner albeit he was contesting proceeding since inception. The request of the respondents for maintenance was not favourably considered by the Magistrate for the vague reasons recorded in the judgment. Still by the impugned judgment and order the Revisional Court has allowed the request and has awarded maintenance.

4. In my considered view, the petitioner was entitled to be heard by the Revisional Court and an opportunity needs to be extended to him now subject to payment of some amount to the respondents by way of cost. No prejudice is likely to be caused to the respondents by such an arrangement even if the Revisional Court is directed to decide the matter afresh by extending an opportunity to the petitioner. The

revision is allowed subject to payment of cost of Rs.5,000/- to the respondents.

5. Out of the balance amount of Rs.15,000/- deposited in Court of Judicial Magistrate pursuant to the order of this Court dated 26.10.2018 the respondents shall be entitled to claim an amount of Rs.5,000/- by way of cost herein-above and the petitioner shall be entitled to receive the balance amount which is Rs.10,000/-

6. The impugned judgment and order is quashed and set aside. The parties are relegated before the learned Additional Sessions Judge who shall decide the revision afresh by extending an opportunity of being heard to both the sides. Parties to appear before the learned Additional Sessions Judge on 25.01.2019 and there shall be no need for the Sessions Judge to issue notice to them.

7. Rule is made absolute in above terms.

8. R & P be sent back immediately.

(MANGESH S. PATIL, J.)