

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

CRIMINAL REVISION APPLICATION NO.50 OF 2019

Fazallur Rehman s/o.Habibu Raheman Shaikh,
Age: 39 years, Occ:Service,
R/o. Near Sath Bhai Masjid,
Khad Kaali, Udgir,
Dist. Latur.

.. APPLICANT

VERSUS

1. Afifa Naaaj @ Shamim w/o.
Fazallur Rehman Shaikh,
Age: 33 years, Occ: Household
2. Owais s/o.Fazallur Rehman Shaikh,
Age: 9 years, minor U/g. Of
Respondent no.1 – real mother.
3. Ku. Afiya d/o.Fazallur Rehman Shaikh,
Age: 11 years, minor U/g. Of
Respondent no.1 – real mother
4. Hussain s/o. Fazallur Rehman Shaikh,
Age: 12 years, minor U/g. Of
Respondent No.1 – real mother.

All Respondents are
R/o. Anjali Nagar, Latur
Dist.Latur.

.. RESPONDENTS

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Mr.Shaikh Mujtaba Gulam Mustafa, Advocate for
the applicant
Mr.S.D.Tawshikar, Advocate for the
respondents.

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CORAM: V.M.DESHPANDE, J.

DATE : 26.03.2019

ORAL JUDGMENT:

1] Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2] Heard Shri Shaikh Mujtaba Gulam Mustafa, learned counsel for the applicant and Shri S.D.Tawshikar, learned counsel for the respondents.

3] The respondents are the wife and minor sons and a daughter of the present applicant. They were required to file proceedings under Section 125 of the Code of Criminal Procedure before the learned Family Court at Latur, since they were neglected by the present applicant. The said proceedings were registered as Petition No. E-45/2017 when the matter was transferred to the Family

Court from the Court of the learned Judicial Magistrate First Class, Latur. In spite of service, the present applicant did not put his appearance before the learned Family Court, consequently he remained absent and the learned Judge of the Family Court delivered the judgment on 3rd March, 2018, directing the present applicant to pay maintenance amount of Rs.3,000/- per month to the wife and Rs.2,000/- per month to each of his sons and a daughter. The said is questioned before this Court.

4] It is crystal clear that the impugned judgment was not on merit. For the reasons as submitted during the course of hearing before the Court below that the applicant could not participate in the said proceedings. In my view, one more opportunity has to be given to the applicant to decide case before the Court below on its own merit.

Consequently, I am of the view that in order to meet ends of justice, the present Criminal Revision Application needs to be allowed, by allowing the present applicant to participate in the proceedings. During the course of hearing of the present Criminal Revision Application, the learned counsel for the applicant submitted that, the present applicant is in arrears of maintenance amount and according to the learned counsel, out of the said arrears, the present applicant is ready to pay Rs.1,25,000/-. Statement accepted.

5] In that view of the matter, to meet the ends of justice, I pass the following order:

ORDER

i] The Criminal Revision Application is allowed.

ii] The Judgment and order dated 03.03.2018 passed by the learned Judge, Family Court at Latur in Petition No.E-45/2017 [Old Criminal M.A.No.699/2014] is hereby quashed and set aside. The Petition No.E-45/2017 [Old Criminal M.A.No.699/2014] is restored to file and the restoration of the Petition is only on the condition that the present applicant to deposit Rs.1,25,000/- within four weeks from today. The said amount should be deposited before the Family Court at Latur.

iii] If the aforesaid amount is not deposited within stipulated period, then, the judgment and order dated 03.03.2018 passed by the learned Judge, Family Court at Latur in Petition No.E-45/2017, shall stand restored.

iv] If the amount of Rs.1,25,000/- is deposited within aforesaid period, then, the respondents herein will be entitled to withdraw the said amount without offering any type of security.

v] The parties are directed to appear before the Family Court at Latur on 10th

April, 2019, so that no fresh notices would be required to be issued to the parties to this Revision Application.

vi] The learned Family Court is directed to decide the Petition No.E-45/2017 afresh after giving opportunity of hearing to both the parties and also opportunity to file written statement or to amend the pleadings etc.

vii] Rule is made absolute on above terms. The Criminal Revision Application is disposed of, accordingly.

[V.M.DESHPANDE]
JUDGE

DDC