

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.127 OF 2018

Jameer Maheboob Shaikh,
Age 28 years, Occu. Labour,
R/o. Near Mohammadiya Masjid,
Teli Galli, Latur, Tq. & Dist. Latur

.. Applicant

Versus

1. Ruksana w/o. Jameer Shaikh,
Age 23 years, Occu. Household,
2. Madiha d/o. Jameer Shaikh,
Age 2 years (Minor and under
guardian of Respondent No.1)
Both R/o. C/o. Ismail Aminsab Patel,
Khorli Galli, Latur, Tq. & Dist. Latur. .. Respondents
3. The State of Maharashtra .. Deleted
(As per Order dated 19.06.2018)

Mr. G. R. Syed, Advocate for Applicant;
Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for Respondents
No.1 and 2

CORAM : S. G. MEHARE, J.

DATE : 17-08-2023

ORAL JUDGMENT :

1. Heard the learned counsel for the applicant and the learned counsel for respondents No.1 and 2.
2. The applicant/husband has impugned the judgment and order of Judge, Family Court, Latur, passed in Petition E.No.159 of 2017, dated 28.03.2018, granting the maintenance of Rs.12,000/- per month to the respondents.

3. The learned counsel for the applicant has argued that the evidence on the income of the applicant has not been properly appreciated. Admittedly, the workshop was in the name of his father, but the learned Judge, Family Court, Latur, did not consider the fact and without appreciating the evidence properly, determined exorbitant maintenance Rs.8,000/- for the wife and Rs.4000/- for a child. The applicant made various attempts to fetch respondent No.1 back, but she did not respond. The explanation to Section 125 of the Code of Criminal Procedure about performing second marriage would not attract as the parties are *Mohammedan* by religion. He would submit that the respondent/wife is residing with her parents in the same town. Considering his responsibilities, the applicant/husband has been heavily burdened to pay Rs.12,000/- per month. The income from the workshop is not regular. Hence, average income ought to have been considered. They are small businessmen, running their workshop at their own hard work. There were no labourers in the workshop. Barely having three machines may not be a factor to determine the quantum of maintenance. Therefore, the revision application may be allowed.

4. Per contra, the learned counsel for the respondents would submit that the applicant is from a business class. They have a good standard of living. He has sufficient income. However, he suppressed the factum of his income. Therefore, the learned

Judge, Family Court, Latur, has correctly appreciated the fact and quantified just and proper maintenance. The applicant has no responsibility to maintain his parents as the workshop is in the name of his father and he runs the workshop. Considering the standard of living and the income source, the quantum of maintenance determined by the learned Judge, Family Court, Latur, cannot be said to be exorbitant. There is no substance in the revision application. Hence, revision application may kindly be dismissed.

5. It appears that the applicant though run engineering workshop with his father, he works personally in the workshop. Lathe machine is normally used for bending and shaping the iron plates and rods. What exactly the income of the applicant was not before the Court, but the fact remains that he was running the workshop with his father. The engineering workshop appears a small business. There appears substance in the arguments of the learned counsel for the applicant that there is no regular income from the business and it depends upon the work orders. The parties appear from lower middle income strata. *Prima facie* it appears that in the absence of cogent and reliable evidence, the learned Judge, Family Court, Latur, has erroneously quantified the income of Rs.30,000/- per month. The applicant is a *Mohammedan*. He got second marriage.

6. Considering the facts of the case in toto, the standard of living and his irregular income, the Court is of the view that the quantum of maintenance is disproportionate. In view of the irregular income from the workshop and considering the daily needs of the respondents, the Court is of the opinion that monthly maintenance of Rs.7000/- p.m. for the wife and Rs.3000/- p.m. for a child, would be proportionate to the income of the applicant. Hence, the impugned judgment and order is liable to be modified. Now, the Court proceeded to pass the following order:-

ORDER

- i) The revision application is partly allowed.
- ii) The impugned judgment and order granting maintenance by the Judge, Family Court, Latur, in Petition No. E-159 of 2017, dated 28.03.2018, is modified as follows:-
 - (a) The applicant/husband shall pay maintenance of Rs.7000/- (Rs.Seven Thousand) p.m. to respondent No.1/wife and Rs.3000/- (Rs.Three Thousand) p.m. to respondent No.2/daughter, from the date of application.
 - (b) The amount of maintenance awarded in this petition shall be adjusted with the maintenance awarded by the Criminal Court in Criminal Miscellaneous Application No.1204 of 2016.
- iii) R & P be returned to the Court of learned Judge, Family Court, Latur.
- iv) Rule made partly absolute in above terms.

**(S. G. MEHARE)
JUDGE**