

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

CRIMINAL REVISION APPLICATION NO.73 OF 2021

Wasim S/o Munaf Bargir,
Age 36 years, Occu. Service,
R/o 7138 Windsor Lakes, Buld-13,
Indianpolis, Indiana – 46237. ... **Revision Petitioner.**

Versus

1. Farheen D/o Nuroddin Nasiroddin Kazi,
Age 34 years, Occu. Service,
R/o D.R.T. No.38, Labour Colony,
Behind Remand Home, Near Vivekanand School,
Gandhi Chowki, Latur,
Maharashtra.
2. Myrah D/o Wasim Bargir,
Age 6 years, Occu. Education,
R/o As above. ... **Respondents.**

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Advocate for Applicant-Petitioner : Ms. Shweta Ankolwar a/w
Mr. Sagar S. Ghumare.

Advocate for Respondents: Ms. Priyanka R. Deshpande.

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CORAM : S. G. MEHARE, J.

DATE : 30.03.2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally
by consent of the parties.
2. The husband has impugned the order granting the wife
interim maintenance of Rs.30,000/- per month and the
maintenance of Rs.20,000/- to her daughter. The impugned

order is dated 09.03.2021, below Exh.17 in Petition No.E-13 of 2019, passed by Judge, Family Court, Latur.

3. Admittedly, the applicant resides abroad and earns money in dollars. It is not in dispute that the applicant, at the relevant time, was making \$ 4554 per month. It was Rs.3,32,442/- per month approximately in Indian currency.

4. Learned counsel for the applicant has vehemently argued that the learned Judge while determining the quantum of interim maintenance, did not consider his living costs in the United States of America (U.S.A. for short) compared with Latur District in India. He would argue that the cost of living compared to the U.S.A. with Latur would be not more than Rs.70,000/- per month. However, the cost of living in the U.S.A. is comparatively too high. Therefore, the learned Judge erred in not considering the principles to be applied while granting maintenance to the wife stationed in India and husband stationed abroad and earning in foreign currency, laid down by the Delhi High Court in the case of ***Rajat Taneja Vs. Harmeeta Singh, 142 (2007) DLT 377***. The Court asked the learned counsel for the applicant for a copy of the said judgment. He was unable to find it on record. However, he

argued that the only principles argued above was discussed in the said judgment. He also argued that respondent No.1 had suppressed the fact from the Court that she was earning and had an independent source of income. She has falsely pleaded that she is a *Pardanashin* woman. He placed on record some salary certificates of her, which were admittedly before passing the impugned order. He could not point out that on the date of filing the application, she was employed and had an independent source of income. Comparing the cost of living abroad and in India, he has vehemently argued that the amount of interim maintenance is highly exaggerated and disproportionate. He also argued that the applicant could not save money due to the high cost of living. He had a balance of \$ 1800 only in his bank account. This aspect has been brushed aside by the learned Judge, Family Court, Latur, while determining the quantum of the interim maintenance.

5. Per contra, the learned counsel for the respondents would argue that on the day of the application, respondent No.1 was not in employment. Her child was a citizen of U.S.A. Hence, she has to pay double the fee for her education. The learned Judge has rightly considered the standard of living and other aspects while determining the maintenance. It has also

been argued that considering the source of income of the applicant, the amount determined by the learned Judge, Family Court, Latur is just, reasonable and proper. She also argued that the applicant has a handsome salary. Now, he formed his own company, so his income has been increased. She prayed to dismiss the revision application.

6. Perused the impugned order. In the set of facts it is to be determined whether the quantum determined by the learned Judge, Family Court, Latur for interim maintenance is just proper and correct. Undisputedly, the cost of living in India and U.S.A. is incomparable. But the fact remains that the parties are from good families. They have a good standard of living. The facts were also on record that the wife was in employment earlier, but when the application was decided, she was not in employment. If the standard of living compared to India and the U.S.A. is considered, it is correctly pointed out that the cost of living in India is comparatively low than the U.S.A.

7. Learned counsel for the applicant has made a statement that to date, he has paid 77% i.e. Rs.14,00,000/- out of Rs.18,00,000/- to respondents as per the impugned order. As against this, the learned counsel for the wife would argue that

he is still in huge arrears of maintenance, and he was most irregular in paying the arrears. It was a matter to be considered by the trial Court. It has no relevance to the present proceeding. The issue here is whether the quantum of interim maintenance is legal and correct. The Court does find substance in her arguments.

8. The regular expenses of the husband and the income are the most relevant factors to consider to determine the quantum of the interim maintenance. It should also be considered how much he could save for family maintenance after fixed expenses. Barely residing abroad and earning much more than Indian income may not be the sole criteria for determining the quantum of interim maintenance. Latur town is not a big town. The cost of living compared to the U.S.A. in a town like Latur would definitely be low. Even it is admitted that the wife is paying double the fee to the school. It would definitely not be Rs.20,000/- per month. Considering the standard of living of the parties in India, the Court is of the view that the learned Judge, Family Court, Latur, has erred in comparing the income of the applicant, he is getting in the U.S.A. He would not earn more than Rs.80,000/- per month if he had a similar job in India. The purpose of interim maintenance is to make an

emergent arrangement for the basic requirements of the aggrieved party. Therefore, this Court is of the view that considering the standard of living of the parties in Latur town, the learned Judge, Family Court, has incorrectly quantified the maintenance of Rs.30,000/- and Rs.20,000/-p.m. each.

9. For the above reasons, the order warrants interference.

Now, the Court proceed to pass the following order :

ORDER

- (i) The Criminal Revision Application is Partly allowed.
- (ii) The quantum determined by the learned Judge, Family Court, Latur, below Exh.17 in Petition No.E-13/2019 by order dated 09.03.2021 is modified as follows :

“The applicant/original respondent do pay monthly maintenance of Rs.20,000/- to respondent No.1/wife and Rs.10,000/- per month to respondent No.2/daughter till the conclusion of the main petition.”

- (iii) It is clarified that the amount the applicant has paid shall be adjusted for the maintenance as per

the final order. The applicant shall not be insisted on paying the balance money as per the impugned order. However, the applicant shall pay the interim maintenance as per the order of this Court till the conclusion of the trial on merits.

- (iv) Rule made partly absolute. No order as to costs.

(S. G. MEHARE, J.)

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vmk/-