

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

**CRIMINAL REVISION APPLICATION NO.16 OF 2023
WITH APPLN/2954/2022 IN REVN/16/2023 WITH
APPLN/4283/2022 IN REVN/16/2023**

Mohammad Azharoddin Jahiroddin Maniyar,
Age : 34 years, Occu. : Labourer,
R/o. : Bazar Chowk, Pathri, Tq. Pathri,
District Parbhani.

...Applicant

Versus

1. Aasma Parvin w/o Mohammad Azharoddin Maniyar
Age : 29 years, Occ. : Household,
2. Mohammad Hasnain s/o Mohammad Azharoddin Maniyar
Age : 5 years, Occu. : Education,
Since minor, through his mother i.e. respondent No.2,
Aasma Parvin w/o Mohammad Azharoddin Maniyar
Both R/o. : Near Allama Ekbal School,
Dukhi Nagar, Old Jalna,
Tq. and District Jalna.

...Respondents

...

Advocate for Applicant : Mr. Bolkar Yogesh B.
Advocate for Respondents : Mr. Syed R. Ali & Mr. Tahr Ali Quadri

...

CORAM : S.G. MEHARE, J.

DATED : MARCH 30, 2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.
2. The applicant/husband has impugned the order of granting maintenance to the wife and son under Section 125 of Criminal Procedure Code by learned Judge, Family Court, Jalna in Petition No.E-81/2020 dated 22.11.2021.

3. Learned counsel for the applicant has argued that the summons was not properly served. Hence, the learned Judge, Family Court has incorrectly proceeded exparte. He further argued that the notice was not properly served upon the applicant and the serving officer was also not examined. He also argued that the procedure under Section 62 of Cr.P.C. has also not been followed.

4. Learned counsel for the respondents would submit that the notice was duly served by registered post. The applicant refused to receive the notice. He never appeared before the Court. The learned Family Court passed an exparte order after about more than one month of the refusal of the notice. The proceeding under Section 125 of Cr.P.C. is a quasi civil proceeding; hence, notice by registered post is permissible. The applicant did not deny that he does not reside on the address given on the postal envelope below Exhibit-8. The notice was properly served upon the applicant. Therefore, it cannot be said that it was a invalid service.

5. The proceeding under Section 125 of Cr.P.C. is undisputedly a quasi civil proceeding. Hence, the summons/notice may be served through post. The applicant did not deny that the address on the envelope was incorrect. In these circumstances, the Court did not find substance in the arguments advanced by the learned counsel for the applicant that notice was not properly served.

6. Learned counsel for the applicant has vehemently argued that the photograph is not the proof to believe that the applicant was the owner of the bangle shop. He also vehemently argued that the applicant was serving in the said shop and it was owned by one Bangle Feriwala. It is correct that the photograph is not the proof of income; however, in the absence of any evidence in rebuttal, it would be inappropriate to accept the case of the applicant that he was a labour in the said shop. The wife was well aware about the business of the applicant. He had placed no material to consider that he was receiving the wages. Barely naming a person as the owner of the shop on affidavit may be insufficient to admit that he was not the owner of shop in the absence of Shop Act Licence or other proof of ownership of the shop. Though as observed above, the photograph may not be the proof of income but in the absence of rebuttal, the evidence of the wife about the source of income of the applicant cannot be discarded.

7. As far as the quantum of maintenance is concerned, it has been vehemently argued that the applicant has not that much income to pay the separate maintenance of Rs.5,000/- to the wife and Rs. 3,000/- to the son. The learned counsel for the applicant argued that he has income of Rs.6,000/- to Rs. 7,000/- per month. In the absence of proved and direct evidence about the income, the learned Judge, Family Court, Jalna considered the standard of living, daily needs, education and medical expenses and assessed the maintenance

amount. The reasons assigned by the learned Judge, Family Court, Jalna appears legal, correct and proper. Considering the inflation of the day, the amount determined by the learned Judge, Family Court, Jalna cannot be held disproportionate.

8. After having gone through the impugned judgment and order, the Court is of the view that it is free from infirmities. It is legal, proper and correct; hence, does not warrant interference. Now the Court proceed to pass the following order :

ORDER

- I) The revision application stands dismissed.
- II) Record and proceeding be returned to the Court of learned Judge, Family Court, Jalna.
- III) Rule is discharged.
- IV) Pending applications, if any, stand disposed of.

(S.G. MEHARE, J.)