

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

CRIMINAL REVISION APPLICATION NO.257 OF 2022

1. Sana Afroz w/o Altaf Ghavti
Age: 24 Yrs., Occu: Husehold
2. Jabiya d/o Altaf Ghavti
Age: 3 years, Occu: Education
3. Alsafan s/o Altaf Ghavti
Age: 2 years, Occu: Education

Applicants nos. 2 & 3 are minors
u/g of their Mother / applicant no.1
All R/o Bole Galli, Latur

... Applicants
[Orig. Applicants]

Versus

1. Altaf s/o Khader Ghvati
Age: 30 years, Occu: Household,
R/o Gavandi Galli Beside Sul Galli
Latur Tal & Dist. Latur

... Respondent
[Orig. Respondent]

...

Mr. Fayaz K. Patel, Advocate for the Applicants
Mr. V. G. Kadale h/f Mr. V. D. Gunale, Advocate for Respondent

...
WITH
CRIMINAL REVISION APPLICATION NO.388 OF 2019

1. Altaf s/o Khader Ghvati
Age: 31 years, Occu: Labourer
R/o Gawandi Galli, Latur
Tal & Dist. Latur

... Applicant
[Orig. Respondent]

Versus

1. Sana Afroz w/o Altaf Ghavti
Age: 24 Yrs., Occu: Husehold
2. Jabiya d/o Altaf Ghavti
Age: 3 years, Occu: Education

3. Alsafan s/o Altaf Ghavti
Respondent nos.2 and 3 are minors
u/g of Mother / respondent no.1
All r/o Bole Galli, Latur
Tq. and Dist. Latur

... Respondents
[Orig. petitioners]

...
Mr. V. G. Kadale h/f Mr. V. D. Gunale, Advocate for Applicant
Mr. Fayaz K. Patel, Advocate for the Respondents
...

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 05.09.2023

FINAL ORDER :

1. Both the criminal revision applications impugn common judgment and order dated 04/05/2019, passed under Section 125 of the Criminal Procedure Code [hereinafter referred to as 'Cr.PC' for short] by the Family Court, Latur, in Petition No.E-1/2018 granting total maintenance of Rs.6000/- in favour of the original applicants.
2. The criminal revision application no.388/2019 is filed by the husband challenging the grant of maintenance in favour of the wife and children, whereas, criminal revision application no.257/2022 is filed by the wife and children seeking enhanced maintenance. [Hereinafter parties are referred as per the original status before the Family Court.]
3. Admittedly, the non-applicant - Altaf married with the applicant - Sana Afroz and applicant nos. 2 and 3 are born out of such wed-lock. The applicant no.1-wife alleges that the non-applicant/husband neglected and failed to

maintain the applicants although he has sufficient means. She also alleges that the non-applicant used to ill-treat her so also doubted her character and finally, driven her out of house while she was pregnant. It is the contention of applicant no.1 that the non-applicant runs automobile shop at Arvi Railway Station Road and earns minimum Rs.15000/- per month. He owns agricultural land at village Bhoyara, Dist.Latur and earns about Rs.500000/- per annum. He owns two storied house and three auto rickshaws that generate income of Rs.9000 per month. Therefore, she claimed the maintenance of Rs.5000/- for herself and Rs.3000/- each for applicant nos.2 and 3.

4. The contention of the applicant no.1 was refuted by the non-applicant by filing his say. He submits that the allegations in the application are false. The applicant no.1, on her volition, left the house and residing separately with her parents on account of her demand for separate residence from joint family. Many attempts were made to reconcile the differences and bring the applicant/ wife for cohabitation. However, she quarreled and insisted for separate residence. It is further contended that she runs a beauty parlor and earns sufficient amount for her maintenance. The Family Court upon recording evidence of the parties and after due consideration of submissions, concluded that applicant no.1 is entitle for maintenance of Rs.3000/- per month and applicant nos.2 and 3 are entitle for maintenance of Rs.1500/- each per month.

5. Learned Advocate appearing for the applicants submits that although there is voluminous evidence to show the income of the non-applicant, meagre amount of maintenance has been granted, which is not sufficient to maintain the applicant/wife and two minor children. It is contended that the non-applicant runs automobile shop, which is not disputed. Further, the family of non-applicant holds multistoried building, vehicles which show the standard of living. The applicant/wife and minor children are entitled for the same standard of living. Therefore, they claimed for enhanced maintenance.
6. Per contra, it is contended on behalf of the non-applicant that he is running a puncture shop at small place like Arvi. The house and agricultural land stands in the name of his father. There is no separate income to the non-applicant except his income from the puncture shop. It is further submitted that applicant no.1 has left the house without reasonable cause although the non-applicant was ready and willing to maintain her. Hence, she has no right to claim maintenance under Section 125 of Cr.PC.
7. Having considered the submissions advanced, it can be gathered that there is no dispute regarding the relationship the applicant no.1 and non-applicant. The non-applicant is running a shop at Arvi. It can be gathered from the record that the parties were referred for re-conciliation to the Marriage Counselor where the non-applicant had executed a consent terms and agreed to pay the maintenance of Rs.3000/- so also bear the education expenses of the children. Such terms were executed on 03/09/2018. However, the non-applicant

failed to adhere by his promise. It is therefore evident that non-applicant is capable of earning and he is under obligation to maintain the applicants. Going by the price index, the maintenance of Rs.3000/- to the wife and Rs.1500/- to the children appears to be moderate even by minimum standards. The evidence on record depicts that the applicant required to stay away on account of the compelling circumstances that has been created by the conduct of the non-applicant. The Family Court on evolution of the entire evidence has recorded the finding that the non-applicant failed to maintain the applicants.

8. It has come on record that applicant no.1 is doing some course of fashion designing. However, there is nothing on record to show that she is generating any income from the work. It is trite that if she endeavors to earn some amount by her efforts, that itself would not disentitle her from claiming the maintenance. As observed above on assessment of the material on record, the Family Court has granted in all maintenance of Rs.6000/- to the applicants. Pertinently there is no evidence regarding exact income of non-applicant. It is admitted that he runs a puncture shop at Village Arvi but nothing is placed on record to indicate income generated out of such business. The land and house is in the name of father of non applicant. Considering living standard of family quantification made by Family Court do not require interference. No case is made out to entertain both revision applications. Hence, both the criminal revision applications are dismissed.

[S. G. CHAPALGAONKAR, J.]