



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

15 CRIMINAL REVISION APPLICATION NO. 60 OF 2024
AND
43 CRIMINAL APPLICATION NO. 885 OF 2024
IN REVNST/2302/2024
WITH
CRIMINAL APPLICATION NO. 2052 OF 2024 IN APPLN/885/2024

Syed Fahimuddin s/o. Syed Kalimuddin Quadri,
Age 36 years, Occu. Service, R/o. Rahul Nagar,
Taluka and District Aurangabad .. Applicant

Versus

1. Amara Andalip Saba w/o. Syed Fahimuddin Quadri,
Age 30 years, Occu. Household,
R/o. Roshan Khan Mohalla, Near Golgumbad,
Parbhani
2. Sayada Jainab d/o. Syed Fahimuddin Quadri,
Minor Under Guardianship of Respondent No.1 .. Respondents

Mr. A. P. Avhad holding for Mr. Shaikh Ashraf Patel, Advocate for
Applicant;
Mr. Quadri Tabrezuddin Rahimuddin, Advocate for Respondents

CORAM : S. G. MEHARE, J.

DATE : 10-06-2024

PER COURT :-

1. Heard the learned counsel for the applicant and the learned
counsel for the respondents.
2. This is a matrimonial dispute. The respondent No.1 had filed
the petition under the Protection of Women from Domestic

Violence Act, 2005 (D.V. Act for short) before the Judicial Magistrate First Class, Court No.6, Parbhani. After hearing the parties, the learned Judicial Magistrate granted *interim* maintenance of Rs.7000/- per month to respondents No.1 and 2. Thereafter, respondent/wife filed an application under Section 125 of the Code of Criminal Procedure before the Family Court. It was brought to the notice of the learned Judge, Family Court, Parbhani that already the maintenance order has been passed.

3. The respondent/wife submitted before the Judge, Family Court that the order has been passed by the learned Judicial Magistrate. However, it is not complied with by the applicant. Hence, she prayed for another order for *interim* maintenance. The learned Judge, Family Court passed the impugned order granting interim maintenance of Rs.3,000/- per month to each of the respondents.

4. Learned counsel for the applicant has argued that the learned Judge, Family Court has passed the impugned order barely considering that the petitioner has not complied with the interim order passed by the learned Judicial Magistrate under D.V.Act. He submits that the order of the learned Judge, Family Court is rather emotional than the legal order. However, the applicant is ready to obey the order of the learned Judicial Magistrate and ready to pay the interim maintenance of Rs.7,000/-

per month to the respondents. The law is clear that there shall be no recovery of maintenance granted by the two different courts. The Court granting higher maintenance should be considered and the maintenance granted under another Act, should be adjusted.

5. The learned Judge, Family Court granted interim maintenance Rs.3,000/- per month each to the respondents. It is lesser than the order passed by the learned Judicial Magistrate. The petitioner/husband agreeable for Rs.7,000/- as *interim* maintenance as per the order of the learned Judicial Magistrate. The respondent/wife would not insist for execution of the order of the Judge, Family Court till the petitions have been concluded. The submissions have been made consciously.

6. In view of the above submissions, the following order is passed:-

ORDER

- i) Criminal Revision Application No.60 of 2024 is partly allowed.
- ii) The order of the learned Judge, Family Court, passed below Exhibit-5 in Petition E.No.162 of 2020, dated 11.04.2023, directing the applicant to pay *interim* maintenance of Rs.3,000/- per month each to the respondents/wife and daughter, shall not be implemented till the petition is concluded.

- iii) The order issuing the warrant for recovery of the amount against the applicant, by the learned Judge, Family Court, Parbhani, in Petition E.No.28 of 2023, dated 21.11.2021, is quashed and set aside.
- iv) The applicant shall comply with the order of this Court, dated 21.05.2024 strictly as per the directions.
- v) The respondents are allowed to withdraw Rs.1,00,000/- (Rs. One Lakh) deposited with this Court. The applicant shall comply with the said order by depositing the balance amount with the Court of learned Judicial Magistrate in the proceeding under section 125 of Cr.P.C.
- vi) Criminal Application No.885 of 2024 in Criminal Revision (Stamp) No.2302 of 2024 stands disposed of.
- vii) Both parties are directed to appear before the Judge, Family Court, Parbhani, on 03.07.2024.
- viii) Pending application, if any, stands disposed of.
- ix) Learned counsel for the respondents undertakes not to press the application for issuing arrest warrant which is pending before the learned Judge, Family Court, Parbhani.

(S. G. MEHARE)
JUDGE