



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL REVISION APPLICATION NO. 219 OF 2023

RIZWAN KHAN MOOSA KHAN PATHAN

VERSUS

VAJEEJA KHAN W/O RIZWAN KHAN PATHAN AND OTHERS

...

Advocate for Applicant : Mr.P.P. More h/f Mr.Sisodiya Ashutosh C.

Advocate for Respondents : Mr. Khan S. B.

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WITH

**CRIMINAL APPLICATION NO. 2795 OF 2023
IN REVN/219/2023**

RIZWAN KHAN MOOSA KHAN PATHAN

VERSUS

VAJEEJA KHAN W/O RIZWAN KHAN PATHAN AND OTHERS

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Advocate for Applicant : Mr.P.P. More h/f Mr.Sisodiya Ashotosh C.

Advocate for Respondents : Mr. S. B. Khan

WITH

CRIMINAL REVISION APPLICATION NO. 224 OF 2023

VAJEEHA KHAN W/O RIZWAN KHAN PATHAN AND OTHERS

VERSUS

RIZWAN KHAN S/O MOOSA KHAN PATHAN AND OTHERS

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Advocate for Applicant : Mr. S.B. Khan

Advocate for Respondents : Mr.P.P. More h/f Mr.Sisodiya Ashotosh C.

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**CORAM : SANJAY A. DESHMUKH, J.
DATED : 2nd APRIL, 2024.**

PER COURT :-

1. In both these applications, the husband and wife have challenged the order passed by the learned Judicial Magistrate, First Class No.18, Aurangabad in PWDVA No.151 of 2021 under sections

12 and 18 for protection, residence, monetary benefits, compensation and maintenance etc.

2. The learned trial Court granted interim maintenance of Rs.1000/- to the wife and Rs.2,000/- to each of the children by order dated 01.12.2022. Appeal was preferred by the husband i.e. PWDVA Appeal No. 193 of 2022 and by wife PWDVA Appeal No.183 of 2022 before the Additional Sessions Judge, Aurangabad. By order dated 10.05.2023, the Appellate Court dismissed the appeal of husband and partly allowed the appeal of the wife and her children. Appellate Court awarded Rs.20,000/- for maintenance and rent for residential facility and also awarded Rs.10,000/- to each of the children.

3. Feeling aggrieved by the said order, the husband and wife, both have preferred these revisions.

4. The learned advocate for the applicant – husband in Criminal Revision Application No.219 of 2023 pointed out the grounds of objections of this revision that the applicant – wife is not justified while residing with her parents at Aurangabad and due to the illness of the mother of this applicant-husband, he performed second marriage. The applicant – husband is only having medical profession and he has no other source of income. Huge amount of maintenance is awarded to the respondent – wife and her children without any justification. Wife is B.H.M.S. and is not doing that profession as medical practitioner. Earlier she was running an independent

dispensary when she was at Nandurbar. Considering all the facts situation, it is lastly prayed that the said order be set aside.

5. The learned advocate for the applicant in Criminal Revision Application No.224 of 2023 pointed out the grounds of objections of revision that reasonable amount of maintenance is awarded considering the status of the parties and their need. The reasons given by the trial Court are legal and correct. This Court cannot go into the merits of the case and this Court can only decide with regard to the legality and priority of the said impugned judgment. It is pointed out that the applicant – husband is paying income tax which shows his ability to pay the maintenance. It is also submitted that the applicant-husband is doing business of real estate transactions, and therefore, he has source of income. He further submitted that husband filed affidavits of his income. However, he had shown his less income. He lastly prayed to quash and set aside the impugned judgment and enhance the maintenance. The learned advocate is relying upon the authority in the case of ***Rajnish Vs. Neha and another*** reported in ***AIR 2021 SC 569***.

6. Perused the impugned judgment and order and the relevant documents submitted by both the sides. It is pointed out by the learned advocate for the applicant – husband that once the wife was paying income tax and for that purpose, she has filed ITR returns. It is also pointed out that the wife was also running her

independent dispensary when she was cohabiting with the husband at Nandurbar. It is admitted fact that both are educated i.e. B.H.M.S. and they were once upon a time practicing. Now it is disputed that whether wife who is doing any independent job or having any source of income or not is entitled for maintenance, for that purpose, the learned Advocate for the husband-applicant is relying upon the following authorities in the cases of :-

- (i) ***Vijay Kumar Vs. Harsh Lata Aggarwal* in Appeal CM(M) 539 of 2008, decided on 10th September, 2008.**
- (ii) ***Damanpreet Kaur Vs. Inderjeet Juneja and another* decided in CRL.REV.P. 344 of 2011, decided on 14.05.2012.**
- (iii) ***Mamata Jaiswal Vs. Rajesh Jaiswal* reported in 2000 SCC Online MP 580.**
- (iv) ***Niraj Kathuria Vs. the State of Jharkhand and another* in Criminal Revision No. 535 of 2022, decided on 13.10.2023.**

7. The ratio laid down in these authorities is that when the wife is competent having special qualification and not doing any job then she is not entitled for maintenance. Nobody can dispute the authorities cited above. However, it is well settled that each case has its peculiar set of facts and facts of each case are decisive. In the case in hand while passing order, the trial Court has considered the status of the parties, their need, their source of income and

requirement of the wife and her children. The reasons given by the trial Court are legal and correct. In these background of facts situation of the case and at this stage, there is no scope for interference in the impugned order as the claim of the parties can be decided on merits before the trial Court. This Court found no any illegality, impropriety in the impugned order. Considering all these aspects, both the applications deserves to be rejected. Hence both the revisions are rejected.

8. However, considering the peculiar sets of facts and time required for filing appeal before the Additional Sessions Court and in this Court, it would be proper to direct the trial Court to decide the main application of the applicant on merits as expeditiously as possible and in any case within six months from today. It is directed accordingly.

9. At this stage, the learned advocate for the applicant – husband submits that interim relief granted by this Court shall be continued for further six weeks.

10. The learned advocate for the respondent – wife submits that the arrears of maintenance amount is of Rs.18,00,000/-.

11. The learned advocate for the applicant – husband submits that during pendency of this revision, the amount of Rs.1,15,000/- is deposited.

12. Considering the huge amount of arrears of maintenance, it

would not be proper to continue the interim relief. Therefore, the prayer of the applicant is rejected.

13. In view of the disposal of the revision applications itself, Criminal Application No.2795 of 2023 is also disposed of.

(SANJAY A. DESHMUKH, J.)

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