



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

907 CRIMINAL REVISION APPLN. NO. 109 OF 2025

- 1] Akshay s/o. Vijay Chaudhari
Age : 30 years, Occ. Pvt. Service.
- 2] Vijay s/o. Eknath Chaudhari
Age : 60 years, Occ. Pensioner.
- 3] Savita w/o. Vijay Chaudhari,
Age : 55 years, Occ. Housewife.
- 4] Gaurav s/o. Vijay Chaudhari,
Age: 27 years, Occ. Service.

All R/o. "Muktai Nagar", Tq.Muktainagar,
Dist. Jalgaon.

.. APPLICANTS

VERSUS

Mrs. Tejal w/o. Akshay Chaudhari,
Age : 23 Years, Occ. : Housewife,
R/o. C/o. Ramesh Raghunath Mahajan,
R/o. Kerhale (Bk),
Tq.Raver, Dist. Jalgaon.

.. RESPONDENT

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Advocate for Applicants : Mr.B.R.Kedar

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CORAM : ARUN R. PEDNEKER, J.

DATE : 04.04.2025

P.C. :

- 1] By the present Revision Application, the applicants challenge the exparte order passed by the

Judicial Magistrate First Class, Raver, dated 0909.2024 below Exh.06 in P.W.D.V. Application No.89/2024, whereby ex parte order is passed by the Magistrate under the Domestic Violence Act [for short 'D.V.Act'] to grant temporary custody of a child of one year ten months to the mother and order dated 06.03.2025 passed by the Appellate court i.e. Sessions Court confirming the order passed by the Judicial Magistrate First Class.

2] The learned counsel for the applicants submits that the mother had left the child in custody of the applicants while she was taking treatment, as such, the applicants ought to have heard before granting custody of child to the mother and the applicants ought to have given opportunity to file say, therefore, the ex parte order granting interim custody of the child aged 22 months is illegal. The learned counsel for the applicants relies upon the judgment in the case of **Marotrao Shamrao Pachare & others Vs. Usha Marotrao Pachare** reported in **2003 LJSoft (BOM) 972** and submits that when the child is left in custody of the father and the child is not taken by physical force, it cannot be said that the offence of wrongful confinement is made against the father. He further submits that the respondent is not physically and mentally fit to take care of the child.

3] It is to be noticed that the marriage between the applicant no.1 and respondent was solemnized on 04.06.2021 and the male child is born on 06.11.2022. The applicant has submitted that child was kept in custody of the applicants from 06.04.2024. The respondent – wife is residing with her parents. It is not shown why the wife respondent is incapable of taking care of child. Merely because the mother has suffered amputation of right hand arm it cannot be said that she is incapable of taking care of the child.

4] *Prima facie* the findings are rendered by the Magistrate that there is a domestic violence against the mother and that the interim custody of the child of 22 months [now 2 years 4 months approximately] is directed to be handed over to the mother. In terms of Section 6 (a) of the Hindu Minority and Guardianship Act, 1956, the custody of a child below 5 years shall ordinarily be with the mother. I see no error in the orders passed by both the Courts below. Considering the same, the present revision application is dismissed.

[ARUN R. PEDNEKER]
JUDGE