



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

CRIMINAL REVISION APPLICATION NO. 134 OF 2023

1. Sainath S/o. Madhavrao Buchade (Husband),
Age : 37 years, Occu. : Business,
2. Madhav S/o. Dhondiram Buchade (Father-in-law),
Age : 70 years, Occu. : Pensioner,
3. Godavari W/o. Madhav Buchade (Mother-in-law),
Age : 67 years, Occu. : Household,

All R/o. Plot No.302, 3rd Floor,
Gokuldharm Apartment, Ekvira Chowk,
Gavade Mala Escon Temple, Savedi,
Ahmednagar.

Now all R/o. Plot No.33, Saikrupa Niwas,
Vistarit Nathnagar, Opposit MGM College,
Nanded, Dist. Nanded.

... Applicants
(Orig. Opponents)

Versus

Shital W/o. Sainath Buchade,
Age : 32 years, Occu. : Household,
R/o. Nabhangan, Deepijoti Nagar,
MIDC Road, Latur.

... Respondent.

.....
Mr.Vishwajeet R. Jain, Advocate for Applicants.
Mr. Mahesh S. Bhosale, Advocate for Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 29 JANUARY 2025

PRONOUNCED ON : 28 FEBRUARY 2025

JUDGMENT :

1. In instant revision, husband and in-laws of respondent
have set up following prayers :-

- “A. This Criminal Revision Application kindly be allowed.*
- B. Record and proceeding be called for.*
- C. The judgment and order dated 09.02.2023 in Criminal Appeal (PWDVA) No. 14 of 2021 passed by learned Additional Sessions Judge-4, Latur may kindly be quashed and set aside.*
- D. The judgment and order dated 11.11.2021 below Exh.10 in Criminal M.A. (DV) No. 87 of 2021 passed by learned 6th J.M.F.C. Latur may kindly be quashed and set aside and to dismiss/reject the application Exh.10 of original applicant in M.A. (DV) No. 87 of 2021.*
- E. Pending hearing and final disposal of this criminal revision application the execution and operation of the judgment and order dated 11.11.2021 and 09.02.2023 may kindly be stayed.*
- F. Pending hearing and final disposal of this criminal revision application the proceeding of Contempt No. 221 of 2022 and Execution Application in M.A. (D.V.) No. 87 of 2021 filed by respondent before 5th J.M.F.C. Court, Latur may kindly be stayed or kept abeyance.*
- G. Any other suitable and equitable relief to which the 3 petitioners are found entitled in the peculiar facts and circumstances of the case may kindly be granted.”*

2. Learned counsel for revisionist would submit that revisionist no.1 and respondent are husband and wife and they have a minor son. Due to differences and clashes, they are residing separately. That, respondent resides with her parents, whereas, since

beginning minor resides with his father and grandparents. That, since beginning there is good emotional bonding and as such, child whose interest and welfare is of paramount importance, is well taken care of by revisionist. That, respondent apart from entering into adulterous life, abandoned the small child and went to her parents and thereafter she set up proceedings under Domestic Violence Act, tendering application under section 21 of D.V. Act seeking temporary custody of the minor.

3. Learned counsel further pointed out that, above application was resisted tooth and nail by the revisionist on the ground that child is already taking education while he is put up with them and apart from his academic interest, his welfare is also already secured. He should not be allowed to fall in the company of a mother, who has engaged in adulterous life. That, in spite of case being made out for rejection of application for custody Exh.10, learned J.M.F.C. Latur granted interim custody to her. That, conduct of respondent is prejudicial to the interest and well being and upbringing of the child and therefore, order dated 11.11.2021 was taken exception by revisionist by filing Criminal Appeal (PWDVA) bearing No.14 of 2021, thereby questioning the above order. However, according to learned counsel, without appreciating the facts, documentary material and circumstance as well as legal

position, and moreover, financial stability of revisionist to protect the interest of the child, which is of paramount interest, learned Additional Sessions Judge, Latur dismissed the appeal. Hence, the revision.

4. Per contra, learned counsel for respondent wife also submitted as well as placed on record written notes of arguments refuting all allegations and contentions raised in the revision, she blamed husband being a suspicious character. It is pointed out that, she being biological mother, has every right to claim custody and moreover law also in favours of grant of custody to mother when children are below 7 years of age. Even according to her, husband had bad vices and it would have also adverse effect on the upbringing of the child. She too doubted fidelity of her husband.

5. Heard extensively. Here, an order granting interim custody of minor by trial court and it being further affirmed by learned Additional Sessions Judge, is a subject matter of revision. On going through the applications, its reply/say and the assertions raised therein, in the trial court, it seems that both sides, who are husband and wife, are making volley of allegations against each other in spite of having a minor son. It also emerges that, as the marriage ran into rough weather out of strained relations, they have already

parted ways. Applicant husband seems to be residing at Nanded, whereas, respondent wife, who is said to be put up with parents, is residing at Latur.

6. Application Exh.10 seems to be at the instance of respondent wife in Criminal M.A. (D.V.) No. 87 of 2021 demanding custody of a minor, the then 5 years old. This application seems to be decided by the learned trial court, who appreciated the contentions raised by both sides, heard them extensively and in the fitness of the things, which appeared to the learned trial Judge on hearing them and on going through the papers, formed an opinion that minor is 5 years old and thereby interim custody was granted to the mother. It seems that, age of the minor is what prevailed over learned trial Judge, who finally ordered temporary custody by order dated 11.11.2021 to mother by permitting visitation rights to the opposite party.

7. Papers show that, aggrieved by the above order on Exh.10, present revisionist took exception to above order dated 11.11.2021 before learned Additional Sessions Judge by invoking section 29 of D.V. Act and again both parties seem to have hotly contested Criminal Appeal No. 14 of 2021. Again first appellate court, after hearing both the parties to their satisfaction and also

appreciated the documentary evidence as well as citations relied by each of them, reached to a conclusion that learned trial court has merely granted interim custody by protecting husband's visitation right, dismissed the appeal.

8. On going through the judgment and order of learned trial court, it is emerging that, there is detailed discussion in the reasoning commencing from paragraph no.12 onwards till paragraph no.17 entertaining and appreciating assertions raised by both the parties and also taking the legal precedents about consideration of welfare of a minor to be paramount, awarded custody of the minor, the then 5 years and some months old and granted temporary custody.

9. Again on visiting judgment and order of first appellate court, it is emerging that, since paragraph no.7 onwards, cases advanced by both sides as well as rulings relied by both sides are taken into account and discussed, and finally conclusion has been drawn that order passed by trial court is just, legal and proper.

10. Even this revisional court has appreciated the contentions raised by each of the parties and in the peculiar facts and circumstance, in which parties are currently placed and when it is

apparent that though child is with respondent, husband has been invested with visitation rights and thereby balance has been tried to be struck by protecting not only the interest of warring parties, but also the minor. The situation in which both litigating parties have landed themselves, the impugned order passed by trial court and affirmed by first appellate court, is the viable order that could emerge. This is just a temporary situation, which is taken into account by both trial court as well as appellate court and in the event of passage of time and change in circumstances, both sides have equal opportunities to either reconcile or to knock the doors of the court, if the situation so demands.

No case for interference being made out, revision application is dismissed.

(ABHAY S. WAGHWASE, J.)