



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 158 OF 2025
WITH
CRIMINAL APPLICATION NO. 1605 OF 2025
IN CRIMINAL REVISION APPLICATION NO. 158 OF 2025
WITH
CRIMINAL APPLICATION NO. 2614 OF 2025
IN CRIMINAL REVISION APPLICATION NO. 158 OF 2025
WITH
CRIMINAL APPLICATION NO. 3128 OF 2025
IN CRIMINAL REVISION APPLICATION NO. 158 OF 2025

Sandeep s/o Shivaji Pawar,
Age – 30 years, Occ – Labour,
R/o. House No. 80/1, Opp. Rohit Complex,
Near Dattawadi, Taluka Mulashi,
District Pune-411 033
Mob No. 9834132365. ... Revision Petitioner

Versus

Mrs. Archana Sandeep Pawar,
Age – 24 years, Occ – Digital source of income etc,
R/O C/o. Shivaji Laxman Rathod,
Post Vatsale Nagar, Andoor,
Taluka Tuljapur, District Dharashiv
(Osmanabad) 413 603 Revision Respondent

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Ms. Sudha M. Dixit, Advocate for the Applicant in Cri.Revision
Application No. 158 of 2025 and Cri.Application No. 1605 of 2025

Mr. V.B. Deshmukh, Advocate for the Respondent

Mr. G. A. Ambildhage, Advocate for the Applicant in Cri.Application
No. 2614 of 2025 and Cri.Application No. 3128 of 2025
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 21.11.2025
Pronounced on : 24.11.2025

JUDGMENT :

1. Instant revision takes exception to the judgment and order dated 21.04.2025 passed by learned Additional Sessions Judge, Osmanabad in PWDV Appeal No. 3 of 2025 arising out of the order passed by learned JMFC, Tuljapur on Exhibit 6 dated 23.01.2025 in PWDVA No. 8 of 2024.

2. Brief facts giving rise to the present proceedings are as under :

3. Parties are husband and wife. Present respondent (wife) pressed into service application **Exhibit 6** before learned JMFC, Tuljapur seeking interim custody of minor son Lavyansh, who was at that time allegedly few months short to four years. She alleged that, apart from inflicting domestic violence on her, non applicants i.e. husband and in laws have illegally retained custody of her minor son, and moreover they are not taking care of his health and are not providing for his daily needs. Being biological mother, she is separated from the minor. That, it if is allowed to continue, there would be no acquaintance of the child with respondent in future. There is neglect of both, physical and mental health of the child.

According to her, husband works in shifts and old aged parents in law are not in position to take care of the minor who is most of the times kept in confined or locked condition. That, under such circumstances, there would be repercussions on the future of the child. She being biological mother, is more capable and is thus entitled to receive interim custody of the minor.

4. Above application was countered by respondent husband denying allegations of domestic violence. In short, according to him, in spite of being mother, she neglected the child, always remained busy on phone, repeatedly left the house to stay with her parents. She also failed in discharging her household chores and liabilities. She is keen in residing separately from her in laws and is rather keen in staying with her parents. Husband has denied illegally retaining the custody. That, moreover he is also natural guardian. According to him, he is both, physically and financially, better capable of providing the needs and education to the minor. On the contrary, if the child is given in custody of mother, he would be put up in rural atmosphere affecting his upbringing and future. He pointed out that, he has admitted the minor in a international school in Pune and he is paying regular fees and the child is provided best education. Thus, for all above reasons, he resisted the application for interim custody.

5. After appreciating cases advanced by both the sides, by order dated 23.01.2025, learned JMFC, Tuljapur, before whom above application was tendered, allowed the application by invoking section 21 of PWDVA Act 2005 and directed husband non applicant to hand over interim custody of the minor to the applicant (wife) within a period of two weeks and granted visitation rights on every Sunday.

6. The above order was assailed by present revisionist before learned Additional Sessions Judge, Osmanabad, who after hearing both sides, was pleased to dismiss the appeal by its judgment and order dated 21.04.2025.

Feeling aggrieved by the above, revisionist husband has knocked the doors of this Court assailing both the orders of learned trial court as well as first appellate court on various grounds mentioned in the revision.

7. Heard. The crucial question which needs consideration here is, whether revisionist husband is entitled for the custody of minor aged five years, or it is the respondent-wife.

8. Before adverting to decide above point, a quick and short summary of the factual aspects needs to be reiterated. Relations as

husband and wife are not disputed by the parties as their marriage is of April 2019. Child was born to them on 10.08.2020. Due to strained relations, parties are residing separately. Now, there is tug of war between father and mother for custody of the minor. Respondent currently seems to be residing at Andur, Taluka Tuljapur, District Osmanabad i.e. at her parents' place. It is emerging that, after marriage, present respondent resided with present revisionist at Pune. After one year, it is alleged that there was maltreatment by revisionist to respondent, coupled with demand. She has alleged that, on 27.09.2023, she was driven out of the house. On third party indulgence, there was reconciliation and so she had come back to stay to revision petitioner, but there was no change in the conduct of revisionist and treatment meted out to her. It is her case that she was again driven out of the house and while she was put up at her parent's place, applicants came and forcibly took away the minor. She approached police who directed her to court and hence she instituted proceedings before JMFC, Tuljapur wherein she pressed into service application for interim custody by invoking Section 21 of PWDVA Act and the same was allowed on 23.01.2025, which order was then challenged before the Sessions Court by way of appeal bearing no. 3 of 2025 which came to be dismissed.

9. Perused the impugned order. The **reasoning and analysis of the first appellate court** are in paragraph 16 onwards. In para 19, learned first appellate court has observed that, better educational facilities at Pune cannot be compared with educational facilities available at village or small town. However, it is observed that, education of child of four years and the right of mother for custody cannot be compared or equated and education is a part of life, better and expensive education is a luxury of life and not a need of life. It is further observed that though right to education is basic right of the child, but same cannot be treated over and above the psychological of the child.

In para 20 and 21, it is observed that mother of four year child cannot be deprived from her legal right merely because she lives in town. That, it is always in the best interest of the child who is four years old, to get love and affection of his mother. Relying on the judgment of this Court in the case of ***Dr. Parijat Kanetkar v. Mrs. Malika Kanetker*** learned first appellate court made following observations in para 23 :

“23. This observation about the welfare of child, custody with mother are of nature of binding force, therefore, only for the reason of better educational

facilities at Pune in all development of a child which could be possible in the company of mother not to be compromised. The education can help the child to have better opportunities in the life but, the primarily child should grow physically, mentally as well psychologically, as a better human at first, then and then only a better education will be valued for him.”

Finally, with above observations, appeal has been dismissed.

10. Studied the papers and record. Here, as stated above, parties are at loggerheads for custody of the minor who is admittedly five years of age. It needs to be noted that as on today, revisionist is currently in custody of the minor and the reason for the same is emerging from the previous orders passed by this Court more particularly, order dated 16.05.2025.

11. Learned counsel for revision petitioner has invited attention of this Court to the order passed by this Court during pendency of revision i.e. order dated 12.08.2025. The said order shows that, this Court had held extensive interaction with counsel as well as their parties and also interacted with the minor separately.

The relevant observations are in para 2 and 3, and it has been observed as under :

“... Considering the totality of the facts and circumstances one needs to be alive to the given fact that mandate taking a compassionate approach in such kind of peculiar situations, guided by the legal principles, parameters. In my view, interest of the justice coupled with welfare of the child would be better served if the custody of the child, at this juncture, continues to be with the applicant (father) untill 30.08.2025....”

In para 4 of the order, visitation rights were accorded to the mother. Therefore, above order at least shows that, currently revisionist is having custody of the minor.

12. In child custody matters, law is fairly settled that, welfare of the child is of paramount importance and it supersedes all other considerations.

13. In the case of ***Mausami Moitra Ganguli v. Jayanti Ganguli***, the Hon’ble Apex Court in para 14 and 15 has observed thus :

“14. The principles of law in relation to the custody of a minor child are well settled. It is trite that while determining the question as to which parent the

care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Indubitably the provisions of law pertaining to the custody of a child contained in either the Guardians and Wards Act, 1890 (Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child as a predominant consideration. In fact, no statute, on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor. The question of welfare of the minor child has again to be considered in the background of the relevant facts and circumstances. Each case has to be decided on its own facts and other decided cases can hardly serve as binding precedents insofar as the factual aspects of the case are concerned. It is, no doubt, true that father is presumed by the statutes to be better suited to look after the welfare of the child, being normally the working member and head of the family, yet in each case the Court has to see primarily to the welfare of the child in determining the question of his or her custody. Better financial resources of either of the parents or their love for the child may be one of the relevant considerations but cannot be the sole determining factor for the custody of the child, it is here that a heavy duty is cast on the Court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstances, bearing in mind the welfare of the child as the paramount consideration.

15. *In Rosy Jacob v. Jacob A. Chakramakkal*, a three-Judge bench of this Court in a rather curt language had observed that the children are not mere chattels; nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in normal balanced manner to be useful members of the society and the guardian Court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them.”

14. The issue of custody of minors is also dealt by the Hon’ble Apex Court in ***Nil Ratan Kundu and Another v. Abhijit Kundu***, wherein the Hon’ble Apex Court has observed as under :

*“Apart from statutory provision in the form of sub-section (3) of Section 17, examination of child to ascertain his wishes also helps the Court in performing onerous duty, in exercising discretionary jurisdiction and in deciding delicate issue of custody of a tender aged child. Moreover, the final decision rests with the Court which is bound to consider all questions and to make an appropriate order keeping in view the welfare of the child. **Normally,***

therefore, in custody cases, wishes of the minor should be ascertained by the Court before deciding as to whom custody should be given.” (emphasis laid)

In the said case of ***Nil Ratan*** (supra), the Hon’ble Apex Court has also observed that ;

“In determining custody of child, it is not the ‘negative test’ that the party is not ‘unfit’ or disqualified to have custody of his son/daughter is relevant but the ‘positive test’ that such custody would be in the welfare of the minor which is material and it is on that basis that the Court should exercise the power to grant or refuse custody of minor in favour of father, mother or any other guardian.”

In para 56 of the judgment in ***Nil Ratan*** (supra), the following observations are made :

“56. In our judgment, the law relating to custody of a child is fairly well-settled and it is this. In deciding a difficult and complex question as to custody of minor, a Court of law should keep in mind relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a humane problem and is required to be solved with human touch. A Court while dealing with custody cases, is neither

bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the Court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, 3 though the final decision should rest with the Court as to what is conducive to the welfare of the minor." (emphasis laid)

15. Bearing above settled legal position in mind, here, admittedly, minor aged five is currently in the custody of father. Papers show that, child is also undertaking education. Mother is admittedly residing at town place in Osmanabad District, namely, Andur. Therefore, on the count of education, child is shown to be admitted in a International School in Pune. Mother has not clarified or asserted that she is also capable of providing for better education at the place where she currently resides with her parents. She has also not put up her independent source of earnings to provide for education of the

child. Therefore at least on the education front, which includes welfare of the child, father is better placed than mother.

16. Her primary contention is that she is biological mother and that child is neglected from care as father goes out for work, that too in shifts. However, it is pertinent to note that, revisionist has placed on record some photographs depicting medical treatment given to the minor on account of injuries suffered by him. Therefore, as regards to care and negligence is concerned, such documentary evidence reflects contrary position, as at such point of time, child was with mother and revisionist.

17. Another distinct feature which needs to be emphasized is that, this Court on 25.08.2025 had interacted with the very child apart from Advocates and parties. Such assessment was not done by either the learned JMFC Tuljapur, who granted interim custody, or even the first appellate court, who rendered order after hearing submissions of the parties. Therefore, the observations of this Court on personal interaction with the minor definitely outweigh the observations and opinions expressed by both the courts below. This Court had recorded opinion upon interaction with the child, that he is very much comfortable with father. Taking such material into consideration,

merely because respondent is biological mother and the child is being separated from her, is no good ground to handover custody to her when the overall well being and welfare of the child is while he is in Pune with his father.

18. The fact situation in the case in hand is similar to and in sync with the judicial pronouncements dealt above on the point of desirability of taking wish of the child if he is capable of expressing it.

19. To sum up, when law is fairly settled that welfare of the child is of paramount importance and when revisionist has succeeded in demonstrating that he is the only earning member amongst parents and he has further demonstrated that, at his instance child is admitted in an International School at Pune where revisionist is in service. Annexures show that child is attending school and documents of his progress are also placed on record.

20. Under such circumstances, it would not be in the interest of the very child to relocate him from his current place and shift him to relatively new area to which he is not shown to have been accustomed to. No doubt, respondent is biological mother, but circumstances in which the child is placed currently favours his stay at

Pune where he is undertaking education. Welfare of the child being paramount, and when there is nothing from mother's side to show that future of the child is unsecured or the child being neglected, it would be unjust to shift custody of the child to a relatively new place. Mother can enjoy visitation rights which would strike the balance and also take care of her anxiety of losing touch with the child.

ORDER

- I. The Criminal Revision Application is allowed. Revisionist-husband to retain custody of the minor.
- II The order dated 23.01.2025 passed by JMFC, Tuljapur below Exhibit 6 in PWDVA No. 8/2024 as well as the judgment and order dated 21.04.2025 passed by the Additional Sessions Judge, Osmanabad in PWDV Appeal No. 03/2025 are quashed and set aside.
- III. Respondent-wife shall have visitation rights i.e. on every Saturday and Sunday of every week.
- IV. Revisionist-husband to permit respondent-wife to meet their son at any place which is mutually decided by both parties. The Child shall be made available from 09.00 a.m. to 05.00 p.m. on every Saturday and Sunday.
- V. Parties shall not act in any manner which is prejudicial to the interest of the minor.

VI. In view of disposal of the Revision Application, pending Criminal Applications also stand disposed off.

[ABHAY S. WAGHWASE, J.]

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