



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

CRIMINAL REVISION APPLICATION NO. 179 OF 2025

1. Mohammad Ajaharoddin Najimoddin Shaikh
Age: 36 years, Occu.: Service,
 2. Khurshid Bi Najimoddin Shaikh
Ag: 60 years, Occu.: Household,
 3. Najimoddin Shafiyodin Shaikh
Age: 68 years, Occu.: Retired,
 4. Mohammad Akram Najimoddin Shaikh
Age: 30 years, Occu.: Labour,
All R/o 476, Haza Kholi,
Besides Goal Garden, Malegaon
 5. Musarrat Danish Afzalkhan
Age: 40 years, Occu.: Household,
 6. Haji Afzalkhan Shabir Khan
Age: 45 years, Occu.: Engineer,
Both R/o Hazira Mohalla, Faizpur,
Tq. Yawal, Dist. Jalgaon
 7. Shaikh Rafiq Shaikh Rahimoddin
Age: 45 years, Occu.: Service,
R/o Shahu Nagar, Jalgaon
 8. Naziya Parveen Majid Malak
Age: 40 years, Occu.: Household,
R/o Millat Nagar, Wadjai Road, Dhule
- ..APPLICANTS

VERSUS

1. Shaherbano Mohammad Ajahroddin Shaikh
Age: 30 years, Occu.: Classes
 2. Khatija Fatema Mohammad Ajaharoddin Shaikh
Age: 8 years, Occu.: Nothing
(Respondent No.1 is natural guardian as mother)
R/o c/o Riyaz Amed Husnoddin Shaikh
House No. 265, Near Masjid, Shivaji Nagar
Jalgaon
- ..RESPONDENTS

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 Ms Nayana Patil, Advocate h/f Ms Surekha Mahajan, Advocate for applicants
 Mr. A.G. Mulange, Advocate h/f Mr. J.V. Patil, Advocate for respondents

CORAM : ABHAY J. MANTRI, J.
DATE : 10th OCTOBER, 2025

ORAL JUDGMENT :

1. The applicants/original respondents, being aggrieved by the conditions imposed while allowing the application filed by the applicants below Exhibit 7 in Criminal Appeal No. 11 of 2025 vide order dated 21st April, 2025, by learned Additional Sessions Judge, Jalgaon, have preferred this revision application.

2. At the outset, it appears that the respondents, being wife and daughter of Applicant No.1, have filed application under the provisions of Domestic Violence Act, which came to be allowed by learned J.M.F.C., Jalgaon vide Judgment and order dated 22nd November, 2024 in PWDVA No. 73 of 2019 thereby granting maintenance of Rs. 5,000/- per month each to Respondent No.1 - Shaherbano and respondent No.2 Khatija and also directed to pay Rs.50,000/- towards compensation to the respondents, have preferred Criminal Appeal No. 11 of 2025 before the learned Additional Sessions Judge, Jalgaon.

3. In the appeal, the applicants have filed an application below Exhibit 7, for the grant of a stay to the said judgment and order. After considering the rival submissions and material on record, the learned

Additional Sessions Judge allowed the said application and passed a conditional order. Being aggrieved by the said conditional order, the applicants have preferred this revision application.

4. Having heard learned counsel for both parties and perused the impugned order and the record. While dealing with the same, I would like to reproduce the said conditional order as under :-

- “1. Application is allowed.*
- 2. The execution and operation of the Judgment and order dated 22.11.2024, passed by the learned Magistrate in PWDVA NO. 73/2019 is hereby stayed till the disposal of the appeal on the following conditions :*
 - a) The appellant No. 1 shall pay 50% of the arrears of the maintenance amount to the respondent Nos . 1 and 2 from the date of application before the learned trial Court till 30 April 2025, within a period of 30 days from the date of this order.*
 - b) The appellant No.1 shall continue to pay every month maintenance of Rs. 3000/- per month to respondent No.1 and Rs. 3000/- per month from May 2025 till the disposal of the appeal. The said amount shall be deposited in the Court or directly paid to the respondent on or before the 10th day of each succeeding month, till the disposal of this appeal.*
 - c) The appellants shall pay the cost of Rs. 10,000/- as directed by the learned Magistrate and Rs. 25,000/- towards compensation amount to the respondent No.1 within two months from the date of this order.*
- 3. In case of default on the part of appellants to comply with any of the aforesaid conditions, the stay to the effect and operation of the impugned judgment and order shall stand vacated automatically without further reference to this Court.*
- 4. It is also clarified that no extension for the payment as mentioned above will be granted to the appellants”*

5. A Bare perusal of the impugned order appears that the learned Additional Sessions Judge granted stay subject to payment of 50% of the arrears of maintenance amount to the respondents from the date of the application and also directed to pay maintenance of Rs.3,000/- per month to the respondents each and also directed to pay Rs.25,000/- of the compensation amount to Respondent No.1 and directed to comply the same within two months from the date of the said order and failing which the stay granted shall stand vacated automatically.

6. At the outset, I do not find substance in the application. As the applicants are challenging the interlocutory order passed in appeal, as such, in my view, as per Section 397 (2) of the Code of Criminal Procedure (for short- '~~Cr. P. C.~~') the powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order, and on that ground alone, the same is liable to be dismissed. Even assuming that the said order is interlocutory, after considering the material on record, the learned Judge has rightly passed the order.

7. Apart from this, the learned counsel for the applicants failed to point out any illegality or perversity in the impugned order. However, the learned counsel for the applicants contends that Respondent No.1 has suppressed the fact that she is getting maintenance under Section 125 of the Cr. P. C., and without considering the said fact, the learned appellate Court

has passed the impugned order. Similarly, the respondent No. 1 has not filed an affidavit disclosing her assets and liabilities before the trial Court, and thereby, she has failed to disclose her income before the learned Magistrate; hence, the said conditional order cannot be sustained in the eyes of the law. However, on perusal of para 21 of the judgment and order dated 22nd November, 2024, it appears that the learned Magistrate has considered that in the maintenance proceeding, this Court has granted maintenance of Rs. 7,000/- per month to the respondents. The learned Appellate Court, while considering the application below Exhibit 3 in the appeal, has considered the order dated 22nd November, 2024, passed by the learned Magistrate and, after considering the same, passed the impugned order, and therefore, I do not find substance in her contention that the respondents have suppressed about the maintenance proceedings.

8. It is pertinent to note that Applicant No.1 does not dispute his relationship with the respondents, nor does he dispute that they are residing separately. He is not providing any maintenance to them prior to passing the orders in both proceedings. Moreover, Applicant No.1 is the Assistant Teacher, and he himself admitted his salary of Rs. 70,000/- per month in 2023. The learned Magistrate in para 21 observed that his gross salary is Rs. 78,795/-, i.e. net salary after deduction of statutory dues must have been Rs. 70,000/-. Indeed, the same would have increased during the passage of time.

9. The second limb of the argument of the learned counsel for the applicants was that the learned Judge had not considered the law laid down in paragraph nos. 59 and 61 of the judgment in *Rajnish v. Neha and Another, (2021) 2 SCC 324*, and therefore, the impugned order is improper. She further pointed out paragraph no. 14 of the judgment in the case of *Shikha Vs. Avaneesh Mahodaya, 2024 (4) CCC 39* and submitted that the Respondent No.1 is well qualified, and therefore, she should not be left idle or remain idle depending upon the husband's income. Thus, she submitted that the order passed by the learned Appellate Court is improper.

10. Perused the impugned order. I do not find any illegality or perversity in the impugned order. The learned Judge has rightly considered the material on record and the judgment passed in the maintenance proceeding, and after considering the same, has granted a stay subject to the deposit of 50% arrears of maintenance amount.

11. It is pertinent to note that the husband's obligation is to maintain his wife and daughter. He cannot be permitted to plead that he is unable to maintain them due to financial constraints as long as he is capable of earning. It is to be noted that the husband has to fulfil the day-to-day needs of his wife and daughter; he is duty-bound to provide a maintenance amount to them to live their life as per his status. In such an eventuality, it is necessary to grant maintenance to them. As observed above, the applicant has sufficient means to earn the money. Besides, judicial notes can be taken that there is a rise in

the prices of essential commodities. Therefore, the maintenance amount granted to the respondent also appears to be too meagre to satisfy their daily needs.

12. It appears that in the maintenance proceeding, the total maintenance amount was granted to the respondents i.e. wife and daughter is Rs.11,500/- and in appeal, while staying the order, the learned appellate Court has granted Rs.6,000/- additional maintenance i.e. total maintenance in both the proceedings comes to Rs.17,500/- only, which is less than 25% of the gross income of Applicant No.1, and therefore, in view of the mandate in *Kulbhushan Kumar V. Raj Kumari and Ors.* I do not find substance in her contention in that regard.

13. In view of the above, the mandate laid down in the judgment relied on by learned counsel for the applicant is hardly of any assistance in support of her submissions. On the contrary, it emerges that Applicant No.1 has deprived the respondents of getting their rights of maintenance and filed this proceeding. He has not provided maintenance to his daughter either. Hence, in my view, the cost is liable to be imposed on the applicants while disposing of this application.

14. That being so, the revision application being devoid of merits, stands dismissed with the cost of Rs. 15,000/- (Rupees fifteen Thousand). Applicant No.1 is directed to pay the cost of litigation to Respondent No.1

within four weeks from today, failing which the stay granted by the learned Additional Sessions Judge vide order dated 21st April, 2025, shall stand vacated without further reference to the Court.

(ABHAY J. MANTRI, J.)

SSD