



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 27 OF 2024

1. Mahesh S/o Suvalal Surana
Age – 48 years, Occu – Labourer

2. Pramila W/o Suvalal Surana
Age 74 years, Occu – Nil

Both R/o – Parag Apartment, Satbhai Lane,
Ahmednagar, Tq & Dist. - Ahmednagar ...Applicants

Versus

1. Ashwini W/o Mahesh Surana,
Age: 30 years, Occu- Labourer,

2. Aarti D/o Mahesh Surana,
Age: 7 years, Occu – Nil
Rsep. No. 2 is minor under guardianship of
resp. no.1

Both R/o – Sahilrao Housing Society,
Tambatkar Mala, Pipeline Road, Ahmednagar
Tq and Dist. Ahmednagar ...Respondents

- Mr. A. S. Gandhi, Advocate for the Applicants
- Mr. S. R. Shirsat, Advocate for the Respondents

CORAM : ABHAY S. WAGHWASE, J
RESERVED ON : JANUARY 27, 2026
PRONOUNCED ON : JANUARY 29, 2026

ORDER :

1. In this Revision, Revision Petitioners - original Respondents
are taking exception to order passed by learned Sessions Judge in

Criminal Appeal No. 18/2018 arising out of judgment and order dated 21.02.2017 passed by learned JMFC, Ahmednagar in Criminal Misc. Application No. 136/2024.

2. Above Criminal Misc. Application came to be instituted by present Respondents on her behalf as well as on behalf of her daughter by invoking provisions of Protection of Women from Domestic Violence Act, 2005 (for short '**D.V. Act**') seeking various reliefs and learned JMFC partly allowed the said application directing making provision of one room or in lieu of it, Rs.3,000/- and also awarded Rs.12,000/- to both of them, apart from inflicting cost of litigation.

Against above judgment, husband knock the doors of learned Appellate Court vide Criminal Appeal No. 18/2018, but he same came to be dismissed by order dated 09.07.2020. Hence, present Revision.

3. Learned Counsel for Revision Petitioners would point out that, undisputedly Revision Petitioner No. 1 and Respondent No.2 husband and wife and they also have daughter. According to him, all allegations leveled by Respondent wife are baseless and without any evidence. According to him, at the threshold, he was not given opportunity to contest the proceedings and, therefore, matter went virtually ex parte against them. He further submitted that, in fact, both

parties had performed second marriage. That, there was divorce by mutual consent and, therefore, there is no question of meeting the needs of wife. He pointed out that, both the Courts below has not afforded him opportunity to effectively contest the application moved by wife and, therefore, he urges for remanding the matter back for fresh consideration by giving him an opportunity.

4. Learned Counsel for Respondents strongly opposes the application by pointing out that, there was maltreatment to the wife. That, by playing fraud on her, her signatures were obtained on alleged divorce by mutual consent. That, moreover, during cohabitation, she was subjected to physical cruelty. That, on 10.02.2013, she was beaten and thrown out along with the daughter and thereafter there was neglect to maintain. Before the learned JMFC, she had adduced her own evidence at Exhibit 14. Learned Counsel for Respondents justifies the order of both Trial Court as well as Appellate Court and would specifically point out that, in spite of opportunity, except causing appearance, there was no contest to the case and evidence of wife and, therefore, both learned Trial Court committed no error in granting relief, which is based on trustworthy evidence. For above reasons, Revision is sought to be dismissed.

5. Here, there is challenge to order of Appellate Court i.e. Sessions Court while entertaining Appel under Section 29 of D.V. Act whereby there was challenge to order passed by learned JMFC in Criminal M.A. No. 36/2015.

6. This being revision, re-appreciation of the evidence is to be avoided. It is only to be tested whether impugned order is illegal, irregular or perverse. The object of revision has been lucidly and succinctly dealt in the case of Amit Kapoor vs. Ramesh Chandra and Another, reported in (2012) 9 SCC 407. The relevant paragraph is borrowed and quoted hereunder:

Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and

cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.

Revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of the Supreme Court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely on apprehension or suspicion of the same would not be a sufficient ground for interference on such cases.

The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though Section 397 CrPC does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 CrPC is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 CrPC but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is

palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the juridical discretion is exercised arbitrarily.

7. On going through the record, it appears that, both Revision Petitioner No. 1 as well as Respondent No. 1 got married on 01.03.2010 and out of their wedlock and cohabitation, daughter seems to be born on 07.07.2012. Wife alleged that, husband, under influence of liquor, used to beat her and repeatedly driven her out of house. She, in her application before learned Trial Court, has given the dates on which above events took place. She has specifically averred in the complaint that, she was made to accompany husband's brother to bank for embranchment of Rs.8,00,000/- and it was tried to be projected before the Court that, the said amount was towards one time settlement. She claims that, she realized that she was cheated and thereafter as she was again maltreated and driven out of house, she resided with her parents. She described the assets and liabilities of her husband in her application and claimed above relief.

8. Record shows that, in spite of service, though present Revision Petitioner appeared, he did not bother to give reply or say to the averments raised by wife and, therefore, after giving sufficient opportunity learned Trial Court seems to have passed no written statement order. Consequently, learned Trial Court was left with no

other alternative but to proceed on sole evidence of wife. Learned Trial Court granted relief as stated above in aforestated paragraphs.

9. It further appears that, the said order was challenged by present Revision Petitioner vide Criminal Appeal No. 18/2018 but apparently after a delayed period. Grounds raised are like leveling false and frivolous allegations, divorce already obtained under Section 13(b) of the Hindu Marriage Act, no evidence about violence were put forth.

10. However, record and judgment of Appellate Court also shows that, present Revision Petitioner though appeared in the application, he failed to file say and, therefore, again even First Appellate Court was constrained to proceed in absence of say of Revision Petitioner. Therefore, what is emerging is that, both before the Trial court as well as First Appellate Court except causing appearance, there was no contest to the accusations and allegations raised by wife.

11. In the Trial Court, present Respondent had adduced her complete evidence, which had remained intact and unchallenged. Before this Court, except raising a prayer that both Courts below proceeded ex parte against him, matter is sought to be remanded for fresh trial. Such prayer cannot be considered when both Trial Court as well as First Appellate Court has tested the contentions raised by the wife before

said Courts. Wife's evidence remains unchallenged. Revisionist failed to contest claim of wife. This Court does not find any plausible reason to remand the matter for fresh consideration.

12. No case being made out in revision, the same is deserves to be dismissed. Hence, I proceed to pass following order:

ORDER

- (a) Criminal Revision Application stands dismissed.
- (b) Pending Criminal Application(s), if any, stands disposed of.

(ABHAY S. WAGHWASE, J.)

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