



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

CRIMINAL REVISION APPLICATION NO. 31 OF 2024

Deepak Gangadhar Dadge
Age: 42 years, Occupation: Doctor
R/o. Shahu Chowk, Latur

...Applicant

Versus

1. Sou. Vijaya w/o Deepak Dadge
Age: 36 years, Occupation: Professor
2. Samarth @ Piyush Deepak Dadge
Being a Minor through his Guardian
i.e. Respondent No.1
Both Residing at:
C/o Asst. Professor,
Dr. Vijaylaxmi D/o Vishwanath Gaware,
Swami Ramanand Tirth (R)
Medical College, Ambajogai, Dist. Beed

...Respondents

- Mr. A. A. Yadkikar, Advocate for the Applicant
- Mr. V. D. Gunale, Advocate for the Respondents

CORAM : ABHAY S. WAGHWASE, J
RESERVED ON : JANUARY 09, 2026
PRONOUNCED ON : JANUARY 17, 2026

JUDGMENT :

1. Revision Petitioner - Husband hereby takes exception to the judgment and order dated 31.01.2023 passed by learned Additional Sessions Judge, Udgir in Criminal Appeal (PWDVA) No. 04/2019 arising out of judgment and order dated 03.08.2019 passed by learned Judicial Magistrate, First Class, Udgir in Criminal Misc. Application No. 257/2012. The learned JMFC awarded maintenance to the Respondents

wife and son on her application, whereas, learned First Appellate Court maintained the said order. Hence, this Revision.

2. Learned Counsel for Revision Petitioner – Husband, apart from placing on record written notes of arguments, would point out that, parties are undisputedly husband and wife, who had entered into marital ties in May, 2010 and there is no further dispute that, Respondent no. 2 is born out of their wedlock. According to him, due to strained relations, Respondent Wife instituted proceedings by invoking Section 12 of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act) in the Court of learned Magistrate alleging maltreatment and domestic violence and thereby set up claim of Rs. 25,000/- maintenance per month for herself as well as child. That, learned Trial Court has disbelieved most of the allegations but has still awarded compensation. He very emphatically submitted that, Respondent No. 1 has acquired M.B.B.S, M.D. qualifications and she has gained employment as medical officer in Primary health Centre. That, she has not only permanent source of salary but also residential accommodation. She came to be appointed through Maharashtra Public Service Commission & her gross salary is Rs. 1,38,192/- According to him, thus, she was not at all dependent on him and she is competent and self sufficient to maintain herself. That, documentary evidence in the form of salary slip as well as

affidavit of evidence strengthens such contentions. That, she is income tax payer. According to him, learned Trial Court as well as learned First Appellate Court have not correctly appreciated such quality of evidence and has awarded maintenance to her, which according to him, is erroneous, illegal and perverse. He makes a statement across the bar that, Revision Petitioner - Husband is still ready to bear the expenses of the child but not for wife, who has more than sufficient means to maintain herself. Consequently, he seeks indulgence by allowing the revision.

3. Learned Counsel for Respondents, who also placed on record written notes of arguments, would support and justify the orders passed by learned JMFC as well as First Appellate Court. According to him, domestic violence was proved and, therefore, protection orders have been passed. He would submit that, though wife has employment, in view of the judgment of Hon'ble Apex Court in the case of Rajnesh vs. Neha and another, AIR 2021 Supreme Court 569, to enable wife to maintain the same standard of living, which she was placed and receiving while being married and he canvasses in favour of her entitlement to receive maintenance. According to him, both the Courts below have correctly appreciated the evidence, settled principle of law and has committed no error whatsoever in granting maintenance.

Lastly, he submits that, there is no merit in the revision and no illegality committed by either of the Courts below.

4. 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 aforestated. 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.

5. Here, learned Trial Court was approached by present Respondent by invoking Section 12 of the D.V. Act and had sought various reliefs available under Section 18 to 20 and 22. It is in such backdrop, learned JMFC granted maintenance to the tune of Rs. 12,000/- to Respondent wife and Rs. 10,000/- to son apart from granting Rs. 7,000/- towards rent, awarding compensation to the tune of Rs.1,00,000/- and cost of litigation to the tune of Rs. 1,500/-. Appeal against the same, admittedly, stood dismissed at the hands of learned Additional Sessions Judge, who thereby maintained the order of trial Court.

6. There is no dispute that both Revision Petitioner and Respondent No. 1 are qualified medical practitioners. Revision Petitioner who is runs a hospital in Latur and thus, is a practicing pediatrician. Undeniably, till appeal was decided, Respondent Wife after completing her MBBS also seems to have completed her post graduation and she does not refute that she is employed as a medical officer in Public health Centre. Contention of wife that she is residing separately with Respondent Son since August, 2010 is also not denied or questioned by Petitioner Husband.

7. On one hand, while asserting financial support from husband Respondent, Wife set up a case that, husband earns almost

Rs.10,000/- per day from his practice and as such, he also earns Rs. 20,00,000/- from agriculture income apart from earning Rs.20,000/- from rental income of medical shop.

In affidavit, wife claims that, she has to expend Rs. 20,000/- towards house rent, medical expenses of son to the tune of Rs.5,000/- and Rs.30,000/- for her own transportation and conveyance. For child, she claims that, she is required to expend Rs.2,00,000/- towards school fees; Rs.30,000/- for his transportation charges per annum; Rs.20,000/- for his food & clothing and Rs.15,000/- for extra classes and tuition fees. In her affidavit, she also claims that, she has borrowed vehicle loan and she pays EMI to the tune of Rs.12,000/-, as well as she pays Rs.70,000/- for housing loan. However, except stating so in the affidavit, she has not placed on record, documentary evidence, more particularly, of housing loan to the tune of Rs.70,000/-. Though she claims to be spending Rs.20,000/- towards rent, her salary slip shows that, she is already a beneficiary of House Rent Allowance. On Court's query, learned Counsel for Respondent-Wife informed that, she is spending Rs.30,000/- for her transportation to travel from Latur to the place of her job, but even details of the mode of conveyance and transportation are not supplied by her. Be it so.

Revision Petitioner Husband has placed on record before this Court salary slip of her wife for the month of August, 2025 i.e. post

orders passed by Trial Court as well as learned First Appellate Court. This is neither refuted nor denied by Respondent Wife. Thus, as on today wife is shown to be receiving salary of Rs. 1,38,192/-.

8. Therefore, the point central for determination is, whether wife, who is in employment of State government and receiving salary regularly, is at all entitled to receive maintenance and she is unable to maintain herself.

The Hon'ble Apex Court in the case of **Rajnesh vs. Neha and Another, MANU/SC/0833/2020** has laid down the object as well as guidelines to be followed while determining the maintenance. The ratio i.e. laid down is even if wife is earning, it would not operate as a bar from she being awarded maintenance by husband. In paragraph 63 of the judgment, it seems to be clarified that, the Court has to determine whether the income of wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home, which was observed by the Apex Court in the case of **Chaturbhuj vs. Sita Bai, MANU/SC/8141/2007**.

Thus, what is emerging from above observations of Hon'ble Apex Court is that, it is duty of the Court to also take into account the income of a wife, who is earning and to further determine whether or not she is capable of sustaining herself in the similar manner and

lifestyle, which she is accustomed to while cohabiting with the husband.

9. Keeping above legal precedent in mind, here in the considered opinion of this Court, as each case has distinct facts and features, it is duty of this Court, to determine whether income of wife who is earning, is at all sufficient maintain herself that too in accordance with the lifestyle of her husband in the matrimonial home.

Here undisputedly Respondent wife is shown to be in employment of State Government as a medical officer. Her salary slip, as stated above, shows that she earn Rs.1,38,192/-. Though she has narrated in her affidavit the liabilities and expenses incurred by her i.e. under the head of she is spending Rs. 20,000/- for rent, her salary slip itself shows that, she is availing House Rent Allowance to the tune of Rs. 5940. Her own affidavit shows that, she has her own abode as she claims to be paying EMI for housing loan as well as she is paying EMI for car loan suggesting she to be also owning a car. Therefore, in terms of lifestyle, post separation is concerned, she does seems to have her own shelter, her own vehicle. Thus, the very essentials for comfortable lifestyle, she apparently has her means and sources. With her above quoted income, she definitely can maintain herself decently and with dignity.

As regards to expenses incurred by Respondent Wife for the

son are concerned, except stating about it in her affidavit, there is no supportive documentary evidence, however, learned Counsel for Revision Petitioner already stated that, he is ready to continue to bear the expenses of the child as directed by learned Trial Court and maintained by First Appellate Court.

10. As a result of which, interference is called for in the impugned order. Hence, I proceed to pass following order:

ORDER

- A. Criminal Revision Application is partly allowed.
- B. Judgment and order dated 31.01.2023 passed in Criminal Appeal (PWDVA) No. 4/2019 to the extent of upholding maintenance to wife/Respondent herein is set aside.
- C. Clause '2' of the order dated 03.08.2019 passed in Criminal Misc. Application No.257/2012 is modified. Order of granting maintenance of Rs. 12,000/- per month to wife (Original Applicant No. 1) is set aside. So also, clause '3' of the said order is set aside.
- D. Revision Petitioner - Husband shall continue to pay Rs. 10,000/- for maintenance of son.
- E. Rest of the judgment and order dated 03.08.2019 to remain intact.

(ABHAY S. WAGHWASE, J.)

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