



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.302 OF 2024

Nissar Shaikh S/o. Rajjak Shaikh,
Age : 48 years, Occu. : Labour,
R/o. Degloor, Tq. Degloor,
Dist. Nanded.

... Applicant
(Orig. Respondent)

Versus

1. Fatima Almara W/o. Nissar Shaikh,
Age : 38 years, Occu. : Household,
R/o. C/o. Dhilkhas bi Shashuddin,
Pin No. 292, Kabas Nagar, Aurangabad.

2. Daniyal S/o. Nisar Shaikh,
Age : 9 years, Occu. : Education,
R/o. C/o. Dhilkhasbi Shashuddin,
Pin No.292, Kabas Nagar, Aurangabad.

... Respondent
(Orig. Petitioners)

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Mr. Adil Biyabani, Advocate for Revision Applicant/Petitioner.
Mr. Mudassir H. Shaikh h/f. Mr. Imtiyaz I. Pathan, Advocate for
Respondents.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 20 JANUARY 2026

PRONOUNCED ON : 22 JANUARY 2026

ORDER :

1. Revision petitioner - husband takes an exception to the judgment and order dated 26.07.2024 passed by learned Family Court, Aurangabad in Petition No. E-5 of 2019 by which present revision petitioner is directed to pay maintenance to the tune of Rs.5,000/- per month to wife and son.

2. Learned counsel for revision petitioner would point out that, wife left the company of husband on her own accord. That, moreover she was residing at Degloor, however, she instituted proceeding before the court of Family Court, Aurangabad, therefore he raises dispute about the maintainability of very petition before the Family Court, Aurangabad. He further pointed out that, subsequently, petitioner has performed second marriage, but as second wife also left, he performed third marriage. He has children from the said marriage to take care of, apart from maintaining his old aged mother as well as differently abled sister. That, though wife claimed that husband earned by conducting business of selling milk packets, before the Family Court she did not adduce any legally acceptable evidence. Learned counsel took this court through his own deposition and also further pointed out that, several proceedings are instituted by invoking several jurisdiction like Domestic Violence Act. Therefore, according to him, for above reasons, revision deserves to be allowed by setting aside the impugned order.

3. Learned counsel for respondents supports the findings and conclusion drawn by learned Family Court.

4. Heard. At the threshold, the issue of jurisdiction of Family Court, Aurangabad to entertain the proceedings instituted by wife, being

raised, is required to be dealt at the outset. According to husband, Family Court, Aurangabad had no jurisdiction as marriage between revision petitioner and respondent no.1 had taken place at Degloor. Secondly, entire family of wife also resides at Degloor. Therefore, there was no reason to institute above proceedings in the Family Court, Aurangabad on the ground of temporary stay. He pointed out that, moreover, there is no medical evidence in support of alleged treatment of son at Aurangabad.

5. Section 126 of Cr.P.C. deals with territorial jurisdiction of court to decide proceedings under section 125 of Cr.P.C., which reads as under :-

“Section 126 - Procedure

(1) Proceedings under section 125 may be taken against any person in any district.—

(a) where he is, or

(b) where he or his wife resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

(2) All evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be

made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just.”

6. In the light of above provision, it is abundantly clear that section 126(1) of Cr.P.C. does not contemplate permanent place of residence and therefore it cannot be said that proceedings are necessary to be issued only from registered permanent address. Here, wife has categorically stated that, she had shifted to her brother's place at Aurangabad and providing treatment to her ailing son. In the light of her such change of address and shifting, though temporarily, she has right to institute proceedings at the Family Court, Aurangabad by virtue of her stay with her brother. For above reasons, entertainment of her application by Family Court, Aurangabad cannot be faulted at.

7. As regards to second point is concerned, though there is no legally acceptable evidence in support of the income and that revision petitioner having married multiple times subsequently and he has children from such marriages, apart from his duty to maintain his old

aged mother as well as differently abled sister, his submission before this court, on court query, that he along with his nephew is involved in the business of real estate and taking the same into account coupled with the evidence adduced by wife in trial court, the quantum of Rs.5,000/- per month each to the respondent and their son, cannot be said to be unjustified or excess.

As no point made out on merits showing any patent perversity and illegality in the impugned order, this court in its revisional jurisdiction refrains itself from interfering. Hence, the following order is passed :

ORDER

The Criminal Revision Application is dismissed.

(ABHAY S. WAGHWASE, J.)