



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 145 OF 2025

Arfat S/o. Yusuf Shaikh,
Age : 35 years, Occu. : Driver,
R/o. Plot No. 8-A, G. No.13/2,
Priyadarshani Colony,
Ravraspura, Near Padegaon,
Aurangabad.

... Applicant
(Orig Respondent)

Versus

1. Aadiba W/o. Arfat Shaikh,
Age : 25 years, Occu. : Household,
R/o. Barshi Naka, Behind Hina Petrol
Pump, Beed, Tq. & Dist. Beed.
2. Fahad S/o. Arfat Shaikh,
Age : 3 years, Occu. : Minor,
U/g. of mother, Respondent No.1.

... Respondents
(Orig. Petitioners)

.....
Mr. Shaikh Shermahmed K., Advocate for Applicant.
Mr. Avinash Patil h/f. Mr. A. K. Bhosale, Advocate for Respondent
Nos.1 and 2.

.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 04 MARCH 2026
PRONOUNCED ON : 05 MARCH 2026

ORDER :

1. In this Revision Application, there is challenge to the judgment and order dated 12.02.2025 passed in Petition No. E - 46 of 2022 by the learned Family Court, Beed granting maintenance of Rs.10,000/- to wife and Rs.7,000/- to daughter.

2. Learned counsel for revision petitioner pointed out that, there is no dispute that present revision petitioner was married to respondent no.1 in September 2020, but according to him, without any just and sufficient cause, wife left the company of husband and levelled false allegations of physical and mental cruelty and also set up claim under section 125 of Cr.P.C. before the learned Family Court.

3. Learned counsel would submit that, before the learned Family Court, the case was set up that, husband conducts business of furniture shop, however, there was no supportive evidence in that regard, and even learned Family Court observed in impugned order to that extent that, in fact, revision petitioner is a rickshaw driver and he does not earn that much income so as to comply the order of paying maintenance to the tune of Rs.17,000/- per month. According to him, the quantum arrived by learned Family Court is in absence of cogent and reliable evidence. His second contention is that, moreover, the above order of learned Family Court is *ex parte* and without his participation, say or evidence. For both above reasons, he urges to allow the Revision Application.

4. Learned counsel for respondent wife would justify the order of learned Family Court by submitting that, there is no denial of

marital relations or bearing a child. That, there was mental and physical cruelty, as a result of which she was constrained to leave the house, and as there was further neglect, wife was constrained to file a maintenance proceeding for herself as well as her minor daughter. She has no distinct income. Consequently, according to learned counsel, the order of learned Family Court is justified and prays to dismiss the Revision Application.

5. Heard. It being a Revision, there is limited scope for this Court to see whether there is any patent illegality, perversity, or error on the part of the trial Court while passing the impugned order. The scope of section 397 of Cr.P.C. is repeatedly dealt by the Hon'ble Apex court in numerous judgments.

Though there are catena of judgments, the landmark judgment of ***Amit Kapoor v. Ramesh Chander and another*** (2012) 9 SCC 460 is relied and the relevant observations therein are borrowed and quoted as under :

“12. Section 397 of the Code 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 it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the 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.

13. 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."

6. With the above limited scope, impugned order is put to scrutiny. There is no denial of marital relations between petitioner and respondent no.1. Equally there is no denial of birth of respondent

no.2 out of their wedlock. Barely after 2 to 3 months of marriage, relations between parties seem to have soured and consequently, parties are residing separately. Wife set up claim for maintenance before the Family Court, Beed on the ground of neglect to be maintained and having no source of income. Judgment of learned Family Court shows that, in spite of of notice, revision petitioner did not participate and contest the claim, and as such, learned Family Court was left with no other alternative, but to proceed ex parte against the present revision petitioner. As pointed out, both respondents are beneficiaries of maintenance to the tune of Rs.10,000/- and Rs.7,000/- by virtue of order dated 12.02.2025.

7. Before this court, only point raised by revision petitioner is that, there was ex parte order, and secondly, no evidence about income of revision petitioner.

8. Learned Family Court, in paragraph no.7, had made following observations :

“7. The contents of the evidence on affidavit (Exh.14) of the petitioner No.1/wife are as per the contentions in her petition, so need not be repeated. Said contentions of the wife have gone unchallenged which are required to be accepted, so far as inability to maintain wife to herself and

daughter is concerned, as well as refusal on the part of husband to maintain them. The wife has stated that the husband is owner of Sofa and furniture shop at Aurangabad but she has not produced any material in support of the same. However, it is seen that the husband is able bodied person who is residing in city like Aurangabad, his probable monthly income would not be less than Rs.40,000/-. Even otherwise, the absence of husband speaks against him. Therefore, considering the reasonable requirement of the wife and daughter and own upkeep of the husband; I am of the opinion that the husband can be directed to pay an amount of Rs. 10,000/- per month to petitioner No.1/wife and Rs.7,000/- per month to her daughter from the date of petition alongwith cost of Rs.5,000/- to petitioner No.1.”

9. Therefore, in the light of above, it is clearly emerging that, there was only evidence of wife at Exh.5 and her affidavit Exh.14 and 15. Apparently and admittedly revision petitioner has not contested. Proceedings are apparently instituted in 2022 under section 125 Cr.P.C. and the same are decided on 12.02.2025 i.e. after laps of three years. No efforts seems to have been done by revision petitioner to appear, contest or resist the above claim.

10. From the impugned judgment and order, indeed, it does emerge that, wife could not substantiate earning of her husband from

alleged business of furniture shop, and even learned Family Court noted to that extent. Learned Family Court primarily seems to have formed an opinion on assumption that husband, being able-bodied and residing in a city like Aurangabad, he might be probably earning not less than Rs.40,000/-. Thus, on the point of earning capacity of husband, findings are apparently based on assumptions, presumptions and surmises.

11. Before this Court, learned counsel for revision petitioner had made statement that, husband runs a rickshaw, but no details in that regard are also placed on record to accept such contentions. Under such circumstances, even before this Court, there is no concrete evidence about income of husband. Mere residence in a city like Aurangabad would not be the correct basis to draw inference about income. As regards to maintenance of the daughter is concerned, this court is not inclined to interfere. However, as regards to wife is concerned, in absence of any evidence of actual earnings, grant of Rs.10,000/- to her slightly appears to be on the higher side and the same is required to be reduced. Hence, the following order is passed :

ORDER

- (i) The Criminal Revision Application is partly allowed.

(ii) Clause No.(2) of the operative part of judgment and order dated 12.02.2025 passed in Petition E No.46 of 2022, is hereby modified to the following effect :-

(2) “The respondent/husband is directed to pay an amount of Rs.8,000/- (Rupees Eight Thousand Only) per month to the petitioner no.1 wife as maintenance from the date of petition.”

(iii) Rest of the impugned judgment and order is hereby maintained.

(ABHAY S. WAGHWASE, J.)