

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.281 OF 2022

Sujata Uttam Khavale & Anr.	... Applicants
V/s.	
Uttam Dhondiba Khavale & Ors.	... Respondents

Ms. Babita Pandey for the applicants.

Ms. Leena Patil for the respondent No.1.

Mr. R.M. Pethe, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 9, 2022

PC.:

1. The applicant/wife and her son have filed present revision application challenging judgment and orders passed by the Courts below refusing to grant maintenance to the wife but granting maintenance in favour of applicant No.2.

2. On perusal of the orders passed by both the Courts below, it appears that the Courts have considered bank account entries for the period from 7th October, 2016 to 30th December, 2020 to record a finding that the applicant No.1 is working. The parties have already filed affidavit as contemplated in paragraph 72 of the judgment in the case of **Rajnish Vs. Neha** reported in (2021) 2 SCC 324.

3. It was, therefore, expected from the Courts below to consider

the affidavit filed by the parties and if any party is disputing the contents of the affidavit, it is open for the party disputing averments in the affidavit to place on record positive evidence to show that the statements in the affidavits are incorrect.

4. Therefore, the approach of the Courts below to arrive at the finding that the applicant No.1 is working is against well settled principles of law.

5. For the aforesaid reasons, hence, following order:

a) The impugned judgment and order dated 12th August, 2021 passed below Exhibit-50 in Criminal Miscellaneous Application No.2096 of 2018 confirmed by the judgment and order passed by the learned Additional Sessions Judge in Criminal Appeal No.135 of 2021 dated 5th April, 2022 to the extent of rejecting request for maintenance of the petitioner No.1 are quashed and set aside.

b. The application below Exhibit-50 is restored before the learned Magistrate, who shall decide the said application to the extent of grant of maintenance to the applicant No.1 in accordance with law and considering the criteria laid down by the Apex Court in the case of **Rajnish Vs. Neha** from paragraph 77 to 92;

6. The criminal revision application is disposed of in above terms. No costs.

(AMIT BORKAR, J.)