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

CRIMINAL REVISION APPLICATION NO.558 OF 2019

Suzette June Titus	... Applicant
V/s.	
Abraham Titus & Anr.	... Respondents

Mr. Mohammad Abdi i/by Bhavana H. Mhatre for the Applicant.

Mr. M.R. Tidke, APP for the respondent No.2/State.

Mr. Nitin G. Raut with Ms. G.P Vas & Ms. Sunita Serrao i/by P. Vas & Co. for the respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 24, 2023

P.C.:

1. The petition challenges order dated 19th August 2019 passed by the learned Family Court No.5, Mumbai. The application under section 125 of the Code of Criminal Procedure, 1973 was filed by the petitioner seeking maintenance against the husband. Learned Family Court by the impugned order partly allowed the application by directing the respondent to continue to pay the EMI of the house where the wife is residing. The maintenance to the wife was denied on the ground that she has failed to explain bank entries since 2010 to 2017. It is also observed that she is highly qualified and skilled person, she has incapacitated herself without justifiable

reason. While recording a finding that there are bank entries in her account, the learned Family Court has recorded a finding that the petitioner could not justify the transaction from 2010 to 2017.

2. Learned advocate for the petitioner, invited my attention to the application dated 18th June 2019 seeking permission to examine witnesses to explain the entries from 2010 to 2017. According to him, in addition to justifying the entries, she wanted to prove her contention that she was borrowing money from various relatives. The rejection of such application amounts to withholding material evidence from the Court which has material bearing on the issue involved. Non-explanation to the entries has been held to be reason for rejecting application for interim maintenance. Therefore, in my opinion, it is necessary that the wife be given opportunity to bring material on record to explain the entries in the bank account.

3. Additionally, at the relevant time judgment of the Apex Court in the case of **Rajnesh Vs. Neha**, reported in (2021) 2 SCC 324 had not been rendered. According to the said issue both the parties are required to submit their affidavit of assets and liabilities as per Annexure-1.

4. In that view of the matter, proceeding needs to be remanded back to the learned Family Court for decision afresh after giving opportunity to the wife to lead evidence as per application dated 18th June 2019. Both the parties shall file affidavit of assets and liabilities as per the case of **Rajnesh** (supra).

5. Since the application was filed in the year 2014, it is

accepted that the learned Family Court shall decide such application within six (6) months from today. During pendency of the present petition, this Court had directed the husband to pay interim maintenance to Rs.7,000/- per month to the wife. Till the decision of application under section 125, the husband shall continue to pay interim maintenance of Rs.7,000/- per month to the wife. However, it is made clear that quantification of interim maintenance of Rs.7,000/- would not be relevant factor for deciding interim maintenance application filed by the petitioner under section 125 of the Code of Criminal Procedure, 1973.

6. The criminal revision application is disposed of. No costs.

(AMIT BORKAR, J.)