

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CRIMINAL APPLICATION (DOMESTIC VIOLENCE) NO.
9118 of 2025**

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AVNISHKUMAR GUPTA (AVINSHKUMAR OMPRAKASH GUPTA)

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MS SHIVANGI M RANA(7053) for the Applicant(s) No. 1

MR MANAN MAHETA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 03/07/2025

ORAL ORDER

[1.0] RULE returnable forthwith. With the consent of learned advocates appearing for the respective parties, present petition is taken up for final hearing today.

[2.0] By way of present petition under Article 226 of the Constitution of India read with Section 528 of the BNSS, the petitioner has prayed for the following reliefs:

“(A) Your Lordship may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or directions quashing order dated 12.09.2022 passed by the court of learned Chief Judicial Magistrate First Class, Vadodara below Exh.4 in Criminal Misc. Application No.3786 of 2021 (at Annexure-A hereto) as well as the order dated 17.02.2025 passed by the learned Additional Sessions Judge, Vadodara in an appeal under Section 29 of the Domestic Violence Act being Criminal Appeal No.335 of 2022 (at Annexure-B hereto);”

[3.0] The brief facts giving rise to present petition are as follows:

[3.1] The respondent No.2 filed an application under the Domestic Violence Act alleging that the respondent No.2 got married the petitioner herein on 12.06.2015 at Bengaluru and soon after the marriage the respondent No.2 started residing in her matrimonial home. That, thereafter, respondent No.2 filed an application Exh.4 for interim application claiming maintenance at the rate of Rs.30,000/- per month. The learned Magistrate has been pleased to pass an order directing the petitioner to pay Rs.10,000/- per month towards interim maintenance to the respondent No.2 from 04.12.2021.

[3.2] Being aggrieved and dissatisfied with the said order, the petitioner approached the learned Sessions Court by way of filing Criminal Appeal No.335 of 2022 and the learned 8th Additional Sessions Judge, Vadodara on 17.02.2025 was pleased to dismiss the said appeal.

[3.3] Being aggrieved and dissatisfied with both the orders, the petitioner has preferred the present petition.

[4.0] The main grievance of the learned advocate for the petitioner is that petitioner is a retired senior citizen and respondent No.2 is aged 52 years and she is residing separately and already getting maintenance under Section 125 of the CrPC and she is even using the ATM card of the petitioner. Further, she has submitted that reply given by the petitioner to the claim of the respondent No.2 has not been considered by the learned Magistrate and monthly interim maintenance of Rs.10,000/- has been awarded to the respondent No.2, which is on higher side.

[5.0] At the outset, it is worth to mention that the proceedings under Section 125 CrPC and D.V. Act, both are different and there is no provision in the Domestic Violence Act to test the refusal and neglect to maintain. The concept of domestic violence is specific as provided in the Domestic Violence Act and it could not be compared with the concept section 125 of the CrPC and further it appears that the learned Magistrate has been pleased to come to conclusion that concept of refusal and neglect cannot be taken into consideration in comparsion to provisions of section 125 of the CR.PC.

[5.1] One more aspect is required to be considered that there is no bar to pass any order on the ground that simultaneously two proceedings under section 125 of CrPC or other enactments are going on. At that event, the petitioner has the right to seek only a set-off, as no substantial order for the award of maintenance had been passed. However, considering the circumstances, the learned Magistrate has passed an interim maintenance order of Rs.10,000/-. This order provides immediate relief to the wife, pending further proceedings.

[5.2] At this stage it is appropriate to refer to the judgment of the Hon'ble Apex Court in the case of **Rajnesh vs. Neha** reported in **(2021) 2 SCC 324**, wherein the Court, in paragraph 49, held as follows:

"49. Section 22 provides that the Magistrate may pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence perpetrated by the respondent. Section 23 provides that the Magistrate may grant an ex parte order, including an order under Section 20 for monetary

relief. The Magistrate must be satisfied that the application filed by the aggrieved woman discloses that the respondent is committing, or has committed an act of domestic violence, or that there is a likelihood that the respondent may commit an act of domestic violence. In such a case, the Magistrate is empowered to pass an ex parte order on the basis of the affidavit of the aggrieved woman."

[5.3] From the various pronouncement of the Hon'ble Supreme Court as well as the High Court, it can be said that the husband cannot escape from his liability to maintain his wife or children because it is the legal and ethical duty of the husband to maintain them. It is the duty of the husband to maintain his wife and to provide financial support to her and their children and he cannot shirk his responsibility as husband as well as father to maintain his legally wedded wife and children, which is his social and lawful duty towards them and the wife and children would be entitled to the same standard of living, which they were enjoying while living with them. In this regard reference is required to be made in the case of **Bhuwan Mohan Singh vs Meena**, reported in **2015 (6) SCC 353**. The amount for the maintenance of wife for her sustenance does not mean minimal existence, but signifies leading life in a similar manner as she would have lived in the house of her husband, husband has a bounden duty to enable his wife to live the life with dignity according to their social status and strata. Herein, though petitioner is retired but he was serving with BHEL and while determining the interim maintenance, the court has to consider various factor; the income, assets and financial position of the parties of the financial needs of the applicant(s) and standard of

living. They accustomed to the effect that the said order must be effective from the date of filing of the application, until the conclusion of legal proceedings, the interim maintenance played vital role in protecting the financial well-being of wife and provide the lifeline for those, who are lack of means to support themselves that they are not destitute wife awaiting of final decision.

[5.4] The monetary relief explained under the provisions section 23 of the D.V. Act and Section 20 (2) of the DV ACT is important. The scope of the D.V. Act is wider than section 125 Cr.PC. In this regard reference is required to be made in case of **Lalita Toppo vs. State of Jharkhand, reported (2019) 13 SCC 796**, wherein the Hon'ble Apex Court has been pleased to explain the scope of D.V. Act, which is wider than provision of section 125 of the CrPC. The proceedings under the DV Act and CrPC, both are independent of each other and have a different scope. The monetary relief under section 20 of DV Act is in addition to Section 125 CrPC and such amount must be fixed by striking a balance between the earning capacity of husband and the needs of the wife. Perusing the provisions of DV Act having the great significance is provided and the effective protection of the rights of the women, who are subjected to the victim of violence of any kind occurring within the family. The gist of the fact is that whether physical, sexual, verbal, emotional, or economical all are redressed by the statute, keeping in mind the settled principles of law.

[6.0] Even, the respondent No.2 herein has produced entire details as per the decision of the Hon'ble Supreme Court in the case of **Rajnish (Supra)**. Considering the aforesaid fact and considering the status of the petitioner and the fact that the petitioner is retired employee of BHEL who retired in the year 2022 and considering other real estate and other investments of the petitioner however, the interim maintenance is always subject to final outcome of the final adjudication and appreciation of evidence.

[7.0] In view of above, no perversity or no illegality has been committed by the Courts below which calls for interference by this Court in exercise of power under Article 226 of the Constitution of India considering the attending circumstances of the case and the status of the petitioner. Hence, present petition is dismissed. However, the learned Trial Court is directed to decide the matter expeditiously and independently on its own merits without being influenced by the order of the learned Sessions Judge or the present order.

(HASMUKH D. SUTHAR, J.)

Ajay

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AJAY CHANDRAN MENON(HC00939), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 03/07/2025 19:04:02