



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.270 OF 2025

Sujata W/o. Nishant Manwar,
Age-31 years, Occu-Household,
House NO. 88, Galli No. 01, Garkheda Parisar, ...**APPLICANT**
New Hanuman Nagar, Chh. Sambhajinagar [Ori. Applicant]

VERSUS

Nishant S/o. Ramesh Manwar,
Age-38 years, Occu-Service,
R/o. Gopika Sadan, Opp. Silver Pride Apartment,
(Meghdoot Colony), Amar Colony, Old By-pass Road,
Dasturnagar, Amravati.**RESPONDENT.**
[Ori. Non-Applicant]

Mr. Bharat S. Doifode, Advocate h/f Mr. Y. L. Bidve, Advocate for the
applicant
Mr. Vijay V. Deshmukh, Advocate for the respondent

CORAM : ABHAY J. MANTRI, J.

RESERVED ON : 17th OCTOBER, 2025

PRONOUNCED ON : 16th DECEMBER 2025.

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally by consent of the learned counsel for the respective parties.

2. The original applicant, i.e., the wife being aggrieved by the impugned judgment and order dated 27-09-2024, passed by the learned Judge, Family Court, Aurangabad (for short the '*learned Judge*') in Petition E-No.98/2021, thereby dismissing the petition filed

by the applicant for the grant of maintenance, has preferred this revision application.

3. The learned advocate for the applicant vehemently contended that the learned Judge has not considered the evidence on record in its proper perspective and erred in dismissing the petition, holding that the applicant has suppressed the fact of filing of the Domestic Violence Proceeding (for short the *D. V. Proceeding*) and the grant of interim maintenance from the court. Similarly, the learned Judge has erred in observing that the applicant has miserably failed to prove that the non-applicant failed and neglected to maintain her. However, the applicant is staying separately from him without any reason. Therefore, he urged that the said findings are contrary to the facts on record and liable to be set aside in the revision.

4. He further argued that though the applicant has taken the education of LLB, she is not a practising advocate. The respondent-husband has not led any evidence to show that she had an independent income to maintain herself. However, the learned Judge has not considered this fact in its proper perspective and erred in dismissing the application. Accordingly, he urged that the application be allowed.

5. *Per contra*, the learned advocate for the respondent vehemently opposed the application, contending that the applicant

has deliberately suppressed the material facts relating to the previous filing of DV proceedings and receiving the monetary relief by her in the said proceeding, and therefore, the learned Judge has rightly held that the applicant is not entitled to relief. He further canvassed that the applicant failed to prove that the respondent deserted her. But she herself left the house; therefore, the learned Judge has held that she is not entitled to maintenance on that ground. Lastly, he argued that the respondent has Sickle Cell Disease, a severe hereditary disorder and has 40% permanent disability due to said disease. Therefore, he has to spend a huge amount on his medical treatment. He also resigned from his employment in February 2020 and is currently unemployed. On the contrary, the applicant is a Law Graduate and is educated and capable of earning her livelihood. The applicant was employed and earning approximately Rs. 8000/- per month, and also engaged in Law practice. Therefore, she is not entitled to maintenance, and, as such, he submitted that the learned Judge has considered this aspect and rightly dismissed the petition; accordingly, no interference is warranted.

6. To buttress his submission, he has relied on the following judgments: K. D. Sharma Vs Steel Authority of India Ltd and others 2008 AIR SCW 6654, Sudeep Chaudhary Vs Radha Chaudhary AIR 1999 SC 536, Vishal Rajesaheb Gore Vs Sow. Aparna Vishal Gore and

others, 2018 ALL MR (Cri) 3399, and Ranjesh Vs Neha Manu/SC/0833/2020 submitted that in view of the law laid down in the above judgments, due to non-disclosure of relevant material facts, the applicant is not entitled to the maintenance and as such, urged for dismissal of the revision application.

7. Heard the rival contentions of the learned advocate for the parties and gone through the impugned judgment and record as well as the judgments relied on by the learned advocate for the respondent, a short question arises before this court; *whether the order of dismissal of the petition/application passed by the learned Judge, Family Court on account of suppression of the material fact of getting interim maintenance in D. Vproceedings is just and proper or it requires interference in revision.*

8. On perusal of the impugned judgment, at the outset, it appears that the learned Judge dismissed the petition solely on the ground that the applicant has suppressed the fact that she has filed the DV Proceeding and getting interim maintenance to her therein and also held that the applicant failed to prove that non-applicant has failed and neglected to maintain her and therefore, rejected the petition.

9. It is pertinent to note that the respondent appeared before the learned family court and filed a written statement (Exh.

15). He does not dispute his relation with the applicant nor dispute that she is residing separately. He resisted the application on various grounds as observed in para 3 of the impugned judgment. It further reveals that the applicant has filed an affidavit of examination-in-chief (Exh. 17) and also filed a copy of the order passed in PWDVA No. 146/2021. The applicant has also filed an affidavit of disclosure of income, assets, and liabilities as per the direction of the Hon'ble Apex Court in Rajnish Vs Neha (Exh . 6) and other documents and closed her evidence. The respondent has cross-examined her at length. *It is pertinent to note that the respondent failed to adduce any evidence in support of his defence.*

10. It further emerges that the applicant does not dispute that she is a LLB degree holder and does not dispute that in the DV proceeding, an interim relief of Rs. 2500/- was granted to her, which was challenged by her before the appellate authority.

11. The respondent, along with his affidavit-in-reply, has filed a copy of the order passed in the DV proceeding on record (Exh. R-1) to demonstrate that in the DV proceeding, an interim maintenance of Rs. 2500/- was granted to her. The said order is of 19-10-2022, i.e. much prior to the passing of the impugned order. As well as the order passed by the learned Addl. Sessions Judge, Aurangabad on 22.02.2024, whereby enhanced maintenance up to

Rs. 5,000/-p.m. (Exh. R-2)

12. The learned Judge in para 9 has observed that, “*Moreover, the applicant has been getting interim maintenance in the D.V. case filed by her. The important factor is that she has challenged the said interim order seeking enhancement in the said amount of interim maintenance. Despite these facts, she has not given any reason as to why she has filed the present petition again seeking maintenance from the non-applicant.*” Said observation appears contrary to the settled position of law as well as the law laid down in para 56 of the *Ranjesh Vs Neha* (supra), relied by the learned advocate for the respondent. I would like to reproduce the same as under:

56. It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Code of Criminal Procedure, or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

13. Bare perusal of the above para, it appears that a wife can make a claim for maintenance under different statutes, and *there is no bar for filing an application for maintenance under various enactments.*

Therefore, the observations appear to be contrary to the law laid down by the Hon'ble Apex Court. Thus, these findings cannot be sustained in the eyes of the law. In para 9 of the impugned order, it is observed that "*She has not even disclosed this fact of filing D.V. case to this Court. She has not produced a copy of the interim maintenance order passed by the learned J.M.F.C. Aurangabad. As such, she has suppressed this material fact from this Court*". However, this finding appears to be contrary to the facts on record. In para 5, the learned Judge has observed that the applicant has filed a copy of the order passed in PWDVA NO.146/2021. The said filing of the copy itself indicates that the proceeding under PWDVA is pending between the parties. Undisputedly, she has not filed a copy of the order granting interim maintenance in her favour before the court, which she was bound to produce, as her evidence was recorded after 29-05-2023, as observed in para 5 itself. No doubt, as observed by the learned Judge, the parties must come to court with clean hands and disclose all the facts before the court when applying for the grant of maintenance. Similarly, in my view, it was the duty of the respondent also to bring those facts on record by filing relevant documents before the court. But the respondent did not enter into the witness box nor adduce evidence in support of his defence. During the applicant's cross-examination, she was asked only certain questions,

to which she admitted that she had received interim maintenance of Rs. 2500/- per month. While considering the above aspect, I would like to reproduce **para 57** of the *Rajnish Vs Neha (supra)* as under:

“57. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the Applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.”

14. Bare perusal of the above, it emerges that the applicant has to disclose the previous maintenance proceeding and the order passed therein, so that the court would take into consideration the maintenance already awarded in the previous proceeding and the adjustment for the said amount. The above mandate itself indicates that for the purpose of awarding further maintenance, it is a bounden duty of the applicant to disclose the receipt of the previous maintenance amount.

15. In the case in hand, the applicant is a Law graduate and aware of the provisions of law, and therefore, it was incumbent on her to disclose all the material facts before the court. Undisputedly,

the interim maintenance order was passed on 19-10-2022, i.e., well before the evidence was adduced. Similarly, it appears that the learned Additional Sessions Judge enhanced the said interim maintenance order vide judgment and order dated 22-02-2024, i.e., much before the judgment in the case was passed. But none of the parties has produced a copy of the order of the learned Addl. Sessions Judge. Indeed, the non-production of the order by both the applicant and the respondent is improper. It is not the case that the respondent was not contesting the application before the learned Family Court. But he appeared through his advocate and argued the application. Therefore, in my view, there is no doubt about the conduct of the applicant; for the said conduct, at the most, the applicant can be liable to pay the costs for non-production of the said order before the court. But certainly, on that ground, it would not be proper to dismiss the application, as it was filed under the beneficial legislation, and it is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Code of Criminal Procedure, or under H.M.A.

16. Moreover, she has disclosed about the filing of D. V. proceedings by affidavit of examination-in-chief (Exh. 17) and also filed a copy of the order passed in PWDVA No. 146/2021. Likewise,

during her cross-examination, she admitted that, in the DV proceeding, an interim relief of Rs. 2500/- was granted to her, which she challenged before the appellate authority. In such circumstances, it cannot be said that she has suppressed the facts of filing the D. V. Proceedings from the court, but it can be inferred that the interim maintenance order passed therein was not produced before the court. Accordingly, the findings recorded by the learned Judge are liable to be set aside.

17. The next aspect is whether the applicant is entitled to maintenance or not. However, the learned Judge has not dealt with the said issue. Though in para 9, it is observed that the applicant has miserably failed to prove that the non-applicant has failed and neglected to maintain her. When it is undisputed that the applicant is residing separately, and it is a settled position of law that the husband is bound to maintain his wife. Therefore, these findings appear contrary to the settled position of law. The learned Judge has not dealt with the issue of whether the applicant is entitled to maintenance or not. But, erred in holding that she is not entitled to maintenance.

18. I would like to reproduce paragraphs 66 and 67 of the judgment in *Rajnish Vs Neha (supra)* as under:

“66. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in Chander Prakash Bodhraj v. Shila Rani Chander Prakash. MANU/DE/0028/1968 : AIR 1968 Delhi 174. The onus is on the husband to establish with the necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.

67. This Court in Shamima Farooqui v. Shahid Khan MANU/SC/0380/2015 : (2015) 5 SCC 705 cited the judgment in Chander Prakash (supra) with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.”

19. A bare perusal of the above dictum, it appears that it is a bounden duty of the husband to maintain his wife and children. He cannot contend that he is not in a position to earn sufficiently to maintain his family. It is not in dispute that the respondent/husband has not adduced any evidence in support of his defence nor provided any maintenance to the wife when she is residing separately from him. Thus, in view of the above mandate, the husband is bound to pay the maintenance to the wife.

20. It further appears from the record that initially the learned Magistrate awarded an interim maintenance of Rs. 2500/- to the applicant, which was the learned Addl. Sessions Court enhanced up to Rs. 5000/- per month. However, this court stayed the said order

and directed the respondent to pay Rs. 3500/- to the applicant. The above order indicates that the applicant is currently receiving Rs. 3500/- per month as interim maintenance. The prices of the essential commodities have risen, and therefore, the amount of Rs. 3500/- granted to the applicant is too meagre to live the life as per the status of her husband.

21. Apart from this, the respondent failed to adduce any evidence on record to demonstrate that the applicant has an income source or that she earns the amount as claimed. However, he did not enter the witness box and failed to establish that the applicant has any source of income. As such, it appears that the applicant is currently receiving interim maintenance of Rs. 3500/- only.

22. I would like to reproduce para 98 (i) of the judgment in *Rajnish Vs Neha (supra)* as under:

“98. To overcome the issue of overlapping jurisdiction and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding.”

(ii) It is made mandatory for the Applicant to disclose the previous proceeding and orders passed therein in the subsequent proceeding.

(iii) If the orders passed in the previous proceeding/s require any modification or variation, it would be required to be done in the same proceeding.

23. In the judgment mentioned above, the Hon'ble Apex Court has given direction while dealing with an issue of overlapping jurisdiction. As per the said direction, the learned Judge shall pass an order regarding maintenance to the applicant therein.

24. The learned advocate for the respondent relied on the judgment in K. D. Sharma (supra) and referred para Nos. 24 to 29, 45 and 46 and urged that in view of the dictum laid down in the said judgment, the applicant is not entitled for the relief as claimed as she has suppressed the fact from the court about receipt of the maintenance in the DV proceeding.

25. The facts in the said case are distinct from the case at hand. It was brought to the notice of the learned Judge that a DV proceeding is pending between the parties. However, the parties have not produced a copy of order passed in D. V. proceeding about interim maintenance before the court. It is pertinent to note that it was incumbent on the applicant as well as the respondent to produce

the said order before the court. However, neither party has produced the same before the court nor disclosed the same. Thus, considering the beneficial legislation and the fact that the applicant-wife is entitled to make an application for maintenance under different statutes. In my view, the law laid down in the above judgment is hardly of any assistance to the respondents in support of his contention.

26. In the judgments *Sudeep Choudhary Vs Radha Chaudhary (supra)*, *Vishal Rajasaheb Gore Vs Sow. Aparna Vishal Gore and others (supra)*, and *Rajnesh Vs Neha (supra)*, the Hon'ble Apex Court held that the maintenance allowance granted needs to be adjusted in the subsequent proceeding. The Hon'ble Apex Court, after considering various judgments of the Apex Court and High Courts, has given ***Certain guidelines*** for granting maintenance and adjusting the same in ***Rajnesh Vs Neha (supra)***, and therefore, the court has to follow the said directions of the Hon'ble Apex Court.

27. Therefore, in the case in hand, also receiving the interim maintenance in the DV proceeding can be adjusted while passing the order of maintenance instead of rejecting the same on the point of non-disclosure of the fact of filing D.V. case to the Court, and the facts that, she has not given any reason as to why she has filed the present petition again seeking maintenance from the non-applicant, without

assigning cogent reasons. Therefore, in my view, observations made in the said judgments are hardly of any assistance to the respondent, but the same is helpful to the applicant in support of her case.

28. To sum up the above discussion, it appears that the learned Judge, without dealing in detail, has given more significance to the fact that the applicant has failed to disclose the facts of receiving the interim maintenance to her and has dismissed the petition. In fact, it was incumbent on the learned Judge to deal with the evidence on record in detail, when admittedly, the respondent failed to adduce any evidence in support of his defence. The court is bound to consider the settled position of law as well as the evidence on record in its proper perspective. However, the learned Judge has failed to consider the same in its proper perspective and erred in dismissing the petition. Therefore, in my view, an interference is required in the revisional jurisdiction.

29. As a result, the criminal revision application is allowed. The impugned judgment and order dated 27-09-2024, passed by the learned Judge, Family Court, Aurangabad, in Petition E-No.98/2021, is hereby quashed and set aside. The matter is remanded back to the learned Judge, Family Court, Chh. Sambhajinagar for reconsideration afresh on its own merits. The rule is made partly absolute accordingly. No order to costs.

30. The parties are directed to appear before the learned Judge, Family Court, Chh. Sambhajinagar on ***01.01.2026***. The proceedings should be completed and decided on or before ***30th April 2026***.

31. Inform the learned Judge, Family Court, accordingly.

[ABHAY J. MANTRI, J.]

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