



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 CRIMINAL REVISION APPLICATION NO. 93 OF 2025

SAYYED FEROZ SAYYED FAROOQ

....Applicant

VERSUS

SARA BEGUM W/O SAYYED FEROZ AND ANOTHER

....Respondent

Mr. A. L. Shaikh, Advocate h/f Mr. Ramijkha K. Pathan, Advocate for the applicant

Mr. H. B. Pawar, Advocate for the respondent Nos. 1 and 2

CORAM : ABHAY J. MANTRI, J.

DATE : 04th OCTOBER, 2025

ORAL JUDGMENT:

1. The applicant is aggrieved by the impugned judgment and order dated 15-05-2024 passed by the learned Judge, Family Court, Aurangabad, in Petition No. E-302/2021. Hence, the petition was partly allowed, and the applicant is directed to pay maintenance of Rs. 10,000/- per month to the respondent No. 1 and Rs. 5000/- per month to the respondent No. 2-son from the date of the application.

2. Heard the learned advocates for the parties and perused the impugned judgment and record.

3. At the outset, it appears that the respondents, the wife and son, have filed an application for the grant of maintenance under

Section 125 of the Cr. P. C. against the applicant. The applicant appeared in the matter. Both parties were referred for counselling. However, the matter could not be settled between the parties. Respondent No.1 filed her affidavit of assets and liabilities. However, despite being granted sufficient opportunities, the applicant did not file an affidavit disclosing his assets and liabilities. The learned Judge, after considering the evidence on record, held that the applicant is an able-bodied person with sufficient means of income and therefore allowed the petition partly, directing him to pay maintenance as stated above. Aggrieved by the same, the applicant has preferred this revision.

4. It is pertinent to note that the applicant does not dispute his relationship with the respondents. Similarly, they reside separately, and the applicant has not provided them with any maintenance amount.

5. The learned advocate for the applicant vehemently contended that the advocate for the applicant had suffered from a paralytic attack. Therefore, he could not inform him about the stages of the proceedings. Thus, the applicant did not file his affidavit disclosing assets and liabilities, nor did he adduce evidence on record. The learned Judge of the Family Court did not consider the said facts in their proper perspective and erred in proceeding with the

matter without giving an opportunity. Therefore, he urged that the matter be remanded to provide him with an opportunity to present his case.

6. On perusal of the record, it reveals that the learned Judge in para 9, 11, 14 & 17 categorically observed that the applicant and respondents were referred for conciliation. However, the matter could not be settled between them. Similarly, the applicant, despite being granted sufficient opportunities, failed to file an affidavit disclosing his assets and liabilities and thereby did not comply with the direction of the Hon'ble Apex Court in *Rajnish Vs Sneha (2021) 2 SCC 324* and purposely avoided filing his affidavit. On the date of judgment, the applicant was also present in the court and was directed to file an affidavit. However, he failed to submit it. Therefore, the court has drawn an adverse inference against him that he has nothing to say regarding the contention of the petitioners about his income. The above facts indicate the applicant's conduct, which involved willfully avoiding assistance to the court, despite his appearance in court. However, they failed to file an affidavit disclosing assets and liabilities, as well as evidence. Therefore, I do not find substance in his contention that no opportunity was granted to him, or his advocate was not informed about the stage of the proceeding.

7. The learned advocate for the applicant further emphasised that the learned trial court has not considered the evidence on record in its proper perspective while determining the quantum of the maintenance. Respondent No.1, in her cross-examination, admitted that she has not produced any documents on record showing the applicant's income. However, the learned Family Court has not considered the facts above, as well as the fact that respondent No. 1 earns an amount of Rs. 30,000/- to Rs. 35,000/- per month from teaching the Arabic subject in the school and drawing Mehendi. But based on the assumption and presumption, the learned Family Court has awarded maintenance. Therefore, he urged modifying the maintenance amount.

8. On perusal of the impugned judgment, it appears that the learned Judge in paras 16 to 18 has dealt with the income of the applicant and respondent No.1 and determined the quantum of the maintenance. In paragraph 18, the learned Judge observed that the applicant is a mechanical Engineer working in a company at MIDC, Pune, and earning a salary of Rs. 70,000/- to Rs. 80,000/- per month. Her testimony remained unchallenged. The learned Judge has also observed that, *“As per section 106 of the Indian Evidence Act, the fact of the income of the applicant is within his own knowledge and*

therefore, the burden of showing his income is not on the respondent, but on the applicant. The applicant not only avoided producing any document showing his income but also failed to produce his affidavit of assets and liabilities.” Therefore, the learned Judge has held that the testimony of respondent No. 1 is reliable, and after considering the same, the learned Judge granted maintenance of Rs. 10,000/- and Rs. 5,000/- per month to respondent Nos. 1 and 2, respectively. The total maintenance amount of Rs. 15,000/- is less than 20% of the applicant's income. As such, I do not find any substance in the contention of the learned advocate for the applicant in that regard.

9. It is pertinent to note that it is the applicant-husband's obligation to maintain his wife and son. He cannot plead that he is unable to maintain them due to financial constraints as long as he is capable of earning. Moreover, it is worth noting that there have been rises in essential commodities. Therefore, the maintenance amount granted to the respondents appears to be too meagre to satisfy their daily needs.

10. It is worth noting that Section 125 of the Code of Criminal Procedure is a social welfare provision, which must be subjected to an extensive beneficial concern, and this understanding has been extended to maintenance. Similarly, it must be borne in

mind that the right to maintenance under Section 125 of the Code of Criminal Procedure is not a benefit received by the wife and son but rather a legal and moral duty owed by the husband to maintain his wife and son. Undisputedly, the wife and son do not reside with the husband, and the husband does not provide them with any maintenance. This is sufficient in itself to grant them maintenance.

11. As a result of the above discussion, it appears that the learned Judge, after considering the evidence on record, has categorically held that the applicant failed to maintain the respondents when he had sufficient means of income to do so. On the contrary, no evidence was adduced by the applicant to show that he does not have sufficient means of income to maintain the respondents.

12. Thus, it appears that the order passed by the learned Judge is just and proper. However, the learned advocate for the applicant failed to point out that the said order is illegal, manifestly perverse or a sanctuary of errors. As such, I do not find substance in the contention of the learned advocate for the applicant to interfere in the impugned judgment in revisional jurisdiction.

13. Consequently, the criminal revision application, being devoid of merit, stands dismissed. No order as to costs.

14. Inform the learned trial court accordingly.

15. Needless to clarify, the applicant shall deposit the entire arrears of amount in the Family Court within eight weeks from today, failing which, the learned Family Court shall take appropriate steps to comply with this order.

[ABHAY J. MANTRI, J.]

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