

TRUSHA
TUSHAR
MOHITE

Digitally signed by
TRUSHA TUSHAR
MOHITE
Date: 2025.04.01
14:30:40 +0530

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

INTERIM APPLICATION NO. 132 OF 2025

IN

WRIT PETITION NO. 4490 OF 2024

Komal Kushal Kamble & Anr.

.. Applicants

Versus

Kushal Kaluram Kamble & Anr.

.. Respondents

**Mr. Mohit Khanna a/w Mr. Pranav Narsaria i/b Mr. Pravin Patil for
the Applicants.**

None for the Respondents.

**CORAM : FIRDOSH P. POONIWALLA, J.
RESERVED ON : 27th FEBRUARY, 2025
PRONOUNCED ON : 1st APRIL, 2025**

JUDGEMENT :-

1. By this Interim Application, the Applicants (Original Petitioners in Writ Petition No. 4490 of 2024) are seeking a review of the Judgement dated 29th November 2024, passed by this Court in Writ Petition No. 4461 of 2024 and Writ Petition No. 4490 of 2024.

2. By a Judgement dated 7th June 2024, the Family Court-2, Pune had granted the Applicants maintenance under Section 125 of the Code of

Criminal Procedure, 1973 of Rs. 10,000/- per month from the date of the Judgement i.e. 7th June, 2024 and of Rs. 6,000/- per month from the date of the Application till the date of the Judgement.

3. The said Judgement dated 7th June, 2024 was challenged by the Applicants as well as by Respondent No.1 by filing the aforesaid Writ Petitions before this Court.

4. By a Judgement dated 29th November, 2024, this Court allowed Writ Petition 4490 of 2024 filed by the Applicants and dismissed Writ Petition No. 4461 of 2024 filed by Respondent No.1.

5. At the time of arguments, the Applicants did not make any submissions regarding grant of interest on the maintenance amount granted. After the hearing on 29th November, 2024, the Applicants became aware of a Judgement dated 10th May, 2024 of the Aurangabad Bench of this Court passed in the case of ***Prakash Vs. Vithabai 2024 SCC Online Bombay 1487***. By the said Judgement, it was held by this Court that interest is required to be mandatorily granted on the arrears of maintenance awarded by all Courts in Maharashtra.

6. It is the case of the Applicants that the Judgement in the case of *Prakash (supra)* laid down a clear legal position in respect of mandatorily granting interest on the maintenance awarded and is a binding precedent. Thus, non-granting of interest on the maintenance amount awarded by this Court in its Judgement dated 29th November, 2024, in view of the settled law laid down in *Prakash (supra)*, becomes an error apparent on the face of record. It is the case of the Applicants that the same is required to be corrected by this Court and therefore the present Interim Application has been filed seeking review of the said Judgement dated 29th November, 2024.

7. The Respondents, though served, have not appeared in the matter. The Advocates for the Applicants have filed an Affidavit of Service dated 27th February, 2025 proving service of the present Interim Application on the Respondents.

8. Mr. Mohit Khanna, the learned counsel appearing on behalf of the Applicants, made submissions in support of the Interim Application.

9. As far as the maintainability of the present Interim Application is concerned, Mr. Khanna submitted that the embargo against seeking review contained in Section 362 of the Code of Criminal Procedure, 1973, (Section

403 of the Bharatiya Nagarik Suraksha Sanhita, 2023) is relaxed in proceedings under Section 125 of the Code of Criminal Procedure, 1973 (“the CrPC). In support of this submission Mr. Khanna relied upon the Judgement of the Hon’ble Supreme Court in *Sanjeev Kapoor Vs. Chandana Kapoor & ors.* (2020) 13 SCC 172.

10. Further, Mr. Khanna submitted that non-consideration of a prior binding Judgement amounts to an error apparent on the face of the record and thus a review is maintainable. In support of this submission Mr. Khanna relied upon the following Judgements *i) Tinkari Sen and Others Vs. Dulal Chandra Das AIR 1967 Calcutta 518 , ii) Selection Committee for Admission to the Medical and Dental College Bangalore Vs. M.P. Nagaraj 1971 SCC Online Karnataka 133 ; iii) Nathu Vs. Sonabai 1994 Maharashtra Law Journal 1829. iv) Collector, Cuttack & Ors. Vs. Bharat Chandra Bhuyan 2014 SCC Online Orissa 478.*

11. Mr. Khanna also submitted that, since the proceedings under Section 125 of the CrPC were akin to civil proceedings, the law laid down in the aforesaid judgements, to the effect that non-consideration of a prior binding judgement amounts to an error apparent on the face of the record and thus review is maintainable, would also apply to an application seeking review of a

judgement passed under Section 125 of the CrPC. In support of this submission Mr. Khanna relied upon a Judgement of the Hon'ble Supreme Court in ***Rina Kumari Vs. Dinesh Kumar Mahto 2025 SCC Online SC 72***.

12. Mr. Khanna submitted that, since in the Judgement dated 29th November, 2024, this Court had not considered the binding precedent in the case of ***Prakash (supra)***, this Court should review the Judgement dated 29th November, 2024 on the basis of the said Judgement in ***Prakash (supra)*** and grant interest on the maintenance amount awarded to the Applicants.

13. I have heard the learned counsel for the Applicants and have perused the documents on record.

14. Section 403 of the Bharatiya Nagarik Suraksha Sanhita 2023, ("BNSS 2023") which corresponds to Section 362 of the CrPC, reads as under:-

403. Court not to alter Judgement. – *Save as otherwise provided by this Sanhita or by any other law for the time being in force, no Court, when it has signed its Judgement or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.*

15. The question that arises is whether the present Interim Application seeking review of the Judgement dated 29th November, 2024 is

maintainable in light of the aforesaid provision. This issue is no longer *res integra*. In the case of ***Sanjeev Kapoor (supra)***, the Hon'ble Supreme Court has held that the embargo of Section 362 of the CrPC (Section 403 of BNSS 2023) is expressly relaxed in proceedings under Section 125 of the CrPC. The relevant portions of the said Judgement read as under :

"11. The only point to be determined in this appeal is as to whether the order passed by the Additional Principal Judge, Family Court dated 5-1-2019 setting aside the order dated 6-5-2017 disposing of the application under Section 125 CrPC and restoring the application under Section 125 CrPC was contrary to Section 362 CrPC which provides that no court can alter or review its Judgement except for correcting a clerical or arithmetical mistake. Section 362 CrPC contained in Chapter XXVII "THE Judgement" is to the following effect:

"362. Court not to alter Judgement.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its Judgement or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

19. The legislative scheme as delineated by Section 369 of the Code of Criminal Procedure, 1898, as well as legislative scheme as delineated by Section 362 of the Code of Criminal Procedure, 1973 is one and the same. The embargo put on the criminal court to alter or review its Judgement is with a purpose and object. The Judgements of this Court as noted above, summarised the law to the effect that criminal justice delivery system does not clothe criminal court with power to alter or review the Judgement or final order disposing of the case except to correct the clerical or arithmetical error. After the Judgement delivered by a criminal court or passing of the final order disposing of the case the court becomes functus officio and any mistake or glaring omission is left to be corrected only by appropriate forum in accordance with law.

20. In the present case, we are concerned with the order passed by the Court under Section 125 CrPC. Whether the embargo contained in under Section 362 CrPC prohibiting the court to alter or review its Judgement or final order disposing of the case applies to the order passed under Section 125 CrPC is the question to be answered

in the present case.

21. Section 362 CrPC begins with the word "Save as otherwise provided by this Code or by any other law for the time being in force". The above expression clearly means that rigour as contained in Section 362 CrPC is relaxed in following two conditions:

- (i) Save as otherwise provided by the Code of Criminal Procedure.*
- (ii) Any other law for the time being in force.*

22. We need to first examine as to whether the orders passed in the present case are covered by the exception i.e. "save as otherwise provided by the Code". Section 362 CrPC, thus, although put an embargo on the criminal court to alter or review its Judgement or final order disposing of the case but engrafted the exceptions as indicated therein. The legislature was aware that there are and may be the situations where altering or reviewing of criminal court Judgement is contemplated in the Code itself or any other law for the time being in force. We since in the present case are concerned only with Section 125 CrPC, we need to examine as to whether Section 125 CrPC in any manner relaxed the rigour of Section 362 CrPC.

*23. Before we proceed to look into the legislative scheme of Section 125 CrPC, we need to notice few rules of interpretation of statutes when the court is concerned with the interpretation of a social justice legislation. Section 125 CrPC is a social justice legislation which orders for maintenance for wives, children and parents. Maintenance of wives, children and parents is a continuous obligation enforced. This Court had occasion to consider the interpretation of Section 125 CrPC in *Badshah v. Urmila Badshah Godse*. In paras 13.3 to 18, the following has been laid down: (SCC pp. 196-98)*

"13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of

India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.

14. Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

'It is, therefore, respectfully submitted that "social context judging" is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.'

15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.

16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

17. Cardozo acknowledges in his classic

'... no system of jus scriptum has been able to escape the need of it.'

and he elaborates:

'It is true that codes and statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled.... There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had nonetheless a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a Judge's troubles in ascribing meaning to a statute....

Says Gray in his lectures :

"The fact is that the difficulties of so-called interpretation arise when the legislature

has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the Judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present."

18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision- libre recherché scientifique i.e. "free scientific research". We are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 CrPC, to fulfil its constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from Shah Bano to Shabana Bano guaranteeing maintenance rights to Muslim women is a classical example.

24. The closer look at Section 125 CrPC itself indicates that the court after passing Judgement or final order in the proceedings under Section 125 CrPC does not become functus officio. The section itself contains express provisions where order passed under Section 125 CrPC can be cancelled or altered which is noticeable from Sections 125(1), 125(5) and 127 CrPC, which are to the following effect:

"125. Order for maintenance of wives, children and parents.-(1) If any person having sufficient means neglects or refuses to maintain-

- (a) his wife, unable to maintain herself, or*
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*
- (d) his father or mother, unable to maintain himself or herself,*

a Magistrate of the First Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (6) to make such allowance, until she attains her majority. if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation For the purposes of this Chapter-

*(a) "**minor**" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority:*

*(b) "**wife**" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.*

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

127. Alteration in allowance. (1) On proof of a change in the circumstances of any

person, receiving, under Section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil court, any order made under Section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under Section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage.

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order-

(i) in the case where such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under Section 125, the civil court shall take into account that sum which has been paid to, or recovered by, such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be,

in pursuance of the said order."

25. In Section 125 CrPC the expression used is "as the Magistrate may from time to time direct". The use of the expression "from time to time" has purpose and meaning. It clearly contemplates that with regard to the order passed under Section 125(1) CrPC, the Magistrate may have to exercise jurisdiction from time to time. Use of the expression "from time to time" is in exercise of jurisdiction of the Magistrate in a particular case. Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edn. defines "time to time" as follows:

"Time to time. As occasion arises."

26. The above legislative scheme indicates that the Magistrate does not become functus officio after passing an order under Section 125 CrPC, as and when the occasion arises the Magistrate exercises the jurisdiction from time to time. By Section 125(5) CrPC, the Magistrate is expressly empowered to cancel an order passed under Section 125(1) CrPC on fulfilment of certain conditions.

27. Section 127 CrPC also discloses the legislative intendment where the Magistrate is empowered to alter an order passed under Section 125 CrPC Sub-section (2) of Section 127 CrPC also empowers the Magistrate to cancel or vary an order under Section 125. The legislative scheme as delineated by Sections 125 and 127 CrPC as noted above clearly enumerated the circumstances and incidents provided in the Code of Criminal Procedure where the court passing a Judgement or final order disposing of the case can alter or review the same. The embargo as contained in Section 362 is, thus, clearly relaxed in the proceedings under Section 125 CrPC as indicated above.

28. The submissions which have been pressed by the learned counsel for the appellant were founded only on embargo of Section 362 and when embargo of Section 362 is expressly relaxed in the proceedings under Section 125 CrPC, we are not persuaded to accept the submission of the counsel for the appellant that the Family Court was not entitled to set aside and cancel its order dated 6-5-2017 in the facts and circumstances of the present case."

16. In the light of what has been held by the Hon'ble Supreme Court in ***Sanjeev Kapoor (supra)***, the present Interim Application for review would

be maintainable despite the provisions of Section 403 of the BNSS 2023 (corresponding to Section 362 of the CrPC) and will not be hit by the embargo of Section 403.

17. The next point that falls for consideration is whether, not noticing a binding precedent, amounts to an error apparent on the face of the record, thereby being a ground for review of a Judgement.

18. In *Tinkari Sen (supra)*, the Calcutta High Court held that, although a mistake of law is no ground for review, but when clear legal position established by a binding authority is overlooked, it would clearly amount to an error apparent on the face of the record. The Calcutta High Court further held that whether the error occurred by reason of the counsel's mistake or it crept in by reason of an oversight on the part of the Court was not a circumstance which could affect the exercise of jurisdiction of the Court to review its decision. Paragraphs 15 to 18 of the Judgement in *Tinkari Sen (supra)* are relevant and read as under :-

“(15). Mr. Deb's last submission is that mistake of law is no ground for review. This is a sound submission as far as it goes. But it does not go far enough. The mistake, be it of fact or law, has got to be patent or, in the words of the Code, apparent on the face of the record. A mistake in interpreting the law correctly will not do. But when the clear legal position established by a binding authority is overlooked, as it has been overlooked by me, clearly it becomes an error within the rule: Order 47 Rule 1 None

of the two cases Mr. Deb relies upon negate this proposition. Chhajju Ram v Neki, (1922) 26 Cal WN 697: 49 Ind App 144 AIR 1922 PC 112, reveals that the Division Bench sitting in review, considered the decision under review having "proceeded upon an incorrect exposition of law." And the Privy Council reversed the Division Bench. I do not say I made merely an incorrect exposition of law. I say instead: I overlooked a settled law, having fallen thereby into an error apparent on the face of the record. In Kanshi Ram v Diwan Chand. AIR 1933 Lah 169, a subordinate judge dismissed a suit for non-prosecution under Order 9, Rule 8, of the Code, and rejected too an application for the suit's restoration. Thereafter he allowed an application for review. This, it was held, he was not entitled to do, even if he thought that he had made some mistake on a point of law. I say as much. A mistake simpliciter, either in the realm of fact or of law, is no ground for review But overlooking a proposition of law, well settled and beyond controversy, does furnish a very good ground for review. And that is what faces me here

(16). Consider, in this context, Sir Hari Sankar Pal v. Anath Nath Mitter. AIR 1949 FC 196, Mr. Chittatosh Mookerjee refers me to. Mukherjee J. (as his Lordship then was), observed, kania C J., Fazl Ali, Patanjali Sastri and Mahajan JJ (as their Lordships then were) agreeing:

"That a decision is erroneous in law is certainly no ground for ordering review. If the Court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it "When, however, the Court disposes of a case without advertent to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order 47, Rule 1 of the Civil Procedure Code.

Just so here, save that I have not applied my mind to a law settled by the Special Bench in Krishna Prosad's case 65 Cal WN 293: (AIR 1961 Cal 505) supra, nothing to say of other cases.

(17). Or take the law laid down by Mahajan J. (as his Lordship then was) speaking for the Court in Mt Jamna Kuer v. Lal Bahadur AIR 1950 FC 131, a case I consider on my own:

"Whether the error occurred by reason of the counsel's mistake or it crept in by reason of an oversight on the part of the Court was not a circumstance which could affect the exercise of jurisdiction of the Court to review its decision."

It is an oversight I have been guilty of. I am, therefore, unable to accept Mr. Deb's contention that the mistake I have committed is no ground for review I hold instead that it is a mistake apparent on the face of the record, calling for a review.

(18). Having regard to the foregoing considerations. I allow the application for review and make the rule absolute. Since I have my share of the blame I make no order as to costs.”

19. A similar view has been taken by the Mysore High Court in the case of ***Selection Committee (supra)***. Paragraphs 1 and 24 of the said Judgement are relevant and read as under :

“1. Does overlooking a binding decision constitute a ground for reviewing a Judgement or order of a Court? That is the question that arises for decision in this review petition.

24. Art. 141 of the Constitution provides that the law declared by the court, shall be binding on all courts within the territory of India. Hence, where there is a decision of the Supreme Court bearing on a point and where a Court has taken a view on that point, which is not consistent with the law laid down by the Supreme Court, It needs no elaborate argument to point to the error and there could reasonably be no two opinions entertained about such error. Applying the above test laid down by Rajagopala Ayyangar, J., in AIR 1964 S.C. 1372, such an error would clearly be an error apparent on the face of the record-The reasoning of Srinivasa Iyengar. J., in AIR 1927 Mad 998 and of Waller, J., in AIR 1933 Mad 731, that a mistake of law apparent from a contrary decision of a superior court, cannot be said to be apparent on the face of the record, cannot prevail in view of the test laid down by the Supreme Court as to what constitutes an error apparent on the face of the record.”

20. Further, the said view has also been taken by a Division Bench of this Court in ***Nathu (supra)***. Paragraph 16 of the said Judgement is relevant and reads as under :

“16. The statement of law relating to the scope and amplitude of power of review under section 114 read with Order 47, Rule 1 of the Civil Procedure Code which emerges from the aforesaid decisions is that an error which may be corrected in review must be an error apparent on the face of record. The error should be so glaring and manifest that no court would permit such an error to remain on record. An erroneous view or erroneous Judgement is not a ground for review, but

the Judgement or order which completely ignores a positive rule of law and the error is so patent that it admits of no doubt or dispute, such an error must be corrected in the review. In other words, as the Supreme Court has said, where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of record would be made out."

21. The decision of the Orissa High court in **Collector, Cuttack & ors. (*supra*)** is also to the same effect. Paragraphs 1 and 10 to 14 of the said Judgement are relevant and read as under :

"1. The seminal point that arises for our consideration is as to whether the Court pronouncing a Judgement has, for whatever reason, missed to take into consideration a decision of the Supreme Court taking a contrary view on a point covered by the said Judgement, constitute a ground for review of the Judgement.

10. In M. Murari Rao v. Balavanth Dixit, AIR 1924 Mad 98, the District Judge had decided a suit relating to succession under Hindu Law. The plaintiff applied for a review of the Judgement on the ground that the question of law arising in that decision, namely, the question of propriety of heirs under the Mitakshara Law applicable to Madras Presidency, had been settled by a decision of the Madras High Court. As that ruling had not been brought to the notice of the District Judge at the original trial, he reviewed his Judgement. The defendants appealed to the Madras High Court. It was held that the error of law committed by the District Judge in not noticing the legal position on the point at issue definitely laid down by the Madras High Court in its earlier decision, amounted to an error apparent on the face of the record and that hence there was a ground for granting a review.

11 The above decision of the Madras High Court was followed in Natesa Naicker v. Sambanda Chettiar, AIR 1941 Madras 918. His Lordship said at p. 920:

"When there is a legal position clearly established by a well known authority and by some unfortunate oversight, the Judge has gone palpably wrong by the omission of those concerned to draw his attention to the authority, it may in a proper case, in the light of ILR 46 Mad. 955 = AIR 1924 Mad 98, be a ground coming within the category of an error apparent on the face of the record."

12. The same view was taken by Andhra Pradesh High Court in Sri Karutha

Kritya Rameswaraswami Varu v. R. Ramalinga Raju, AIR 1960 Andh. Pra. 17. The Calcutta High Court had also taken the same view in Tinkari Sen v. Dulal Chandra Das, AIR 1967 Cal 518. Mysore High Court took the same view in The Selection Committee for Admission to the Medical and Dental College, Bangalore v. M.P. Nagaraj, AIR 1972 Mys. 44.

13. Article 141 of the Constitution provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Where there is a decision of the Supreme Court holding the field and the High Court takes a contrary view, it needs no elaborate argument to point to the error. The error is self-evident. It is held in Thungabhadra Industries Ltd. v. The Govt. of Andhra Pradesh, AIR 1964 SC 1372 that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

14. In view of the analysis made in the preceding paragraphs we hold that failure of the Court to take into consideration an existing decision of the Supreme Court taking a contrary view on a point covered by its Judgement would amount to an error apparent on the face of the record.”

22. The position of law that emerges from the aforesaid Judgements is that, if the Court has not considered a binding judgement, then the same would amount to an error apparent on the face of the record and would be a ground for review.

23. Further, the Hon’ble Supreme Court has held in ***Rina Kumari (supra)*** that proceedings under Section 125 of the CrPC are akin to civil proceedings. Paragraph 30 of the said Judgement is relevant and reads as under :

“30. Another contention that was urged before us is that the findings in the Judgement for restitution of conjugal rights by the Family Court, being a Civil

Court, would be binding on the Court seized of the petition under Section 125 Cr. P.C., as they are to be treated as criminal proceedings. This specious argument needs mention only to be rejected outright. No doubt, in Shanti Kumar Panda v. Shakuntala Devi², this Court held that a decision by a Criminal Court would not bind the Civil Court while a decision by the Civil Court would bind the Criminal Court. However, maintenance proceedings are essentially civil in nature and the reason for inclusion of the provisions dealing therewith in the Code of Criminal Procedure was clarified by the Law Commission of India in September, 1969. Significantly, as long back as in the year 1963, in Mst. Jagir Kaur v. Jaswant Singh, a 3-Judge Bench of this Court held that proceedings under Section 488 of the Code of Criminal Procedure, 1898, the precursor to Section 125 Cr. P.C., are in the nature of civil proceedings; the remedy, being a summary one; and the person seeking that remedy, ordinarily being a helpless person. Therefore, even if non-compliance with an order for payment of maintenance entails penal consequences, as may other decrees of a Civil Court, such proceedings would not qualify as or become criminal proceedings. Nomenclature of maintenance proceedings initiated under the Code of Criminal Procedure, as those provisions find place therein, cannot be held to be conclusive as to the nature of such proceedings.”

24. In the light of the decision of the Hon’ble Supreme Court in ***Rina Kumari (supra)***, the aforesaid law laid down by the Courts holding that non-consideration of a binding authority amounts to an error apparent on the face of the record, would also apply to proceedings under Section 125 of the CrPC which are akin to civil proceedings.

25. In the present case, the Judgement of this Court in ***Prakash (supra)*** clearly lays down that it is mandatory to award interest on the amount of maintenance granted. Paragraph 12 of this Judgement is relevant and reads as under :

“12. The applicant has challenged two proceedings of maintenance in this Revision Application. Therefore, also revision is also not maintainable. Revision Application, therefore, sans merit and it deserves to be dismissed with costs of Rs. 5,000/- (Rs. Five Thousand Only) with @ 9% p.m. interest. It is because

respondents must have incurred some amount for contesting this revision. The trial Courts are not awarding interest on maintenance amount. There is no any legal ban to award interest on that amount of maintenance. The husbands or fathers are many a times are not depositing the arrears of maintenance for years together. They have no fear or burden to payment of interest on that amount of maintenance. It is a serious legal mischief in mischief. Section 125 of the CrPC does not prohibit to wards maintenance. Therefore, Courts of District Judiciary are expected to award interest on the amount of maintenance, so that these weaker sections of the society will get their maintenance amount expeditiously. It will serve the purpose of speed justice. Thus, in order to secure their rights fully, effectively and speedily which is an object of justice interest must be awarded which is rationally expected. Their amount of maintenance shall not remain in the hands of the other side which deprives them for maximum period from it. Thus, it is now mandatory to award interest on the amount of maintenance for that this Judgement shall be circulated to the District Judiciary of Maharashtra."

26. As correctly pointed out by Mr. Khanna, the learned counsel for the Applicants, the said Judgement in ***Prakash (supra)*** was not considered by this Court while delivering the Judgement dated 29th November, 2024 as the same was not brought to the attention of this Court. In my view, in light of the law discussed above, the same would clearly amount to an error apparent on the face of the record and thereby be a ground for reviewing the Judgement dated 29th November, 2024.

27. In the said Judgement in ***Prakash (supra)***, this Court has held that it is mandatory to award interest on the amount of maintenance awarded as the same would serve the purpose of speedy justice. In the light of the said law laid down by this Court, the Judgement dated 29th November, 2024 will have to be reviewed and interest granted to the Applicants on the amount of

maintenance awarded, from the date of the Judgement passed by the Family Court – Pune, i.e. 7th June, 2024.

28. In the light of the aforesaid discussion and for the aforesaid reasons, I hereby pass the following Order:-

- a) Judgement dated 29th November, 2024 is reviewed;
- b) Respondent No.1 shall pay to the Applicants interest, at the rate of 9% per annum, on the maintenance amount awarded from 7th June, 2024 till the date of payment/realization;
- c) It is clarified that, except for the aforesaid, the rest of the Judgement remains unaltered;
- d) Interim Application is disposed of in the aforesaid terms;
- e) In the facts and circumstances of the case there will be no order as to costs.

[FIRDOSH P. POONIWALLA, J.]