



Judgment

448 revn24.24

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION NO.24 OF 2024

Wrucha w/o Nagsen Dambhare,
age : 37 years, occupation:NIL,
r/o c/o Bhanudas Jiwane,
Aradhana Housing Society,
Chintaamani Nagar No.1,
Manewada Besa Road,
Nagpur-440027.

..... **Applicant.**

:: V E R S U S ::

Nagsen Manikrao Dambhare,para
Aged about 39 years, occupation service,
Local Address: r/o plot No.285,
Vighnaharta Apartment,
Empress Mill Society,
Nagpur-440015,

and overseas address (present address)
Common Wealth Bank, Shop C-4,
Darting Walk 1, Harbour St.Sydney,
NSW -200 Australia.

..... **Non-applicants.**

Shri A.H.Jamal, Counsel for the Applicant.
Shri Akshay Bagade, Counsel for the Non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 17/07/2025
PRONOUNCED ON : 19/08/2025

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JUDGMENT

1. Heard finally by consent of learned counsel Shri A.H.Jamal for the applicant and learned counsel Shri Akshay Bagade for the non-applicant.

2. By this revision, the applicant is seeking enhancement of maintenance amount granted to her by learned Judge, Family Court No.4, Nagpur while disposing of Petition E.Nos.456/2019 and 956/2019 @ Rs.25000/- per month towards permanent alimony from the date of order dated 15.9.2023, till she marries.

3. Facts of the case are as under:

The applicant and the non-applicant married on 1.1.2015 as per the customs. The applicant resumed cohabitation at the house of the non-applicant. She alleged that after the marriage, the behaviour of the non-applicant with her was not good and she was treated with

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ill-treatment. The non-applicant was doing job at Singapore and in his absence, the applicant has taken all care of her mother-in-law at matrimonial house. When she joined the non-applicant at Singapore, he used to enquire with her about her past life. He was suspecting her character. He was insisting her to return to India and finally, forcibly, he sent her to India in July 2015. His intention was not to continue marital relationship with her. The meeting was held with the relatives and non-applicant was agreed to continue the marital relationship with the applicant. However, thereafter, he used to pick-up quarrels with her and used to threaten her to implicate her falsely. He used to abuse her and, therefore, she was constrained to leave her matrimonial house.

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4. It is further alleged that the non-applicant got new job at Sydney (Australia) in Common Wealth Bank. Despite he is having good earning, he has not taken care of her maintenance and not made any provisions of her maintenance. She has no source of income for survival. Whereas, the non-applicant is working in the bank and drawing salary of Rs.5.00 lacs per month. As there were no changes or reunion, she preferred an applications bearing No.E.956/2019 seeking dissolution of marriage and No.456/2019 for grant of maintenance under Section 125 of the CrPC. Despite the notice is served, the non-applicant failed to adduce his evidence and also failed to cross examine the applicant.

5. After hearing the applicant, learned Judge, Family Court No.4, Nagpur was pleased to pass decree of dissolution of marriage. While passing the said order,

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learned Judge of the Family Court granted permanent alimony @ Rs.25000/- per month, at the same time, rejected the application for grant of maintenance.

6. Being aggrieved and dissatisfied with the rejection of the maintenance application and granting maintenance @ Rs.25000/- per month, which is a very meager amount, the present revision is preferred.

7. Learned counsel for the applicant submitted that at the time of awarding permanent alimony and rejecting the application for grant of maintenance, learned Judge of the Family Court has not considered that the applicant is not having any source of income. Whereas, the non-applicant is getting handsome salary as his earning. However, learned Judge of the Family Court granted maintenance at a very lower rate. Learned Judge of the Family Court has not considered that day by day prices of

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essential commodities are touching to the sky. The applicant has to maintain herself and she has to maintain herself as per the status of her husband. In view of that, the application deserves to be allowed by enhancing the maintenance amount.

8. In support of his contentions, learned counsel for the applicant placed reliance on **Rajnesh vs. Neha, reported in (2021)2 SCC 324.**

9. *Per contra*, learned counsel for the non-applicant supported the order passed by learned Judge of the Family Court and submitted that though the applicant has claimed that the non-applicant is earning Rs.5.00 lacs, he has not placed any document. On the contrary, her evidence itself shows that she is highly qualified and doing job at Bangalore. Thus, she is not dependent upon

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the non-applicant. In view of that, the revision being devoid of merits is liable to be dismissed.

10. On hearing both the sides, it reveals that as far as matrimonial relationship is concerned, the same is not in dispute. Admittedly, the evidence of the applicant, as to refusal and neglect, also remained unchallenged. The applicant herself filed the application for dissolution of marriage wherein also she has claimed permanent alimony. She has also filed an application for grant of maintenance under Section 125 of the CrPC.

11. While granting permanent alimony, learned Judge, Family Court No.4, Nagpur has rejected the application for grant of maintenance by observing that while granting maintenance to the wife and children, what is required to be seen is, the status of the parties, reasonable needs of wife, dependent children, whether

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the wife is educated and professionally qualified, whether she has any independent source of income to maintain herself, the same standard of living as to her matrimonial house, and whether she was working during subsistence of marriage etc.

12. Learned counsel for the non-applicant invited my attention towards the pleadings and submitted that her pleadings itself show that she is qualified lady and was working at Bangalore, which is sufficient to show that she is able bodied and qualified woman and can earn for her livelihood. As far as refusal or neglect is concerned, the same is not established by her and, therefore, order passed by learned Judge of the Family Court granting permanent alimony to her is proper and legal one.

13. Learned counsel for the applicant placed reliance on **Rajnish vs. Neha** *supra* wherein the Hon'ble Apex

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Court, while considering the various provisions granting relief of maintenance, observed that the issue, whether maintenance under Section 125 of the CrPC could be awarded by the Magistrate after permanent alimony was granted to the wife in the divorce proceeding, came up for consideration before the Hon'ble Apex Court in **Criminal Appeal No (s).246-247/2020 (Rakesh Malhotra vs. Krishna Malhotra)** decided by the Hon'ble Apex Court on **7.2.2020** wherein it is held that once order of permanent alimony is passed, the same could be modified by the same court by exercising its powers under Section 25(2) of the Hindu Marriage Act.

14. In **Nagendrapal Natikar vs. Neelamma**, reported in **AIR 2013 SC (Cri) 948** the Hon'ble Apex Court considered a case where wife instituted suit under

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Section 18 of the Hindu Adoption and Maintenance Act, 1956.

15. The Hon'ble Apex Court by referring its earlier decision in the case of **Rajnesh vs. Neha** *supra* observed that 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

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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.

It is further observed that 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

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party would be required to move the concerned court in the previous proceeding.

16. Thus, the right of the wife is identified for grant of maintenance under various enactments. At the same time, the Hon'ble Apex Court observed that there should be adjustment of the said amount if it is granted under the various provisions. There is no dispute that the wife is entitled for grant maintenance considering the status of her husband. At the same time, the Hon'ble Apex Court in the case of **Rinku Baheti vs. Sandesh Sharda, reported in MANU/SC/1374/2024** observed, as under:

“14.5 We have serious reservations with the tendency of parties seeking maintenance or alimony as an equalisation of wealth with the other party. It is often seen that parties in their application for maintenance or alimony highlight the assets, status and income of their spouse, and then ask for an amount that can equal their wealth to that of the spouse. However, there is an inconsistency in this practice, because the

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demands of equalisation are made only in cases where the spouse is a person of means or is doing well for himself. But such demands are conspicuously absent in cases where the wealth of the spouse has decreased since the time of separation. There cannot be two different approaches to seeking and granting maintenance or alimony, depending on the status and income of the spouse. The law of maintenance is aimed at empowering the destitute and achieving social justice and dignity of the individual. The husband is under a legal obligation to sufficiently provide for his wife. As per settled law, the wife is entitled to be maintained as far as possible in a manner that is similar to what she was accustomed to in her matrimonial home while the parties were together. But once the parties have separated, it cannot be expected of the husband to maintain her as per his present status all his life. If the husband has moved ahead and is fortunately doing better in life post his separation, then to ask him to always maintain the status of the wife as per his own changing status would be putting a burden on his own personal progress. We wonder, would the wife be willing to seek an equalisation of wealth with the husband if due to some unfortunate events post-separation, he has been rendered a pauper?”

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17. The law with respect to deciding the amount of permanent alimony is settled by the various decisions of the Hon'ble Apex Court. In the case of **Kiran Jyot Maini vs. Anish Pramod Patel, reported in (2024)7 SCR 942**, the Hon'ble Apex Court has considered the facts as follows:

“The status of the parties is a significant factor, encompassing their social standing, lifestyle, and financial background. The reasonable needs of the wife and dependent children must be assessed, including costs for food, clothing, shelter, education, and medical expenses. The applicant's educational and professional qualifications, as well as their employment history, play a crucial role in evaluating their potential for self sufficiency. If the applicant has any independent source of income or owns property, this will also be taken into account to determine if it is sufficient to maintain the same standard of living experienced during the marriage. Additionally, the court considers whether the applicant had to sacrifice employment opportunities for family responsibilities, such as child-rearing or caring for elderly family members, which may have impacted their career prospects.”

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18. In another decision in **Vinny Paramvir Parmar vs. Paramvir Parmar, reported in (2011)9 SCR 371**, the Hon'ble Apex Court held that as there cannot be a fixed formula or a straitjacket rubric for fixing the amount of permanent alimony and only broad principles can be laid down, the question of maintenance is subjective to each case and depends on various factors and circumstances as presented in individual cases. This Court in the above judgment stated that the courts shall consider the following broad factors while determining permanent alimony – income and properties of both the parties respectively, conduct of the parties, status, social and financial, of the parties, their respective personal needs, capacity and duty to maintain others dependent on them, husband's own expenses, wife's comfort considering her status and the mode of life she was used to during the

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subsistence of the marriage, among other supplementary factors.

19. In the case of **Rajnish vs. Neha *supra*** , elaborated upon the broad criteria and the factors to be considered for determining the quantum of maintenance. The Hon'ble Apex Court emphasizes that there is no fixed formula for calculating maintenance amount; instead, it should be based on a balanced consideration of various factors. These factors include and are illustrative but are not limited or exhaustive, they are adumbrated as under:

- i. Status of the parties, social and financial. ii. Reasonable needs of the wife and dependent children.
- iii. Qualifications and employment status of the parties.
- iv. Independent income or assets owned by the parties.

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v. Maintain standard of living as in the matrimonial home.

vi. Any employment sacrifices made for family responsibilities.

vii. Reasonable litigation costs for a non-working wife.

viii. Financial capacity of husband, his income, maintenance obligations, and liabilities.

20. In the light of the above factors and in view of the observations of the Hon'ble Apex Court, if the facts of the present case are taken into consideration, admittedly, though the applicant has claimed that the non-applicant is earning Rs.5.00 lacs, except her words, no evidence is adduced by her. Her pleadings itself show that she is a qualified lady and was doing job at Bangalore. Learned Judge of the Family Court has rightly considered these

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facts and granted alimony @ Rs.25000/- per month from the date of order, till she remarried.

21. Ordinarily, the maintenance is to be granted from the date of application. Therefore, only modification required is, that she is entitled for grant of maintenance (permanent alimony) from the date of the application.

22. As far as other reasoning of learned Judge of the Family Court is concerned, the same sufficiently shows that learned Judge of the Family Court has considered the nature of the evidence. Considering the fact that the applicant is educated lady and previously working at Bangalore, no interference is called for as far as quantum of amount is concerned.

23. In this view of the matter, the revision deserves to be allowed only to the extent of modification of the order granting maintenance from the date of application

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instead of from the date of order. Hence, I proceed to pass following order:

ORDER

(1) The Criminal Revision is **Partly Allowed**.

(2) The order dated 15.9.2023 passed by learned Judge, Family Court No.4, Nagpur granting permanent alimony/ maintenance @ Rs.25000/- from the date of order is modified as from the date of application i.e. from 4.8.2021, till the applicant remarries.

(3) Rest of the order passed by learned Judge of the Family Court is maintained.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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