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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.89 OF 2024

Leeladhar s/o Naresh Naik,
Aged about 54 Years, Occupation : Service,
R/o. 31/A, Vijaynagar,
Opp. vehicle Modh. Ranjhi, Jabalpur. **APPLICANT**

// VERSUS //

Sulbha w/o Leeladhar Naik
(Sulbha D/o Nilkanth Fale)
Aged about 45 Years,
Occupation : Household,
R/o. C/o. Nilkanth Fale,
Plot No.69, Lahanuji Layout,
Mankapur, Nagpur. **NON-APPLICANT**

Ms. Vaishali Khadekar, Counsel for the applicant.
Ms. Shabana Khan, Counsel h/f Mr. Salim I. Khan, Counsel for
the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 30.07.2025

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. By preferring this criminal revision application, the applicant husband has challenged the judgment and order of maintenance granted by the learned Family Court No.1, Nagpur, in Petition Criminal M.A. No.17/2021 by which the maintenance amount was enhanced at the rate of Rs.12,000/- per month to the

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non-applicant from the date of filing of petition i.e. from 19.06.2021 and thereafter at the rate of 15,000/- per month onwards.

4. The brief facts which are necessary for disposal of the revision application are as under:

The applicant and the non-applicant were married on 15.06.1999, and out of the said wedlock, they have two children, who are staying with the present applicant. As per contention of the non-applicant – wife, since January 2005, they are residing separately. She had filed a petition bearing No.E-2/2010, under Section 125 of the Code of Criminal Procedure for awarding maintenance and the said petition was allowed on 21.07.2011 and she was awarded with maintenance of Rs.2,000/- per month. It is further her contention that since year 2011, the prices of essential commodities and cost of living are highly increased and it is not possible for her to manage her livelihood in the meager amount of Rs.2,000/- per month. She has also come with a contention that she is suffering from diabetes and she requires to spend money for her treatment and therefore, she requires the sufficient amount for maintaining herself. She has to take the treatment in a Government Hospital, whereas the present applicant is Central Government Employee, getting net salary Rs.78,524/- per month and having sufficient income and therefore, the maintenance is to be granted to her.

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5. The applicant had resisted this application by filing a written statement. He denied all the contentions and according to him, the non-applicant – wife was working as Accountant in private firm of renowned Builder and earning Rs.20,000/- per month. It was further contended by him that his daughter is taking higher education and son is also taken education and he is incurring the expenses towards their education and therefore, it is difficult for him to pay a maintenance at the rate which was granted by the learned Family Court.

6. After hearing both sides and on recording the evidence, the Family Court pleased to allow the application and granted enhance maintenance at the rate of Rs.12,000/- per month to the non-applicant and from the date of 19.06.2021 till 06.04.2024 and thereafter the rate of Rs.15,000/- per month onwards.

7. Being aggrieved and dissatisfied with the said judgment and order, present revision application is challenged on the ground that the applicant is already incurring the expenses and maintaining the two children. He has no sufficient means to pay the maintenance at the higher rate which was granted by the Family Court. Moreover, the non-applicant – wife is already earning by doing a job in a private firm and therefore, she is not entitled for any maintenance.

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8. Heard learned Counsel for the applicant, who reiterated the said contentions and submitted that the assets and liabilities were not filed before the Family Court and therefore, nothing was before the Family Court to ascertain the actual income of the present applicant as well as the non-applicant. She submitted for that purpose the matter is to be remanded back to the Family Court for adducing the evidence by producing on record the assets and liabilities. In support of her contention she placed reliance on ***Rajnish Vs. Neha and another*** reported in **(2021) 2 SCC 324**.

9. Per contra, learned Counsel for the non-applicant - wife submitted that the learned Family Court has rightly considered that she has no source of income. She is suffering from diabetes. She has to incur the expenses towards medicine and the applicant is having sufficient means and thereby able to pay the maintenance to the non-applicant - wife separately and therefore, granted the maintenance at the rate of Rs.12,000/- per month till 06.04.2024 and thereafter at the rate of Rs.15,000/- per month therefore, no interference is called for.

10. On hearing both sides and on perusal of the entire evidence on record, it reveals that to substantiate the contention the non-applicant - wife examined herself by entering into the witness box vide Exh.16. She has reiterated the entire contents of the application in her affidavit. During her cross-examination, she

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has admitted that her daughter is taking education as well as her son is also taking education and maintained by the present applicant. During her evidence, the income of the present applicant was also brought on record. Besides oral evidence, she has placed reliance on salary slips Exh.22 and Exh.32, her medical expenses Exh.31.

11. On the other hand, the applicant has examined himself by entering into the witness box and he denied as to his salary as well as he also denied that he is able to maintain the present non-applicant. Besides oral evidence, he has placed on record the educational expenses receipt Exh.37, daughter's college fees receipts Exh.38, his X-ray and Sonography report Exh.39 and certified copy of the judgment delivered in petition No. E-2/2010 vide Exh.40 and certified copy of judgment delivered in Petition No.3/2006 by Family Court, Jabalpur vide Exh.41.

12. Undisputedly, the relationship between the applicant and non-applicant that they are husband and wife and their marital status is still in existence is not challenged. In earlier petition No. E-2/2010, the Court has awarded maintenance of Rs.2,000/- per month, in favour of the non-applicant is also not disputed. Thereafter, this application is filed by the non-applicant for enhancement of the maintenance. In support her contention, she has also adduced the evidence. The non-applicant has produced the salary slips vide Exh.22 and 32. The salary slip at Exh.22 is for

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month November 2022 and salary slip at Exh.32 is for the month August, 2022. After going through these salary slips, it revealed that in the month of August 2022, the applicant's gross salary was Rs.86,316/- including overtime and OT bonus of approximately Rs.25,000/-, and his net salary was Rs.53,577/- which includes deduction of more than Rs.57,796/-. Thus, considering the applicant's salary which are at Exhs.22 and 32, it can be said that by the time the salary may have been increased as he is a Central Government employee and therefore, considering the expected hike in the salary, the Family Court has considered all these aspects and granted maintenance at the rate of Rs.12,000/- till 06.04.2024 and thereafter Rs.15,000/- per month. It is contended by the present applicant that she is working in a private firm and getting salary of Rs.20,000/- per month. He has reiterated the said contentions in Exh.35 and the non-applicant has not denied the said contention during her cross-examination. However, fact remains that apart from his sole testimony that non-applicant is getting some income for her livelihood. Now it is well settled that merely because she is earning something for her livelihood is not sufficient to deprive her from getting maintenance. Admittedly, no exact evidence is brought on record by the present applicant that she is getting amount of Rs.20,000/- per month from the said work. Even if it is accepted that she is working and getting some amount, itself is not sufficient to reject the claim for grant of maintenance.

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13. The another contention raised by the learned Counsel for the applicant that as the applicant and non-applicant have not submitted their assets and liabilities before the Family Court and therefore, the matter is to be remanded back to the Family Court. This aspect is considered by this Court in **Writ Petition (ST) Nos.1913/2024 and 1884/2024 decided on 20.03.2024** relied upon by the learned Counsel by the non-applicant. Wherein this Court has observed that "The Sessions Court has mis-read the decision of the Apex Court in **Rajnesh v. Neha (2021) 2 SCC 324** and has picked up the direction in isolation as regards the filing of affidavits in all maintenance proceedings including the pending proceedings and read the same out of context. No doubt, the appeal is a continuation of original proceedings, however, it needs to be noted that the filing of affidavit of assets and liabilities would amount to bringing in new material which will have to be tested on the touchstone of evidence which will not be permissible at the appellate stage after final adjudication. At the appellate stage, where challenge is to the final judgment, as opposed to an appeal against an order of interim maintenance, in my view, upon reading of the decision of **Rajnesh v. Neha** (supra), the direction of filing of affidavit of disclosure cannot be said to apply inasmuch as at the time of final determination, there is material available before the Trial Court supported by evidence on the basis of which rights of the parties have been determined."

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14. Similar is the fact in the present case, the Family Court has considered the rights on the basis of material available before the trial Court supported by the evidence. The non-applicant - wife has adduced the evidence before the Family Court and on that basis, the Family Court has granted maintenance.

15. The law with respect to decide the amount of permanent alimony is settled by 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** wherein 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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16. In the case of **Rajnish Vs. Neha and another** reported in **(2021) 2 SCC 324**, wherein the broad criteria and the factors to be considered for determining the quantum of maintenance are elaborated. 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 are:

- 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.*
- 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.*

17. In the light of the above factors narrated by the Hon'ble Apex Court, if the facts of the present case are taken into consideration, admittedly, the Family Court has granted maintenance to the non-applicant at the rate of Rs.12,000/- per month initially, thereafter Rs.15,000/- per month is on the basis of the evidence which was adduced before him. In addition to that even if it is accepted that she is doing a private job and earning some amount is not sufficient to show that she is not entitled for

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maintenance. Merely because wife is earning for her livelihood, some amount is not sufficient to deny her any further maintenance. The non-applicant is residing with her parents. Initially, she was residing along with her husband and was leading the life as per the status of her husband and therefore, her comfort considering the status of the husband and other needs are to be taken into consideration. The evidence on record shows that she is suffering from diabetes, so she has to incur the expenses towards her medical treatment and other expenses also. Nowadays, the prices of essential commodities are also rising day by day. On the contrary, there are chances that the applicant would get a hike in his salary by way of increase in his needs and other aspects. She has to incur the expenses towards the rent of the house and other needs i.e. clothing, food and shelter and therefore, after balancing all these factors, the amount enhanced towards maintenance appears to be reasonable and just one and therefore, no interference is called for. In view of that, the revision application deserves to be dismissed. Accordingly, I proceed to pass following order:

ORDER

The revision application is dismissed.

(URMILA JOSHI-PHALKE, J.)