



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

CRIMINAL REVISION APPLICATION NO. 121 OF 2023

APPLICANT : Sudam Namdeo Dudhkor,
Age: 46 years. Occupation -
Labour. R/o. Pradhan Bori,
Tq. Kalamb, Dist. Yavatmal

..Versus....

NON-APPLICANT S : 1. Sau. Chabu alias Shobha Dudhkor
Age: 40 years. Occu – Housework.
2. Gaurav Sudaam Dudhkor,
Age: 16 year. Occu – Education
Minor through his mother as
natural guardian.
C/o. Chandrabhanji Chahare,
R/o. In the house of Keshav Kohale
Ward no. 3, Wadgaon road,
Yavatma1, Tq.& Dist. Yavatmal.

Mr. Amar R. Chavhan, counsel for applicant.
Mr. Nishan P. Singhania, counsel (appointed) for non-applicants.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 11/02/2025

ORAL JUDGMENT :

1. Heard.

2. **Admit.** Heard finally with the consent of learned counsels appearing for the parties.

3. By this revision application, the applicant has challenged the order passed by the Family Court, Yavatmal, enhancing the maintenance amount granted to the non-applicant Nos. 1 and 2 by order dated 14/02/2023, by which the Family Court has awarded the maintenance at the rate of Rs. 4,000/- per month to the non-applicant No. 1 and Rs. 2,000/- to the non-applicant No. 2.

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

The non-applicant No. 1 is the legally wedded wife of the present applicant, and out of wedlock, the birth of non-applicant No.2 took place. The non-applicants 1 and 2 have filed the petition for maintenance under Section 125 of the Code of Criminal Procedure (hereinafter referred to as "the Cr.PC."). Initially, bearing Misc. Criminal Application No. 74/2011 and maintenance at the rate of Rs. 700/- per month to the non-applicant No. 1 and Rs. 500/- per month to the non-applicant

No. 2 were granted.

5. The Criminal Misc. Application No. 5/2020 was filed by the non-applicant No. 1 for enhancement of the maintenance on the ground that prices of the essential commodities have increased. The non-applicant No. 2 is taking education, and the amount granted to them is not sufficient for their livelihood, towards their maintenance and education expenses of the non-applicant No. 2. The applicant owns 15 to 20 acres of irrigated agricultural land, and he also has a milk business, and the family income is Rs. 10 lakhs to 12 lakhs per annum from agricultural land and the milk business. Therefore, she has claimed the maintenance at the rate of Rs. 5,000/- for herself and Rs. 3,000/- for the minor son.

6. The applicant has resisted the claim of the non-applicant by filing his reply and denied all the adverse allegations, and he has also denied that he has sufficient means to grant maintenance at the rate of Rs. 1,000 to 2,000/- respectively to the non-applicant. As per his contention, the initial application No. 74/2011 was decided ex-parte against him; thereafter, he had filed Application No. 74/2011 for setting aside the order.

7. As per his contention, he does labour work and denied that she has agricultural land of 15 to 20 acres. According to him, he resides in a small village and hardly gets Rs. 100 to 150 per day from the labour work. Thus, he has no sufficient means for grant of separate maintenance to the non-applicant, and therefore, he prays for rejection of the application.

8. The Family Court has considered the evidence of the applicant as well as the non-applicant, and their witnesses has come to the conclusion that considering the fact that now prices of the essential commodities are increased, the non-applicant No.1 has to incur the expenses towards educational expenses of the non-applicant No. 2 and enhanced the maintenance at the rate of Rs. 4,000/- to the non-applicant No.1 and Rs. 2,000/- to the non-applicant No.2.

9. Being aggrieved and dissatisfied with the same, the present revision application is filed by the applicant on the ground that the learned Family Court has not considered that there is no sufficient evidence on record to show that the applicant has sufficient means to grant separate maintenance to the non-applicants. The further ground raised is that though the

non-applicant No.1 has admitted during her cross-examination that she is also doing the labour work and thus maintaining herself as well as the non-applicant No.2. The Family Court has also not considered the admissions given by the non-applicant No. 1 that applicant is residing in a small village and sometimes he gets the work, and then the labour charges he gets are minimum labour charges, and therefore, the order passed by the Family Court is exorbitant and excessive and liable to be quashed and set aside.

10. Heard learned counsel for the applicant, he reiterated the said contentions and also invited my attention towards the cross-examination of the non-applicant No. 1 and submitted that, despite the admission given by the non-applicant No. 1 and though there is no evidence as to the income of the present applicant, the amount of maintenance is enhanced by the Family Court, which is illegal, and therefore, the order passed by the Family Court deserves to be quashed and set aside.

11. In support of his contention he placed reliance on the following decisions as follows:-

- a] Chaturbhuj Vs Sita Bai [2008(1) Mh.L.J. (Cri.) 644];*
- b] Shail Kumari Devi and another Vs Krishan*

- Bhagwan Pathak [2008 (4) Mh. L.J. (Cri.) 555];*
c] *Narayan Bhagwantrao Gosavi Balajiwale vs Gopal Vinayak Gosavi and others [AIR 1960 SC 100];*
d] *Akbar Hussain Khan Vs Saira Khan [2017 (4) Mh.L.J. 247].*

12. Per contra, learned counsel for non-applicant Nos. 1 and 2 supported the judgment of the Family Court and submitted that considering the prices of essential commodities are rising day by day, the amount of maintenance is enhanced.

13. In support of his contention, non-applicant has placed reliance which shows that the present applicant possesses agricultural land. He is also doing the labour work. Merely because the non-applicant wife is doing some labour work for her livelihood is not sufficient to deprive her from getting her maintenance amount, and therefore, there is no reason to interfere with the said judgment and order and the revision application being devoid of merits and liable to be dismissed.

14. Heard learned counsel for both parties and perused the evidence on record. As far as the factual aspect is concerned, the applicant and non-applicant No. 1 are husband and wife; their marriage is performed as per Hindu rites and customs; and they

have one son, i.e. non-applicant No. 2, from the said wedlock. It is also not disputed that the non-applicant has left a company of the present applicant and is residing separately along with her son. Initially, she has filed an application for grant of maintenance, which was allowed, and maintenance at the rate of Rs. 700/- to the non-applicant No. 1 and at the rate of Rs. 500/- to the non-applicant No. 2. Subsequently, she has filed an application for enhancement of the maintenance bearing No.20/2017, wherein she has adduced her evidence by examining herself, wherein she reiterated that she was ill-treated by the present applicant and constrained to leave the matrimonial house and took shelter at her parents house.

15. She further stated that on 04/02/2008, she had filed a complaint application with the Superintendent of Police, Yavatmal, and thereafter, the crime was registered against the present applicant and his family members under Section 498-A of the Cr.P.C. She further deposed that as she was dependent upon her parents, she filed an application for grant of maintenance, but initially a very meager amount was granted to her towards the maintenance. Now, her parents are not alive, and therefore, she is

staying in a rented room, and she has to incur the expenses towards the rent of the room as well as the education of the child and to maintain herself, and therefore, the amount which is granted towards maintenance is a very meager amount. On the contrary, the applicant, who is doing the labour work and also holding the agricultural land, has sufficient means to grant maintenance and therefore claim the enhanced amount of maintenance.

16. Her evidence further shows that she has filed on record a 7/12 extract to show that the present applicant is the owner of the agricultural land. She is cross-examined at length. During cross-examination, it further came on record that as she was ill-treated by the present applicant, she was constrained to leave the matrimonial house. She has admitted that initially she has not filed the police complaint, but subsequently she has filed a complaint. She has also issued the notice to the present applicant. Her cross-examination further shows that after delivery she joined the company of the present applicant, but again there was ill-treatment at the hands of the present applicant, and therefore, she left the matrimonial house. Her cross-examination further shows

that, to maintain herself, she is also doing the labour work. She also admitted that the village wherein the applicant is residing is having population of approximately 50 houses, and the labour charges comparatively are less, but she has denied that no work is available in his village. She specifically stated that the labour charges are approximately Rs. 100 to Rs. 150. Thus, her evidence shows that the applicant is not only doing the labour work, but he is also earning from his agricultural land.

17. To give counterblast to the said contention, the applicant has also examined himself vide Exhibit 31. He denied the contention about the ill-treatment as well as denied that he owns agricultural land and having sufficient means to grant maintenance.

18. As per his contention, non-applicant No. 1 herself is doing the labour work, and therefore, she has sufficient means to maintain herself, and therefore, the amount granted initially towards maintenance is a sufficient amount. He has also examined another witness, Chandu Namdeo Dudhkor, who is the brother of the present applicant, who has also supported the case of the present applicant.

19. During his cross-examination, he admitted that they are three brothers. The marriage of the present applicant was performed 15 years ago, and he was residing separately. He denied that the applicant is doing labour work on a yearly basis and earning Rs. 400/- per day. He has also denied that they own the agricultural land and it is well irrigated land. As far as the agricultural land is concerned, his evidence shows that the said land is in the name of his father. On the basis of the said evidence, the applicant attempted to prove that he has no sufficient means to grant maintenance and therefore prays for reduction of the amount of the maintenance by quashing and setting aside the enhanced amount of maintenance.

20. The Family Court has considered the evidence on record and observed that the earlier maintenance amount was granted to the non-applicants in the year 2011 to 2012, and the subsequent application is filed in the year 2017 i.e. more than ten years ago. The prices of the essential commodities have risen day by day, and non-applicant No. 1 has to incur the expenses towards the education as well as she has to maintain herself. The Family Court has also considered that the father of the present applicant

owns fourteen and half acres of agricultural land, and after the death of the father, the present applicant is one of the legal heirs who would inherit the same property, and therefore, the contention of the present applicant that he does not have any share in the said ancestral land is disbelieved by the court, and the amount of maintenance is enhanced.

21. Learned counsel for the applicant placed reliance on decision of ***Chaturbhuj*** referred (supra), wherein the Hon'ble Apex Court has distinguish the phrase "unable to maintain herself" and in the light of the facts of the case, it is held that the object of proceeding is not to punish a person for his past neglect, it is further considered that under the law the burden is placed in the first place upon the wife to show that means of her husband are sufficient.

22. In the case of ***Shail Kumari Devi and another*** referred (supra), wherein also it is held that Magistrate is required to record the reasons for granting or refusing to grant maintenance to wife and children. As far as the quantum of maintenance is concerned, it is held that the income of wife is relevant. The facts of the cited case show that the respondent was working as a

cashier with the State Bank of India, and the respondent therein is the husband, and the applicant therein was also earning a handsome amount, and therefore, the observations were made by the Hon'ble Apex Court by considering the various decisions. It is proved that, respondent could not state as to the actual amount received by the wife from the cultivation of the land, but it is also one of the considerations, which is relevant and material by fixing the amount of maintenance, and thereby it is observed that the income of wife is to be considered while granting the maintenance amount.

23. In the case of ***Akbar Hussain Khan*** referred (supra) wherein also this court has considered whether there was any change in circumstance and whether the petitioner could submit the proof of change in circumstance, and therefore, the petition for modification of maintenance was dismissed.

24. The decision of ***Narayan Bhagwanterao Gosavi Balajiwale*** referred (supra), wherein the law as to the admission is discussed, and it is held that an admission is the best evidence that an opposing party can rely upon and, though not conclusive, is decisive of the matter, unless successfully withdrawn or proved

erroneous. As far as the legal possession in view of Section 31 of the Indian Evidence Act is concerned, it is not disputed.

25. Before entering into the merits of the case, it is necessary to consider the object behind the provision. Admittedly, the object of maintenance proceedings is not to punish a person for his neglect but to prevent some aid to the destitute or a deserted wife by providing her food, clothing, and shelter by speedy remedy. The Section 125 Cr.P.C. is a measure of social justice, especially enacted to protect women and children, falling within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution. Thus, the objective of the provision, then and now, is to assist the financial assistance to the destitute wife, children, and parents who are left by their relatives.

26. This aspect is also considered by the Hon'ble Apex Court in the case of *Bhuwan Mohan Singh vs Meena & Ors [(2015) 6 SCC 353]*, wherein the Hon'ble Apex Court Section 125 of the Cr.P.C. was conceived to ameliorate the agony, anguish, financial suffering of a woman, who left her matrimonial home for the reasons provided in the provision, so that some suitable arrangements can be made by the Court and she can sustain

herself and also her children, if they are with her. It is was held that the concept of subsistence did not necessarily mean 'to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else' and the wife would be entitled to lead a life in a similar manner as she would have lead a life in the house of her husband.

27. Thus, the inherent and fundamental principle behind Section 125 of the Cr.P.C. is financial assistance to the woman who suffers because of the desertion at the hands of her husband and who is compelled to leave her matrimonial house. As per the law, she is entitled to lead life in a similar manner as she could have new in the house of her husband, and as long as she is held entitled to grant of maintenance within the parameters of Section 125 of Cr.P.C., it has to be adequate so that she can live with dignity. Lastly, it is to be considered that the husband who has having sufficient means has to pay the maintenance, a wife who is leaving separately for one or the other reasons.

28. In the case of *K. Narayan Rao vs. Bhagyalakshmi reported in 1984 Cri LJ 276*, wherein the Karnataka High Court has considered this aspect and observed that the court dealing

with a maintenance claim under Section 125 of Cr.PC. has to be careful and take into consideration the aspects as to the maintenance and award the amount of maintenance appropriately.

In *Mrs. Amina Mohammedali Khoja vs Mohammedali Ramjanali Khoja And Anr. [1985 Mh.L.J. 988]*, wherein also the aspect of maintenance was considered by this Court.

29. In the light of the settled principle of law, if the evidence in the present case is taken into consideration, there is no dispute as to the fact that since last 30 years, the applicant and non-applicants have not been residing together. As far as the initial maintenance amount is concerned, which was granted at the rate of Rs. 700/- and 500/-, it was not challenged by the present applicant, and it attended the finality. Thereafter, the ground for non-applicant nos. 1 and 2 for filed an application for enhancement of the maintenance was approximately after 15 years. Admittedly, within these 15 years, the prices of the essential commodities are touching to the sky. Moreover, the non-applicant No. 1 has to incur the expenses towards the education of the non-applicant No. 2. The expenses towards the education are also rising day by day.

30. Moreover, as far as the income of the present applicant is concerned, even accepting that he is earning by considering the minimum wages act, it would come to more than Rs. 6,000/-. He is also holding the agricultural land, though he has denied and stated that he has no share in the agricultural land, but the 7/12 extract Exhibit No. 41 shows that he also having share in the said agricultural land, and the continuation area is shown to be 3.78 H.R. land. The 7/12 extract further shows that the crops are taken in the said land by the family members of the present applicant. Thus, though the present applicant has stated that he has no sufficient means or income from the said agricultural land, it appears to be a lie or his falsehood. Admittedly, he is having share in the said agricultural land, and all the family members are receiving the income from the said agricultural land.

31. Considering the principle behind the provision of Section 125 of Cr.P.C. and considering the fact that now, prices of essential commodities are touching to the sky. Moreover, non-applicant has to lead the life as per the status of her husband, and by considering the same, the amount of Rs. 4,000/- and 2,000/- is granted by the Family Court, which is not an excessive and

exorbitant amount, and therefore, I do not find any reason to interfere with the same, and therefore, the revision is devoid of merits and liable to be dismissed. In view of that, I proceed to pass the following order.

- a] The criminal revision application No. 121 of 2023 is **dismissed.**
- b] The fees of the appointed counsel be quantified as per Rule.

[URMILA JOSHI-PHALKE, J.]