



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

CRIMINAL WRIT PETITION NO. 484/2024

Rajesh S/o Uttamrao Sawwalakhe,  
Aged 48 yrs., Occ. Service,  
R/o. Sawanghi (Meghe), Tq.  
Dist. Wardha.

...PETITIONER  
(Ori. respondent)

VERSUS

1. Sau. Pratibha Rajesh Sawwalakhe,  
aged 44 yrs., Occ. Household,
2. Om s/o. Rajesh Sawwalakhe,  
aged about 18 yrs., Occ. Student,

Both R/o. Telipura, Darwha,  
Dist. Yavatmal.

...RESPONDENTS  
(Ori. applicants)

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Mr. P D. Meghe, Advocate for petitioner.  
Mr. S. S. Deshpande, Advocate for respondent Nos.1 and 2.  
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CORAM : M. M. NERLIKAR, J.  
DATE : 08.10.2025

ORAL JUDGMENT :

Heard.

2. **Admit.**

3. By consent of parties, heard finally.

4. By way of this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner is challenging order dated 29.03.2023 passed by the learned Judicial Magistrate First Class, Darwha in Misc. Criminal Application No.96/2018, whereby the learned Judicial Magistrate First Class directed the petitioner to pay Rs.15,000/- per month to respondent No.1 and Rs.10,000/- per month to respondent No.2 w.e.f. 11.04.2018. The challenge is also raised to the order dated 20.12.2023 passed in Criminal Revision No.11/2023 by the learned Additional Sessions Judge, Darwha, wherein the revision preferred by the petitioner herein was dismissed.

5. Brief facts of the case appears to be that:-

The marriage between petitioner and respondent was solemnized as per Hindu rites and customs on 04.07.2004. The respondent No.2 was born out of wedlock of petitioner and respondent No.1 in the month of July 2005. As the relations

between the petitioner and respondent no. 1 were strained, they decided to live separately. The respondent no. 1 filed a petition under Section 9 of the Hindu Marriage Act, 1955 for Restitution of Conjugal Rights, which came to be allowed. Thereafter, the Respondents filed an application under Section 125 of Code of Criminal Procedure (“Code”) before Judicial Magistrate First Class, Darwaha, in which the learned trial court vide order dated 19.04.2008 directed petitioner to pay Rs. 1,000/- to respondent no. 1 and Rs.500 to Respondent No.2 per month from the date of filing of application. Subsequently, in the year 2018, the respondents filed an application under Section 127 of the Code for enhancement of maintenance. Learned Judicial Magistrate First Class, Darwaha vide its judgment and order dated 10.3.2021 directed the petitioner to pay Rs. 10,000/- per month to respondent No.1 and Rs.8,000/- per month to respondent No.2. Against the same, the petitioner preferred criminal revision under Section 397 of the Code before the District and Sessions Judge, Wardha, wherein the said Court partly allowed the revision by quashing and setting

aside the judgment and order passed by the learned Judicial Magistrate First Class, Darwha and the matter was remanded back to decide afresh. Pursuant to same, the Trial Court passed the impugned order dated 29.03.2023, against which a revision was preferred by the petitioner which came to be dismissed. Being aggrieved by both the aforesaid orders, the petitioner has preferred this petition.

6. The learned counsel for the petitioner submits that it is not in dispute that the Misc. Criminal Application No.96/2018 under Section 127 of the Code was filed on 11.04.2018. It was submitted that the petitioner is not disputing the date from which the maintenance amount is granted, however a challenge is raised to the quantum of amount which was granted. He submits that when the affidavit of assets and liabilities was presented, the Trial Courts ought to have considered that date of the affidavit while granting maintenance amount of Rs.15,000/- and Rs.10,000/- per month to respondent Nos.1 and 2 respectively. However, he submits that the Trial Courts have committed gross error by granting maintenance amount

from the date of application on the basis of salary slip of 2022, thereby giving retrospective effect. As in the year 2018, the petitioner was not getting that much salary on which basis the impugned order is passed. He further submits that he is restricting his claim only to the extent of quantum of amount which is granted from the date of application.

7. Per contra, the learned counsel for the respondents submits that the Trial Court as well as the Revisional Court has given concurrent findings of fact. In the judgment of the Supreme Court in case of *Rajnesh Vs. Neha and another, (2021) 2 SCC 324* the Hon'ble Supreme Court has laid down law in respect of date from which the maintenance amount is to be granted and the Supreme Court accordingly has held that the maintenance amount should always be granted from the date of application and not from the date of the order. He further submits that the petitioner is getting a handsome salary of Rs. 99,051/- which can be gathered from the affidavit of assets and liabilities. The second wife of the petitioner is also earning Rs.75,000/- per month and therefore, both the Courts'

below after considering all aspects of the matter and the evidence laid down by the parties have rendered the finding, therefore, no error has been committed.

8. Upon hearing both the sides at length and upon perusal of material placed before this Court, it appears that application under Section 127 of the Code for enhancement of amount of maintenance was filed on 11.04.2018. Initially, the Trial Court granted Rs.10,000/- and Rs.8,000/- per month to respondent Nos.1 and 2 respectively. The said order was challenged by the petitioner by filing revision before the District and Sessions Judge, Darwha. The revision came to be partly allowed by quashing and setting aside the judgment and order passed by the learned Magistrate by remanding the matter to be decided on merits afresh by adducing evidence as well as by giving opportunity of hearing to both the parties. It further appears that the Trial Court by its order dated 29.03.2023 allowed the application and directed the petitioner to pay Rs.15,000/- and Rs.10,000/- per month to respondent Nos. 1 and 2 respectively from the date of application. This order was

challenged by the petitioner in revision, however the revision was dismissed and therefore, the present petition is preferred.

9. There is no dispute that in view of landmark judgment in case of Rajnesh Vs. Neha and another (*supra*), the maintenance amount is to be granted from the date of application. However, so far as the present case is concerned, the facts which are necessary to be considered, are that the application under Section 127 of the Code is filed on 11.04.2018 and the judgment and order was passed on 10.03.2021. The said judgment dated 10.03.2021 was set aside in revision in the year 2022. It is only thereafter, the affidavit of assets and liabilities of the petitioner was filed. The Criminal Misc. Application No. 96/2018 thereafter was decided afresh on 29.03.2023, wherein the total maintenance amount of Rs.25,000/- per month was granted to the respondents. In these peculiar facts and circumstances, it is necessary to determine whether the quantum of amount which was determined by the Trial Court is on the basis of the affidavit of assets and liabilities which was filed in the year 2022. The

salary slips of the year 2018-2019 ought to have been considered because the case was instituted in the year 2018 and it is necessary to determine the quantum of maintenance amount on the basis of salary received by the petitioner in the year 2018 and 2019. It appears from the pleadings that in the year 2018, the petitioner was drawing gross salary of Rs.61,204/-, whereas in the year 2019, he was drawing gross salary of Rs.73,827/- per month. Under such circumstances, the Courts' below ought to have considered the quantum of salary of the year 2018 and 2019, however the Courts have considered the current income of the petitioner which is of 2022 and on the basis of the affidavit of assets and liabilities placed on record by the petitioner, wherein the salary of the petitioner is shown as Rs. 99,051/- per month, the impugned orders have been passed. In both the orders i.e. the order of the Trial Court as well as the Revisional Court, this fact has not been considered. The said fact has also not surfaced in the evidence of the parties, and for the first time it is reflected in the revision application filed by the petitioner.

10. It is the foremost duty of the Court to balance the rights of the parties while determining the quantum of maintenance. There is no dispute that both the orders are based on the salary drawn in the year 2022 and not salary drawn in the year 2018. Even accepting for a moment the case of the petitioner that in the year 2018, he was getting a salary of Rs.61,204/- per month and in the year 2019 he was receiving Rs. 73,827/- per month. Under such circumstances, the respondents are entitled for 25% of the net salary after statutory deduction as held by the Supreme Court in Kalayan Dey Chowdhury Versus Rita Dey Chowdhury Nee Nandy (SLP No. 34653/2016). As held in the case of Rajnesh Vs. Neha and another (*supra*), in order to maintain the balance between the parties so far as the quantum is concerned, it is necessary to grant the amount of maintenance to respondent Nos. 1 and 2 on the basis of the income of the petitioner of the year 2018 and 2019, therefore the respondent Nos. 1 and 2 would be entitled for Rs.10,000/- and Rs.8,000/- per month respectively from the date of application i.e. 11.04.2018 till the affidavit of

assets and liabilities is filed by the petitioner i.e. till July 2022 and from August 2022 onwards, the respondent Nos. 1 and 2 would be entitled for Rs.15,000/- and Rs.10,000/- per month. It is further made clear that if after filing of the affidavit of assets and liabilities or after the judgment of the Trial Court dated 29.03.2023, there is a hike in the salary of the petitioner, the respondents are at liberty to claim further maintenance. It is further clarified that as the maintenance amount was granted from August 2022 till today total amount of Rs.25,000/- per month to both the respondents, shall not be construed as maintenance granted from the date of affidavit of assets and liabilities, if at all the salary of the petitioner is increasing.

11. Considering the above discussion, the Trial Court as well as the Revisional Court ought to have considered the date on which the salary was increased and ought to have determined the quantum accordingly. For example if the salary is increased e.g. in the year 2025 and case was instituted way back in the year 2020, under such circumstances, salary

received in the year 2020 ought to have been considered and not salary received in the year 2025 meaning thereby, the maintenance ought to be granted from the date of application so also, after considering the income received in the year when the application was instituted.

12. In view of the peculiar facts of the present case, as initially the case was instituted in the year 2018, however in year 2021 the order of remand was passed and accordingly in the year 2023 the case was decided afresh on the basis of affidavit of assets and liabilities of the petitioner, wherein the income was shown for the current year i.e. 2022, therefore, the Trial Courts committed an error as the aforesaid eventuality was not considered. Hence, this Court passes the following order:-

1. The criminal writ petition is partly allowed.
2. The order of the learned Additional Sessions Judge, Darwha passed in Criminal Revision No.11/2023 dated 20.12.2023 as well as the order passed by learned Judicial Magistrate First Class,

Darwaha in Misc. Criminal Application No.96/2018 dated 29.03.2023 is modified as under:-

I. The respondent Nos. 1 and 2 are entitled for maintenance amount of Rs.10,000/- and Rs.8000/- per month respectively from the date of application i.e. 11.04.2018 to July 2022.

II. From August 2022 onwards, respondent Nos. 1 and 2 are entitled for Rs.15,000/- and Rs.10,000/- per month respectively.

III. Needless to mention that, the amount already disbursed to the respondents shall be adjusted according to the directions issued herein above.

13. The criminal writ petition stands disposed of accordingly.

**( M. M. NERLIKAR , J.)**

*Gohane*