



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

CRIMINAL REVISION APPLICATION NO.96 OF 2024

Shri Ganesh Chauryaji Wattighare
Aged about 49 years,
Occupation – Weaving,
R/o Near Dadrapool, Opp. Primary School,
Timki, Nagpur, Police Station Tahsil.

...APPLICANT

VERSUS

1. Smt. Rekha w/o Ganesh Wattighare,
Aged about 47 years,
Occupation – tailoring,
2. Gopal s/o Ganesh Wattighare,
Aged about 20 years,
Occupation – Private Job,

Both R/o at Raghunath Kohad's house,
Opp. Mata Mandir,
Near Police Station, Bangladesh,
Naik Taab, Nagpur
Police Station Pachpaoli

...NON-APPLICANTS

Mr. C.F. Bhagwani, Advocate for the applicant.
Mr. Y.A. Kullarwar, Advocate (appointed) for the non-applicants.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : FEBRUARY 18, 2025.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for the parties.

2. The applicant who is the original non-applicant has challenged the order of enhancement of maintenance passed by the Principal Judge, Family Court, Nagpur in Criminal M.A. No.63/2016 dated 28/05/2024 is under challenge in this revision application.

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

A] The non-applicant No.1 and applicant were married as per their rites and customs and out of said wedlock, non-applicant No.2 is begotten. According to the non-applicants, applicant had deserted them, and therefore, she constrained to leave the matrimonial house. She has filed a proceeding under the domestic violence act as well as the FIR under Section 498-A of the Indian Penal Code. She has also filed a petition bearing No.E-149/2001, under Section 125 of Code of Criminal Procedure for maintenance, and said petition was allowed by order dated 20/04/2006 and they were awarded with monthly maintenance of Rs.1500/- and Rs.750/- respectively. Thereafter, the non-applicants had also filed Misc. Cri. Appln. No.39/2011 for enhancement of maintenance and by order dated 27/11/2012, their maintenance was enhanced further to the extent of Rs.500/- per month each.

B] The applicant had challenged the order of enhanced maintenance before this Court and this Court pleased to uphold the judgments passed by this Court. According to the non-applicants, since the year 2012, there are material changes in the circumstances, the applicant's income is considerably increased and their expenses are also increased due to the increase in the prices of essential commodities, further non-applicant No.1 has to incur the expenses towards the school education of the non-applicant No.2. It is further contended that the applicant is earning Rs.40,000/- to Rs.50,000/- per month from tailoring and other business and he has sufficient means for grant of maintenance, therefore, the non-applicants have prayed for awarding enhanced maintenance @ Rs.15,000/- per month for the non-applicant No.1 and Rs.10,000/- per month for non-applicant No.2.

C] The applicant has resisted the petition by filing his written statement vide Exh.12 and denied the entire contentions. According to him, the he is running tailoring shop and earning Rs.15,000/- to 20,000/- per month. Non-applicant No.2 has attained the age of majority, and therefore, he is not entitled for maintenance. It is further stated by him that he is not earning Rs.40,000/- to Rs.50,000/- per month but he was doing weaving work but because of government policies, said work has been badly affected and presently he has no

sufficient means for grant of maintenance and prayed for rejection of the petition.

D] After appreciating the evidence adduced by both the parties, the Family Court enhanced the maintenance as far as non-applicant No.2 is concerned by directing the applicant to pay Rs.8000/- per month from the date of filing the petition i.e. 21/09/2016 till 21/10/2017 and as far as non-applicant No.1 is concerned directed to pay the maintenance @ Rs.8000/- from 21/10/2017 till December, 2021 and thereafter Rs.10,000/- per month till the date of passing of the judgment and thereafter Rs.12,000/- onward.

4. Being aggrieved and dissatisfied with the same, present revision application is preferred by the applicant on the ground that the Family Court has not considered that being non-applicant No.2 belongs to the scheduled caste he has free education. It is further contended that non-applicant No.1 is an educated lady and she can earn the amount for her survival. Moreover, the applicant has no sufficient means for grant of maintenance at an exorbitant rate which is granted by the Family Court. The Family Court has not considered the evidence on record in a proper perspective and without any evidence there been the maintenance amount is enhanced at a higher rate, and therefore, it requires to be quashed and set aside.

5. Learned Counsel for the applicant reiterated the contention and submitted that as far as the refusal and neglect is concerned there is absolutely no evidence to show that the applicant has refused and neglected the wife and son. She herself has left the company of the applicant and started residing separately. As far as the proceeding filed under the Domestic Violence Act is concerned the applicant is acquitted from the charges as well as he is acquitted from the charges under Section 498-A of the IPC also. As far as the income of applicant is concerned there is absolutely no documentary evidence produced by the non-applicants to prove the contention that the applicant is getting handsome amount to pay the maintenance @ Rs.10,000/-, 12,000/- and 8000/- for the respective periods. He submitted that as the evidence is not appreciated by the Family Court in proper perspective and order passed of a maintenance is an excessive and exorbitant one and deserves to be quashed and set aside.

6. Per contra, learned Counsel for the non-applicants supported the judgment of the Family Court and submitted that the observation of the Family Court that the bank entries sufficiently shows that there is sufficient means to the applicant to grant maintenance as far as the standard of proof for proving the domestic violence and the cruelty under Section 498-A is concerned are different whereas the standard of proof in the proceeding under Section 125 of Cr.P.C. is

different. As far as the granting of maintenance on account of refusal and neglect is concerned that order has already attained the finality which is confirmed by this Court also and now the application is filed under Section 127 considering the change in circumstance that there is increase in the income of the present applicant. Moreover, the prices of the essential commodities are touching to the sky and in view of that the order passed by the Family Court is proper and legal one and no interference is called for.

7. I have heard learned Counsel for both the sides. Perused the impugned judgment as well as the evidence on record from which it reveals that as far as the application under Section 127 is concerned which is filed under the change in circumstance that the prices of the essential commodities are touching to the sky and non-applicant No.1 has to incur the expenses towards the education of non-applicant No.2 as well as to incur the expenses towards his basic needs. Now, non-applicant No.2 is of a 16 years at the time of filing the petition and considering his higher education the amount was claimed by the claiming the maintenance under Section 127 of the Cr.P.C. Non-applicant No.1 stepped into the witness box filed affidavit of examination-in-chief. She has reiterated the contention as contended by her in the application. During her cross-examination she has admitted that her son's birth date is 21/10/1999. The birth certificate is also on record which is at Exhibit

20. She has admitted that she has no document to show that the applicant is having a workshop and 15 to 20 workers are working in the workshop. She voluntarily stated that she was one of the worker there who was working under the present applicant. She further admitted that she has no document to show that the applicant incurred the expenses in his brother's marriage. She admitted during her cross-examination that she has no idea if the rice is available at Rs.2/- per kg on Reshan Card. She also admitted that she belongs to the ST community but she denied that fees are not payable for education as she belongs to the ST community. She further admits that she has no document to show that applicant's monthly income is Rs.40,000/- to Rs.50,000/-. Thus, on the basis of this cross-examination, learned Counsel for the applicant contended that there is absolutely no material to support the contention of the non-applicants that the income of the applicant is increased and he has sufficient means for grant of maintenance.

8. On perusal of the impugned judgment it reveals that the entire reliance is placed by the Family Court on the circumstance that some bank entries are filed on record which shows that non-applicant No.1 is doing a tailoring work under the name and style as Govinda Tailors and earning Rs.15,000/- to Rs.20,000/- per month from the said work. The Family Court has further considered the bank transactions i.e. bank statement Exhibit 49 collectively which shows that the various

money transactions took place which shows that the non-applicant No.1 is getting handsome income which she is depositing in her bank account. She is also paying the premiums to the LIC and PLA and on asking by the Court it is explained by the non-applicant No.1 that she had borrowed loan from LIC from time to time from the policy and also sometime the maintenance amount paid by applicant is being credited in her account either by the Court or directly by her in cash. The explanation furnished by the non-applicant No.1 is accepted by the Family Court. Family Court has considered that even if non-applicant No.1 is doing some work for her survival that itself is not sufficient to deny her the grant of enhanced maintenance amount and thereby allowed the application. Thus, the reasoning given by the Family Court appears to be just and proper. The Hon'ble Apex Court in the case of ***Rajnesh Vs. Neha and anr. [AIR 2021 SC 569]*** wherein had considered the aspect of grant of maintenance and observed that :

“The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependant spouse hampers their capacity to be effectively represented before the Court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the concerned Court.”

9. While considering the interpretation as to the 125 of Cr.PC. by referring the judgment of ***Badshah v Urmila Badshah Godse [(2014) 1 SCC 188]*** the Hon'ble Apex Court held as under:

“13.3. ...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.”

10. It has therefore become necessary to consider the scope and the intention behind Section 125 of Cr.PC. Section 125 of the Cr.PC. was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home for the reasons provided in the provision, so that some suitable arrangements could be made by the Court and she can sustain herself and also children if they are with her. The concept of "subsistence" did not necessarily mean to lead a life "like an animal", feel like an

unperson to be thrown away from grace and the roam for her basic maintenance somewhere else and the wife would be entitled to lead a life in a similar manner as she would lead a life in the house of her husband. Thus, the inherent and fundamental principle behind Section 125 of Cr.P.C. is financial assistance to the woman who suffers because of the desertion at the hands of her husband or who is compelled to leave her matrimonial house. As per the law she is entitled to lead a life in a similar manner as she could have been live 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.

11. 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 living separately for the one or the other reasons.

12. In the light of the above settled principles of law if the evidence in the present case is taken into consideration which sufficiently shows that the applicant is doing the tailoring work and also getting a handsome amount from the said work.

13. On the contrary, non-applicant No.1 has to incur the expenses towards the education of her son as well as to fulfil his

basic needs. As far as non-applicant No.2 is not required to take education by paying the fees is not supported by any material. The Family Court has considered all these aspects and considering that the prices of the essential commodities are touching to the sky and the non-applicants has to live the life as per the standard of the husband of non-applicant No.1, the Family Court has granted maintenance by considering the evidence on record. Therefore, I do not find any reason to interfere with the said order. Thus, the revision is devoid of merits and liable to be dismissed.

14. The revision application is dismissed.

15. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)

**Divya*