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

CRIMINAL REVISION APPLICATION NO.107 OF 2023

Afaq Ahmad S/o Ishaq Bhat,
Aged : 37 years, Occupation : Business,
R/o. C/o Moh Ishaq Bhat House No.313,
Doodh Ganga Road, Karan Nagar,
Srinagar.

..... APPLICANT
(Ori. Res.)

// VERSUS //

1) Nuzhat W/o Afaq Bhat @
Nuzhat D/o Moh. Riyazuddin,
Aged : 35 years, Occupation : Job,

2) Kownain D/o Afaq Bhat,
Aged : 7 years, Minor through Natural
Guardian Mother,
Both R/o. C/o Yasmeen Bano Qrt No-1,
CMPDI Complex Jaripatka Nagpur
Police Station, Jaripatka,
Nagpur, 440014.

.... NON-APPLICANTS
(Ori. Appl.)

Ms. Pranali Wasnik, Counsel h/f Mr. Raju Kadu, Counsel for the
applicant.
Mr. Saket Premal Makkad, Counsel for the non-applicants.

WITH

CRIMINAL REVISION APPLICATION NO.220 OF 2023

1) Nuzhat W/o Afaq Bhat,
Nuzhat D/o Mohammad Riyazuddin,
Aged about : 35 years, Occupation : Job,

2) Kownain D/o Afaq Bhat,
Being a minor through her Natural Guardian
Mother i.e. the Applicant No.1),
Both are R/o.: C/o. Yasmeen Bano,
Quarter No.B-1, CMPDI Complex,
Jaripatka Nagpur, Police Station,
Jaripatka, Nagpur, 440014.

..... APPLICANTS

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// VERSUS //

Afaq Ahmad S/o Ishaq Bhat,
Aged about 37 years, Occupation : Business,
R/o. C/o. Mohammad Ishaq Bhat,
House No.313, Doodh Ganga Road,
Karan Nagar, Srinagar Kashmir-190010. ... **NON-APPLICANT**

Mr. Saket Premlal Makkad, Counsel for the applicants.
Ms. Pranali Wasnik, Counsel h/f Mr. Raju Kadu, Counsel for the
non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17.02.2025

ORAL JUDGMENT :

1. **Admit.**
2. Heard finally with the consent of learned Counsel appearing for the parties.
3. By both the revisions applications, the applicants therein have challenged the order passed by the Family Court No.4, Nagpur in Petition No.E.269/2018 by which, the application of the applicants therein for grant of interim relief is partly allowed and the respondent therein is directed to pay Rs.5,000/- per month to petitioner No.2 towards interim maintenance from the date of the application i.e. from 23.05.2018 till final disposal of main petition.
4. The Revision Application No.107/2023 is filed by the father of the minor child contending that he has no sufficient means

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for grant of maintenance to the non-applicant No.2, who is the minor daughter. It is further contended that the non-applicant No.1 of the mother of a minor child is already deposed by him and she is working in HCL Technology Limited and earning sufficient means, and therefore, no separate maintenance is required for the maintenance of the daughter and claimed for quashing of the order passed by the Family Court No.4, Nagpur.

5. The Criminal Revision Application No.220/2023 is filed by the mother of the minor child on the ground that though she is serving in HCL Technology Limited at Nagpur, but she has to incur the expenses towards the daily expenses as well as towards house and towards the education of the minor child. The minor daughter is studying in 3rd Standard in English medium school and she has to incur the expenses towards her education, tuition fees, stationary as well as clothing and basic needs, and therefore, the minor daughter is entitled for grant of maintenance from her father.

6. After hearing both sides and on perusal of material filed on record, the learned Family Court granted maintenance @ Rs.5,000/- per month to the minor daughter i.e. non-applicant No.2 in Revision Application No.107/2023.

7. Being aggrieved and dissatisfied with the order passed by the learned Family Court, Revision Application No.107/2023 is

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filed by the father of the minor daughter, whereas the other revision application is for enhancement.

8. Learned Counsel for the applicant in Revision Application No.107/2023 submitted that the mother has sufficient means for maintenance of the child and no separate maintenance is required from the present applicant. Moreover, he has no sufficient means to grant maintenance and there is no evidence produced by the non-applicant No.1 to show that the applicant is having sufficient means to grant of maintenance to the non-applicant No.2. She further submitted that on the contrary, it is an admitted position that the mother is educated as MBA doing her job as HR and drawing a salary of Rs.33,000/-, and therefore, she has sufficient means to maintain the child. Moreover, he has already disorder the marriage with the non-applicant No.1.

9. Per contra, learned Counsel for the applicants in Criminal Revision Application No.220/2023 submitted that though she is serving, but she has to incur the expenses towards the education of the child as well as towards the household and towards the daily needs and therefore, the salary of the applicant No.1 is not sufficient to maintain the daughter including her education expenses and being father of the child, the non-applicant husband owes the duty to pay the maintenance to the non-applicant No.2.

10. In support of his contention, he placed reliance on the decision of **Dr. Nihal Singh Vs. Dr. (Mrs.) Priyanka Singh Badalia** reported in **2018 (2) ADR 549** wherein it is observed by the Delhi High Court that father cannot shy away from statutory obligation of maintaining child on ground of mother having sufficient source of income. He further placed reliance on the decision of the Hon'ble Apex Court in the case of **Noor Saba Khatoon Vs. Mohd. Quasim** reported in **AIR 1997 SC 3280** wherein the Hon'ble Apex Court considered the aspect that right to maintenance of Muslim children under they are entitled to claim maintenance for period till they attain majority or are able to maintain themselves. Females are also similarly entitled till they get married. Right not restricted, affected or controlled by Section 3(1)(b) Muslim Women (Protection of Rights on Divorce) Act that children living with divorced wife immaterial.

11. After hearing both sides and on perusal of the material on record, it reveals that the marriage between the applicant Afaq Ahmad s/o Ishaq Bhat and Nuzhat w/o Afaq Bhat @ Nuzhat d/o Moh. Riyazuddin is not denied. It is also not denied that they are having one daughter i.e. non-applicant No.2 in Criminal Revision Application No.107/2023 and applicant No.2 in Criminal Revision Application No.220/2023. It is also admitted that the now the relationship has some discord and there is a rift in the said

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relationship, and therefore, the wife is residing along with her daughter separately. The object of the maintenance proceeding is also to be taken into consideration. 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 wives, children and parents, who are left by their relatives. This aspect is also considered by the Hon'ble Apex Court in the case of **Bhuwan Mohan Singh Vs. Meena and others** reported in **(2015) 6 SCC 353** wherein the Hon'ble Apex Court while dealing with Section 125 of the Cr. P.C. held that Section 125 of 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 was further held that the concept of sustenance does 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 entitle to lead a life in the similar manner as she would have lived in the house of her husband.

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12. Thus, the inherent and fundamental principle behind Section 125 of Cr. P.C. is financial assistance to the women who suffers the cause of the desertion at the hands of her husband and who is compelled to leave her matrimonial house. As per law, the children are also entitled in a similar manner as they are residing in the house of their father and as long as they are held entitled for grant of maintenance within the parameters of Section 125 of Cr.P.C. It has to be kept in mind that they have to live with dignity. It is to be considered that the husband who has having sufficient means has to pay the maintenance to the wife as well as the children.

13. Learned Counsel for the applicants also placed reliance on the decision of the Hon'ble Apex Court in the case of **Noor Saba Khatoon Vs. Mohd. Quasim** (supra) wherein also the Hon'ble Supreme Court has reiterated the aspect that the obligation of a muslim father, having sufficient means, to maintain his minor children, unable to maintain themselves, till they attain majority and in case of females till they get married, is absolute, notwithstanding the fact that the minor children are living with the divorced wife. The children of muslim parents are entitled to claim maintenance under Section 125 Cr. P. C. for the period till they attain majority or are able to maintain themselves, whichever is earlier and in case of females, till they get married and this right is

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absolute. Further the right is not restricted, affected or controlled by divorcee wife's right to claim maintenance for maintaining the infant child/children in her custody for a period of two years from the date of birth of the child concerned under Section 3(1)(b) of the 1986 Act.

14. In the light of the observation of the Hon'ble Apex Court, if the facts of the present case are taken into consideration, the Family Court has considered that the husband (father of the child) is serving and also doing a business of selling of diamonds and branded garments at Shrinagar and earning Rs.2,50,000/-. The Family Court has also considered the aspect that the wife i.e. mother of the minor child, is working at HCL Technology, Nagpur. She is working as HR Executive in Infosys Technology Limited. The Family Court has also considered that though she is having a means to maintain herself, but she has to incur the expenses towards her expenses as well as the expenses of the child as well as towards the education and day-to-day needs and granted maintenance of Rs.5,000/-. There is no dispute as to the fact that the daughter is studying in 3rd standard and was admitted in English medium school. It is well settled that the wife and the children have to maintain the dignity and to maintain the said dignity they have right to get maintenance or the expenses towards their livelihood from the husband as well as the father. The father alleged to be to run a

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business in Shrinagar and by considering his standard of living, the amount is to be granted towards the maintenance to the minor daughter also. Moreover, the minor daughter is studying in 3rd standard and considering the prices of essential commodities are touching to the sky as well as the prices towards the educational expenses, stationary are also increasing. The mother also has to incur the expenses towards food and clothing of child. In view of that, the amount granted towards the maintenance Rs.5,000/- is a very meager amount. Considering there are increases in prices of the essential commodities, prices of the educational expenses and prices of stationary, the said amount requires to be enhanced up to Rs.8,000/- per month. In view of that, the revision application of the wife i.e. Criminal Application No.220/2023 deserves to be allowed partly, whereas the Criminal Revision Application No.107/2023 being devoid of merits liable to be dismissed. Accordingly, I proceed to pass following order:

ORDER

(i) Criminal Revision Application No.107/2023 is hereby dismissed and Criminal Revision Application No.220/2023 is allowed partly.

(ii) The non-applicant in Criminal Application No.220/2023 is directed to pay Rs.8,000/- per month to the applicant No.2 minor daughter towards interim maintenance from the date of the application i.e. 23.05.2018, till final disposal of the main petition.

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(iii) The non-applicant shall pay the total arrears of the amount including the difference within six weeks.

Both the revision applications are disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.