



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

CRIMINAL WRIT PETITION NO. 609 OF 2025

WITH

CRIMINAL REVISION NO. 125 OF 2025

Dr. Navneet Wadhwa S/o Anand Prakash Wadhwa

-- VERSUS --

Mast. Saksham S/o. Dr. Navneet Wadhwa

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. P.K. Sathianathan, Mr. Wilson Mathew a/w Mr. D.R. Vyas,
Ms. Bhavana Pandey, Mr. Dev M. Mehta, Advocates for the
Petitioner.

Mr. Mir Nagman Ali, Advocate for the Respondent.

CORAM : M.M. NERLIKAR, J.

DATE : NOVEMBER 13, 2025.

CRIMINAL REVISION NO. 125 OF 2025:-

Heard.

2. The present revision application is filed challenging the common order dated 12/02/2025, wherein application at Exh.66 filed under Section 362 of the Code of Criminal Procedure, 1973, for recalling of the order dated 18/01/2019 filed by the husband was rejected and the application at Exh.44 filed by wife was allowed and consequently Criminal Miscellaneous Application No.44/2016 was dismissed

for non-compliance of order of maintenance, which is under challenge.

3. The applicant filed Miscellaneous Criminal Application No. 44/2016 under Section 127(2) of the Code of Criminal Procedure for variation / modification of the common order dated 11/02/2013 passed in Petition E No. 141/2009 thereby awarding maintenance of Rs.10,000/- per month which was enhanced to Rs.20,000/- per month by the High Court to the non-applicant son, Saksham, and therefore, prayed to reduce the same to Rs.5,000/- per month for non-applicant No.2 only. Thereafter, both the parties have filed the application at Exh.44 and Exh.66 as referred *supra*.

4. It is submitted by the learned counsel for the applicant, that the common order, wherein the application at Exh.66 was rejected by the Family Court is mainly on the ground that the applicant failed to pay the arrears of amount as was directed by the Family Court vide order dated 18/01/2019. The present applicant contended that the Family Court without going into the merits of the matter has decided both the applications, i.e., Exh.44 and Exh.66 on the ground that the applicant has failed to pay the arrears of maintenance amount. He further invited my attention to the order dated 18/01/2019 which

was passed by the Family Court, *“directing to pay entire arrears of maintenance within one month from the date of this order; else the petition filed by him for seeking modification of maintenance order is liable to be rejected.”* This order appears to be passed in the absence of the applicant. The said order was passed *ex-parte*, therefore, the application at Exh.66 was made to recall the said order, however, thereafter, even the wife has filed the application at Exh.44 for dismissal of the main application, i.e., Criminal Miscellaneous Application No.44/2016.

5. On the other hand, the learned counsel for the respondent-wife vehemently submits that the Court below is justified in passing the order, as the applicant has failed to pay the arrears of maintenance amount to the tune of Rs.32,00,000/-. It is further submitted by the present respondent-wife that mere disability would not absolve the applicant from paying the maintenance amount. The applicant is attending the seminar world-wide and it cannot be said that he is not having any source of income. He further submits that the Court by its order dated 18/01/2019 has already directed to pay the entire arrears within one month, however, the applicant has failed to comply with the order, and therefore, the Family Court has rightly passed the impugned order

dated 12/02/2025, rejecting the main petition, i.e., Criminal Miscellaneous Application No.44/2016.

6. Upon hearing the applicant as well as the respondent, it is important to note that admittedly the applicant is in huge arrears. There is no dispute about that, however, one fact is required to be borne in mind that by the order dated 11/02/2013, it was directed to husband to pay to wife as well to the child maintenance amount, the said maintenance amount was enhanced by the High Court in Appeal No.227/2013. The said maintenance amount was promptly paid by the applicant till December, 2017.

7. It was pointed out by the learned counsel for the applicant that the disability occurred in the month of July, 2017, and therefore, the applicant was constrained to file the application, i.e., Criminal Miscellaneous Application No.44/2016. He suffered disability in the month of July, 2017, still he managed to pay the maintenance amount till December, 2017. This fact cannot be ignored while passing the present order. It is for the Trial Court to consider the Criminal Miscellaneous Application No.44/2016 on the basis of the evidence. There is no dispute that allowing the application at Exh.44 which was filed by the wife for dismissal of the Criminal

Miscellaneous Application No.44/2016 is merely on the ground that the applicant has failed to pay the arrears of amount, in my opinion, it is the cardinal principle of law that the rights of the parties should be crystallised on the basis of the evidence which was led during the course of the proceedings, however, if either of the parties have been deprived from adducing the evidence, it amounts to miscarriage of justice.

8. The learned counsel for the respondent-wife submits that the Trial Court has rightly rejected Criminal Miscellaneous Application No.44/2016, for non-payment of the arrears amount and to support his contention he has relied upon the Judgment of Supreme Court in the case of ***Rajnish VS Neha & Another, 2020 DGLS (SC) 733***. To buttress his contention, he has invited my attention from Paragraph Nos.137 to 145, wherein the Supreme Court has considered various decisions of the High Court and ultimately came to the conclusion that *“striking off the defence is the last resort, if the Court find default to be wilful and contumacious, particularly to a dependant unemployed wife, and minor child.”*

9. There is no dispute about the exposition of law as was dictated by the Supreme Court in the

case of *Rajnish (supra)*, however, the observations are in respect of willful default. It is further to be noted that when the applicant is coming with a specific plea of disability, then under such circumstances in the same judgment, the Supreme Court has held that it is to be considered when there is serious disability or ill-health and that would be a relevant consideration while quantifying the maintenance. It is admitted position that when Exh.44 and Exh.66 was decided by the common order, the Court ought to have considered whether the contentions which was raised by the applicant in Criminal Miscellaneous Application No.44/2016 is required to be dealt with in accordance with law, i.e., by leading the evidence, however, by not doing so, the Trial Court has miserably failed to take into consideration the basic principle of law. It is also necessary to mention at this juncture that the opportunity to lead evidence to both the parties when substantial rights are involved is necessary. Merely arrears is pending is no ground to reject the application without considering or leading the evidence led by the parties to that effect.

10. Mr. Ali, Advocate appearing for respondent-wife submits that the intention of the applicant can be gathered from the very fact that in the year 2019, when the arrears of 2 years was pending, the

applicant has gifted flat situated in Mumbai to his mother. However, it is informed that the gift deed is under challenge by filing the suit on behalf of the respondent. Even if the suit is decreed, the gift deed would be cancelled and the property would be in the name of the present applicant, as was submitted by the learned counsel for the applicant. Without going into that issue, as the litigation is pending, I deem it appropriate not to comment on the said issue. It is further informed by the learned counsel for both the parties that the wife is no more and now only son, Saksham, who is aged about seventeen years, is at present residing with the maternal grand father.

11. In this view of the matter, I deem it appropriate to pass the following order:-

O R D E R

- (i) The common order passed below Exh.1, 44 & 66 dated 12/02/2025 by the Family Court, (Court No.2), Nagpur, is quashed and set aside;
- (ii) The Family Court shall afford an opportunity to both the parties to lead evidence in support of the application which was filed by the applicant, i.e., Criminal Miscellaneous Application No.44/2016, and thereafter, decide the same in accordance with law;

(iii) Application at Exh.66 is also restored to its original position. It is to be decided along with the main Criminal Miscellaneous Application No.44/2016;

(iv) It is made clear that the above order is subject to cost of Rs.3,00,000/- (Rupees Three Lakhs only) which shall be deposited by the applicant before the Family Court, Nagpur, within four weeks;

(v) Maternal grand father is permitted to withdraw the amount of Rs.3,00,000/- after deposit by the applicant in the Court. It is made clear that after withdrawal of the said amount, the same should be made as Fixed Deposit [FD] in the name of the minor son till attaining the majority;

(vi) The Family Court shall dispose of the Criminal Miscellaneous Application No.44/2016 within six months;

(vi) Revision Application is **disposed of**.

CRIMINAL WRIT PETITION NO. 609 OF 2025:-

Heard.

2. The petitioner at the outset submits that as order is passed in Criminal Revision No. 125/2025, that the Family Court shall decide the main Criminal Miscellaneous Application No.44/2016 filed by the applicant-husband within six months, the learned counsel appearing for the respondent has made a statement, that he will not press all execution proceedings for a period of six months. Considering the aforesaid statement, I deem it appropriate to stay the attachment warrant issued by the Family Court dated 10/07/2025 in Petition No. ER-260/2022. Even the counsel appearing for the respondent makes a statement that he will also not press the said attachment for a period of six months.

3. The petitioner shall deposit Rs.10,000/- every month as maintenance to minor son, Saksham, for six months.

4. In this view of the matter, the learned counsel for the petitioner does not press the petition.

5. It is needless to mention that, in case, in future, if any maintenance is granted, the amount of Rs.10,000/-, shall be adjusted accordingly.

6. Petition is **disposed of**, accordingly.

[M.M. NERLIKAR, J]