



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

CRIMINAL REVISION APPLICATION NO. 09 OF 2025

APPLICANT

Niraj Kedarnath Sahagal,
Aged about 56 years, Occu: Nil, R/o
House Ni. 134, Galli No. 3, Shankar
Nagar, Krishna Nagra (East Delhi),
New Delhi-110 051.

-VERSUS-

NON-APPLICANT

Seema w/o Niraj Sahagal, Aged about
50 years, Occu: Household, r/o:- C/o
Upendra Shakya, House No. 725-E,
Kachipura, Ramdaspath, Nagpur.

Ms. Sejal A. Lakhani, counsel for applicant.
Ms. Vaishali Khadekar, counsel for non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 24/02/2025

ORAL JUDGMENT :

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

3. By this revision, the applicant/husband has challenged the judgment and order of maintenance passed by the Family Court No. 4, Nagpur, in Petition No. E-348/2021 dated 16/02/2023, by which the applicant-husband is directed to pay an amount of Rs. 7,000/- per month to the non-applicant-wife towards a monthly maintenance allowance from the date of petition.

4. The applicant and the non-applicant are the husband and wife; their marriage was performed on 08/09/1994 in Delhi as per the customs prevailing in the Punjabi religion. After marriage, they resided together, and from the said wedlock, they have two children, namely Nipun and Ishita, aged about 25 years and 20 years, respectively.

5. After some years of cohabitation, there was a rift in the relationship, and therefore, the non-applicant left the matrimonial house on the ground that she was ill-treated by the present applicant and the present applicant had also not taken care of her during her pregnancy; she was assaulted for petty reasons. Though she was waiting for the change in the behaviour of the present applicant, there was no such change, and the

forcibly drove her out of the house, and thereafter, she was constrained to take shelter at her parents house at Secunderabad. Though his parents took the efforts to bring them together, but the efforts gone in vain, and therefore, she was constrained to file the petition under Section 125 of Code of Criminal Procedure for grant of maintenance.

6. Notice of the said application, though served upon the present applicant, he has not contested the application and failed to file a written statement as well as adduce the evidence. The Family Court has recorded the evidence of the non-applicant and come to the conclusion that she was refused and neglected by the present applicant and directed to grant maintenance of Rs. 7,000/- per month to the non-applicant from the date of the application.

7. Being aggrieved and dissatisfied with the said judgment and order, the present revision is preferred by the applicant/husband on the ground that the non-applicant-wife has neither filed assets and liabilities before the Family Court, which is a requirement in view of the judgment of the Hon'ble Apex Court in the case of *Rajnish Vs Neha and another [(2021) 2 SCC 324]*. It is further submitted that the opportunity was not granted to the

present applicant to adduce his evidence. Though he was served with the summons, due to some unavoidable circumstances, he could not appear and file his written statement, and the matter was decided in his absence, and prayed for the remand of the matter.

8. Heard learned counsel for the applicant, who reiterated the said contentions and submitted that the non-applicant is also earning. She failed to file her assets and liabilities, which is the requirement, and the family Court, without leading his evidence, granted the maintenance, which is excessive and exorbitant. She invited my attention towards para-12 of the judgment and submitted that the Family Court specifically mentioned that, except her oral testimony, there is no other material brought by her to say that the applicant is having sufficient means to grant maintenance. In fact, the applicant is dependent upon the income of his children, as he is suffering from the ailment of slipped disc and is unable to walk, and therefore he had no sufficient means to grant separate maintenance to the present non-applicant. For all above this grounds, and to give him an opportunity matter be remanded back to the Family Court

for the fresh disposal.

9. Learned counsel for the non-applicant strongly opposed the said contention and submitted that, despite the notice served upon the present applicant, he failed to appear. The law helps the diligent and not the negligent.

10. After sufficient opportunity, the applicant neither appeared before the counselor nor before the court, and failed to adduce the evidence, and therefore, on the basis of the unchallenged evidence of the non-applicant, the order of maintenance was passed; therefore, no interference is called for. She further submitted that total arrears of Rs. 3,10,000/- remain with the present applicant, who has not paid a single penny towards the maintenance amount, and for all these reasons, the revision application deserves to be dismissed.

11. After hearing both sides and on perusal of the impugned order, it reveals that as far as the relationship regarding the applicant and the non-applicant is concerned, which is not disputed. It is also not disputed that they are having two children from the said wedlock, and they are not residing separately. The applicant and non-applicant are residing separately. As there was

no provision made by the applicant towards the maintenance of the present non-applicant and therefore, she constrained to file an application for grant of maintenance. There is no dispute as to the legal position also, that the non-applicant was under obligation to file assets and liabilities before the Family Court. The family Court has considered the oral evidence, which is not supported by any documentary evidence. The Roznama, which is on record, sufficiently shows that notice was served upon the present applicant, but he remained absent, and therefore, the matter proceeded ex-parte against him. Thus, considering the evidence of the non-applicant remained unchallenged as far as the refusal and neglect is concerned, the sufficient means of the present non-applicant is concerned, and by considering her oral evidence, the Family Court has granted the maintenance @ Rs. 7000/- per month.

12. The Family Court has considered the object behind the provision under Section 125 of Code of Criminal Procedure and held that the object of Section 125 Code of Criminal Procedure 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. The Section 125 Code of Criminal Procedure was conceived to ameliorate the agony, anguish, and financial suffering of a woman who left her matrimonial house 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 the concept of subsistence, which 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 lived in the house of her husband. Thus, the inherent and fundamental principle behind Section 125 of Code of Criminal Procedure is financial assistance to the women who suffer because of the desertion at the hands of her husband, who is compelled to live her matrimonial house. As per the law, she is entitled to lead life in similar manner as she could have in the house of her husband, and as long as she held entitled to grant of maintenance within the parameters of Section 125 of Code of Criminal

Procedure, it has to be adequate so that she can live with dignity. Lastly, it is to be considered that sufficient means has to pay the maintenance, the wife for living separately for one or the other reason.

13. As far as the opportunity to the present applicant is concerned, in the interest of justice, which requires to be given as the matter was proceeded ex-parte against him. Thus, considering the aspect of natural justice, the opportunity of hearing is to be granted to the present applicant. At the same time, considering the fact that the applicant has not made any provision towards the maintenance while remanding back the matter to the family Court, the applicant shall deposit the total arrears under protest within eight weeks before the Family Court. In the meantime, the applicant shall also pay 50% of the maintenance amount, which is granted by the Family Court every month to the present non-applicant, till the Family Court decides the petition finally.

14. The applicant shall deposit 50% of the total maintenance amount granted by the family Court directly in her account on or before the 12th of every month. For all above this reasons, I proceed to pass the following order;

- a] The revision application is **allowed**.
- b] The petition bearing No. 348/2021 is remanded back to the Family Court No. 4, Nagpur, for disposal.
- c] The Family Court, Nagpur, shall give an opportunity to the applicant to adduce the evidence as well as the non-applicant shall file her assets and liabilities before the Family Court.
- d] The family Court shall reconsider the evidence which is adduced by both parties.

[**URMILA JOSHI-PHALKE, J.**]