

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****NAGPUR BENCH: NAGPUR****CRIMINAL REVISION APPLICATION NO.157 OF 2024**

- 1 Nusrat Jahan Syed Mehboob,
Aged about 35 years, Occupation: Household.
 - 2 Misbah Syed Mehboob Aged, 12 years, Occup.
Education.
 - 3 Syed Aahil Syed Mehboob.
Aged 9 years, Occ: Education.
 - 4 Syed Rahil Syed Mehboob, Aged 6 years, Occ: Education
- Applicant Nos. 2 to 4 being minors through their
natural Guardian mother Nusrat Jahan Syed Mehboob,
Aged about 35 years,
All R/o C/o Azhar Hussain Tajammul Hussain , Iqbal
Nagar, Buldhana. Applicants.

VERSUS

Syed Mehboob Syed Budhan, Aged about 38 years, Non
Occupation: Auto Owner/Driver, R/o Junagaon, Applicant.
Sundarkhed, Buldhana.

Mr. Mir Nagman Ali Mir Jafar All, counsel for the Applicants.

CORAM : MRS. VRUSHALI V. JOSHI, J.

Judgment reserved on: 02 /12/2025

Judgment pronounced on: 23/12/2025

JUDGMENT :-

1. Heard.

2. Rule. Rule made returnable forthwith. The Criminal Revision Application is heard finally with the consent of the learned counsel appearing for the applicants. Though served, non applicant is absent.

3. Being aggrieved by the judgment and order dated 29.07.2024 passed by the learned Family Court, Buldhana in Petition No. E-78/2023, rejecting the claim of maintenance of Applicant No.1 under Section 125 of the Criminal Procedure Code, 1973, the applicants are preferring the present Revision Application on the following facts and grounds amongst others.

4. The applicants had instituted Petition No. E-78/2023 before the learned Family Court, Buldhana under Section 125 of the Code of Criminal Procedure, 1973 (now Section 144(1) Bharatiya Nagarik Suraksha Sanhita, 2023 (for short BNSS), seeking grant of maintenance on the ground that the Respondent-husband had failed, neglected and refused to maintain them without any fault on their part, despite having sufficient means to do so, and had further issued an illegal and invalid talaq to

Applicant No.1. The applicants had prayed for maintenance of Rs.10,000/- per month for applicant No.1 and Rs.5,000/- per month each for applicant Nos.2 to 4.

5. The facts in brief are as under: -

The Applicant No.1 is the legally wedded wife of the non-applicant; their marriage having been solemnized on 21.11.2011 as per Muslim law. From this wedlock, three children-Applciant Nos.2 to 4-were born, who are presently residing along with their mother. According to the applicant No.1, she always performed her marital duties sincerely, but the non-applicant and his family subjected her to persistent cruelty, harassment and unlawful demands for additional dowry and monetary contributions. She has alleged that despite providing jahez worth Rs. 2,00,000/-, the Respondent demanded an additional Rs.1,00,000/- for purchasing a three-wheeler vehicle and mentally and physically abused her.

6. The applicants further state that in July 2023, the non-applicant issued an illegal written talaq without any valid cause, and subsequently pronounced triple talaq again on 05.08.2023 in the

presence of family members, thereby attempting to unlawfully terminate the marital relationship. She asserts that the non-applicant deserted her and the children without reasonable cause and has completely neglected to provide any financial support, despite having sufficient means, whereas she lacks any independent source of income. She thus sought Rs. 10,000/- per month for herself and Rs. 5,000/- per month each for the children.

7. The non-applicant, in his written statement, denied all allegations and instead accused the applicant No.1 of misconduct, refusal to perform household duties, and misbehaviour towards his family. He further claimed that on 08.02.2023 at around 1:00-1:30 am, he allegedly found the applicant No.1 in a compromising position with one Nadim, and that she later admitted to maintaining an illicit relationship for five years. The non-applicant relied on this allegation of adultery and a purported Talaq-E-Hasan dated 27.07.2023 to deny maintenance asserting that the applicant No.1 has independent income from tailoring.

8. The primary issue that was raised in the trial was the non-

applicant allegation that the Applicant No.1 was "living in adultery". which would disentitle her from claiming maintenance under Section 144(4) of the BNSS, 2023 (earlier Section 125(4) CrPC). The trial Court was required to assess whether the non-applicant had discharged his burden to prove the allegation with credible evidence, and whether the applicants had reasonable cause to live separately.

9. The Revision Application is preferred on the grounds as follows:

(a) That the applicant No.1 was driven out of the matrimonial home due to continuous harassment, dowry demands, and unlawful pronouncement of talaq. She admitted filing proceedings under Section 498-A of the Indian Penal Code and the Domestic Violence Act, which supported her claim that the separation was not voluntary but was the result of cruelty. The non-applicant, on the other hand, examined himself but did not examine any independent witnesses-particularly those relatives he claimed had witnessed the alleged "admission" of misconduct by

the applicant No.1. The trial Court wrongly accepted allegations of adultery without proof, ignoring that the Respondent neither examined any independent witness nor produced any evidence as required under the Evidence Act.

(b) The non-applicant examined himself as the sole witness and filed his evidence on affidavit at Exhibit-19, wherein he reiterated baseless allegations intended to escape his statutory liability to maintain the applicants. His cross-examination clearly exposed the falsity and inconsistency in his stand. During the trial, the Respondent produced a copy of an alleged Talaq-nama dated 27.07.2023, marked at Exhibit-12. The said talaq is illegal, invalid, unilateral, not in accordance with the Muslim Personal Law, and was produced solely with an intent to deny maintenance.

(c) Cruelty, dowry demands, harassment and illegal talaq fully justified the separate residence of Applicant No.1, fulfilling the essentials of Section 125(4) of the CrPC/144(4) of the BNSS.

10. Learned counsel for the applicants, Mr. Ali, submitted that the mere stray acts, mere suspicion, or a past instance of alleged

misconduct do not amount to "living in adultery." The expression under Section 125(4) of the CrPC has a specific legal meaning, i.e., a course of continuous adulterous conduct, which must be proved by clear, convincing, and independent evidence. No such evidence exists in the present case. In this regard, reliance is placed on the judgment of the Delhi High Court in *Sh. Pradeep Kumar Sharma v. Deepika Sharma*, 2022 LiveLaw (Del) 3241, wherein it has been categorically held that "only continuous and repeated acts of adultery or cohabitation in adultery would attract the rigours of Section 125(4) of the CrPC, and a single instance or isolated lapse does not bar maintenance." Further, reliance is placed on the consistent view of the Madhya Pradesh High Court in *Ashok v. Anita* (2011 LS (MP) 179) and *Sukhdev Pakharwal v. Rekha Okhle* (2018 ILR (MP) 1571), wherein it has been categorically held that a stray or isolated act of adultery does not disentitle a wife from claiming maintenance, as the expression "living in adultery" under Section 125(4) of the CrPC refers only to a continuous, habitual adulterous course of conduct. The husband must prove

that the wife was actually living in adultery at the relevant time, and the burden of proof lies squarely upon him. Mere suspicion, conjecture, or unsubstantiated allegations cannot operate to defeat a woman's statutory right to maintenance.

11. Heard the learned counsel for the applicants.

12. On the specific ground that the applicant is living in adultery, maintenance to the applicant No.1 is rejected by the Family Court and challenging the said order, the applicants have filed this Revision Application. As per Section 144(4) of the BNSS, the person who is living an adulterous life, is not entitled for maintenance under Section 144 of BNSS. The applicants and the non-applicant have filed their evidence on affidavit. While filing reply to the application, the non applicant has specifically taken a plea of adultery and has made allegations giving specific date, time and name of the person that he found the applicant No.1 in compromising condition with said Nadim on that day. On the next day he called the meeting. She has admitted about their relationship since five years and on that day, she went to her

maternal house. This is the specific allegation made by the non applicant in his written statement.

13. The applicant No.1 has filed her evidence on affidavit. She has stated about how she was tortured by non-applicant. She has not mentioned anything and not denied the contents in reply/written statement i.e. the allegations made by the applicant No.1 in her examination-in-chief. In cross-examination, the non-applicant has put up the defence of adultery by putting questions to the applicant. The applicant No.1 has denied it in her cross examination, however, has not given any suggestion during cross-examination of non-applicant that he is stating falsely about said incident of adultery. On perusal of the order passed by the Family Court it appears that non denial in cross-examination of applicant No.1 is considered as amounts to admission and therefore, the maintenance is rejected by the Family Court. However, it is the core question that whether said admission is sufficient to prove the adultery. It is the settled position of law that one or two incidents of illicit relations do not amount to adultery. It should be proved and

then only the maintenance on that count can be rejected. In this case, the applicant No.1 has specifically denied the question put to her during her cross-examination about said incident. Only because she has not asked anything during cross-examination of non applicant, it can not be presumed that the allegations made by the non-applicant husband are proved. As per Section 105 of the Bharatiya Suraksha Adhiniyam, the burden of proof in proceedings lies on person who would fail if no evidence at all were given on either side, it lies on the person who asserts the facts. Only because the advocate of the applicants has not cross examined the non applicant on the said point, it cannot be presumed that the adultery is proved. Hence, considering the said legal position, the rejection of maintenance to applicant No.1 is not correct under Section 125 of the Code of Criminal Procedure. She is entitled for maintenance. Hence, the application is partly allowed. Considering the earning of the non-applicant, the non-applicant to pay Rs.2500/-(two thousand and five hundred only) per month as a maintenance to the applicant No.1, since the date of filing of the application.

14. Prayer for enhancement of maintenance amount for children is rejected.
15. Criminal revision application stands disposed of.

(MRS.VRUSHALI V. JOSHI, J)