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IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 75 of 2024

Maneswar Nath ... ... Petitioner

-Versus-

Arati Nath ... ... Opp. Party

Advocates appeared in this case:

For Petitioner : Mr. Pradeep Ku. Nath, Advocate

For Opp. Party: Mr. Rajesh Ku. Mahapatra, Advocate

CORAM:
HON'BLE SHRI JUSTICE MRUGANKA SEKHAR SAHOO

J U D G M E N T

Decided on :9th April, 2026

MRUGANKA SEKHAR SAHOO, J.

1. The petitioner-husband is before this Court seeking revision of the order dated 29.08.2023 passed by the learned Judge, Family Court, Angul in Cr.P. No.29 of 2020. The said application was filed U/s. 125 of Cr.P.C. (since repealed and substituted by *parimateria* provision contained in Section 144 of BNSS, 2023) by the wife in

the marriage seeking Rs.15,000/- per month towards her monthly maintenance.

2. The learned counsel for the petitioner was heard at length. He addresses arguments being present at the Virtual Court, High Court of Orissa, Sambalpur.

3. Before the learned Family Court, as per the pleadings of the parties, marriage was not disputed, solemnized on 02.12.2016.

The present petitioner being opposite party appeared before the learned Family Court. He filed his reply stating himself to be a daily labourer depending on his father and staying in his village due to scarcity of work.

4. The learned Judge, Family Court for adjudicating the matter apart from discussing the pleadings of the parties that is the plaint and the written statement has considered and discussed the evidence of three witnesses on behalf of the petitioner, P.W.1 being the petitioner herself, evidence of the opposite party who examined himself O.P.W.1 and another individual as O.P.W.2. Two documents were marked as exhibits by the petitioner-wife and one document was marked as exhibit on behalf of the opposite party-husband who is the petitioner herein for consideration of the learned Family Court.

5. Seeking revision of the judgment, it is contended by the learned counsel for the petitioner that affidavit was filed by the opposite party-husband before the learned Family Court in terms of the directions contained in the decision of ***Rajnesh v. Neha***[1].

Now it is seen at paragraph-12 of order 29.08.2023 passed by the learned Judge, Family Court, the learned Court has delved into the aspect of 'income' of the husband, his capacity to earn and the affidavit filed. The discussions made is considered by this Court for present adjudication and the paragraph is reproduced herein:

> *"12. No specific evidence adduced by the petitioner to show the actual income of the O.P. Being the wife of the O.P she has the legal right to get maintenance from the O.P u/s.125 of the Cr.P.C. the petitioner is entitled to get the maintenance as per the status of the O.P. The O.P has also not given a clear picture about his monthly income.*
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> > *"In a decision reported in AIR 2015 (SCC) 2025 decided between Shamima Farroqui –vrs- Saheed Khan the Hon'ble Court has held that it is the obligation of the husband to maintain his wife and when the husband does not disclose the court about the exact amount of his income the presumption will be easily permissible against him".*
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> *The O.P stated in his show cause that he is a poor cultivator and labourer. They are cultivating one acre of land. There is irrigation facility in his*

[1] (2021) 2 SCC 324

village. This evidence on record shows that the O.P has sufficient income to maintain himself and the petitioner. His mother has already expired. The O.P is an able bodied person. Therefore he has the legal and social responsibility to maintain the petitioner who is unable to maintain herself. Since the O.P is a labourer as well as cultivating land, his income can be assessed at a higher rate in comparison to the income of an unskilled worker. Therefore as per the Labour Department notification No.6078/LC, Bhubanewar dtd. 19.10.2022 issued by Labour Commissioner, Odisha the minimum wages with VDA per day of the O.P being an unskilled employee can be accessed at ₹333/- per day. Therefore, his monthly income is assessed at ₹.8,325/- on the basis of 25 days work per month and his annual income can be assessed at ₹.99,900/- per year. The O.P has the responsibility only to maintain himself, the petitioner and his father. Therefore considering the evidence on record, social status of the parties and income of the O.P, it is felt proper to award maintenance of ₹.3000/- per month in favour of the petitioner which shall be paid by the O.P and the same will commensurate to the status of the O.P."

6. It is submitted by the learned counsel for the petitioner that the petitioner-wife before the learned Judge, Family Court, worked in a school as alleged by the opposite party-husband, but she did not indicate the said fact in her affidavit in terms of ***Rajnesh*** (*supra*).

In response to the said submission, learned counsel was asked to show before this Court while considering the revision, whether such pleading was made in the written statement filed by the opposite party

and whether any question was put to the petitioner-wife in cross-examination making the allegation and if such question was put then what was her answer.

7. Learned counsel for the petitioner took some time to go through the written-statement and the copies of depositions available with him and he fairly submits that no question was put nor it was pleaded in the written statement raising such contention.

Cross-examination is relevant in the present case as the opposite party-husband raises a question regarding authenticity of statements made by the petitioner-wife in the affidavit in terms of ***Rajnesh*** (*supra*) at para-'F'.

8. Learned counsel for the petitioner was also asked if it is assumed that the assertions made by the opposite party is correct what would turn on same, as in ***Rajnesh*** (*supra*), the Hon'ble Supreme Court has dealt with the issue how the Courts should deal with a situation where *"(c) Where wife is earning some income"*. The relevant paragraphs from ***Rajnesh*** (*supra*) which authoritatively settles the issue are reproduced herein from SCC Print:

> *"90. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:*

90.1. In Shailja v. Khobbanna [Shailja v. Khobbanna, (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308; See also the decision of the Karnataka High Court in P. Suresh v. S. Deepa, 2016 SCC OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar)], this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] Sustenance does not mean, and cannot be allowed to mean mere survival. [Vipul Lakhanpal v. Pooja Sharma, 2015 SCC OnLine HP 1252 : 2015 Cri LJ 3451].

90.2. In Sunita Kachwaha v. Anil Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

90.3. The Bombay High Court in Sanjay Damodar Kale v. Kalyani Sanjay Kale [Sanjay Damodar Kale v. Kalyani Sanjay Kale, 2020 SCC OnLine Bom 694] while relying upon the

judgment in Sunita Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] , held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

90.4. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in Chander Parkash v. Shila Rani [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] . The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court.

90.5. This Court in Shamima Farooqui v. Shahid Khan [Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785] cited the judgment in Chander Parkash [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife."

9. The scope of interference by High Court in exercise of power of revision in the kind of judgments/orders that is being dealt with in the case at hand i.e. grant of maintenance U/s.125 of Cr.P.C. has been authoritatively dealt with by the Hon'ble Supreme Court in ***Shamima Farooqui v. Shahid Khan*[2].** The paragraphs 19, 20 and 21 (SCC online web edition print), are apt and are applied for the present adjudication and are reproduced herein:

> *"19. From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes her faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance.*
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> *20. In the instant case, as is seen, the High Court has reduced the amount of maintenance from Rs.4000 to Rs.2000. As is manifest, the High Court has become oblivious of the fact that she has to stay on her own. Needless to say, the order of the learned Family Judge is not manifestly perverse. There is nothing perceptible which would show that order is a sanctuary of errors. In fact, when the order is based on proper appreciation of evidence on record, no Revisional*

[2] (2015) 5 SCC 705

Court should have interfered with the reason on the base that it would have arrived at a different or another conclusion. When substantial justice has been done, there was no reason to interfere. There may be a shelter over her head in the parental house, but other real expenses cannot be ignored. Solely because the husband had retired, there was no justification to reduce the maintenance by 50%. It is not a huge fortune that was showered on the wife that it deserved reduction. It only reflects the non-application of mind and, therefore, we are unable to sustain the said order.

21. Having stated the principle, we would have proceeded to record our consequential conclusion. But, a significant one, we cannot be oblivious of the asseverations made by the appellant. It has been asserted that the respondent had taken voluntary retirement after the judgment dated 17-2-2012 with the purpose of escaping the liability to pay the maintenance amount as directed to the petitioner; that the last-drawn salary of the respondent taken into account by the learned Family Judge was Rs 17,564 as per salary slip of May 2009 and after deduction of AFPP Fund and AGI, the salary of the respondent was Rs 12,564 and hence, even on the basis of the last basic pay (i.e. Rs 9830) of the respondent the total pension would come to Rs 14,611 and if 40% of commutation is taken into account then the pension of the respondent amounts to Rs 11,535; and that the respondent, in addition to his pension, had received encashment of commutation to the extent of 40% i.e. Rs 3,84,500 and other retiral dues i.e. AFPP, AFGI, gratuity and leave encashment to the tune of Rs 16,01,455. The aforesaid aspects have gone uncontroverted as the respondent husband has not appeared and contested the matter. Therefore, we are disposed to accept the assertions. This exposition of facts

further impels us to set aside the order of the High Court.

[Underlined to supply emphasis]

10. The learned counsel for the petitioner refers to the fact that the petitioner and the opposite party in the present application who were the respondent-applicant before the learned Judge, Family Court have divorced each other and claim for maintenance U/s.125 of Cr.P.C. cannot be awarded to the divorced/former wife.

In response Mr. Mahapatra, learned counsel for the opposite party refers to the judgment of the learned Family Court internal page-8, para-7 which is reproduced herein:

"7. With regard to the status of the petitioner in relation to the O.P. the petitioner stated in her evidence that she married the O.P according to Hindu rites and customs on dtd.2.12.2016. The marriage of the petitioner with the respondent is not disputed but on the other hand the O.P in his evidence stated that the petitioner is a divorcee by virtue of the order passed by the Judge, Family Court, Sambalpur in CP Case No.80 of 2021 w.e.f. dtd.1.1.2022 which is after filing of this case by the petitioner on dtd. 22.12.2020. The certified copy of the judgment passed by the learned Judge, Family Court, Sambalpur in CP Case No.80 of 2021 is exhibited as Ext.A. The said exhibit shows that the present O.P had filed CP Case No.80 of 2021 in the court of Judge, Family Court, Sambalpur u/s.13(1) (ia) of the Hindu Marriage Act, 1955 and vide order dtd. 28.12.2021 the suit was decreed on exparte against the petitioner and the marriage

solemnized between the petitioner and the O.P was dissolved by the decree of divorce which shall be effective from the date of decree. Therefore from the evidence on record it is found that the petitioner was the legally wedded wife of the O.P and at present her marriage with the O.P has been dissolved by a decree of divorce. The explanation(b) appended to section 125 of the Cr.P.C. provides that wife includes a woman who has been divorced by or has obtained divorce from her husband and has not remarried. In the present case the O.P stated that the petitioner has got married to another man. To whom she married for the second time has not been specifically pleaded. The said person is not made a party to this case. No reliable evidence adduced to show that the petitioner has married to another person. Therefore for the purpose of maintenance, the petitioner is to be treated as the wife of the O.P even though there marriage has been dissolved by a decree of divorce in CP Case No.80 of 2021."

11. Learned counsel Mr. Mahapatra for the opposite party further refers to the internal page-10 & 11 of the Family Court judgment, which is reproduced herein:

The copy of the FIR vide Industrial PS (Nisha) Case No. 168 dtd.24.9.2018 is produced and marked as Ext.1. The FF filed in the said case is also marked as Ext.2. The O.P stated that the petitioner is earning money out of tuition but he has no document to that effect. To whom the petitioner is teaching is also not specifically stated. Therefore the evidence of the O.P that the petitioner is earning out of tuition cannot be accepted. Therefore, in view of the evidence on record and principle of law settled by the Hon'ble Court it is to be held that the petitioner is living separately from the O.P for sufficient reason.

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Nothing substantial has been brought out from the mouth of the P.Ws. to disbelieve their evidence. O.P.W.2 stated in his evidence that the petitioner is serving as a teacher in a private school and getting monthly salary of ₹5000/-. The said evidence of the O.P.W.2 is not corroborated by the O.P. No reliable evidence adduced to show that at present the O.P is serving as a private teacher. In which school the O.P is serving as a teacher now is not disclosed by O.P.W.2. O.P.W.1 stated that his wife was serving as a teacher. When she joined in the private school at present is also not stated. No document produced to that effect. Therefore, it cannot be safely concluded that the petitioner is working as a private teacher and earning Rs.5000/- per month. Therefore from the above evidence on record it is to be held that the petitioner is unable to maintain herself."

12. In considered view of this Court, the provisions contained in Section 125 Cr.P.C. is very clear to the extent that divorced wife can seek maintenance from her erstwhile husband. The conclusion of the learned Family Court is just and proper and is correct appreciation of law on the issue.

13. Learned counsel for the petitioner submits that the judgment of the learned Family Court is erroneous as the learned court has not appreciated the evidence presented in its proper perspective.

Learned counsel has been apprised by the Court, the law laid down in ***Shamima Farooqui*** (*supra*), that it is required to be shown from the written statement filed

by the petitioner and evidence laid before learned trial court in terms of the law laid down by the Hon'ble apex Court in ***Shamima Farooqui*** (*supra*), to accept his contention.

14. Regarding the liability of the husband to pay the maintenance, paragraphs 16, 17 and 18 of the judgment rendered by the apex Court in ***Shamima Farooqui*** (*supra*) deal with the aspect, are applied and are reproduced herein :

> ***16.*** *Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In Chaturbhuj v. Sita Bai [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] , it has been ruled that : (SCC p. 320, para 6)*
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> > *"6. … Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Capt. Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508] falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787] ."*

17. *This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.*

18. *In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in Chander Parkash Bodh Raj v. Shila Rani Chander Prakash [1968 SCC OnLine Del 52 : AIR 1968 Del 174] wherein it has been opined thus : (SCC OnLine Del para 7)*

> *7. … an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him."*

[Underlined to supply emphasis]

15. By applying the above settled principles of law to the case at hand, it is apparent that the present petitioner husband being able bodied, has to be presumed to be capable of earning money to maintain his wife at least by doing work and earning daily wages. He cannot be heard to say that he is not in a position to earn enough. It was for him to show cogent grounds to

the learned Judge, Family Court to hold that for reasons beyond his control he is unable to earn enough to discharge his legal obligation. Before the learned Judge, Family Court he has not made any such endeavour. There was no legally permissible ground shown before the learned Judge, Family Court to accept the plea of the petitioner that he would not pay any maintenance.

16. Nature and scope of S.125 Cr.P.C. (since repealed and substituted by *pari materia* provision contained in S.144 of the BNSS, 2023), the legislative policy behind the enactment and the constitutional philosophy that has guided such enactment have been elaborately discussed in the judgment rendered by the Hon'ble Supreme Court in ***Rajnesh*** (*supra*).

The paragraphs relied upon and applied for deciding the present revision application are reproduced herein (from SCC Online web edition print) :

> ***"(d) Section 125 CrPC***
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> ***32.*** *Chapter IX of the Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 CrPC may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 CrPC is to provide immediate relief to an applicant. An application under Section 125 CrPC is predicated on two conditions : (i) the husband has sufficient means; and (ii) "neglects" to maintain his wife, who is unable to maintain herself. In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of*

the financial capacity of the husband and other relevant factors.

33. *The remedy provided by Section 125 is summary in nature, and the substantive disputes with respect to dissolution of marriage can be determined by a civil court/Family Court in an appropriate proceeding, such as the Hindu Marriage Act, 1955.*

34. *In Bhagwan Dutt v. Kamla Devi [Bhagwan Dutt v. Kamla Devi, (1975) 2 SCC 386 : 1975 SCC (Cri) 563] the Supreme Court held that under Section 125(1) CrPC only a wife who is "unable to maintain herself" is entitled to seek maintenance. The Court held : (SCC p. 392, para 19)*

> *"19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments."*
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> *[emphasis supplied]*

35. *Prior to the amendment of Section 125 in 2001, there was a ceiling on the amount which could be awarded as maintenance, being Rs 500 "in the whole". In view of the rising costs of living and inflation rates, the ceiling of Rs 500 was done away with by the 2001 Amendment Act. The Statement of Objects and Reasons of the Amendment Act states that the wife had to wait for several years before being granted maintenance. Consequently, the Amendment Act introduced an express provision for grant of "interim maintenance". The Magistrate was vested with the power to order the respondent to make a monthly allowance towards interim*

maintenance during the pendency of the petition. Under sub-section (2) of Section 125, the court is conferred with the discretion to award payment of maintenance either from the date of the order, or from the date of the application. Under the third proviso to the amended Section 125, the application for grant of interim maintenance must be disposed of as far as possible within sixty days from the date of service of notice on the respondent.

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37. *In Chaturbhuj v.Sita Bai [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316: (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] this Court held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife by providing her food, clothing and shelter by a speedy remedy. Section 125 CrPC is a measure of social justice especially enacted to protect women and children, and falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution.*

38. *Proceedings under Section 125 Cr PC are summary in nature. In Bhuwan Mohan Singh v. Meena[Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200] this Court held that Section 125 CrPC was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.*

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III. Criteria for determining quantum of maintenance

77. *The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.*

78. *The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.*

79. *In Manish Jain v. Akanksha Jain [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for*

maintenance based on various factors brought before it.

80. *On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications.*

81. *A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.*

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84. *The Delhi High Court in Bharat Hegde v. Saroj Hegde [Bharat Hegde v. Saroj Hegde, 2007 SCC OnLine Del 622 : (2007) 140 DLT 16] laid down the following factors to be considered for determining maintenance : (SCC OnLine Del para 8)*

"1. Status of the parties.

2. Reasonable wants of the claimant.

3. The independent income and property of the claimant.

4. The number of persons, the non-applicant has to maintain.

5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.

6. Non-applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.

8. Payment capacity of the non-applicant.

9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act."

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Discussion and Directions

109. *The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded. Even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in Section 125(2) CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 CrPC. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for*

interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

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V. Enforcement of orders of maintenance

114. *Enforcement of the order of maintenance is the most challenging issue, which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law. The Bombay High Court in Sushila Viresh Chhadva v. Viresh Nagshi Chhadva held that : (SCC OnLine Bom para 7)*

> *"7. … The direction of interim alimony and expenses of litigation under Section 24 is one of urgency and it must be decided as soon as it is raised and … the law takes care that nobody is disabled from prosecuting or defending the matrimonial case by starvation or lack of funds."*

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117. *Section 125(3) CrPC provides that if the party against whom the order of maintenance is passed fails to comply with the order of maintenance, the same shall be recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier.*

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VI. Final Directions

127. *In view of the foregoing discussion as contained in Part B — I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India.*

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(d) Date from which maintenance is to be awarded

131. *We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in part B-IV above."*

[underlined to supply emphasis]

17. Having gone through the judgment of the learned Family Court that has dealt with the pleadings of the parties, the evidence adduced by the P.Ws,1, 2 and 3, the evidence adduced by the O.P.Ws. 1 & 2, cross-examination of P.Ws. done on behalf of the petitioner herein and the appraisal of the exhibits marked by the petitioner-wife and Opp. Party-husband; by applying the tests laid down in ***Shamima Farooqui*** (*supra*) it has to be and is held that there is nothing perceptible which would show that the judgment of the learned Judge, Family Court is a sanctuary of errors. Further it has to be and is held that the order is based on proper appreciation of evidence on record.

18. As observed by the Hon'ble apex Court, this Court in exercise of revisional jurisdiction would not interfere with, for the reason that this Court would arrive at a different or another conclusion.

Now further it has to be held that this Court would not interfere when in the case at hand substantial justice has been done by considering minimum wages Rs.333/- per day for 25 days a month; monthly income that the husband can earn has been calculated @ Rs.8,325/- and the awarded amount of Rs.3,000/- per

month. The amount awarded to wife not being a huge fortune that was showered on the wife and it does not deserve reduction.

19. In ***Shamima Farooqui*** (*supra*) the Hon'ble Supreme Court commenting on reduction of amount of maintenance from ₹4,000/- to ₹2,000/- by order of the High Court observed *"it only reflects the non-application of mind and, therefore, we are unable to sustain the said order..."*

20. In view of the elaborate discussions made above, in considered opinion of this Court, no case is made out for revision of the judgment of the learned Judge, Family Court, Angul dated 29.08.2023 passed in CR.P. No.29 of 2020.

21. The application seeking revision fails and is dismissed.

(Mruganka Sekhar Sahoo)
Judge

Orissa High Court, Cuttack
The 9th April, 2026/Radha

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