



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 233 OF 2025

Jyoti w/o Sandeep Dhamapurkar
Age : 45 Years, Occ : Housewife,
R/o : Tushar Bapu Pradhan,
Rameshwar Colony, Mehrun, Jalgaon,
Taluka and District Jalgaon. ... Applicant.

Versus

Sandip s/o Eknath Dhamapurkar
Age : 47 Years, Occ : Service,
R/o : Building No 03/209, 3rd Floor,
Pratikshanagar, Old Mahada Building,
Near Mala Garden, Above Bhavrao Patil
School, Sion (E), Mumbai – 400 022. ... Respondent

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Ms. Fatema S. Kazi, Advocate for the Applicant
Mr. Dharmesh J. Gogri, Advocate for the Respondent
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 16.01.2026

Pronounced on : 17.01.2026

ORDER :

1. Revision petitioner-wife of present respondent, is hereby taking exception to the judgment and order dated 08.05.2025 passed by learned Family Court, Jalgaon in Petition No. E-35 of 2021, dismissing petitioner's claim for maintenance sought under Section 125 of Cr.P.C.

2. Factual background of the case is, that parties herein got married on 05.05.2019. Due to marital discord wherein blame was shifted on each other, wife started residing separately. Subsequently, she set up claim for maintenance by invoking Section 125 of Cr.P.C. on the premise that, she has no source of income and is further unable to maintain herself. Husband has refused to maintain her in spite of having salaried income of Rs.90,000/- per month by virtue of his job as Assistant Professor in Junior College and thereby she set up maintenance claim to the tune of Rs.20,000/- per month.

3. The above claim was contested by present respondent-husband denying all allegations of being driven out of the house. He set up a specific defence that wife left his company on her own accord as she was keen in residing separately from in-laws. That, there was no just reason for her to part company and he also expressed his willingness to accept her and therefore, for all above reasons, he opposed grant of maintenance.

4. Learned Family Court appreciated the respective cases advanced by each side and vide above judgment, dismissed the claim set up by wife, which is now subject matter of present revision.

5. Learned counsel for revision petitioner would appraise this Court of the background of the case and would submit that indisputably parties are husband and wife. According to her, husband failed to perform his duties towards her. He Neglected her, threatened her and thereby maltreated her. According to her, on 16.06.2019 husband left her alone and she was left without electricity and water, and he also did not respond to her phone calls, as a result of which she was constrained to leave husband's company. That, thereafter there was total neglect to maintain and therefore, it is her submission that, revision petitioner was compelled to seek maintenance. That, she had no independent source and means to maintain herself and therefore, it is pointed out that, case for grant of maintenance was made out. She pointed out that learned Family Court failed to consider and appreciate such facts and according to her, learned Family Court unnecessarily took into account material and evidence in proceedings under the Domestic Violence Act (DV Act) for arriving at conclusion in proceedings for maintenance. She emphasized that only scope for Family Court was to ascertain whether in spite of sufficient means, husband has deliberately neglected to maintain her even when it was obligatory for him. She pointed out that husband earns around Rs.90,000/- per month and as such, has sufficient

source and means to provide for maintenance, but according to her, all such legal requirements, in spite of its existence, were not correctly appreciated and so, she finds fault in the order of rejection of maintenance and prays to allow the revision.

6. Learned counsel for respondent-husband would support the judgment of Family Court by pointing out that, firstly, wife is highly qualified and there was evidence suggesting she doing private job. That, moreover, she had, on her own accord, deserted husband and therefore was disentitled to receive maintenance and on such count, he supports the impugned order and prays to dismiss the revision.

7. This being revision under **Section 397 of Cr.P.C.**, it would be fruitful to first refer to the settled legal principles governing the said aspect. By umpteen judgments, scope of Section 397 Cr.P.C. has been time and again reiterated. Though there are catena of judgments, the landmark judgment of *Amit Kapoor v. Ramesh Chander and another* (2012) 9 SCC 460 is relied and the relevant observations therein are borrowed and quoted as under :

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality

and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well - founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

8. Bearing in mind above settled legal position, this Court is only expected to test whether the impugned order is erroneous, illegal, perverse and whether there is failure to appreciate the available evidence in correct perspective or available material has not been taken into account while passing the impugned order. Admittedly, parties are husband and wife who seem to have got married on 05.05.2019. Record shows that initially, on application Exhibit 14, interim maintenance was also granted to the tune of Rs.10,000/-, but subsequently, on appearance and contest by husband-respondent, on

complete analysis and appreciation of evidence, there is dismissal of main application for maintenance.

9. Evidence of wife seems to be at Exhibit 16 and that of husband to be at Exhibit 47. Specific case of wife was that, there was neglect to maintain her in spite of sufficient means and sources whereas, specific defence of husband was that, there was no neglect and that wife had left his company on her own accord for no plausible reason. That, he had taken steps for filing petition for conjugal rights and getting annoyed by the same, present proceedings, including proceedings under Domestic Violence Act were instituted.

10. While facing cross, revision petitioner seems to have admitted that she has acquired B.Tech. qualification. Though she initially denied the suggestion that she was keen in residing separately than from the joint family of husband and she insisted for separate residence, however, it appears that learned counsel for husband brought to her notice the evidence in the previous proceedings instituted by her under DV Act wherein she has clearly admitted that she insisted husband to arrange for separate flat as she was unwilling to reside in joint family. She has also admitted that husband had instituted proceedings for restitution of conjugal rights and she

further admitted that husband informed her that, she should come and cohabit with him. To a question in cross, whether she was willing to rejoin husband or not, she has answered that even if husband is ready, she was not willing to cohabit with him. Therefore, her such answers clearly suggest that she, on her own accord, is not willing to cohabit. S

11. Law is fairly settled that, only when there is willful neglect to maintain, only then wife is entitled for maintenance. Here, the above answers given by revision petitioner in the cross clearly show that in spite of husband willing to take her back, she has herself refused to go back to him and is further asserting neglect to maintain. Evidence and findings recorded with regard to cruelty, neglect and financial status put forth in the proceedings under DV Act can definitely be gone into while considering entitlement of maintenance under Section 125 of Cr.P.C. by wife. Both the jurisdictions, though overlapping and though scope of each of the proceedings are distinct, on the point of maintenance, which is included in both the proceedings, evidence in the earlier DV proceedings can definitely be gone into for deciding the entitlement of maintenance under Section 125 of Cr.P.C. The Family Court has committed no error in going into the evidence adduced by wife in earlier DV proceedings and in applying the same while

deciding grant of maintenance. Therefore, there is no illegality or perversity on the part of learned Family Court in refusing to grant maintenance. No illegality or perversity is brought to the notice of this Court in the findings and conclusion reached at by the Family Court so as to interfere. Hence, following order :

ORDER

The Criminal Revision Application is dismissed.

[ABHAY S. WAGHWASE, J.]

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