

Salgaonkar

MANDIRA MILIND
SALGAONKAR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL (ST) NO.35795 OF 2024

Karan Pramod Kudale

.. Appellant

Versus

Dipali Karan Kudale

.. Respondent

WITH

CRIMINAL WRIT PETITION NO.6075 OF 2024

Karan Pramod Kudale

.. Petitioner

Versus

Dipali Karan Kudale

.. Respondent

...

Mr.Avinash Avhad for the Appellant/Petitioner.

Mr.Amit A. Patil with Mr.Aaditya Nikam and Mr.Prathamesh Deshpande for the Respondent.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATE : 30th JANUARY, 2026

...

P.C:-

1. Under Section 125 of the Code of Criminal Procedure, 1973, (for short, "**Cr.P.C.**"), while making an order for maintenance of wife, two things are required to be looked into; (1) the neglect or refusal to maintain the wife, and (b) the inability of wife to maintain herself.

Any application filed under Section 125, therefore, has to be tested on these two parameters.

2. When we have perused the common Judgment and Order passed by the Family Court No.2, Pune in Petition No.A-66 of 2020 alongwith Petition No.E-44 of 2020 dated 14/10/2024, we find that the learned Family Court Judge has completely failed to consider the parameters on which the application under Section 125 shall be considered.

While determining the application, the discussion is to be found from paragraph 37 onwards of the judgment, and it is recorded that the wife staked a claim of Rs.2,00,000/- per month against her husband, who is admittedly a Chartered Accountant. He had disclosed his income as Rs.1,50,000/- per month as per the order and he admitted that he was under an obligation to pay Rs.20,000/- per month towards maintenance of their child and also invested a sum of Rs.20,000/- in Fixed Deposit and PPF.

The wife pleaded that her salary was Rs.16,000/- per month, but as on today i.e. on the date of passing of the order i.e. 14/10/2024, her salary is Rs.50,000/- and for the year 2020, her monthly expenses were Rs.30,000/- per month.

3. The above details make us wonder, that if the expenses of the wife from 2020 were computed as Rs.30,000/- per month, and she was earning a salary of Rs.50,000/- per month then how did the Judge conclude that the wife is unable to maintain herself.

In any case, we note the observations of the Court in paragraph 38, that the husband had an earning capacity and his total income from all sources was Rs.10,00,000/- per month, is without any evidence being brought on record to that

effect and what is more relevant is the observation in paragraph 40, when the Court referred to the family business of the husband and also certain commercial properties, which are given on rent alongwith his profession as Chartered Accountant and an assumption is drawn as, "It means the net income of the husband must be Rs.4 lakhs per month. The income of the wife is on lower side comparing to the husband. In such situation, the balance needs to be struck down". While striking this balance, the Court abruptly expressed an opinion that Rs.50,000/- per month for the wife and Rs.30,000/- per month to the child would be sufficient to meet the ends of justice.

4. We must observe that the learned Family Court Judge has gone completely wrong in deciding the application filed under Section 125 of Cr.P.C., as he had to consider the factors that there was neglect and refusal to maintain the wife on behalf of the husband, and secondly that the wife was unable to maintain herself.

These factors being conspicuously absent from the consideration, we deem it appropriate to set aside the order passed by the Family Court No.2, Pune on 14/10/2024, thereby disposing of Petition No.E-44 of 2020, by directing the payment of maintenance.

By setting aside the order to this limited extent, we deem it appropriate to remand the proceedings to the Family Court for consideration of the application afresh and in the wake of the specific stand of the wife, that as on date, she is not employed and her earning capacity is 'zero', Let the Judge on

considering the evidence produced before him, determine the application, strictly in accordance with the parameters that are relevant for determining an application under Section 125.

However, as far as the child is concerned, since there is no challenge to the order of maintenance to the extent of Rs.30,000/- per month, we direct the husband to continue to make the payment of his maintenance amount, and if he is in arrears of the said amount, the same shall be cleared forthwith.

The learned Family Court Judge shall decide the application within a period of six months.

5. In the wake of the aforesaid, Criminal Writ Petition No.6075 of 2024 is disposed of.

6. Apart from the aforesaid direction, for examining the challenge to the order passed by the Family Court on Petition No.A-66 of 2020, list the Appeal for hearing on **27th February, 2026.**

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)