



Judgment

2 revn99.24

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

CRIMINAL REVISION APPLICATION NO.99 OF 2024

Shyam Jaganathrao Jungade,
(original respondent)
aged about 40 years, occupation: doctor,
r/o Sai Prasad, Dhanwantari,
taluka and district Wardha. **Applicant.**

:: VERSUS ::

1. Sou.Aarti Shyma Jungade,
(original petitioner),
aged about 37 years, occupation: household.

2. Durwang Shyam Jungade,
aged about 4 years, occupation: Nil,
both r/o 108, Pawan Apartment, Pawan
Bhumi, Somalwada Nagpur, taluka and district Nagpur
through Natural Guardian
Aarti Shyam Jungare. **Non-applicants.**

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Shri M.N.Ali, Counsel for the Applicant.

Shri Y.B.Mandpe, Counsel for the NAs.

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CORAM : URMILA JOSHI-PHALKE, J.

DATE : 25/02/2026

ORAL JUDGMENT

1. By this revision, the applicant is challenging judgment
and order passed by Family Court No.2, Nagpur in Petition
No.E-323/2020 dated 2.6.2022 by which maintenance @

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Rs.6000/- per month to non-applicant No.1 and Rs.4000/- to non-applicant No.2 is granted from the date of the petition i.e. 5.11.2020.

2. Brief facts necessary for disposal of the revision are as under:

The applicant and non-applicant No.1 got married on 25.3.2014 at Nagpur. After the marriage, she started cohabiting with the applicant for six years. In the initial period of two months, there was no complaint with each other. It is alleged that, thereafter, he subjected her for ill-treatment at the instigation of his family members and he used to beat her by fists and kicks blows. The father and sister of the applicant used to interfere in the marital life, but she tolerated the ill-treatment under the expectation that one day will be smooth. It is further alleged by her that her father serving in HPCL at Khapri died due to heart attack. After his death, the amount was received by his legal heirs and the

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applicant was knowing about the same. He insisted her to bring the share of amount and on that account also she was ill-treated by him. It is further allegation that the applicant has performed first marriage with one lady who was a doctor and ill-treated her and, therefore, the first marriage was dissolved and, thereafter, he married with the present non-applicant No.1 with whom his behaviour was the similar. Due to the behaviour of the applicant, she has undergone frustration and, therefore, she was constrained to leave the matrimonial house. After leaving the matrimonial house, she filed an application for grant of maintenance.

3. The Notice was served upon the applicant, but he failed to appear and, therefore, she adduced the evidence. On the basis of her evidence, the Family Court came to the conclusion that she is refused and neglected by the applicant and thereby the Family Court granted maintenance @ Rs.6000/- per month to non-applicant No.1 and Rs.4000/- to non-applicant No.2 from the date of the petitioner.

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4. Being aggrieved and dissatisfied with the same, the present revision application is preferred on the ground that no opportunity was granted to the applicant to counter the allegations levelled as due to the Pandemic situation, he could not engage counsel and could not attend the proceeding. He is a medical practitioner by profession and due to the pandemic situation, it was not possible for him to attend the proceeding and, therefore, an opportunity be granted to him.

5. Learned counsel for the applicant reiterated the said contentions and invited my attention towards Roznama and submitted that the petition was filed during pandemic period and due to the pandemic situation, as the applicant belongs to the medical profession, he could not attend the proceeding and, therefore, to counter the allegations levelled against him, an opportunity be granted to him to adduce the evidence and only prayer made by learned counsel for the applicant is to remand the matter for a fresh consideration.

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6. Learned counsel for the non-applicants strongly opposed the said contentions on the ground that Roznama shows that the petition was not filed during covid pandemic period. The notice was served upon the applicant after pandemic. Thereafter, a sufficient opportunity was granted and as he failed to appear, the petition was disposed of on the basis of evidence adduced by non-applicant No.1. He also invited my attention towards Section 126 of the Code and submitted that by following the procedure given under Section 126 of the Code, the Magistrate has proceed to pass ex parte order and, therefore, no interference is called for.

7. After hearing both sides and perusing the impugned judgment as well as submissions of both sides, there is no dispute as far as matrimonial relationship is concerned. It is also not disputed that the applicant is a medical practitioner by profession. Roznama placed on record also shows that the petition was filed on 5.11.2020 and notice was issued to him on 10.12.2020. Thereafter, since 5.2.2021 to 22.9.2021, the

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petition was pending for appearance of the applicant. Despite service of Notice, he has not appeared and, thereafter, finally, ex parte order was passed on 15.3.2022 i.e. after two years of the notice.

8. Section 126 of the Code deals with procedure which is to be adopted while dealing with application under Section 125 of the Code. The proviso to sub section (2) shows that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

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9. Thus, it is apparent that the Magistrate, after following the procedure under Section 126 of the Code, passed an ex parte order.

10. The evidence adduced by non-applicant No.1 shows that she has specifically stated before the court that the marriage was performed on 25.3.2014.. She went to her parents house on 10.6.2020. When she was returning to her matrimonial house, she received a notice of CJSD at Wardha.

11. Thus, after spending six and half years with the applicant, though he has subjected her for the ill-treatment, she has tolerated the same and, thereafter, the applicant has filed a petition by making false allegations against her. She has specifically stated regarding ill-treatment at the hands of the applicant and by considering the income of the applicant, the amount of maintenance was granted to the non-applicant No.1 @ Rs.6000/- per month to her and Rs.4000/- to the non-applicant No.2 who is her son.

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12. Thus, the amount of maintenance is granted by considering the income of the applicant.

13. Now, only question is whether opportunity is to be granted to the applicant though the Magistrate has followed the due procedure.

14. It is submitted by learned counsel for the applicant that by way of an opportunity, by continuing the order granting maintenance, the matter be remanded back to the court and an opportunity be granted to adduce the evidence and no prejudice would be caused to the non-applicants.

15. As far as the said submission is concerned, there should be some substance in the said submission as the applicant has shown willingness to deposit the amount towards the maintenance granted by the Family Court No.2, Nagpur and he is ready to deposit the said amount though the matter is remanded back to the Family Court.

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16. Admittedly, there has to be reasonable cause for accepting the said submissions. However, considering the fact that due to some unavoidable reasons, he could not attend the proceeding and, therefore, the matter was decided ex parte. Therefore, an opportunity is to be granted to the applicant to adduce his evidence to rebut the contentions of the non-applicants. However, considering the application is filed by the non-applicants in the year 2020, it was decided in the year 2022.

17. In view of that, it would not be proper to remand the matter blanketly. However, considering that amount of Rs.6000/- per month is already awarded by the Family Court to non-applicant No.1 and Rs.4000/- per month to the non-applicant No.2, the Family Court will take its own time to decide the matter after remanding back. During this period, to make the provisions for the non-applicants for their livelihood, it would be in the interests of justice to impose conditions on the applicant to deposit amount of maintenance granted by the Family court regularly in the Family Court

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without making any default and an opportunity is to be granted to the applicant to adduce evidence.

18. In view of that, I proceed to pass following order:

ORDER

(1) The criminal revision application is **allowed**.

(2) Petition No.E-323/2020 is remanded back to Family Court No.2, Nagpur.

(3) The Family Court No.2, Nagpur shall grant an opportunity to the applicant as well as the non-applicants to adduce the evidence in support of their contentions and to file reply by the present applicant (original respondent).

(4) The applicant shall not delay the proceeding and shall adduce the evidence within two months.

(5) The non-applicant No.1 is also permitted to adduce additional evidence if she so desires the same.

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(6) In the meantime, the applicant shall pay Rs.6000/- per month to the non-applicant No.1 and Rs.4000/- per month to the non-applicant No.2 on or before 10th of every month and one single default would be sufficient to strike off his defence.

(7) The parties to appear before the Family Court No.2, Nagpur on 6.3.2026.

Revisions stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

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