



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

CRIMINAL REVISION APPLICATION NO. 143 OF 2025

1. Tushar Jagannath Ambodkar
Aged about 37 years, **APPLICANT**
Occ.:Service
Add.-C/o. Hashmukhbhai Patel,
Badaj Road, State Highway No. 63,
Vill.-Dharampuri,Tq.
Dabhoi, Dist.- Baroda (Gujrat)
391110

// V E R S U S //

1. Sau. Minal W/o Tushar Ambodkar
Aged about 33 years, Occ. - **NON-APPLICANTS**
Housewife &
2. Mugdha D/o. Tushar Ambodkar
(Minor) through Respondent No.1
Mother being natural guardian, a
Age:-7 yrs, Occ: Education
Both 1 & 2 Add.-C/o. Triambakrao
Baliram Dahake, Behind
Wankhade Nagar, Datta Chowk,
Akola Tq. And Dist. Akola.

Mr. R.M. Tahaliyani, Advocate for the applicant.
Mr. Piyush Girdekar, Advocate for non-applicants.

CORAM : URMILA JOSHI PHALKE, J.

JUDGMENT RESERVED ON:- 13.03.2026
JUDGEMENT PRONOUNCED ON:- 26.03.2026

J U D G M E N T :

1. This revision is preferred challenging the judgment and order passed by the Family Court, Akola in petition No.E-75/2019 dated 21.11.2023 granting maintenance @ of Rs.18,000/- to the non-applicant No.1 and Rs.10,000/- to the non-applicant No.2 from the date of application i.e. from 21.11.2023.

2. The brief facts which are necessary for the disposal of the application are as under:-

The applicant and non-applicant No.1 got married on 25.02.2015 as per Hindu rights and rituals at Akola and were blessed with daughter Mugdha from the said wedlock. After marriage non-applicant No.1 resumed cohabitation at the house of the present applicant. It is alleged by non-applicant No1 that it was informed prior to the marriage that the applicant is serving in South Africa. He owns his house at Bhusawal. He also owns agricultural land at Samner Taluka Pachora District Jalgaon and getting handsome income from the said sources. It is alleged that present applicant is BE, B.Tech and MBA and serving at higher position. After marriage when she resumed the cohabitation at the house of the present applicant she was not treated well and she was subjected for the harassment as well as ill treatment and she

was humiliated and insulted on various occasions. For some days she has tolerated the ill treatment but applicant has not taken her along with him when he was serving at South Africa. When she was pregnant neither the applicant nor his family members took any responsibility of her and therefore, she constrained to take shelter of her parents house. Thereafter the applicant started demanding divorce from her and for fulfilment of the said demand he had subjected her for ill treatment. Thus, applicant has refused and neglected her and denied to maintain her. Therefore, she constrained to leave the matrimonial house and started residing at her parents house.

3. The said application is strongly opposed by the present applicant on the ground that non-applicant No.1 has also filed an application under Section 12 of the Protection of Women From Domestic Violence Act, 2012 before Family Court at Akola bearing MCA No.1105/2022 which is still pending and interim maintenance was granted at the rate of Rs.10,000/- per month by the Family Court, Akola in the said matter. The said interim order has been challenged by the present applicant before the District Court. It is further contended by the present applicant that it was

non-applicant No.1 who has left the matrimonial house without any sufficient reason. She has also concealed that she is practising lawyer and earning for her livelihood. The Family Court has not granted him opportunity to adduce the evidence to show that non-applicant No.1 is practising lawyer and earning for livelihood and therefore, she is not entitled for maintenance. No sufficient opportunity is granted to the present applicant to adduce the evidence. It is further alleged that initially the maintenance was granted @ of Rs.15,000/- to the non-applicant No.1 and Rs.10,000/- to non-applicant No.2. But without issuing notice the said order was corrected by the Family Court Akola and granted maintenance @ of Rs.18,000/- to the non-applicant No.1 and Rs.10,000/- to the non-applicant No.2.

4. Learned Trial Court has also not considered the affidavit which is filed by the present applicant showing his income 2 lakhs Naira which is equal to Rs.32,000/- in the Indian Rupees and on the wrong assumption the application for maintenance is allowed by the Family Court. In view of that matter be remanded back to the trial Court and opportunity be granted to the applicant to adduce the evidence.

5. Learned Family Court has recorded the evidence and after recording the evidence decided the application in favour of the non-applicant No.1 and granted maintenance as aforesaid. Being aggrieved and dissatisfied with the said judgment and order the present revision application is preferred.

6. Heard learned counsel for the applicant. He invited my attention towards the entire evidence on record and submitted that various documents which are filed on record sufficiently shows that non-applicant No.1 is practising lawyer. She has appeared in many matters and having sufficient means to maintain herself. Despite she has mentioned in the application that she is a practising lawyer Family Court has ignored the said fact and granted maintenance on wrong assumptions. He submitted that statement of assets and liabilities filed on record by the non-applicants also shows she is practising lawyer and assets and liabilities of the present applicant shows that his income which is mentioned by him at the time of marriage was Rs.20,000/- per month and at the time of separation it was Rs.25,000/- per month. This aspect is completely ignored by the

trial Court while granting the maintenance. In fact refusal and neglect on the part of the present applicant itself is not established by the non-applicants and therefore, on that ground also the application deserves to be rejected.

7. Per contra learned counsel for the non-applicants supported the judgment of the Family Court and submitted that refusal and neglect as well as income of the present applicant is proved before the Family Court. The applicant failed to cross-examine the present non-applicant. Thus, the evidence of non-applicant No.1 remain unchallenged and therefore, no interference is called for in the judgment and order of the Family Court.

8. After hearing both the sides and on perusal of the entire record it reveals that application was received by the Family Court on 28.06.2019. Notice was issued to the present applicant by the Family Court on 29.06.2019. The notice duly served on the present applicant but he remained absent on 10.07.2019. On 06.08.2019 also the present applicant was absent before the Family Court. On 09.08.2019 present applicant appeared through

his counsel and filed his reply. From 14.08.2019 to 28.08.2019 the application was pending for report of marriage counsellor. On 14.11.2019 reply was filed on the application of interim maintenance. On 07.09.2021 after filing of the assets and liabilities on the affidavit the application was kept for evidence on affidavit. On 18.03.2023 non-applicant and her counsel were present and they filed affidavit of evidence. Thereafter matter was listed for cross-examination on 21.04.2023. On 24.04.2023 as applicant failed to appear and cross-examine the non-applicant No.1, therefore, no cross order was passed. From 30.05.2023 to 28.07.2023 the matter was listed for the evidence of present applicant but he failed to adduce the evidence. Therefore, matter was listed for the final arguments and finally after hearing the learned counsel for the non-applicant No.1 the application was decided granting maintenance to the present non-applicants.

9. Admittedly, the evidence of non-applicant No.1 remained unchallenged before the trial Court. On perusal of her evidence it reveals that her marriage with the present applicant was performed on 25.02.2015. The applicant is BE, BTech. MBA and was serving an higher post. After marriage she was not

treated well. At the time of marriage the applicant was residing along with his parents, elder brother and sister of the applicant. The applicant was serving on contract basis at South Africa. After marriage when she was staying with other family members she was never respected. She was humiliated and insulted on various counts. During that period she was pregnant. During pregnancy also she was not properly taken care of and due to ill treatment at the hands of the applicant as well as his family members she constrained to leave the matrimonial house. Thus, it was contended that due to ill treatment at the hands of the present applicant she was constrained to leave matrimonial house and therefore, she is entitled for the maintenance. As already observed that as the applicant failed to appear and cross-examine the witnesses the evidence of non-applicant No.1 remained unchallenged and therefore, accepting the said evidence the maintenance was granted.

10. The revision application is filed firstly on the ground that opportunity was not granted to the present applicant to adduce the evidence to show that present applicant No.1 is also practising lawyer and she is earning her livelihood. In support of

his contention applicant placed on record the sanad issued by Bar Council of India to the non-applicant No.1 showing that she has completed a Law Graduation. She has enrolled herself at Akola Bar Association. The certificate issued by the Bar Association shows that she is practising in civil, criminal, labour and industrial and Cooperative Court at Akola. He has also filed on record certified copy of vakalatnama which shows that she appeared in various matters as a lawyer for the parties. The day to day business or the case details maintaining E Court Services shows that she appeared for various clients in independent capacity representing them as a lawyer. Thus, she is having sufficient means to maintain but applicant has not got an opportunity to prove the same and therefore, matter be remanded back.

11. Learned counsel for the applicant further invited my attention towards certified copy of MJC No.2/2024 and submitted that the said application was filed for condonation of delay in filing review of the order passed by the Family Court wherein also she has mentioned that she is legal practitioner. Petition No.84/2025 which is filed before the Family Court wherein also she has mentioned as she is legal practitioner in ER petition

No.36/2023 filed before the Family Court, Akola also shows that she is legal practitioner. Thus, he submitted that certified copies of the Court proceeding itself shows that she is legal practitioner but this aspect was not considered by the Family Court, Akola. Therefore, for proper opportunity to the present applicant the application deserves to be remanded back to the trial Court for further consideration by giving an opportunity to the present applicant to adduce evidence. It is further submitted that the Family court has also not considered that she is already getting interim maintenance at Rs.10,000/- in D.V. proceedings. He further invited my attention towards the order passed by the Family Court and submitted that the order passed by the Family Court shows that initially maintenance @ of Rs.15,000/- was granted to the non-applicant No.1. However, subsequently without granting an opportunity or without issuing notice the said order was corrected and clause 3 of the order was corrected as

०३) सदरचे प्रकरण अंतीमतः निकाली निघाल्यामूळे कौटुंबिक हिंसाचाराच्या प्रकरणातील अंतरीम खावटीची रक्कम दहा हजार ही या प्रकरणामधील अंतीम निर्णयामध्ये समाविष्ट करता येणार नाही. पुढे कोणतीही संधिगृह्यता राहू नये म्हणून कौटुंबिक हिंसाचाराच्या प्रकरणातील रु.१५,०००/- दरमहा खावटीचा आदेश या आदेशात समाविष्ट असेल, हा आदेश वगळण्यात यावा.

12. Learned counsel for the non-applicants supported the judgment of the Family Court and submitted that despite sufficient opportunity applicant has not adduced the evidence and therefore, no illegality is committed by the Family Court and therefore, revision application deserves to be rejected.

13. After hearing both the sides and on perusal of the entire record there is no dispute that present applicant was not at all diligent while pursuing the application. After closing of the evidence by the non-applicant No.1 on 01.07.2022 and on 28.07.2023 matter was kept for evidence of the non-applicant i.e. present applicant but present applicant failed to adduce the evidence and therefore, his evidence was closed and case was fixed for argument. Therefore, submission of learned counsel for the applicant that sufficient opportunity was not granted to him is not sustainable.

14. The object of Section 125 of the Code is to provide a summary remedy to save dependants from destitution and vagrancy, and thus to serve a social purpose from an independent

obligation of the parties under their personal law. Since the object is to prevent vagrancy or destitution by means of a summary remedy before Magistrate, jurisdiction is preventive rather than remedial or punitive. Foundation of order Under Section 125 is the neglect or refusal of the opposite party to maintain wife, child or parents. "Refuse" means a failure to maintain or denial of the obligation to maintain after demand. "Neglect on the other hand, means a default or omission maintain, in the absence of a demand. Neglect or refusal may be implied from the conduct of a party and need not be a formal refusal. Refusal or neglect on the part of husband may be proved not only by express words, but also by his conduct. Under Sub-section (4) of Section 125, a wife who without sufficient reasons, refuses to live with her husband is not entitled to maintenance under Section 125. Neither in Sub-section (4) which deals with such a situation nor in Sub-section (5), the Code attempts to enumerate what would be sufficient cause for a wife-claimant to refuse to live with her husband and yet succeed in her claim for maintenance. It is left to be objectively determined by the Court having regard to the circumstances of case and social ideas and background facts. Torture or ill-treatment in the husband's house would be sufficient for refusal by

the wife-claimant for not live with her husband, even though husband may not be guilty personally. Where a wife cannot reasonably hope to live with dignity with her husband she may refuse to live with him. The offer must be bona fide and the same should not have been made with object to escaping the obligation to pay maintenance. The burden that the wife is refusing to live with him is to be discharged by the husband. But when once that is proved, it is for the wife to show that there are reasons for her living apart from the husband. The object of Section 125 is to arm wife in difficulty with a cause of action to get maintenance from her erring husband. Second proviso to Sub-section (3) of Section 125 is also relevant. Even though a person offers to maintain his wife with condition of her living with him and she refused to live with him, the Magistrate may consider ground of refusal as stated by wife- claimant and make an order under Section 125 of the Code notwithstanding such offer if he is a satisfied that there is just ground for so doing. The neglect or refusal referred to in Section 125(1) Cr. P.C. is only of the obligation to maintain the wife. If no maintenance is paid either negligently or deliberately Section 125 comes into play. The reasons for non-payment of maintenance is irrelevant under Section 125(1). Neglect or refusal

to maintain exists if there is non payment of maintenance whether deliberately or negligently whatever be the cause. Separate residence by a wife without just ground or without sufficient reason does not militate against the fact of neglect or refusal to maintain. Neglect or refusal to maintain exists whenever there is breach of obligation to maintain whether negligently or deliberately whether there be justifiable and sufficient reasons or not for separate residence. It is necessary to understand the concept of refusal by the wife to live with her husband Both Section 125(4) and 125(5) as also the second proviso to Section 125(3) Cr. P.C. are couched in identical expressions and language which insist that sufficient reason must be shown by the wife who refuses to live with her husband. Section 125(4) and 125(5) as also the second proviso to Section 125(3) Cr. P.C. show clearly that such sufficient reasons must be there, both when the order is claimed under Section 125(1) Cr. P.C. and when the claim is sought to be enforced later after securing the order. Either way there must be refusal and sufficient reason to justify refusal to entitle the wife to claim maintenance and enforce the same under Section 125 Cr. P.C.

15. A husband can successfully resist the claim under Section 125(1) for maintenance of a residing separately only if he comes within the sweep of the second proviso to Section 125(3) Cr. P.C. which states that if such person offers to maintain his wife on condition of living with him and she refuses to live with him, Magistrate may consider any grounds of refusal stated by her and may make order under this Section notwithstanding such offer, if he is satisfied that there is a just ground for so doing.

16. To understand what can amount to refusal under Section 125(4) and 125(5) of Cr.P.C., the second proviso to Section 125(3) makes it crystal clear that it is incumbent that the husband must offer to maintain the wife on the condition of her living with him. Only when such offer is made and that offer is not accepted by wife and refuse to live with him. Where there is no offer and there can only be failure to live with husband and no refusal to live with husband. The scheme of Section 125 Cr.P.C. is thus very evident. A husband is liable to maintain his wife wherever she is, provided she is unable to maintain herself, provided he is having sufficient means and provided he does not maintain her whether negligently or deliberately. Her claim can be

resisted by the husband if he makes an offer to maintain her on condition that she lives with him. Once he shows that he has made a contemporaneous bona fide offer and she refuses to live with him, the burden is shifted to the wife to show sufficient or just reasons to prove that her separate residence is justified. Only when such an offer is made and the same is rejected can she be said to refuse to live with her husband and only thereafter the burden to prove just ground and sufficient reason would arise.

17. In the light of the above provisions, admittedly in view of the proviso 2 to Section 125(3) there was no offer by the present applicant to non-applicant No.1 and therefore, as far as refusal and neglect is concerned, there is no offer which is refused by the non-applicant. Therefore, it can be sufficiently infer that the present applicant has not fulfilled the obligation to maintain his wife and daughter.

18. Second requirement to grant maintenance is that she is unable to maintain herself. As far as this aspect is concerned, admittedly Family Court has not considered though there is sufficient material before the Family Court to ascertain that she is

legal practitioner because she herself has mentioned in her application that she is legal practitioner. Her appearance is also before the Family Court. Various petitions filed by her also shows that she is legal practitioner. This aspect was not considered by the Family Court while calculating the amount of maintenance. Third aspect whether non-applicant has proved that there is sufficient means with present applicant to provide maintenance to her i.e. also at the rate of Rs.18,000/- and Rs.15,000/- per month to non-applicant No.1 and non-applicant No.2 respectively. Family Court has considered her oral evidence wherein she has stated that applicant is serving in South Africa and getting Rs.2 Lakhs salary. He is also having his own house, agricultural land. From the said house and agricultural land also he is getting income. It is specifically observed by the Family Court that she has not filed any document on record to show the applicant is having means by way of salary i.e. of Rs.2 lakhs and agricultural property as well as house property. However, Family Court has considered that he is well educated and he has served abroad and therefore, the evidence of the non-applicant No.1 requires to be taken into consideration. The affidavit of assets and liabilities filed on record by the present applicant is also not taken into

consideration by the Family Court while considering the amount of maintenance. It is well settled that when there is no evidence as to the income of the husband, on the basis of guess work the amount of maintenance can be calculated. The affidavit and affidavit regarding assets and liabilities which is at Exh. 51 filed by the present applicant shows that at the time of marriage his monthly income was Rs.20,000/- at the time of separation it was Rs.25,000/-. It was specifically stated that the amount of Rs.2 lakh is not Indian rupee but it is in the currency of South Africa which is 2 Lakh Naira which comes at the most Rs.32,000/- in the Indian rupees. This aspect has also not been considered by the Family Court.

19. In view of this, observation of the Hon'ble Apex Court in the case of *Rajnish vs. Neha* reported in *MANU/SC/0833/2020* is relevant wherein the Hon'ble Apex Court laid down the criteria for determining quantum of maintenance. The objective of granting interim/permanent alimony is to ensure that the dependant 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 the factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant 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, looking after adult members of the family; reasonable costs of litigation for a non-working wife.

20. 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. Careful balance between must be all relevant factors. Test for determination of maintenance in matrimonial disputes depends on the financial status of the non-applicants and the standard of

living that applicants accustomed to her matrimonial home. Thus, while determining the maintenance status of the parties reasonable wants of the claimants an independent income and property of the claimants and number of persons and non claimants has to maintain amount should aid to applicant to live in similar life style as she has enjoyed in the matrimonial house, non-applicants liabilities The provisions for food clothing shelter education medical attendance treatment etc. payment capacity of the non-applicant requires to be considered. At the same time, merely because wife is earning it cannot operate as a bar from being awarded maintenance by the husband. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself in accordance with lifestyle of husband in the matrimonial home.

21. In the case of ***Rajnish Vs. Neha (supra)*** it is further held that to overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions and accordingly it was directed that (i) where successive claims for maintenance are made by a party under different statutes, the Court would

consider an adjustment or set-off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;

(ii) it was made mandatory for the Applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.

22. In view of the observations, admittedly the non-applicant No.1 was getting interim maintenance which is not disclosed in her petition in MCA No.1105/2022. Despite there is disclosure by the non-applicant that she is practising lawyer, this aspect has also not considered by the Family Court while fixing the amount of maintenance. Thus, the guidelines or the directions issued by the Hon'ble Apex Court in the case of **Rajnesh (supra)** were not considered by the Family Court while awarding the maintenance amount.

23. Initially the order was passed by the Family Court granting maintenance including interim maintenance granted in D.V. proceeding but said order was modified without issuing any notice to the present applicant. Thus, for all above these reasons the application deserves to be remanded back to the Family Court, Akola for reconsideration. At the same time, the non-applicants shall not be deprived from getting maintenance it would be in the interest of justice to direct the applicant to pay interim maintenance.

24. Therefore I proceed to pass the following order:-

(i) Criminal Revision Application is allowed.

(ii) The judgment and order of the Family Court granting maintenance at the rate of Rs.18,000/- and Rs.10,000/- is hereby quashed and set aside.

(iii) The matter is remanded back to the Family Court Akola at the stage of adducing the evidence by the present applicant i.e. original non-applicant.

(iv) Family Court shall give an opportunity to the present applicant to adduce evidence and also opportunity to the

non-applicant No.1 to cross examine the present applicant as well as his witnesses and to adduce additional evidence if requires.

(v) During the pendency of this application the applicant shall pay amount of maintenance at the rate of Rs.10,000/- as interim maintenance to the non-applicant No.1 and Rs.10,000/- to the non-applicant No.2.

(vi) The applicant shall release on depositing Rs.1,00,000/- within 15 days. He shall deposit the additional Rs.2,00,000/- within next one month towards maintenance.

25. Criminal Revision Application is disposed of.

(URMILA JOSHI PHALKE, J.)

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