



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

CRIMINAL REVISION APPLICATION NO. 167 OF 2024

1. **Ramratan s/o Wasudeo Sarve**
Aged about 49 years, **APPLICANT**
Occupation : NIL,
R/o Gunjepar, Post -Mohadura, Tah
and Distt. Bhandara - 441906

// V E R S U S //

1. **Sau. Nanda Ramratan Sarve**
Aged about 42 years, **NON-APPLICANT**
Occupation: Nil,
R/o C/o Khojraj Balkrushna
Tavkar, Kinni
Post- Pachkhedi, Tah. Kuhi, Dist.
Nagpur 441210

Mr. Parth Sagdeo, Advocate for the applicant.

CORAM : URMILA JOSHI PHALKE, J.

JUDGEMENT RESERVED ON : 07.03.2026
JUDGMENT PRONOUNCED ON:- 11.03.2026

J U D G M E N T :

1. This revision petition has been filed challenging the order of maintenance granted by the Family Court Bhandara in Petition No.E82-2021 dated 08.08.2024.

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

The marriage between applicant and non-applicant was solemnized on 25.04.1999. From the said wedlock non-applicant had begotten son Saurabh and daughter Aarati. Now son Saurabh and daughter Aarati are not alive. As per the allegations by the non-applicant that the applicant was abusing and assaulting her by suspecting her character. Since death of her daughter Aarati he started ill treating her by physically assaulting as well as by abusing her. He was also threatening her that he will perform second marriage. Various attempts were made by the applicant to drive her out of the house and subsequently he has started residing separately at Sahapur on 11.09.2021. Thereafter also non-applicant tried to cohabit with him but as he was desiring to perform second marriage she was constrained to live separately. Thus, it is the contention of the non-applicant that there was refusal and neglect on the part of the present applicant. She is unable to maintain herself. Applicant has not made any provision for her maintenance. Therefore, she constrained to file application for grant of maintenance.

3. Said application is strongly opposed by the present applicant before the Family Court on the ground that non-applicant was in habit of raising quarrels. They were having two issues son and daughter but she has not taken care of them and both are died. It is further contended that non-applicant was living in adulterous life with one Krishna Shende and she is staying along with him. Therefore, in view of Section 125 of the Code of Criminal Procedure she is not entitled for any maintenance. In support of his contention applicant as well as non applicant both filed on record their assets and liabilities. As per the assets and liabilities of the present applicant he is doing labour work and there is no sufficient means to him. However, he has mentioned that he holds that he is having agricultural land and household property.

4. Non-applicant adduced her evidence vide Exh.15 she has reiterated contentions as per her application. The sum and substance of her evidence is that some days after the marriage applicant started ill treating her though from the said wedlock one son and one daughter are begotten but her son died in 2011. Since then applicant started ill treating her by saying he will

perform second marriage. In the year 2021 her daughter also died and thereafter applicant started physically assaulting her as well as abusing her. He was insisting her to leave the house and finally applicant himself has left the house and went at Shahapur to stay there. She further deposed that he has performed the marriage with one lady Babita Kukde, resident of Dhangaon and staying alongwith her. He has not made any provisions for her maintenance. She is unable to maintain herself and claims the maintenance. Her cross-examination shows that she admitted during cross-examination that she came in the court for deposition from Ruyal Takuka Kuhi District, Nagpur. She is residing there since one month. She admitted that since 2021 she is also residing separately. She resided along with present applicant for 22 years. Rest of the cross-examination is in denial form. She specifically stated that applicant himself left her company by leaving her alone in the house. Her cross examination further shows that she has filed on record 7/12 extract in support of her contention. She has also examined Bharat Shankar Gondhule who has also deposed that applicant was assaulting non-applicant by suspecting her character. His cross-examination shows that non-applicant is residing at her own at Ruyal.

5. The applicant has also entered into witness box and reiterated the contentions as per his written statements. His cross examination shows that non-applicant has performed second marriage. He admits during cross-examination that he is working in Karan Bislary company. But he denied that he has performed second marriage and he also admitted that non-applicant has filed complaint against him alleging that he has performed second marriage. During his cross-examination he voluntarily stated that non-applicant is residing along with Khojraj Thakkar. To prove the aspect of marriage of the non-applicant he has examined Vijay Thakkar who deposed that he has residing since his birth at Kinhi. He knows the Khojraj Balkrishn Thakkar as said Khojraj has brought applicant Nanda at his house by performing the marriage with her and since last six months she is residing along with him. Now her name is changed as Chanda. His cross-examination shows that he came in the Court on the say of Sanjay Dhenge. He also admits that affidavit of examination-in-chief was already prepared and he already signed on it. He specifically admitted that he was not aware whether the marriage of non-applicant was performed with Khojraj. Applicant has also examined said Sanjay Dhenge whose evidence shows that first wife of namely Chanda

died. Said Khojraj has performed marriage with the present non-applicant. She is residing in the said village by name Chanda. His cross-examination shows that he is not aware when the marriage of the applicant and non-applicant was performed. He is not aware about what was their dispute. On the basis of the said evidence the applicant claimed that as non-applicant is leading adulterous life, therefore, she is not entitled for maintenance.

6. The Family Court has appreciated the evidence and observed that in support of the statement the applicant has examined two witnesses. But there is no evidence to support his contention and held that non-applicant is entitled for maintenance as the applicant failed to prove the adulterous life of non-applicant and granted maintenance at the @ Rs.5000/- and cost of litigation Rs.10,000/-.

7. Being aggrieved and dissatisfied with the same the present revision application is filed by the present applicant.

8. Mr. Parth Sagdeo, learned counsel for the applicant submitted that evidence of two witnesses adduced by the present

applicant before the Family Court sufficiently shows that non-applicant is leading adulterous life. Therefore, in view of Section 125(4) she is not entitled for maintenance. He submitted that despite evidence is adduced by the present applicant before the Family Court, Family Court while appreciating the evidence not assigned any reasons why this aspect is not considered by the Family Court. The order of maintenance passed by the Family Court is unreasoned one and therefore, revision application deserves to be allowed.

9. In support of his contentions he placed reliance on the decision of *Kerala High Court in the case of X Vs. Y in RPFC NO.100/2023*. He also placed reliance on *Resham Lal Dewangan Vs. Suman Dewangan* reported in *2025 SCC OnLine Chh 5619*.

10. Despite service none appears for non-applicant.

11. The application was filed by the non-applicant for grant of maintenance before the Family Court on the ground of refusal and neglect by present applicant. As per her evidence it was applicant who left her house and started residing separately

at Shahapur which is sufficient to show that there was refusal and neglect on his part. She has also adduced the evidence by examining herself. She is cross-examined at length which shows that applicant himself left her and started residing separately is not shattered during cross-examination. The evidence of present applicant also shows that he is residing at Shahapur. Thus, evidence of non-applicant is not only supported by her evidence but also supported by fact that he is residing at Shahapur. Evidence of non-applicant also shows that her marriage was performed at Mauja Rajola Taluka Kuhi District Nagpur and after marriage she came to reside at Mauja Gunjewar. After death of her two children he has started residing separately by neglecting her at Shahapur. The affidavit of applicant also shows that he is residing at Shahapur. The evidence of present applicant nowhere discloses that when he was residing along with non-applicant at Gunjewar why he started residing at Shahapur. Her further evidence that she was subjected for mental and physical assault and as she has not left the house of the applicant, applicant himself left the house and started residing separately. Despite cross-examination nothing elicited from the same to show that

there was any reasonable cause for the applicant to live separately from the non-applicant.

12. 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 apart 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 a Magistrate, jurisdiction is preventive rather than remedial or punitive. Foundation of an order under Section 125 is the neglect or refusal of the opposite party to maintain his wife, child or parents. "Refusal" means a failure to maintain or denial of the obligation to maintain after demand. "Neglect" on the other hand, means a default or omission to 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.

13. Torture or ill -treatment in the husband's house would be sufficient for refusal by the wife-claimant to live with her

husband, even 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 once that is proved, it is for the wife to show that there are reasons for her living apart from 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.

14. Here in the present case the act of the present applicant leaving her alone in the house started residing at Shajapur itself is sufficient to show that there was refusal and neglect on the part of husband.

15. Another ground raised by the applicant is that she is living adulterous life and to establish that non-applicant is leading an adulterous life by staying with Khojraj applicant has adduced his evidence as well as other evidence also. As per his evidence

non-applicant is residing along with one Khojraj Thakkar. Except the bare statement that she is residing with same Khojraj he has not given any details as to since when she is residing or as to the change of her name. He has also adduced evidence of Vijay who also stated during his cross-examination that he has stated that non-applicant is residing along with Khojraj Thakkar on the say of Sanjay Dhenge. The evidence of Sanjay shows that present non-applicant is residing with Khojraj Thakkar as his wife and she is residing by name Chanda. Admittedly, there is no evidence to show that marriage took place between Khojraj Thakkar and present non-applicant. The evidence of said Sanjay Dhenge nowhere shows that he was acquainted with non-applicant and he was present at the time of marriage. His evidence is to the extent that the name of the present non-applicant was changed from Nanda to Chanda and she is residing with said Khojraj Thakkar. Admittedly, no documentary evidence is produced on record to show that she is residing along with Khojraj Thakkar.

16. The evidence of Deorao Daulatrao Sable who is the police patil who has issued one certificate stating that person by name Nanda Ramratan Surve resident of Gunjepar started

residing separately from her husband and now she is residing along with Bhojral Thakkar and he has given said certificate. Admittedly, except the bare statement of this witness there is no document on record either voter list or any other document to show that non-applicant is residing along with one Bhojraj Thakkar. The witness Deorao Daultrao Sable is resident of Rah Kini Taluka Kuhi District Nagpur. There is no evidence on record that said Nanda and person residing along with Bhojraj namely Chanda is one and the same person. Therefore, the evidence which is adduced by the applicant to prove that she is leading adulterous life is not sufficient.

17. Learned counsel for the applicant placed reliance on the decision of ***Resham Lal Dewangan vs. Suman Dewangan*** referred supra wherein aspect of adultery is considered and by referring the decision of Orissa High Court in ***Rachita Rout Vs. Vasanta Kumar Rout*** reported in 1986 ***SCC OnLine Orissa 123*** wherein it is observed that "the expression "if she is living in adultery" undoubtedly connotes a course of adulterous conduct more or less continuous. An occasional lapse would not be a sufficient reason for refusing maintenance within the ambit of sub-

section (4). Therefore, a Magistrate has to probe and find out whether at or about the time of the application, there has been an adulterous conduct on the part of the wife. Further, there must be clear proof of adultery. A suspicion nurtured by the adultery. Since, subsection (4) is in the nature of an exception to the main section, it is for the husband claiming protection under the said provision to show that the said sub-section is applicable. That is to say, the husband must establish that the wife is living in adultery.

18. Within the aforesaid parameter, let me now examine whether the conclusion of the learned Magistrate in this regard can be sustained in law or not. The burden of proving the act of adultery by a spouse is on the one who raises the same. "It goes without saying that adultery, which mostly happens behind closed doors, is difficult to be proved beyond all reasonable doubts." Further more in adultery direct evidence is generally difficult to get and therefore, reliance on circumstantial evidence is often soft for. It deserves to be noticed herein that adultery by its very nature thereof and unlikely to be conducted covertly and behind closed doors to base the case on circumstantial evidence it is essential that there must be circumstances amounting to prove

that opportunities could be used, such as association of the parties being so clear that adultery might reasonably assumed as a result of an opportunity for its occurrence. Proving of adultery by preponderance of probability is sufficient.

19. In the present case except bare statement that present non-applicant is residing along with one Khojaraj Thakkar by performing marriage with him is not established as all the witnesses examined by the present applicant nowhere states that either they were present in the said marriage or they are aware about the performance of marriage by the non-applicant with said Khojaraj Thakkar. It is difficult to ascertain that on what basis witness No.4 of the present applicant issued certificate that she is married with Khojraj and residing with him. There is no voter list or any proof showing that she is resident of village Kinni and residing there by performing the marriage with said Khojaraj.

20. Since the proceedings under Section 125 Cr.P.C. / section 145 of BNS are summary in nature, the evidence brought forward by husband should meet the test of preponderance of probabilities where the maintenance proceedings are being dealt

with by Family Court. Such Court is entitled to take into any material which in the judicial discretion of such Court may be essential for effectively adjudicating list before it whether or not it makes the requirements of the Indian Evidence Act.

21. In the light of the above evidence contention of learned counsel for the applicant that she is leading adulterous life is not proved.

22. The evidence of non-applicant shows that applicant is serving in Company. The applicant has also admitted the same during his evidence. It also came on record during his evidence that he is also having agriculture land which is cultivated by him. Thus, Family Court has considered evidence of the present applicant stating that he is working in the Company as well as he is having agricultural land therefore, on the basis the evidence of the applicant and the assets and liabilities filed on record Family Court has assessed his income and assuming his income in the range of Rs.15,000/- to Rs.20,000/- maintenance was granted at the rate of Rs.5,000/-.

23. While granting maintenance the status of the parties is significant factor. The reasonable needs of the wife must be assessed including cost for food, clothing, shelter, education and medical expenses. It is brought on record that he is having sufficient means to grant maintenance. Family Court has on the basis of the admission given by him that he is serving in company as well as his assets and liabilities shows he is having agricultural land there is no evidence that any other person is dependant on him learned Family Court Judge granted the maintenance at the rate of Rs.5,000/-. Admittedly, the prices of essential commodities are touching to the sky. Non-applicant has to incur the expenses food, clothing and medical expenses. Therefore, the order of granting maintenance at the rate of Rs.5,000/- and the litigation cost of Rs.10,000/- is not excessive and exorbitant.

24. In view of that revision application being devoid of merits and liable to be dismissed.

25. Hence I proceed to pass the following order:-

Criminal Revision Application is dismissed.

(URMILA JOSHI PHALKE, J.)