



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

CRIMINAL REVISION APPLICATION NO. 191 OF 2025

(Sachin Harichandra Athawale
Vs.
Harsha W/o Sachin Athawale & Anr.)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. U.J. Deshpande, Advocate for the Applicant.

CORAM: URMILA JOSHI-PHALKE, J.

DATED : 13th JANUARY, 2026

1. Heard learned Counsel for the Applicant.
2. Though the Non-applicants are served none appears for them.
3. By this Revision, the Applicant is challenging the order passed by the Family Court No.4, Nagpur below Exh.44, wherein the defence of the present Applicant is struck off.
4. As per the contentions of the learned Counsel for the Applicant the marriage between the Applicant and the Non-applicant No.1 was solemnized on 14.12.2016 at Ravidas Sanskrutik Sabhagruha, Hanuman Nagar, Nagpur. After marriage the Non-applicant No.1 resumed cohabitation but the dispute arose between them, and therefore, she started residing separately. She has filed the proceeding under the provisions of the Domestic Violence Act bearing Misc. Cri.

Apln. No.1820/2019 and she has also filed petition before the Family Court bearing No. E-256/2019 for grant of maintenance under Section 125 of the Code of Criminal Procedure. As the Applicant was in arrears of the amount of maintenance and the litigation expenses awarded by the Family Court, the Non-applicant No.1 has filed an Application for struck off the defence. The learned Family Court has allowed the said Application and the defence of the present Applicant is thereby struck off.

5. Heard learned Counsel for the Applicant who submitted that the order passed by the learned Family Court is illegal and bad in law. In view of the observations of the Hon'ble Apex Court in the case of *Rajnesh Vs. Neha & Anr., (2021) 2 SCC 324*, he invited my attention towards para 123 and 124 of the said judgment. In the said judgment the Hon'ble Apex Court has considered the judgment of the Punjab and Haryana High Court in *Gurvinder Singh Vs. Murti, 1990 SCC OnLine P&H 35*, and observes that, considering a case where the trial court struck off the defence of the husband for non-payment of ad interim maintenance. The High Court set aside the order of the trial court and held that instead of following the correct procedure for recovery of interim maintenance as provided under Section 125(3) or Section 421 of Cr.P.C. the trial court erred in striking off the defence of the husband. The error of the court did not assist in recovery of interim maintenance, but rather prolonged the litigation between the parties.

6. In para 124, the Hon'ble Apex Court has

considered the issue whether the defence can be struck off in proceedings under Section 125 of Cr.P.C. came up before the Madhya Pradesh High Court in ***Venkateshwar Dwivedi Vs. Ruchi Dwivedi, 2017 SCC OnLine MP 2065***, and held that neither Section 125(3) of Cr.P.C. nor Section 10 of the Family Courts Act either expressly or by necessary implication empower the Magistrate or Family Court to strike off the defence. A statutory remedy for recovery of maintenance was available and the power to strike off defence does not exist in a proceeding under Section 125 of Cr.P.C..

7. In para 126 the Hon'ble Apex Court held that, striking off the defence of the respondent is an order which ought to be passed in the last resort, if the courts find default to be wilful and contumacious, particularly to a dependent unemployed wife, and minor children. Contempt proceedings for wilful disobedience maybe initiated before the appropriate court. In para 125, the Hon'ble Apex Court held that, the order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc.

8. In view of the above observations of the Hon'ble Apex Court, the order passed by the Family Court No.4, Nagpur striking off the defence apparently is bad in law, and therefore, the Revision Application deserves to be allowed. Accordingly, I proceed to pass the following order.

ORDER

- i. The Application is **allowed**.
 - ii. The order passed by the Family Court No.4, Nagpur below Exh. 44 striking off the defence is hereby quashed and set aside.
 - iii. The Family Court No.4, Nagpur shall give all the opportunities to the present Applicant to raise his defence.
 - iv. The parties to initiate the appropriate proceeding for recovery of the maintenance amount.
9. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)