



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

CRIMINAL WRIT PETITION NO. 204 OF 2025

1. Vinita w/o Anand Bagde, aged about 41 years,
Occ. Household,
2. Master Ayush s/o Anand Bagde, through
Natural Guardian Mother (Vanita w/o Anand
Bagde) aged about 14 years, Occ. Student.

Both 1 and 2 r/o Plot No.263-B, Dixit Nagar,
Samdev, Nari Road, Nagpur.

... PETITIONERS

VERSUS

1. Anand s/o Udhavji Bagde, aged about 47
years, Occ. Service, r/o 47, Vaishali Nagar,
Near Trust Office, Nagpur. Presently at Officer
Colony, MINE, Tirodi, Balaghat, Madhya
Pradesh.

... RESPONDENT

Shri Ayush Sharma, Advocate for the petitioners.
Shri R.P. Kothari, Advocate for respondent.

CORAM: M.M. NERLIKAR, J.

DATE :17.03.2026.

JUDGMENT :

1. **RULE.** Rule made returnable forthwith.

2. Heard the learned Counsel appearing for the parties.

3. In the present petition, the petitioners who are the wife and son of the respondent are challenging the judgment and order dated 10.09.2024 passed by the Family Court No.3, Nagpur in Criminal Misc. Application No.60/2015 and prayed for enhancement of maintenance amount.

4. Initially, the petitioners had filed Petition E.No.210/2009 before the Family Court No.4, Nagpur seeking maintenance under Section 125 of the Code of Criminal Procedure ('CrPC'), which came to be allowed vide order dated 01.03.2013 thereby granting maintenance of Rs.3000/- per month to the wife and Rs.2000/- per month to the son. This order was challenged by the wife before this Court by filing Criminal Revision Application No.89/2013, which came to be partly allowed and the maintenance amount was modified to Rs.5000/- per month each to the petitioners from the date of application, i.e. 30.06.2009. Thereafter also, the petitioner wife has filed Criminal Misc. Application No.60/2015 claiming enhancement of maintenance amount, which came to be partly allowed, thereby modifying the earlier order and granting maintenance of Rs.8000/- per month to the wife and son, each, from 01.01.2021 to 31.08.2024. Further from 01.09.2024, the Family Court Nagpur granted an amount of

Rs.12,000/- per month each to the petitioners vide order dated 10.09.2024, which is challenged before this Court by submitting that the Trial Court has grossly erred in not considering the educational and other expenses.

5. Learned Counsel for the petitioners submit that the maintenance amount which was granted by the Trial Court is nowhere comparable to the monthly income of the respondent husband. Reliance has been placed on the judgment of the Supreme Court in the case of *Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy (2017) 14 SCC 200*, wherein it is held that 25% of the husband's net income would be just and proper to be awarded as maintenance. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance, this aspect has been ignored by the Family Court. The salary slip of the respondent husband for the month of June, 2024 shows that the respondent husband is getting salary of Rs.1,68,000/- however the Court has granted only Rs.12,000/- per month each to the petitioners and therefore, the Trial Court has failed to take into consideration the ratio laid down by the Hon'ble Supreme Court in the aforestated case. In order to frustrate the claim of the petitioners the respondent husband has availed loans from the Bank, which cannot be

considered as only statutory deductions are permissible to be considered for calculating net salary income of the respondent husband. Medical expenses of the petitioner no.2 has also not been considered as the son is suffering from sinusitis and the expense receipts were already placed on record to that effect. Further, petitioner no.2 is studying in the 9th standard, and next year he will appear for 10th standard examinations, and therefore, educational expenses will increase and this aspect has also not been considered by the Trial Court. Therefore, learned Counsel for the petitioners pray to allow the petition by granting maintenance as claimed by the petitioners.

6. On the other hand learned Counsel for the respondent husband opposes the petition by submitting that petitioner wife is highly educated. She is holding M.A. B.Ed. Degree and earning handsome amount from running tuition classes. The documents are placed on record to that effect and submitted that an educated woman cannot sit idle and therefore, she is not entitled for enhancement of maintenance amount. Though the respondent husband has not challenged the impugned order however it cannot be ignored that already maintenance amount is exorbitant which was granted to the petitioners. The net income of the respondent husband is only Rs.41,801/- as he has availed loans and huge deductions are being

made because he has to pay EMIs on his loan. Even the parents of the respondent are dependent on him, therefore expense of Rs.20,000/- is required to be spent on them. It is also submitted that already in Domestic Violence Proceeding, the respondent husband is paying Rs.5,000/- per month to the petitioner wife as house rent. Both the parties have placed on record an affidavit of assets and liabilities wherein net salary of the respondent is shown as Rs.41,801/- after deductions, therefore, it is very difficult to pay the amount which has been granted by the Family Court in the impugned order. Despite aforesaid, the respondent husband is regularly paying monthly maintenance granted by the Trial Court to the petitioners and therefore, as there is no merit in the petition, the same deserves to be rejected.

7. I have considered the rival submissions and gone through the record. It appears that at present both the petitioners are getting total Rs.24,000/- per months as maintenance. No doubt, petitioner wife is an educated lady however, she is unable to find a job and she is continuously taking efforts to secure a job by appearing in several competitive exams however she has not been successful. However this Court is of the opinion that she cannot sit idle and depend wholly on her husband. She has to search for an alternative job. A well educated

wife ought not to remain idle who has the earning capacity.

8. Therefore, considering the evidence placed on record, I am not inclined to interfere with the impugned judgment and order regarding petitioner no.1 wife as she is getting monthly maintenance of Rs.12,000/- per month and Rs.5,000/- for house rent. So far as petitioner no.2 son is concerned, it is an admitted fact that today the educational expenses are exorbitant and therefore, it is the duty of the father to incur educational expenses of his son. In the entire impugned judgment and order there is no discussion about the educational expenses. Right from the admission fees, there are several expenses like for books, uniform, school program fees, tuition fees, etc., which have to be considered as the petitioner no.2 son is studying in 9th standard and next year he will go to 10th standard. Therefore in my opinion Rs.12,000/- per month is not sufficient in order to maintain petitioner no.2. In the salary slip of the respondent, there are many deductions shown under several heads, however the Hon'ble Supreme Court in the case of *Dr. Kulbhushan Kumar vs. Smt. Raj Kumari (1970) 3 SCC 129* has held that only compulsory statutory deductions as income tax can be reduced from the gross salary. No deduction is permissible for payment of LIC, home loan, installments towards payment of loan for purchasing land or premium of policy of insurance. Therefore, after

going through the salary slip, I tried to calculate the statutory deductions and net salary of the respondent husband approximately comes to Rs.1,38,678/-. It is further to be noted that the petitioner wife is already getting Rs.5,000/- as house rent in the DV proceedings and so also, Rs.12,000/- in present proceedings. Therefore, considering the exposition of law, entire expenses and maintenance amount, it would be just and proper to enhance the maintenance amount of petitioner no.2 son from Rs.12,000/- to Rs.17,000/- per month, which in my opinion is sufficient to maintain the petitioner no.2 Son. Hence I pass the following order :

- (a) The petition is partly allowed.
 - (b) The impugned judgment and order is modified to the extent of petitioner no.2 son only. The enhanced amount of Rs.17,000/- to petitioner no. 2 shall be paid from 10.09.2024.
9. The Petition stands disposed of accordingly. Rule is made absolute in the above terms.

(M.M. NERLIKAR, J.)

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