

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/CRIMINAL REVISION APPLICATION NO. 213 of 2022**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE SAMIR J. DAVE**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	-YES-
2	To be referred to the Reporter or not ?	-YES-
3	Whether their Lordships wish to see the fair copy of the judgment ?	-NO-
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	-NO-

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SHRIPAL RAJA RAJENDRAKUMAR SHAH  
 Versus  
 STATE OF GUJARAT

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Appearance:  
 MR PRATIK Y JASANI(5325) for the Applicant(s) No. 1  
 URVESH M PRAJAPATI(8878) for the Applicant(s) No. 1  
 MR RC KODEKAR, APP for the Respondent(s) No. 1  
 RULE SERVED for the Respondent(s) No. 2,3

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**CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE**

**Date : 02/12/2022**

**ORAL JUDGMENT**

1. By way of present application, the applicant has requested to quash and set aside the judgment and order dated

13.08.2021 passed by learned Family Court at Ahmedabad in Criminal Misc. Application No. 450 of 2013.

2. Brief facts of the present case are as under:

That, the marriage of the applicant and respondent no.2 was solemnized on 24.11.2008 at Ahmedabad and out of their wedlock, one daughter namely Brahmi was born and later on matrimonial disputes were started between the applicant and the respondent no.2 and therefore, the respondent no.2 had left her marital home with the respondent no.3 and started residing at her parental home. Thereafter, applicant preferred an application being CRMA No. 356 of 2022 for getting custody of his daughter from the respondent no.2 as well as the respondent no.2 has filed application being Criminal Misc. Application No. 450 of 2013 for getting maintenance. Thereafter, the applicant had preferred HMP Suit No. 1541 of 2012 for divorce as well as application under Section 6(4) of the Hindu Guardians and Wards Act for getting custody of their daughter before the learned Family Court, which came to be withdrawn. Thereafter, applicant was constrained to prefer an application under Section 9 of the Hindu Marriage Act before the learned Family Court, Nashik for conjugal rights being HMP No. 82 of 2014 as well as applicant preferred Hindu Marriage Petition No. 196 of 2016 before the learned

Family Court, Nashik and thereafter, various litigation were initiated for the custody of of the child and thereafter, the respondent no.2 has filed Criminal Misc. Application No. 450 of 2013 for maintenance and after hearing both the parties, learned Family Court, Ahmedabad has partly allowed such application of the respondent no.2 directing the applicant to pay Rs. 10,000/- per month to the respondent no.2 and Rs. 5,000/- per month to the respondent no.3 towards maintenance from the date of filing the maintenance application i.e., 04.03.2013. Hence, being aggrieved by the said order, applicant has approached this court by way of present revision application.

3. Heard learned advocates for the respective parties.

4. It was submitted by learned advocate for the applicant that learned Family Court has erred in overlooking the plethora of evidence produced on record by the applicant which was having much more credibility as against the evidence produced by the respondent no.2 herein to prove the income as well as the conduct and behaviour of the respondent no.2 towards the applicant. The applicant has placed on record his income evidence to demonstrate that the applicant is not earning what has been contended by the respondent no.2 and the respondent no.2 has given an exaggerated figure just to

prejudice the learned Family Court and for procuring an order of maintenance at a higher rate. That, learned Family Court has erred in believing the case of the respondent no.2 as a gospel truth and overlooking clinching and overwhelming evidence produced on record by the applicant to prove his income. That, the learned Family Court has erred in passing the impugned order of granting maintenance to respondent no.3 and erred in overlooking the evidence produced on record by the applicant to demonstrate that the respondent no.3 is residing with him only and even though by ignoring the fact that the respondent no.3 is residing with the applicant, learned Family Court has passed an order of granting maintenance to the respondent no.3. That, learned Family Court ought not to have gone on assumptions and presumptions and also should not have overlooked the documentary evidence produced by the applicant. That, the impugned order is passed on erroneous assumptions, is of excess of jurisdiction and violative of principles of natural justice, arbitrary, capricious and arrived at a finding which is perverse and based on no material. That, the same suffers from vice of patent error in procedure and causing manifest injustice to the applicant. In support of his arguments, learned advocate for the applicant has placed his reliance on the

judgment passed in the case of “Rajnish v. Neha and Anrs” reported in (2021) 2 SCC 324. Ultimately, it was submitted by learned advocate for the applicant to allow present application.

5. Though served, none was present for and on behalf of the respondents no.2 and 3 in this matter and thus, no any arguments on behalf of the respondents No.2 and 3.

6. Learned APP for the respondent no.1-State has submitted that the dispute between the parties is matrimonial in nature and thus, learned APP for the respondent No.1-State to pass necessary orders.

7. Having heard learned advocate for the applicant and learned APP for the respondent no.1- State as well as considering the averments made in this application, it is undisputed fact that the applicant and respondent no.2 are the legally married husband and wife and respondent no.3 is their daughter.

8. Before concluding the matter, it is required to be noted that the purpose and object of Section 125 Cr.P.C. is to provide immediate relief to an applicant. An application under Section 125 Cr.P.C. is predicated on two conditions : (1) the husband has sufficient means; and (2) “neglects” to maintain his wife, who is unable to maintain herself. In such a case, the husband may be directed by the Magistrate to pay such monthly sum to



the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors. Under sub-section (2) of Section 125, the Court is conferred with the discretion to award payment of maintenance either from the date of the order, or from the date of the application. Under the third proviso to the amended Section 125, the application for grant of interim maintenance must be disposed of as far as possible within sixty days' from the date of service of notice on the respondent.

9. Chapter IX of Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 of the Code may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 of the Code is to provide immediate relief to an applicant. An application under Section 125 of the Code is predicated on two conditions : (i) the husband has sufficient means; and (ii) "neglects" to maintain his wife, who is unable to maintain herself. In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors. Proceedings under Section 125 of the Code are summary in nature.

10. In the impugned judgment the learned Family Judge has observed that it can be believed that the applicant is earning RS. 5,00,000/- per month at Nashik. It was further observed that during the filing of application, the applicant was getting salary of Rs. 2,88,000/- during the financial year 2012-2013. It was further observed by learned Family Court that 65% body as a whole handicapped of the applicant cannot be believed as no any medical expert medical witness has not been examined showing that the applicant is suffering from the ailment of Rheumatoid Arthritis. Thus, learned Family court has granted maintenance to the respondent no.2 and respondent no.3 while considering the annual income of the applicant as Rs. 4,00,000/- to Rs. 5,00,000/-. It appears from the impugned judgment that while considering the education expenses, medical expenses, maintenance, clothes etc of the respondent no.3 as well as prevailing rate of inflation, the learned Family Court has granted the maintenance to the respondent no.2 and respondent no. 3.

11. It is observed in the judgment cited by the learned advocate for the applicant i.e., Rajnesh v. Neha and others that the maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which

becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

12. In case of “Bani v. Parkashsingh”, Punjab & Haryana High Court, it is held that:

"Law is not that powerless as not to bring the husband to book. If the husband has failed to make the payment of maintenance and litigation expenses to wife, his defence be struck out."

13. It is the duty of the husband to maintain his wife and to provide financial support to her and their children and he cannot shirk his responsibility as husband as well as father to maintain his legally wedded wife and children, which is his social and lawful duty towards them and the wife and children would be entitled to the same standard of living, which they were enjoying while living with them.

14. Thus, while considering aforesaid discussion, it appears that the learned Family Court has rightly considered the income of the applicant and rightly granted the maintenance amount to the respondent no.2 and 3 and thus, this court deems it not fit to accept the prayer of the applicant. Thus, the



judgment and order dated 13.08.2021 passed by learned Family Court at Ahmedabad in Criminal Misc. Application No. 450 of 2013 stands confirmed and accordingly, present application stands rejected.

15. The interim relief granted to the applicant vide order dated 07.03.2022 by this court directing the applicant to pay the amount of maintenance to the respondent no.2 at the rate of Rs. 7,000/- per month regularly till final disposal of this application stands vacated.

16. The applicant is directed to clear the arrears amount of the maintenance as has been awarded by the learned Family Court in order dated 13.08.2021 passed in Criminal Misc. Application No. 450 of 2013 and applicant shall pay the maintenance amount as ordered in the impugned order regularly per month.

17. Rule stands discharged. No order as to costs.

**(SAMIR J. DAVE,J)**

**FURTHER ORDER:**

18. After pronouncement of aforesaid judgment, learned advocate for the applicant has requested to extend the Interim relief granted earlier.

19. But, considering the facts and circumstances of the present case, prayer of the learned advocate for the applicant stands rejected.

**(SAMIR J. DAVE,J)**

K. S. DARJI

