

**HIGH COURT OF GUJARAT**

**CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI**

**Date of Decision: 21/03/2024.**

R/CRIMINAL REVISION APPLICATION (FOR MAINTENANCE) NO. 590 of 2023

With CRIMINAL MISC.APPLICATION (QUASHING) NO. 1 of 2023

**MEGHRAJSINH S/O MANHARSINH CHUDASMA ...APPLICANT(S)**

**VERSUS**

**MEGHAVINIBA W/O MEGHRAJSINH CHUDASAMA D/O  
PRAHLADSINHJI PRADYUMANSINHJI JADEJA & ANR.  
...RESPONDENT(S)**

**Legislation:**

Section 125 of the Cr.P.C.

Section 397 read with Section 401 of Cr.P.C.

Section 106 of the Evidence Act

**Subject:**

Revision application for maintenance, challenging the Family Court's order granting Rs. 40,000/- per month to the respondent wife and daughter.

**Headnotes:**

Maintenance Awarded by Family Court – Challenged by Husband – Family Court ordered husband to pay Rs. 40,000/- monthly for wife and daughter maintenance – Husband's revision application under Section 397 read with Section 401 of Cr.P.C. claiming inability to pay and contesting wife's ability to earn – [Para 1, 2, 4]

Assessment of Maintenance – Husband’s Income and Wife’s Earning Capacity – Contention of underreported income by husband and wife’s potential to earn – Court examined factors including status, income, property, and liabilities of parties for maintenance determination – [Para 9-11, 13]

Evidence and Legal Principles – Husband’s duty under Section 106 of the Evidence Act to disclose income – Court relied on precedents for assessing underreported income and deciding maintenance, emphasizing holistic evidence assessment – [Para 11-13]

Decision – Revision Application Dismissed – High Court upheld Family Court’s maintenance order – No merit found in husband’s revision application under limited revisional jurisdiction – [Para 13]

#### **Referred Cases:**

- Chaturbhuj Vs. Sita Bai, 2008(2) SCC 316
- Rajnesh Vs. Neha And Another, 2020 AIJEL – SC 66659
- Bhagwan V/s. Kamla Devi, AIR 1975 SC 83
- Sunita Kachwaha vs. Anil Kachwaha – (2014) 16 SCC 715
- Arunaben V. Davda vs. State of Gujarat – 1993 (2) GLR 1080
- Gopal Krishnaji Ketkar v. Mohamed Haji Latif and Ors.
- Kiran Tomar and others vs. State of Uttar Pradesh and another -2022 (0) AIJEL – SC 70439

Representing Advocates:

Ms. R.V. Acharya for the petitioner

Mr. Tatvdeep J Jani for the respondents

#### **ORAL ORDER**

1. The destituted lady for herself and her minor daughter preferred Criminal Misc. Application No.1003 of 2016 before the learned Family Court, Rajkot under Section 125 of the Cr.P.C. After battle, she could get relief in February, 2023 by way of the impugned judgment and order. The husband instead of satisfying the impugned judgment and order assailed it by way of the revision under Section 397 read with Section 401 of Cr.P.C.
2. In nutshell, the facts of the present case are stated as under.

- 2.1 The marriage of the petitioner and the respondent wife was solemnized on 29.04.2004 at Rajkot as per the Hindu rites and rituals. During the wedlock, the parties have one daughter namely respondent No.2. After passage of some time, quarrel took place between the petitioner and the respondent wife. In the year 2016, the respondent wife left the house of the petitioner. On 20.10.2016, the respondent wife filed Criminal Misc. Application No.1003 of 2016 before the learned Family Court seeking maintenance and on 14.02.2023, the learned Family Court vide impugned judgment and order directed the petitioner to pay Rs.40,000/- as maintenance towards the respondent wife and her daughter. Hence, the present revision is filed.
3. Heard learned advocates for the respective parties.
  4. Ms.Acharya, learned advocate appearing for the petitioner husband raised multiple grounds to assail the impugned judgment and order. She firstly submits that in view of the earlier order dated 23.08.2023, she has filed (i) statement of payment made towards the maintenance; (ii) details of the income, assets, liabilities etc. submitted before the Court below and (iii) particulars of pending proceedings or order qua maintenance under another enactment. She would further submit that the income of the petitioner husband is less than the amount of the maintenance granted by the learned Family Court. She would further submit that the learned Family Court has not considered the salary slip of the husband which indicates that he was getting Rs.23,600/- per month. She would further submit that the learned Family Court has also ignored the aspect that the wife is highly qualified and she was serving at Jaipur University in the capacity of Manager. She would further submit that the wife was capable of earning and to maintain herself but the sole aspect has not been considered by the learned Family Court although sufficient evidence was produced. Thus, it is submitted that the learned Family Court has committed serious and gross error in granting the maintenance to the wife. It is also submitted that wife has withdrawn herself from the conjugal relationship and therefore, she is not entitled to get the maintenance in view of Section 125(4) of Cr.P.C.
  5. It is also submitted that the learned Family Court has ignored the evidence of witness Yogeshkumar Babulal Saini at Exhibit-179 which unfolds that the wife was working as Secretary to one Kamla Poddar, Chairman of Poddar Enterprise. Learned advocate Ms.Acharya would further submit that the

- impugned order is passed in ignorance of various documentary evidence on record particularly Exhibit-182 to 184, also Exhibit 132 to 137, 66 to 82 and also 85 to 87 which disclose that the wife has bank account. Learned advocate for the petitioner husband submits that the learned Family Court fell in error in assessing the amount of maintenance on higher side without having any evidence on record. She would also submit that the impugned judgment and order indicates that the learned Family Court has employed guess work to record that the husband is earning Rs.1 to 1.5 Lakhs per month and the wife is entitled to maintenance to that extent or as per the status of the husband.
6. Lastly, it is submitted that the revision deserves consideration and requires to be allowed to interfere with the impugned judgment and order at least to the extent of reducing the amount of maintenance granted to the wife.
  7. On the other hand, learned advocate Mr. Tatvdeep Jani, appearing for the other side would submit that the learned Family Court has not committed any error much less error of law in drawing the impugned judgment and order to grant the maintenance to the wife and children. She would further submit that the learned Family Court has thoroughly assessed the evidence on record to reach to the conclusion that the petitioner is earning around Rs.1 to 1.5 Lakh per month as there was no evidence produced by the husband indicating his income. He would further submit that the wife was working at one point of time and after six months, she has resigned and thereafter she is not earning any amount. However, no evidence to that effect has been produced on record. He would further submit that the accused who has best knowledge of his income but has not come forward to produce the documentary evidence including the income-tax returns to establish his income, therefore, he submits that the learned Family Court has taken correct view which is not required to be interfered with under the limited jurisdiction of the revision. Upon such submissions, he would submit to dismiss this revision.
  8. Having heard learned advocates for both the sides, at the outset, let us refer to the scope and object of Section 125 which is observed in case of **Chaturbhuj Vs. Sita Bai** reported in **2008(2) SCC 316**, wherein the Hon'ble Apex Court relying upon the judgment in case of **Rajnish Vs. Neha And Another, 2020 AIJEL - SC 66659**, observed in para 8 as under:-

*“8. In an illustrative case where wife was surviving by begging, would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance u/s. 125 of the Criminal Procedure Code. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In Bhagwan V/s. Kamla Devi, AIR 1975 SC 83 it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance u/s. 125 of the Criminal Procedure Code.”*

9. It could be noticed that following factors could be considered while deciding the application under Section 125 of Cr.P.C. :

*“(1) Status of the parties.*

- (2) Reasonable wants of the claimant.*
  - (3) The independent income and property of the claimant.*
  - (4) The number of persons, the non applicant has to maintain.*
  - (5) The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.*
  - (6) Non-applicant's liabilities, if any.*
  - (7) Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.*
  - (8) Payment capacity of the non applicant.*
  - (9) Some guess work is not ruled out while estimating the income of the non applicant when all the sources or correct sources are not disclosed.*
  - (10) The non applicant to defray the cost of litigation.*
  - (11) The amount awarded Under Section 125 Cr.PC is adjustable against the amount awarded Under Section 24 of the Act.”*
10. Firstly, it is submitted by learned advocate Ms.Acharya that the learned Family Court has not considered the capacity of the wife to earn the income. It comes on record through the evidence more particularly that for some time period from June, 2018 to November, 2018, the wife has worked with Jaipur University. It is reflected from Exhibit-183. Exhibit-184 is the resignation letter along with salary slip of the destituted wife but there is no other evidence on record which indicates that when the application under Section 125 of Cr.P.C. was to be decided, she was working with any institution or organization. Learned advocate Ms.Acharya placed certain documents on record to indicate that the wife has bank accounts in multiple banks but that has no relevance for the reason that she is entitled for maintenance. Mere capacity

of wife to earn something or her qualification would not be the reason for denying the maintenance to the wife. The Hon'ble Supreme Court in the case of **Sunita Kachwaha vs. Anil Kachwaha - (2014) 16 SCC 715** addressed this issue. Paragraph 10 of the said judgment reads thus :-

*“10. The learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance. \*\*\* \*\*”*

11. Another submissions of the learned advocate for the petitioner was that the learned Family Court has not considered the income of the husband which is reflecting from the income tax returns more particularly Exhibit-188. It is undisputed that in view of Section 106 of the Evidence Act, it is duty of the husband to produce the evidence regarding his income before the learned Family Court. The issue has been succinctly addressed by this Court in **Arunaben V. Davda vs. State of Gujarat - 1993 (2) GLR 1080**. Page 3 thereof reads as under:-

*“3. It may be mentioned that the learned Additional Sessions Judge has found respondent No. 2 herein (the husband of the petitioner) to have concealed and suppressed his real income from the Court. After recording this finding, the learned Additional Sessions Judge came to the conclusion that the income of the husband could be Rs.1200 per month. It may be mentioned at this stage that the petitioner in her evidence deposed to the effect that her husband's income was to the tune of Rs.1500 per month. What was the income of the husband was certainly within his special knowledge. It was his duty to have disclosed to the Court his correct income. In fact the burden to prove his income which was within his special knowledge was on him in view of Section 106 of the Evidence Act, 1872 ('the Act' for brief). If a party in possession of the best evidence within his special knowledge does not produce the best evidence before the Court, an adverse inference can be drawn against such party in view of the ruling of the Supreme Court in the case of Gopal Krishnaji Ketkar v. Mohamed Haji Latif and Ors. . In that case the adverse inference would be to accept the other side's case in that regard in toto.”*

12. In the background of evidence produced, if we examine the impugned order, learned Family Court in paragraph 27 onward has assessed and examined this issue and after referring Exhibit-61 believed that in 2013, the husband

was getting Rs.1,24,439/- towards the salary. This evidence coming from the document was not accepted by the learned Family Court and also believed that the husband is suppressing his true income. It also appears that the petitioner husband has not produced any income tax returns during the trial. It is difficult to assess the income of the self employed person in unorganized sector. The truthful income generally never surfaces. In a proceeding under Section 125 of the Cr.P.C., it is a tendency to avoid placing the correct scenario of the income. Therefore, entertaining the maintenance application, the Court could not come to mathematical precision. The Court in view of that has to take small guess work to conclude the income of the husband. Hon'ble Supreme Court in the case of **Kiran Tomar and others vs. State of Uttar Pradesh and another -2022 (0) AIJEL – SC 70439** observed that income tax returns do not necessarily furnish an accurate guide of the real income particularly when the parties are engaged in matrimonial quarrel. There is a tendency of the husband to underestimate his income and hence, stressed upon that it is for the Family Court to determine on a holistic assessment of the evidence what would be the real income. Paragraph 10 thereof reads thus :

*“10. On the first aspect, it is well-settled that income tax returns do not necessarily furnish an accurate guide of the real income. Particularly, when parties are engaged in a matrimonial conflict, there is a tendency to underestimate income. Hence, it is for the Family Court to determine on a holistic assessment of the evidence what would be the real income of the second respondent so as to enable the appellants to live in a condition commensurate with the status to which they were accustomed during the time when they were staying together. The two children are aged 17 and 15 years, respectively, and their needs have to be duly met.”*

13. The scope of revision under Section 397 read with Section 401 is limited and circumscribed. The scope is to examine the correctness, legality or perversity in examining the record of any proceeding before the learned Family Court as to the correctness, legality or perversity of any finding arrived at. The revisional scope is limited to set right apparent defect or error of jurisdiction or law. In view of the above discussion and having ascertained the correctness, legality and propriety of the impugned order under the limited revisional jurisdiction, this Court finds no good case for the petitioner. Learned Family Court has assessed all the evidence on record and reached to the conclusion rightly. The present revision since devoid of merits is dismissed. Notice is discharged.

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