



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION (FOR MAINTENANCE) NO. 283 of
2021**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Approved for Reporting	Yes	No

LALITKUMAR JIVRAJBHAI VAGHELA
Versus
STATE OF GUJARAT & ANR.

Appearance:

MR TAPASWI P RAVAL(10534) for the Applicant(s) No. 1
MR. BHARGAV K MEHTA(7094) for the Applicant(s) No. 1
MR. HARSHAD D BAROT(7287) for the Respondent(s) No. 2
MR ROHAN RAVAL, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 17/03/2026

ORAL JUDGMENT

1. By way of present application, applicant has requested to quash and set aside the judgment and order dated 19.02.2021 passed by the learned Principal Judge, Family Court, Gandhinagar wherein the learned Family Court has awarded a sum of Rs.15,000/- as monthly maintenance to be paid by the petitioner to the respondent No.2.

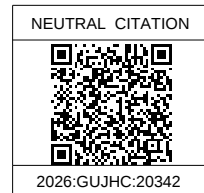
2. Brief facts of the case are that the petitioner is the original respondent-husband, against whom respondent No.2-wife filed Criminal Misc. Application No. 151 of 2020 before the learned Principal Judge, Family Court, Gandhinagar under Section 127 of the Code of Criminal Procedure seeking enhancement of



maintenance to Rs. 30,000/- per month, alleging that the petitioner was earning about Rs. 70,000/- to 75,000/- per month and had subjected her to mental and physical cruelty before driving her out of the matrimonial home on 06.04.2018. The petitioner filed his reply stating that his gross salary was Rs. 69,354/- and net take-home salary was Rs. 54,499/-, out of which he had financial obligations including maintenance to his parents, rent, and loan installments. Both parties led oral evidence, and upon appreciation of the same, the learned Family Court partly allowed the application and awarded Rs. 15,000/- per month to the respondent No.2 as maintenance from the date of application. It is further relevant that earlier, the respondent No.2 had filed an application under Section 125 of the Code of Criminal Procedure, being Criminal Misc. Application No. 313 of 2018, which came to be decided on 20.09.2019, awarding Rs. 5,000/- per month as maintenance from the date of filing..

3. Heard learned advocates for the respective parties.

4. Learned advocate for the applicant herein has submitted that the order passed by the learned Family Court are improper, unjust and without considering the facts and circumstances of the case. That the impugned judgment and order of interim maintenance is also against from the established principle of law in as much as earning capacity of wife if concerned. That, learned Family Court has committed a serious error by not considering the evidence produced on record in its true spirit and impugned order is passed without assigning cognate and proper reasons. Even otherwise from the documentary evidence



and oral evidence it is clearly come out that wife has made false and exaggerated allegation against the applicant just a view to get the handsome amount from the applicant and living her luxury life. It is further submitted that the respondent-wife is doing tailoring work and earning approximately Rs.15,000/- per month, however, the said fact has been deliberately suppressed in the application under Section 127 of the Code of Criminal Procedure. Despite this, the learned Court has enhanced the maintenance from Rs.5,000/- to Rs.10,000/- without proper justification. It is submitted that original order was passed in the year 2018 after considering the circumstances and the prevailing dearness rates. As of today, the husband is earning a gross salary of Rs. 90,000/-, which has been candidly admitted by the learned advocate for the applicant. It is also submitted that the applicant-husband has the responsibility to maintain his parents and is paying Rs.25,000/- per month towards their maintenance, which has not been properly appreciated by the learned Court. Hence, it was requested by learned advocate for the applicant herein to allow present revision application.

5. Mr. Rohan Raval, APP for the respondent-State and Mr. H.D. Barot have opposed the present revision application and submitted that the impugned orders passed by the learned Family Court is just, proper and in consonance with the settled principles of law. It is submitted that the learned Family Court has duly appreciated the oral as well as documentary evidence on record and has rightly considered the income and earning capacity of the applicant-husband while awarding maintenance. It is further submitted that the allegations made by the applicant



regarding the respondent-wife earning independently are baseless and not supported by any cogent evidence. The respondent-wife has no sufficient independent source of income to maintain herself and, therefore, she is legally entitled to maintenance. It is further submitted that the amount awarded by the learned Court is reasonable and commensurate with the standard of living to which the respondent-wife was accustomed during the subsistence of marriage. The contention of the applicant that the respondent has made false and exaggerated allegations is denied, and it is submitted that the respondent was compelled to initiate proceedings due to the neglect and failure on the part of the applicant to maintain her. In view of the above, it is prayed that the present revision application being devoid of merits deserves to be dismissed.

6. Having heard the learned advocates for the respective parties and considering the contents of the application as well as the conclusions of the learned Family Court, it is evident that the wife is unable to maintain herself and has been neglected by her husband. Furthermore, it is important to note that the mere fact that the wife is earning is not a valid ground to reject her claim for maintenance. In this regard, this Court finds it appropriate to refer to the judgment delivered by the Hon'ble Apex Court in ***Sunita Kachwaha and Ors. vs. Anil Kachwaha, reported in (2014) 16 SCC 715***. In that case, the wife, who was living separately, sought maintenance from her husband. The husband objected on the ground that the wife had sufficient means to maintain herself, but this argument was rejected by the Hon'ble Apex Court. It was held that merely



because the wife is earning and may be highly qualified cannot be a reason to deny her claim for maintenance. The relevant observation made in paragraph 9 of the judgment is reproduced as follows:

"Inability to maintain herself is the pre-condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant-wife has stated that only with the help of her retired parents and brothers, she is able to maintain herself and her daughters, while her husband's economic condition is quite good and the wife was entitled to maintenance."

7. In view of the above, the Court is of the considered opinion that the wife's earning cannot be the sole criterion for denying her maintenance. The husband's objection to the wife's claim for maintenance is unsustainable. When addressing an application However, it is clarified that if any final order is passed, the learned trial Court is directed to adjust the amount of maintenance appropriately and decide the matter expeditiously and independently, without being influenced by the order of this Court under this provision by a destitute wife or parents, the Court is dealing with marginalized sections of society. The objective is to achieve "social justice," in line with the constitutional vision enshrined in the Preamble to the Constitution of India. Further, the husband cannot escape from his liability to maintain his wife or children because it is the legal and ethical duty of the husband to maintain them. It is the duty of the husband to maintain his wife and to provide financial support to her and he cannot shirk his responsibility as

husband to maintain his legally wedded wife, which is his social and lawful duty towards wife would be entitled to the same standard of living, which they were enjoying while living with them. In this regard reference is required to be made in the case of **Bhuwan Mohan Singh vs Meena**, reported in **2015 (6) SCC 353**.

8. Further, under Section 127 of the Cr.P.C., an application for enhancement of maintenance can be made upon a change in circumstances. In this regard, reference is required to be made to **Bhagwan Dutt v. Kamla Devi, reported in (1975) 2 SCC 386**. In the present case, considering the change in circumstances and the fact that the respondent is employed as a Professor, it appears that in June 2019 his salary was Rs. 54,385/-, whereas the order came to be passed in the year 2020. Thereafter, there has been a substantial increase in his salary to approximately Rs. 70,000/- to Rs. 75,000/-. Further, the respondent does not have any other substantial liabilities, as his mother is a retired government employee and a pensioner, his father is self-sustaining, and his sister is also employed. Thus, his primary responsibility is to maintain the applicant. In view of the aforesaid circumstances, the learned Family Judge has rightly exercised jurisdiction and modified the earlier order of maintenance so as to award a sufficient amount commensurate with the respondent's status and income. Accordingly, the maintenance amount has been enhanced from Rs. 5,000/- to Rs. 15,000/-, i.e., an increase of Rs. 10,000/-.



9. Even in the case of **Lalita Toppo vs. State of Jharkhand, reported (2019) 13 SCC 796**, decided by the Hon'ble Apex Court, the scope of provision of Domestic Violence Act is wider than Section 125 of the Cr.P.C. and independent. Monetary relief under Section 18 of the D.V. Act, distinct from Section 125 of the Cr.P.C., must be determined by striking a balance between the earning capacity of the husband and the needs of the wife.

10. Hence, the argument canvassed by the learned advocate for the applicant is not acceptable. In view of the above, the applicant has failed to point out any patent error, and the learned Family Court has assigned proper reasons for its findings. Therefore, no case is made out for interference with the impugned findings. The application, therefore, fails to satisfy the test for exercise of revisional jurisdiction in light of the scope of revision laid down by the Hon'ble Apex Court in **Amit Kapoor v. Ramesh Chander, 2012 (9) SCC 460**.

11. Accordingly, the present revision application is found to be not maintainable and is hereby **dismissed**.

(HASMUKH D. SUTHAR,J)

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