IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 353 of 2015 (FOR MAINTENANCE)

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI : Sd/-

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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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Versus

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Appearance:
MR PRUTHVIRAJ SOLANKI for MR AS ASTHAVADI(3698) for the Applicant(s) No. 1
MR KULDEEP D VAIDYA(7045) for the Respondent(s) No. 1
MS JYOTI BHATT APP for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

Date : 24/07/2024

ORAL JUDGMENT

1. By way of present petition, the petitioner – husband has challenged the order dated 17.12.2014 passed by the learned Principal Judge, Family

Court, Bhavnagar in Criminal Misc. Application No.198/2013, whereby the petitioner was directed to pay Rs.10,000/- per month along with cost of application of Rs.1,000/- to the respondent – wife.

2. Heard learned advocate, Mr. Pruthivraj Solanki for learned advocate, Mr. A.S. Asthavadi for the petitioner, learned advocate, Mr. Kuldeep Vaidya for the respondent no.1 and learned APP Ms. Jyoti Bhatt for the respondent no.2 – State of Gujarat.

3. Learned advocate for the petitioner submitted that the petitioner – husband got married with the respondent – wife on 09.12.2001 and after the marriage, both started residing together along with the family of the petitioner – husband but somehow in the year 2009, the respondent – wife left her matrimonial house without any reason and, thereafter, she filed an application for maintenance before the learned Family Judge, Bhavnagar being Criminal Misc. Application No.198/2013 inter alia praying for maintenance of Rs.20,000/-, however, learned Judge, without properly considering the income of the petitioner – husband and other documents, passed impugned order directing the petitioner to pay Rs.10,000/- per month to the respondent – wife, which is under challenge before this Court. Learned advocate submitted that while issuing notice by this Court, ad-interim relief was granted by this Court on a condition to deposit Rs.50,000/- within ten days

from that day, Rs.1,00,000/- within six weeks from that day and to pay Rs.5,000/- per month regularly to the respondent – wife towards the maintenance pending this application and as on date, the petitioner is regularly paying the amount of maintenance to the respondent – wife without any break.

4. Learned advocate submitted that at the time of passing of the impugned order, the learned Judge has not properly considered the income of the petitioner and thereby committed an error in awarding amount, which is too high on the part of the petitioner because it is not possible for the petitioner to pay such high maintenance amount and the petitioner is also having other liability. Learned advocate submitted that in fact, there was no mental and physical harassment upon the respondent – wife as alleged and on the contrary, the respondent – wife has voluntarily left her matrimonial house for the reasons best known to her. Learned advocate further submitted that in other words, it can be said that the respondent – wife has deserted the petitioner – husband and the petitioner – husband had tried his level best to bring her back to her matrimonial house but she refused to return back to her matrimonial house and the said facts have been pointed out to the learned Judge concerned but it has not been properly considered by the learned Judge and wrongly passed an order of maintenance, which is

impugned in this petition. Learned advocate submitted that the respondent – wife is well educated and she can maintain herself by doing some job when she has deserted the petitioner – husband. Learned advocate at this stage has put reliance upon the cross-examination of the respondent – wife done before the learned Judge while deciding the application for maintenance, copy of which is produced on record at Annexure-C of the compilation and submitted that in her cross-examination, the respondent – wife has stated in a categorical terms that she has left her matrimonial house with her own will and wish and also stated that she is not willing to go and stay with the petitioner – husband, which clearly goes on to show that it is the respondent – wife, who does not wish to stay with the petitioner – husband and, hence, she is not entitled for any maintenance and, hence, the impugned order granting maintenance may be quashed and set aside.

5. Learned advocate, at this stage, has put reliance upon the provision of Section 125 (4) of the Criminal Procedure Code, 1973 and submitted that as stated above, the respondent – wife has deserted the petitioner – husband and the petitioner – husband has made his all efforts to bring her back to her matrimonial house but she has refused to stay with the petitioner – husband and, hence in view of the provision of Section 125(4) of the CrPC, the respondent – wife is not

entitled for any maintenance and, hence, the impugned order may be quashed and set aside. In support of the aforesaid submissions, learned advocate has put reliance upon the order dated 01.06.2023 passed by the Hon'ble Uttar Pradesh High Court delivered in Criminal Revision No.4498/2022 in case of Gaurav Vashishtha Vs. State of U.P. & Anr. as well as the order dated 10.09.2007 passed by this High Court in Special Criminal Application No.1587/2007 in case of Ushaben Govindbhai Parmar Vs. Rameshbhai Mafatlal Senma and submitted that the aforesaid decisions are squarely applicable to the facts of the case. Referring to the aforesaid decisions as well as facts of the case, learned advocate for the petitioner has urged that this petition may be allowed and the impugned judgment and order of maintenance may be quashed and set aside.

6. On the other hand, learned advocate, Mr. Vaidya appearing for the respondent – wife has opposed the present application with a vehemence and submitted that the impugned order granting maintenance is just, reasoned and proper, which does not require any interference at the hands of this Court because while passing said order, the learned Judge concerned has appreciated and evaluated each and every document produced before it and on the strength of the material available on record, the said order was passed. Learned advocate submitted that in fact, the respondent –

wife had sought more maintenance than what is awarded and the amount of maintenance is too megre and it would not be possible for the respondent – wife to survive with these meagre amount and, hence on the contrary, the said amount is required to be enhanced.

7. Learned advocate submitted that it is true that after the marriage, the respondent – wife started residing with the petitioner – husband and his family but for reason best known to them, not only the petitioner – husband but also other family members meted out mental and physical harassment and, thereafter, she was deserted from the house, which led the respondent – wife to file an application for maintenance, wherein support documents have been produced on record and on the strength of the same, the learned Judge has passed reasoned order, which may not be interfered by this Court.

8. Learned advocate submitted that main emphasis of the petitioner – husband is on the cross-examination of the respondent – wife and on the strength of it, submission has been made that the respondent – wife is not eligible and entitled for the maintenance in view of the specific bar as provided under Section 125(4) of the CrPC. Learned advocate, however, submitted that the petitioner – husband has not pointed out correct facts before this Court because when in the cross-examination, the questions related to returning back to her

matrimonial house and stay with the petitioner – husband were asked, the respondent – wife has specifically stated in a categorical terms that just because of her safety at her matrimonial home, she is not ready to go to her matrimonial home and thus, specific answer was given to the question put before the respondent – wife. Learned advocate submitted that reliance put by the petitioner – husband upon Section 125(4) of the CrPC is also misconceived because the respondent – wife was deserted from the matrimonial house after giving mental and physical torture. Learned advocate submitted that in fact, initially despite order granting maintenance, it was not complied with and there were outstanding, which were paid after filing of this petition after the issuance of notice, which is also recorded in the order by this Court. Learned advocate submitted that before the learned Judge, it was pointed out that the petitioner – husband is earning about 40,000/- to 45,000/- per month but the learned Judge has considered income of the petitioner – husband around Rs.25,000/- to 30,000/- and on the strength of the said income, an amount of Rs.10,000/- towards the maintenance was passed and despite giving opportunity to the petitioner – husband, he failed to produce any evidence with regard to his salary and on the contrary, at the time of filing this petition, copy of salary slip is produced on record, which clearly goes on to show that just

with a view to evade payment and to escape from the payment, such averments are made with a view to prejudice this Court. Learned advocate further submitted that in fact, the impugned order is of the year 2014 and now ten years have passed and it is difficulty for the respondent – wife to survive with the meagre amount but because of pendency of this petition, an application for enhancement of the maintenance could not be preferred under some misconception. Lastly, learned advocate submitted that at the time passing impugned order, the learned Judge has taken into consideration all aspects including the income of the petitioner – husband and on the strength of the material and evidence available on record, passed just and reasoned order, which may not be interfered by this Court. It is, therefore, urged that this petition may be rejected.

9. Learned APP Ms. Bhatt appearing for the respondent – State has also opposed this petition with a vehemence and submitted that there is no error committed by the learned Judge while passing impugned order and in fact, at the time of passing impugned order, each and every aspect of the matter has been considered and there are specific observations in that regard. It is, therefore, urged that this Court may not exercise the discretion in favour of the petitioner and the present petition may be rejected.

10. In view of the rival submissions canvassed by

learned advocate for the parties and in view of the documents produced on record, the moot question, which falls for consideration before this Court is as to whether the impugned order granting maintenance deserves interference or not?

11. As can be seen from the submissions canvassed by learned advocates for the parties and from the documents available on record, the marriage between the petitioner – husband and respondent – wife was solemnized but after the marriage, mental and physical harassment was meted out to the wife and, thereafter, she was driven out from her matrimonial house, which led to filing of an application under Section 125 of the CrPC for maintenance, which on the strength of the material and evidence available on record, was partly allowed by the learned Judge awarding maintenance amount of Rs.10,000/-. Against which, the present petition has been filed, wherein while issuing notice, the petitioner was directed to pay Rs.5,000/- per month instead of Rs.10,000/- to the respondent – wife towards the maintenance.

12. The main facet of argument canvassed by learned advocate for the applicant relying upon Section 125(4) of the CrPC is that as per said section, as the respondent – wife has deserted the petitioner – husband, she is not entitled for any maintenance, which is granted by impugned order. To meet with the said submission, I would like to refer to Section 125 of the CrPC, which reads as

under,

"125 Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain--

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate * * * as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of

such minor female child, if married, is not possessed of sufficient means:

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.--For the purposes of this Chapter,

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

[(2) Any such allowance for the maintenance or interim maintenance and expenses of

proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each months [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and

may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.--If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wifes refusal to live with him.

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section in living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

13. Thus from the aforesaid provision upon which reliance has been placed by learned advocate for the applicant, more particularly, Section 125(4) of the CrPC, it is found out that in case, when the wife is living in adultery, or if, without any

sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent, in that event, the wife is not entitled to claim maintenance from her husband. However in the facts of the present case, as stated above, the respondent – wife is deserted from her matrimonial house and because of their mental and physical torture meted out to her, she was not ready to go and stay with the petitioner – husband and the said fact is stated by her in her cross-examination. Further, section 125 of the CrPC is a legal provision that empowers a person, typically a wife, children, or parents, to claim maintenance from another person, usually the husband or father, who is legally obligated to provide support but has failed to do so. The primary aim of this provision is to prevent destitution and to secure the financial interests of those in need. Over and above that, the object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Thus from the above facts, it is

clear that it is an admitted position of fact that the petitioner – husband has driven/ deserted the wife and, hence, submission canvassed by learned advocate for the applicant relying upon said section is misconceived.

14. At this juncture, I would like to put reliance upon the decision of the Hon'ble Apex Court in case of **Chaturbhai Vs. Sita Bai**, reported in **(2008) 2 SCC 316**, wherein the Hon'ble Apex Court has observed as under,

> "Section 125, CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal 15 falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves."

15. Another submission is made by learned advocate for the applicant with regard to the income of the applicant. In that regard, it is required to be noted that before the learned Judge concerned, the

respondent – wife has stated about the income of the petitioner – husband at around 40,000/- to 45,000/- but the learned Judge concerned has considered the income of the petitioner – husband at around 25,000/- to 30,000/- and considering the said income, the learned Judge concerned has awarded Rs.10,000/- to the respondent – wife. It is required to be noted that before the learned Judge concerned, the petitioner – husband has failed to produce any document with regard to his income and now at this stage, at the time of filing of the present petition, copy of salary slip is produced on record at Annexure-D on record, which clearly goes on to show that monthly income of the petitioner – husband is around Rs.25,000/-, which the learned Judge concerned has considered while passing impugned order. Be that as it may, it would not make any difference on the aspect of income and now by producing the salary slip on record, the petitioner – husband has admitted that his monthly income is around Rs.25,000/-. There can be no shadow of doubt that an order under Section 125 of the CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. In many cases, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well or he is also having responsibility to maintain other family members as also having medical expenses,

which has been pointed out by the applicant in the present case. However, these are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 of the CrPC, unless disqualified, is an absolute right. Therefore, submissions canvassed by learned advocate for the applicant are misconceived.

16. What is required to be taken into consideration while awarding maintenance to the wife, has been considered by the Hon'ble Apex Court in case of **Jabsir Kaur Sehgal Vs. District Judge Dehradun & Ors.**, reported in **(1997) 7 SCC 7**, wherein the Hon'ble Apex Court has observed as under,

> "The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed

cannot be excessive or extortionate."

17. The Court has also gone through the decisions relied upon by the learned advocate for the petitioner. There cannot be any dispute with regard to the ratio laid down in the same. However, in the facts and circumstances of the case on hand and this being discretionary relief, which requires to be granted judiciously, the said decisions would be of no help to the present petitioner at this juncture.

18. At this stage, I would also like to refer to the well known decision of the Hon'ble Apex Court in case of **Rajnesh Vs. Neha**, reported in **(2021) 2 SCC 324**, wherein the Hon'ble Apex Court, after considering various case laws as well as various provisions like the provision of Criminal Procedure Code, 1973, Hindu Marriage Act, Domestic Violence Act, Special Marriage Act and others, has considered the issue of maintenance and settled the law on this aspect, which in the facts of the present case is squarely applicable to the case on hand.

19. From the aforesaid enunciation of law, it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels that she has lost the tenderest friend.

There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance. I have also considered the findings given and conclusion arrived at by the learned Judge concerned while passing impugned order and found that no error is committed by the learned Judge concerned, which requires any interference from the hands of this Court.

20. Therefore in view of the aforesaid observations and discussion, the present petition fails and is hereby rejected. Notice is discharged. Interim relief, if any, stands vacated.

Sd/-
(DIVYESH A. JOSHI, J.)

Gautam