



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

CRIMINAL REVISION APPLICATION NO. 14 OF 2024

1. **Sau. Ratnaprabha Prakash Jawade**
Aged about 53 years,
Occupation :Housework,
C/o Zilla Parishad Quarter No.1,
R/o Barad Kopra (&) Tah.
Babulgaon, Dist. Yavatmal

APPLICANT

// V E R S U S //

1. Prakash Dhyanobaji Jawade Age:
62 years, Occ. Pensioner, R/o Barad
Kopra (पुर्नवसन) Tah. Babulgaon, Dist.
Yavatmal

NON-APPLICANT

Mr. M.P Kariya, Advocate with Mrs. Savitri Dave, Advocate for
the applicant.

Mr.C. B. Dharmadhikari, Advocate for non-applicant.

CORAM : URMILA JOSHI PHALKE, J.

JUDGMENT RESERVED ON:- 10.03.2026

JUDGMENT PRONOUNCED ON :-23.03.2026

J U D G M E N T :

1. Heard.

2. **ADMIT.** Taken up for final disposal with the consent of learned counsel for the parties.

3. By preferring present revision application, the applicant-wife has challenged the judgment and order dated 01.03.2023 passed in Petition No.E-159/2020 by the Family Court, Yavatmal rejecting the application for grant of maintenance to the applicant as the learned Family Court found that applicant failed to adduce any cogent and satisfactory evidence to establish that she has been refused or neglected to maintain by the non-applicant.

4. Brief facts which are necessary for the disposal of the application as under:-

The marriage between the applicant and non-applicant was solemnized on 15.05.1985. From the said wedlock she begotten one son and one daughter. Now both the children have attended the age of majority. It is alleged by the applicant that since beginning of the marriage the non-applicant was raising quarrels with her on trivial issues.. The non-applicant was maintaining extra marital affairs. He was abusing and beating the

applicant and children under the influence of liquor. The non-applicant was working as Class-IV employee in Zilla Parishad, Yavatmal. He has retired in June 2018. Even after retirement his conduct has not been changed. According to the applicant after retirement, the non-applicant had started residing with another lady at Arni Road, Yavatmal. He was asking the applicant to vacate the Zilla Parishad residential quarter. Thus, the non-applicant had neglected and refused to maintain the applicant and therefore, she had lodged complaint at Awadhootwadi Police Station, Yavatmal on 27/09/2018. Thereafter she also lodged the complaint to Superintendent of Police Yavatmal on 12/11/2018. It is further her contention that she does not have any source of income and she is unable to maintain herself. The non-applicant had left Zilla Parishad residential quarter and now Zilla Parishad Authorities are asking the applicant to vacate the quarter. According to the applicant, the non-applicant had received Rs. 25,00,000/- as retirement benefit and he is getting Rs. 20,000/- per month as pension. Thus, he has sufficient means to pay the maintenance.

5. This application is strongly opposed by the non-applicant by filing his written statement. He has admitted the relationship with the applicant. But he denied all the adverse allegations levelled against him. According to him, after 34 years of marriage the applicant has made false allegations against him at the last stage of his life. According to him, he is residing at his native place at village Barad Khopada and doing labour work. Applicant was not ready to leave the urban life and therefore, she herself withdrawn her from the company of non-applicant and after retirement also she is residing in government quarter illegally. He further stated that he has provided good education to both the children as per his capacity as there was no refusal and neglect on his part and therefore, he is not liable to pay the maintenance. He denied that he is having extra marital affairs with another lady.

6. After recording the evidence of the applicant as well as non-applicant learned Family Court observed that it became clear that applicant and non-applicant stayed together till retirement of the non-applicant. Non-applicant has vacated the quarter allotted to him as his service tenure was over. It is further

observed by the Family Court that as far as refusal and neglect is concerned, there is no evidence adduced by the applicant which will inspire the confidence as refusal and neglect itself is not proved therefore, she is not entitled for any maintenance and thereby dismissed the petition.

7. Being aggrieved and dissatisfied with the said finding given by the Family Court, present revision application is preferred by the applicant.

8. First and foremost submission of the learned counsel for the applicant was that the Family Court has permitted the parties to adduce the evidence on affidavit. Thus, Family Court erred in taking recourse to Order XVIII Rule 4 of CPC for recording of evidence on affidavit as reading of Sub-Section (2) of Section 10 of the Family Court Act (for short, 'the Act of 1984') makes it absolutely clear that the provisions of CrPC and Rules thereunder shall apply to proceedings under Chapter IX of that Code and therefore, the Family Court has committed illegality by giving go by to the procedure that is contemplated by the statute. The another contention raised by the applicant was that despite the

evidence is adduced that it was the non-applicant who has left the quarter and withdrawn himself from the company of the applicant and thereby refused and neglected her to maintain and therefore, she is entitled for maintenance. It is the further submission that non-applicant is government employee working in Zilla Parishad initially drawing salary and after his retirement he received pensionary benefits as well as pension of Rs.20,000/- per month. Thus, he is having sufficient means to pay maintenance. In view of that, revision application deserves to be allowed by granting maintenance to the applicant.

9. Per contra learned counsel for the non-applicant submitted that in view of Section 10(3) of the Family Court Act which postulates that nothing in Section 10(1) shall prevent the Family Court from laying down its own procedure so as to deal with the matter in issue before it and therefore, no illegality is committed by the Family Court. It is submitted by him that the Act of 1984 is not only a special legislature but also has been enacted subsequent in point of time than CPC. Hence, it would be wrong to say that the Family Court has committed an error by accepting the evidence on affidavit. He has submitted that a

Family Court is well within its powers to take into evidence any material, which in the judicial discretion of such Family Court, may be essential for effectively adjudicating a lis before it whether or not such material fulfils the requirements of Indian Evidence Act, 1872. However, while exercising such discretion, the Family Court ought to bear in mind that receiving of such material by way of evidence does not violate the basic principles of legal system. Thus, though CPC is not applicable within its full rigours to the proceedings but Family Court is entitled to lay down its own procedure as warranted by facts and circumstances of given case and therefore, no illegality is committed by the Family Court.

10. After hearing both the sides and contentions raised by applicant as well as non-applicant, first I would like to advert the issue whether applicant is entitled for grant of any maintenance. In support of the contention applicant entered into the witness box and filed affidavit of examination in chief stating that her marriage was performed with the non-applicant on 15.05.1985. After marriage she resumed cohabitation. She begotten one son and one daughter from the said wedlock. Non-applicant is serving in Zilha Parishad, Yavatmal and was drawing salary. Now he is

retired. It is alleged by her that since marriage she was subjected for the ill treatment by the present non-applicant. However, she tolerated the entire ill treatment. She further alleged that non-applicant was addicted to bad vices like drinking liquor and used to assault her and her children. Thus, he has refused and neglected her to maintain and therefore, she constrained to file application for grant of maintenance. During her cross-examination she admits that non-applicant is now retired from service. After his retirement also she is residing along with her children in Zilla Parishad quarter. She further admits that he has not received any notice to vacate quarter by her name. She states that as non-applicant is having extra marital relations and therefore, she is unable to stay along with him. She specifically admits that till non-applicant retired from service, she was residing along with him. Thus, her evidence specifically states that she resided along with non applicant till he retires. As far as refusal and neglect is concerned, her evidence shows that till non-applicant's retirement she was residing with him and he was maintaining her.

11. To counter the evidence of the present applicant non-applicant also entered into witness box and he specifically alleged that till his retirement applicant was residing along with him. After retirement he went at his native place. As applicant was not willing to stay in small village, she is still residing in the quarter. Despite he is served with the notice to vacate quarter from Zilla Parishad, it was applicant who is not vacating the quarter and therefore, amount is deducted from his pensionary benefits also. He specifically stated that as applicant does not want to live in small village along with him, after his retirement she has not joined his company. His cross examination shows that his pension is deposited in his account. He also states that since the date of marriage till he retires from service he was staying along with the applicant. He also accepts the liability of his children and liability towards their education. He specifically admits that after the retirement he has received pensionary benefits of Rs.12 Lakhs but he has not incurred expenses towards his wife or children.

12. On the basis of the above said evidence applicant claimed that she is refused and neglected by the present non-applicant and therefore, she is entitled for grant of maintenance.

Preliminary stand of the non-applicant is that applicant was residing with him till his retirement. After his retirement he vacated the Zilla Parishad quarter and went to stay at his native place and therefore applicant has not joined him as she does not want to stay in small village by leaving the urban life. This contention is to be taken into consideration in the light of admission given by the applicant also. She has also admitted that till non-applicant retires she was residing alongwith him. Admittedly, there was no previous complaint as to the ill treatment at the hands of the non-applicant. Admittedly, there is no evidence adduced on record to show that he was addicted to bad vices like drinking liquor.

13. Coming to the object of Section 125 of Code is to provide summery remedy to save dependants from destitution and vagrancy, and thus to serve social purpose apart from an independent obligation of the parties under their personal law. Since the object is to prevent vagrancy or destitution by means of summery remedy before a Magistrate, jurisdiction is preventive rather than remedial ambiguity. Foundation of an order under Section 125 is the neglect or refusal of the opposite party maintain

his wife, child or parents. "Refuse means a failure to maintain or denial of the obligation to maintain after demand" "Neglect on the other hand means a default or omission to maintain in the absence of demand. Neglect or refusal may be implied from the conduct of a party and did not be a formal refusal. Refusal of neglect on the part of the husband may be proved not only by expressed words but also by conduct. Neglect or refusal referred in Section 125(1) of the Cr.P.C. is only obligation to maintain his wife. If no maintenance is filed either negligently or deliberately, Section 125(1) comes into play. The reasons for non-payment for maintenance is relevant under Section 125 (1). Neglect or Refusal to maintain exists if there is non-payment of maintenance, whether deliberately or negligently whatever be the cause. Neglect or refusal to maintain exists whenever there is breach of obligation to maintain whether negligently or deliberately. Whether there is justifiable and sufficient reasons or not for separate residence.

14. A husband can successfully resist the claim under Section 125(1) for maintenance of a wife residing separately only if he comes within the sweep of second proviso to Section 125(3)

of Cr.P.C. Where the wife resides separately and husband wants to resist the claim for maintenance on the ground he must necessary make an offer satisfying second proviso to 125(3) Cr.P.C. to maintain her on the condition that she lives with him. In spite of such offer made by him if she refuses to live with him then and then only the Magistrate have a duty to consider the grounds of refusal stating by her. If the Magistrate is satisfied that there is such a bona fide offer on the part of the husband, he may still pass an order under Section 125 of the Cr.P.C. only if there is a just ground offered by the wife to justify separate residence. No order shall be granted in her favour if there is no just ground. The language in which second proviso to Section 125 of Cr.P.C. is couch, according to me a crucial significance. When the claim is filed husband has offered to maintain the wife on the condition that she lives with him. Only if she refuses that offer then it can be said that she refused to live with him. Only then need the Court requires to consider that offer can be said to be refused to live with him. Only the need the court considers the reasons advanced by her. An offer and refusal at some point of time in the decision past may not attract the second proviso to Section 125(3) of Cr.P.C.

15. Thus, it is evident from the language of Section 125 which also stipulates that both offer and refusal going by words offers and refuses in simple language used in second proviso to Section 125 Cr.P.C. makes it clear that such offer and refusal is not with the events of the past and must be in present.

16. The wife who without sufficient reasons refuses to live with her husband is not entitled to maintenance under Section 125 of Cr.P.C. Neither in subsection 4 which deals with such a situation nor in subsection 5 the Court attends to enumerate what would be the sufficient cause for a wife/claimant to refuse to live with her husband and yet succeed in her claim for maintenance. It is left to be the objectivity determining by the Court having regard to the circumstance of a case and social ideas and background facts. The legislature has not exhaustively enumerated the ground which would furnish the sufficient cause for non-payment of maintenance order under subsection (1) beyond the three grounds which are mentioned in subsection (4). Under subsection (3) if the wife claimant has just ground for refusal she would be entitled to have an order of maintenance enforced

notwithstanding the offer of husband to maintain her on condition of living with him.

17. Torture or ill treatment in the husband house would be sufficient for refusal by the wife claimant to live with the husband even though husband may not be guilty personally. Where the wife cannot reasonable hope to live with dignity with her husband she may refused to live with him. The offer must be bona fide and same should not having with object to escaping the obligation to pay maintenance. The burden that the wife is refusing to live with him is to be discharged by the husband but when once that is proved it is for the wife to show that there are reasons for her living apart from the husband. The object of Section 125 is to arm wife in difficulty with the cause of action to get maintenance from her erring husband. If a person offers to maintaining his wife with condition of her living with him and she refused to live with him. The Magistrate may consider the ground of refusal as stated by wife/claimant and make an order under Section 126 of the Code notwithstanding such offer if he satisfied that there is a just ground for doing so.

18. In the light of the well settled legal position if the evidence of the applicant is taken into consideration which shows that she stayed along with non-applicant till he retires. As far as ill treatment is concerned, admittedly, there is no evidence to show that despite there was continuous ill treatment she was residing along with the present non-applicant. On the contrary, evidence on record sufficiently shows that they resided together till non-applicant's retires from the service. After retirement he went to his native place and the applicant has not joined him which is sufficient to infer that as she was not willing to stay at his native place of the non-applicant and therefore, she withdrawn herself from the company of the present non-applicant. The Family Court has rightly considered these admissions that in absence of evidence of refusal and neglect the non-applicant is not liable to pay maintenance. As far as allegations regarding illicit relations of the non-applicant is concerned, except bare words there is absolutely no evidence to substantiate the allegation that as the non-applicant is residing along with other lady and therefore, there is sufficient reason for the applicant to stay separately.

19. Admittedly, direct evidence would not be available to prove the fact that non-applicant is leading adulterous life but then there has to be some material on record to prove that he is leading adulterous life by staying along with another lady. Thus, in the absence of any material as to the illicit relations of the non-applicant and refusal and neglect on the part of the non-applicant, learned Family Court has rightly held that for 36 years the applicant and non-applicant stayed together. There was no previous complaint by them against each other as to the ill treatment as well as to the refusal and neglect by the non-applicant No.2 therefore, there is substance in the contention of the non-applicant that as she is not willing to reside at his native place and therefore, she has not joined his company is sustainable.

20. Coming to the another ground raised by the applicant that procedure adopted by the Family Court is erroneous and on that ground revision petition deserves to be allowed. In support of his contention learned counsel for the applicant placed reliance on the decision of Karnataka High Court in the case of *Gayithri vs. Ramesh* reported in *II (1993) DMC 197*, and *Anil Ambashankar Joshi vs Reena Anil Joshi* reported in *[2016 (6) Mh.L.J. (cri)]*

597]. Whereas, learned counsel for the non-applicant placed reliance on the decision of Delhi High Court in Criminal Revision Petition No.523/2019 and Criminal M.A.No.9437/2019.

21. While adverting the issue raised by learned counsel for the applicant, it would be relevant to refer to Section 126 of the Cr.P.C. and same is set out below:

Proceedings under section 125 may be taken against any person in any district—

1. where he is, or
2. where he or his wife resides, or
3. where he last resided with his wife, or as the case may be, with the mother of the illegitimate child. All evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases; Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully

neglecting to attend the Court, the Magistrate may proceed to hear and determine the case Ex-parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just. The language of subsection 2 of Section 126 is unambiguous in nature and all evidence relating to proceeding under Section 125 of CrPC is required to be taken in presence of the person against whom the order of payment of maintenance is proposed to be made. It is also relevant to refer Section 273 of Cr.P.C. which reads as under:-

273. Evidence to be taken in presence of accused.

- Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.[Provided that

where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.] Explanation. - In this Section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.

Thus, plain language of Section 273 Cr.P.C. also mandates that except as language expressively provided into 'all evidence in the course of trial Court or other proceeding required to be taken in presence of the accused on when his/her attendance is dispensed with in presence of his /her pleaded. In view of the express provision of Section 126 of the Cr.P.C., there can be no controversy that a Magistrate while dealing with the application under section 125 of the Cr.P.C. is required to follow the procedure as prescribed in Section 126 of the Cr.P.C. and all evidence is required to be taken in presence of the person against whom an order of maintenance is proposed to be made. However, the proceedings in the present case are not before Magistrate but before Family Court established under Section 3 of the Family Court Act, 1984.

Chapter 4 of the Family Court Act, 1984 contains provisions relating to the procedure to be followed by the Family Courts. Section 10 of Family Court Act provides for the procedure to be generally followed.

Section 10 of the Family Court Act is reproduced as under:-

10. Procedure generally

(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of

the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other."

22. Thus in view of sub section (2) of section 10 of Family Courts Act the provisions of Cr.PC or the Rules made thereunder, are applicable to the proceedings under Chapter IX of Cr.PC. However, sub-section (3) of Section 10 of the FC Act contains a non obstante provision and expressly provides that nothing in sub-section (1) or sub-section (2) of Section 10 of the FC Act would prevent a Family Court from laying down its own procedure, inter alia, with a view to arrive at the truth of the facts alleged by one party and denied by the other. It is also relevant to refer to Section 14 of the FC Act, which expressly enables a Family Court to receive in evidence any report, statement, documents, information or matter that may, in the opinion of the Family Court, assist it to deal with the dispute irrespective of whether such evidence is otherwise relevant or admissible under the Indian Evidence Act, 1872.

23. Section 16(1) of the FC Act expressly provides that the evidence of a formal character may be given in an affidavit

and may be read in evidence in any suit or proceedings before a Family Court. Sub-section (2) of Section 16 of the FC Act also enables the Family Court to examine any person as to the facts contained in his affidavit,

24. Section 20 of the FC Act enacts a non obstante clause and provides that provisions of the said Act would have the effect notwithstanding anything inconsistent contained in any other law for the time being in force or any instruction having effect by virtue of any law. Thus, by virtue of Section 20 of the FC Act, the provisions of the FC Act, have an overriding effect and in case of any repugnancy, between the provisions of the FC Act and any other law, the provisions of the FC Act are required to be given effect to.

25. Thus, in view of the above, the Family Courts are required to follow the procedure as set out in the FC Act for determining the matters placed before it notwithstanding the procedure as may be stipulated in the Cr.PC.

26. Thus, sub-section (3) of Section 10 of the FC Act expressly provide that a Family Court is not precluded from laying down its own procedure notwithstanding anything contained in Sub-section (1) sub-section (2) of Section 10 of the said Act.

27. Section 10(1) of the 1994 Act empowers a Family Court to be a civil Court for the purpose of exercising all powers vested in a Civil Court and the provisions of CPC have been made applicable to the proceedings before the Family Court, but at the same time it has been expressly stipulated in Section 10(1) of the 1994 Act itself that such application of CPC shall be “subject to the other provisions of this Act and the rules.” Section 10(3) of the Act, 1984 act postulates that nothing in Section 10 (1) shall prevent the Family Court from laying down its own procedure so as to dealing with the matter in issue before it that is for arrival at settlement in respect of lis of any suit /proceeding before it or to determine the truthfulness of the facts in dispute. This provision by itself shows that the legislature while broadly mandating the application for CPC to proceeding before Family Court has vested discretion in favour of such Family Court to devise a procedure on its own.

28. As observed earlier in view of Section 20 the Family Court Act have an overriding effect which states that the provisions of this act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force or any instruction having effect by virtue of any law.

29. The golden rule of interpretation laid down by Hon'ble Apex Court in the case of **Chief Justice Of A.P & Anr vs L.VA. Dikshitulu & Ors** reported in *MANU/SC/0416 1978* it is held that "the primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it"(Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real

legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction, such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation”.

30. In another judgment *National Insurance Company Limited vs Laxmi Narayan Dhut* reported in *2007(3) SCC 700* the Apex Court has held thus:- “Golden Rule” of interpretation of statutes is that statutes are to be interpreted according to grammatical and ordinary sense of the word in grammatical or liberal meaning unmindful of consequences of such interpretation. It was the predominant method of reading statutes. More often than not, such grammatical and literal interpretation leads to unjust results which the Legislature never intended. The golden rule of giving undue importance to grammatical and literal meaning of late, gave place to 'rule of legislative intent'. The world

over, the principle of interpretation according to the legislative intent is accepted to be more logical.

31. Thus when a question arises as to the interpretation to be put on an enactment, what the court has to do is to ascertain " the intent of them that make it", and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literally interpretation of the words used in disregard of all other materials. "

32. In view of the above rule of interpretation as held by the Hon'ble Apex Court in the case *Dikshitulu case and Laxminarayan Dhut case* when applied in the present scenario to the provisions of 1984 Act shows that language as also phraseology employed in the legislature in question is precise in unambiguous and unequivocal. Legislative intent, that CPC does not mandatorily apply in full force to proceeding under 1984 Act is clearly reveals from bare reading of the legislation in question. Section 10(3) of the 1984 Act postulates that nothing in Section 10(1) shall prevent the Family Court from laying down its own

procedure so as to deal with the matter in issue before it. This provision by itself shows that legislature while broadly mandating for application for CPC to the proceeding before a Family Court, has vested discretion in favour of such Family Court to revise a procedure on its own. The provisions of Section 10(1) and Section 10(3) of 1984 Act reflect the clear legislative intent to the effect that CPC does not apply compulsorily to proceedings before Family Court. The 1984 Act is a special law brought by in legislation exclusively for adjudicating the matrimonial disputes. CPC is a general procedure law for civil litigations. CPC was enacted in the year 1908 whereas the Family Court Act has been enacted in the year 1984. Thus, it is clear that 1984 Act is not only a special legislation but has also been enacted subsequently in point of time than CPC. Hence it would be pragmatic approach as per the principle laid down by the Apex Court while dealing with the interpretation of the law.

33. From the above discussions the following principles of law can be culled out. (I) Sub Section (3) to Section 10 read with Section 20 of the Family Court Act contains non-obstante clause and gives supremacy to the provisions of the said Act, vis-a-

vis the provisions of other enactments/Acts. (II) CPC. 1908 is not applicable with its full rigours to proceedings under the Family Courts Act, 1984. In other words a Family Court is entitled to lay down its own procedure, as warranted by facts/circumstances of a given case and it is not bound by the procedural rigours of CPC 1908, However, while devising its such own procedure the Family Court ought to ensure that such procedure is in consonance with the basic canons of the jurisprudence such as principles of natural justice, good conscience and equity. (III) Family Court is well within its powers to take into account any material, which in the judicial discretion of Such Family Court, may be essential for effectively adjudicating a lis before it whether or not such material fulfils the requirements of Indian Evidence Act, 1872. However, while exercising such discretion, the Family Court ought to bear in mind that receiving of such material by way of evidence does not violate the basic principles of our legal system.

34. It is true that procedure adopted while conducting matters under section 125 is under section 126 of the Code of Criminal Procedure. However, one has to understand that matters under section 125 are not purely criminal of nature, but

proceedings are of quasi civil nature, as issue of maintenance to wife is involved and therefore, the respondent is not an accused and statement under section 313 is not recorded while dealing under section 125. So, the proceedings under section 125 are not treated as purely and strictly criminal proceedings, though the power to issue warrant is given to the Court.

35. Chapter IV of the Family Court Act, 1984 lays down the procedure which is to be followed by the Family Court. It can follow such procedure as it may deem fit. Section 9 is exclusively about the settlement and section 10 is about the procedure which is to be followed generally. Under section 10(1) of the Family Court Act, the Family Court shall be deemed to be a Civil Court and shall have all the powers of such Court dealing with all the matters except the matters covered under Chapter IX of the Cr. P.C. for grant of maintenance under section 125 of the Cr. P.C. Section 10(2) states that for the purpose of conducting the matters of maintenance under section 125 of Cr. P.C., the provisions of Cr. P.C. and rules made thereunder shall apply to the proceedings before the Family Court. It means that the Family

Court while dealing with the issue of maintenance shall follow the procedure under Cr. PC. which empowers the Court to issue warrants, pass order of interim maintenance and follow the procedure under section 126 of Cr.PC. Hence, the evidence is to be recorded in the presence of the respondent. However, the question is that whether part 3 of Section 10 is whether restricted to only settlements or whether it is dehors a settlement. The procedure can be laid down to find out the truth of the facts which are agitated and contested between the parties. It is to be noted that though there is use of word "or", it is not to be read conjunctively with the word "settlement" but it is to be read dis-conjunctively, as the word "at" is used before the words "the truth. The Family Court can lay down its own procedure in respect of (ii) adjudication.

36. In view of statements of objects and reasons for enacting the family Court Act also indicates that the Act also seeks simplify the evidence and procedure so as to enable the Family Court to deal effectively. If the provisions of chapter 4 of the Family Court Act are read bearing in the aforesaid in mind, it would be at once clear that sub section 3 of Section 10 of the

F.C. Act must be read in an expansive manner and Family Court would not be precluded from laying down procedure which is in variance in the procedure prescribed under the Cr.P.C. to deal with the subject matter before it. Section 15 of the Family Court Act provides that it would not be necessary to record evidence of witnesses at length but Judge shall record memorandum of substance of what the witness has deposed. The import of Section 15 is not that the Judge must record memorandum of substance in every case. Section 15 is an enabling provisions which makes it explicitly clear that it is not necessary for oral testimony to be recorded at length and the Court has an option of hearing the testimony of the witnesses and recording the substance of his/her testimony.

37. In view of the above discussion this Court finds no infirmity with the decision of the Family Court in accepting the evidence by way of an affidavit permitting the applicant and non-applicant to tender the same in their examination-in-chief and providing an opportunity to the applicant to cross-examine the non-applicant and therefore, on that ground also the application is devoid of merits and liable to be dismissed.

38. In view of that I proceed to pass the following order:-
Revision application is accordingly dismissed.
Pending applications, if any also stand disposed of.

(URMILA JOSHI PHALKE, J.)

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