

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (FOR MAINTENANCE) NO. 175 of 2022

With

CRIMINAL MISC.APPLICATION (FOR STAY) NO. 1 of 2022

In R/CRIMINAL REVISION APPLICATION NO. 175 of 2022

With

CRIMINAL MISC.APPLICATION (FOR VACATING INTERIM RELIEF) NO. 1 of 2023

In R/CRIMINAL REVISION APPLICATION NO. 175 of 2022

With

CRIMINAL MISC.APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2024

In R/CRIMINAL REVISION APPLICATION NO. 175 of 2022

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Approved for Reporting	Yes	No
		√

VASANTBHAI PREMJBHAI VEKARIYA

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1

MR DARSHIT R BRAHMBHATT(8011) for the Respondent(s) No. 2

MR ROHAN RAVAL, APP for the Respondent(s) No. 1

**CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

**Date : 24/04/2026**

**JUDGMENT**

**RULE.** Learned APP Mr. Rohan Raval and learned advocate Mr. Darshit Brahmhatt waive service of notice of Rule for and on behalf of respective respondents. With the consent of learned advocates appearing for the respective parties, present application is taken up for final hearing today.

[1.0] Present criminal revision application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter

referred to as "CrPC") has been preferred by the applicant herein – husband requesting to quash and set aside the order dated 10.12.2021 passed by the learned Principal Judge, Family Court, Anand in Criminal Misc. Application No.81 of 2019, whereby the applicant is directed to pay Rs.50,000/ per month towards monthly maintenance to respondent No.2 from the date of application i.e. 12.03.2019.

[2.0] The brief facts of the case of the applicant are as follows:

[2.1] The respondent No.2 – wife filed an application under Section 125 of the Code of Criminal Procedure, 1973 (for short "CrPC"), contending that her marriage with the applicant was solemnized on 01.06.1995 at Gondal. Post marriage, both parties resided together in a rented premises at Vidhyanagar and the respondent No.2 also assisted the applicant in his business. Out of the wedlock, a male child, namely [REDACTED], was born on 03.08.1999. It is further contended that the parties jointly acquired immovable property at Shanti Devasiya Bungalows in the year 2016. However, matrimonial relations between the parties became strained over the past decade, and they have not been on speaking terms for the last five years. Allegations of mental and physical harassment have also been made by the respondent No.2. The respondent No.2 has further stated that a mortgage deed dated 21.08.2012 (No. 7226 of 2012) was executed with HDFC Bank in respect of joint property, and a similar document was executed on 26.09.2017. It is also alleged that eight cheques of ₹15 lakhs each, issued by Canon Company, were found in the possession of the applicant at the matrimonial home. Due to the applicant's failure to provide regular financial support for day-to-day expenses, the respondent No.2 filed the present application under Section 125 CrPC

on 12.03.2019 before the Family Court, Anand. During the pendency of the proceedings, an application for interim maintenance (Exh.6) was filed in Criminal Misc. Application No. 81 of 2019. The applicant appeared and filed written objections (Exh.10). The Family Court, by order on the interim application, directed the applicant to pay ₹15,000/- per month as interim maintenance from the date of application. The said order was challenged by the applicant before the Hon'ble High Court by way of Special Criminal Application No. 7239 of 2019, wherein notice was issued and interim stay was granted. The petition was subsequently disposed of. Thereafter, the main proceedings were heard on merits. Both documentary evidence and written submissions were placed on record. Evidence on record indicates that the respondent No.2 resided with the applicant in the same house until 10.12.2019. An Income Tax Officer, Ms. Jyotiben Rathod, was also examined as PW-2 (Exh.29). Upon conclusion of the proceedings, the Learned Principal Judge, Family Court, Anand, by order dated 10.12.2021 in Criminal Misc. Application No. 81 of 2019, directed the applicant to pay ₹50,000/- per month towards maintenance to respondent No.2 from the date of application i.e. 12.03.2019. Hence, present revision application is filed.

[3.0] Learned Advocate Mr. Ashish M. Dagli appearing for the applicant has submitted that the impugned order passed by the learned Family Court is unjust, improper and contrary to the settled principles of law, as the Court below has failed to consider and properly appreciate the oral as well as documentary evidence on record and has proceeded mainly on assumptions and presumptions. He has further submitted that the Court has overlooked the material fact that at the time of filing the application under Section 125 CrPC, the respondent No.2 was residing with the applicant and her expenses

were being borne by him, thereby rendering the application itself not maintainable. Further, though interim maintenance was fixed at ₹15,000/- per month after hearing both sides, the same has been arbitrarily enhanced to ₹50,000/- per month in the final order without any cogent material. He has further submitted that the Court below has ignored crucial evidence regarding the applicant's income, including Income Tax returns, audit reports and the testimony of the Income Tax Officer, and has also failed to consider that the applicant's business has suffered, particularly post-COVID-19, resulting in substantial reduction in income. He has further submitted that the evidence of witness Raj Sureshchandra Tiwari (Exh.58) supporting the financial difficulties of the applicant has also been disregarded. Moreover, the respondent No.2 has admitted that the applicant has been regularly depositing amounts in the joint bank account and bearing household as well as educational expenses of their son. He has submitted that therefore the impugned order imposes an excessive and unrealistic financial burden on the applicant beyond his means and has been passed ignoring material evidence on record. He has further submitted that the proceedings have been initiated with *mala fide* intention to harass and pressurize the applicant. He has further submitted that due to recession in the business, applicant is unable to pay such exorbitant amount of maintenance to the respondent – wife and hence, he has requested to quash and set aside the impugned order in the interest of justice.

[4.0] Learned advocate Mr. Brahmhatt appearing for the respondent – wife has opposed the present revision application and at the outset, he has submitted that in the present case, attitude of the applicant – husband is required to be considered. The recalcitrant attitude of the applicant is not to pay the maintenance to the wife in

any circumstances and only with a view to harass the poor lady, who is suffering from cancer though fully aware of the ailment of wife, the applicant – husband has left no stone unturned to harass the poor lady and show has been created *qua* inability to pay the maintenance in the name of exorbitant award of maintenance which is nothing but an eye-wash. The applicant is having the franchise and business in the name and style of Rutumn Enterprise at Vidyanagar wherein the applicant is the proprietor and he is authorized dealer of Canon Company. The fact of auction of house is mentioned only with a view to avoid the liability. He has further submitted that time and again the applicant has obtained loan after the said incident of alleged auction. Not only that, the turn over in the HDFC Current Bank Account runs into crores of rupees and bank itself has given overdraft facility to the tune of Rs.50 lakh and with 5% net profit and margin annual income is not less than Rs.50 lakh. He has further submitted that while the application was filed, at that time, the applicant was enjoying tour at Dubai and is also having bungalow, flats and applicant is not having any other liability and only to show his income, the applicant has mentioned in his affidavit that his income is monthly Rs.12,000/- to Rs.15,000/- but now the son of the applicant and respondent has attained the age of majority and he is studying abroad. He has further submitted that another stand taken by the applicant is that the respondent – wife is earning but infact the respondent – wife was attending Rutumn Enterprise as part-time worker so as to help the applicant – husband in the business and the salary towards the same was credited in her account but actual beneficiary is the applicant – husband.

[4.1] He has further submitted that the applicant has suppressed his income and has intentionally produced the income tax returns for the years from 2013 to 2020 at Exhs.30 to 36. Thereafter, intentionally,

the applicant has avoided to submit the Profit & Loss Account only for suppressing the income and subsequently the applicant has examined the Income Tax Officer and tried to show and portray that he is earning only Rs.2 lakh per annum. Over and above, Dubai, the applicant used to frequently travel abroad and has visited Japan, Macau, Netherlands, Australia and Bangkok which clearly reveals that the applicant is living a luxurious life. He has further submitted that only to show that canon company sponsored the applicant on his achieving the targets of sale, is nothing but an eye-wash. He has submitted that even if the said contention is accepted without admitting then also applicant is able to meet with or achieve the target given by canon company, it clearly reveals that the applicant is able to fulfill the target as a Distributor and his turn over is huge. Even in the year 2015 also, the applicant visited Bangkok, Thailand, Singapore and Amsterdam and perusing the evidence of Regional Business Manager of Canon company, it appears that applicant has successfully achieved the target given by the company. Now, the applicant is taking the plea that his distributorship of Surat is closed but if the said documentary evidence is perused, it clearly reveals that during one year, from Rutumn Enterprise situated at Surat, cash of Rs.25 lakh was stolen and in this regard, the applicant himself has filed one complaint with Umra Police Station which clearly reveals that business is continuous and applicant is earning. Not only that, the applicant has also lodged one complaint against Nonex Service at Vadodara for recovery of the amount towards goods supplied to the said firm which clearly reveals that Rs.15 lakh is yet to be recovered from Nonex Service, which clearly shows that the applicant is engaged in continuous business and considering his investments in Mediclaim, LIC, Mutual Funds and medical insurance, for which documentary evidences are produced at Exhs.68 to 74, learned Family Judge has not

committed any error more particularly considering the basic requirement to maintain the wife as well as the expenses to be incurred by wife towards her ailment of cancer and therefore, the learned Family Judge has rightly awarded Rs.50,000/-. He has further submitted that not only that, from the medical insurance, for the year 2020, Rs.1.70 lakh came to be received from the insurance company and towards second installment, Rs.2.75 lakh were credited in the account of present applicant however, till date, the applicant has not paid the same to the respondent – wife. Considering this conduct of the applicant, he has requested to dismiss the revision application.

[4.2] He has further submitted that the applicant is intended to anyhow harass the poor lady who is suffering from cancer. Earlier, *ex parte* interim relief was granted on condition to deposit Rs.2 lakh towards maintenance within two weeks thereafter and the applicant has enjoyed the interim relief for a pretty long time and therefore, the respondent – wife filed Interim Application for vacating the interim relief and after giving an opportunity, the coordinate Bench has been pleased to vacate the interim relief. Thereafter, the application under Section 125(3) of the CrPC was filed wherein the warrant upon the applicant remained unexecuted but in connection with another offence under the Land Grabbing Act, applicant was arrested by way of transfer warrant. Even though, rather than paying the maintenance, the applicant opt to go behind the bars. Thereafter, the applicant approached the Hon'ble Supreme Court by way of filing Special Leave to Appeal (Cri.) No.10385/2024, which came to be dismissed as withdrawn on 09.08.2024. In view of above facts, he has requested to dismiss the revision application.

[5.0] Having heard learned advocates appearing for the respective

parties and perusing the record, it appears that relationship between the applicant and respondent as husband and wife is not in dispute and their son has attained the age of majority and is staying abroad. Only wife had filed an application under Section 125 of the CrPC for getting maintenance. Before the learned Family Judge, evidence came to be led more particularly evidence of husband below Exh.68, wherein the husband has tried to show that in the name of respondent – wife, he has invested in mutual funds and husband is paying insurance premium and is also bearing educational expenses like college fee etc. of his son. But the documents produced on record reveals that in the year 2021, for the ailment of cancer, respondent – wife had withdrawn the amount / funds from mutual fund on 23.09.2021. The applicant – husband was running the business in the name of Rutumn Enterprise and having franchise of canon company and he achieved the target and turnover of the said firm is produced on record. Further, since last five years, the applicant – husband has neglected the respondent – wife and due to this reason, she left the matrimonial home and was compelled to live at her parental home and during the said desertion period, she was detected with cancer and she is under ailment which reveals from the record. It is the case of the husband that property was a joint property in the name of husband and wife which was mortgaged with the HDFC Bank towards loan facility of Rs.50 lakh but as the account became NPA, to recover the said amount, said property / house was put for auction and applicant having no any business and having income of only Rs.2.23 lakh to Rs.2.12 lakh for the years 2018-19 and 2019-20 respectively and to prove the said income, applicant has examined Income Tax Officer Mrs. Jyotiben Dineshbhai Rathod (Exh.29). The income tax forms for the period from 2013-14 to 2019-20 i.e. 7 in number have been filed at Exhs.30 to 37. But for the last return, no any Profit & Loss Account is

produced on record and only acknowledgement is produced.

[5.1] Learned Family Court has also considered the said evidence and come to the conclusion that the applicant – husband having the business at Surat and Anand and he is Distributor of canon company. As per the say of husband, the distributorship is closed and wound up in the year 2018 but no any evidence in that regard is produced on record. But, if we peruse the document produced on record *qua* alleged theft of Rs.25 lakh in cash committed in the office of applicant at Surat, it shows the potentiality of the applicant to earn from the business and proceeding to recover the amount of Rs.15 lakh from one Nonex Services is also filed by the applicant and even there are other properties situated at Vallabh Vidyanagar, Anand and investments in mutual funds are also there.

[5.2] Learned Family Judge come to the conclusion that the applicant is earning monthly Rs.1,50,000/- considering the statement of liability and assets filed by both the parties before the Family Court. In absence of any evidence, the learned Family Judge has not accepted the fact that the business is closed down and applicant is unable to maintain the respondent – wife or to pay the maintenance to his wife. The applicant has assailed the impugned order on the ground that the respondent – wife is holding degree of B.Sc. (Home Science) and Fashion Designing and she is able to maintain herself but merely because wife is able to maintain herself is not a ground to avoid the responsibility / liability to maintain the wife more particularly considering the ailment of cancer. To maintain herself and to meet with the expenses of treatment also, learned Family Judge has properly awarded Rs.50,000/- monthly after appreciating the evidence and therefore, this Court is of considered view that no interference is

required more particularly in view of the evidence led before the learned Family Judge. Herein, no any evidence led before the learend Family Judge to show that wife is able to maintain herself and having income or engaged in any gainful profession. Even, merely wife is capable of earning is not a sufficient ground to reduce the maintenance. Herein, no any evidence is there on record which suggests that respondent – wife is working. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Shailja and Another vs. Khobbanna** reported in **(2018) 12 SCC 199; Sunita Kachwaha & Ors. vs. Anil Kachwaha** reported in **(2014)16 SCC 715** as well as **Chaturbhuji vs. Sita Bai** reported in **(2008) 2 SCC 316**, wherein it has been observed and held as under:

*“Where the wife was surviving by begging, it 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 under Section 125 Cr.P.C. 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. 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 under Section 125 CrPC.”*

[5.3] Learned advocate appearing for the applicant has relied on the evidence of Income Tax Officer (Exh.29) and last two income tax returns but it is needless to say that filing of the proceeding under Section 125 of the CrPC is a common practice to avoid the responsibility. Considering the matrimonial conflict, there is a tendency to underestimate the income. Herein also, after alleged auction of the property, another loan was received from various

branches at Surat and different places which clearly reveals that for the business purpose loan was got sanctioned and thus, it is clear that the applicant is engaged in continuous business. Not only that, only two Income Tax Returns are not enough considering the law laid down by the Hon'ble Supreme Court in the case of **Kiran Tomar and Others vs. State of Uttar Pradesh and Another** reported in **2022 (0) AIJEL-SC 70464** as the income tax return filed in the year 2018-19 subsequent to filing of proceeding under Section 125 of the CrPC and in the said decision it has been held that income tax returns do not necessarily furnish an accurate guide of real income of the applicant more particularly when the parties are engaged in a matrimonial conflict and there is a tendency to underestimate the income to avoid the liability. Hence, learned Family Judge has properly ignored the said evidence and based on the evidence and material produced on record, assessed the income of the applicant – husband.

[5.4] Further, the object of proceeding under Section 125 of the CrPC is beneficial legislation. Further, it is also required to be noted that neither the applicant has produced any evidence regarding the earning of his wife nor her means to sustain herself, before the learned Family Judge. From the various judgments of the Hon'ble Supreme Court, it can be said that 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. The law is clear that husband is bound to maintain his wife and minor children and if a husband is negligent and does not pay maintenance to wife or children as awarded by the Court, then how such a person is entitled to the relief claimed by him in the matrimonial proceedings. In this regard, reference is required to be made to the decision of this Court in the case of **Miteshbhai Dinkarbhai Makvana vs. State of Gujarat**

reported in **2025(0) AIJEL-HC 250224**. Further, in the case of **Bhuwan Mohan Singh vs. Meena & Ors.** reported in **(2015) 6 SCC 353** and **Anju Garg and Ors. vs. Deepak Kumar Garg** reported in **2022 SCC OnLine (SC) 1314**, it is held that it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute. Therefore, the argument canvassed by the learned advocate for the applicant that the applicant is unable to maintain his wife – respondent herein and unable to pay the maintenance on the ground that franchise of canon company is now closed down is not acceptable. It is needless to say considering the statement and status with which the respondent – wife was living at the time of her desertion and therefore, learned Sessions Judge has not committed any error considering the peculiar facts of the case more particularly considering the fact that the respondent – wife has to incur medical expenses towards her ailment of cancer, award of Rs.50,000/- towards monthly maintenance is just and proper and merely because the business of the applicant is closed down and recession is not a ground to deny the maintenance more particularly considering the able-bodied principle and considering potentiality to earn more. It goes without saying that it is the duty of the husband to maintain his wife and children. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Anju Garg vs. Deepak Kumar Garg** reported in **2022 SCC OnLine (SC) 1314**. Further, in the case of **Rajnish vs. Neha & Ors.** reported in **(2021)2 SCC 324**, the Hon'ble Supreme relying on its decision in the case of **Reema Salkan vs. Sumer Singh Salkan** reported in **(2019) 12 SCC 303** observed that the Court must have due regard to the standard of living of the husband,

as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications. Further, while awarding the maintenance, Court has to consider all relevant factors and the test for determination of maintenance in matrimonial dispute depends on the financial status of wife and the standard of living that the wife was accustomed to in her matrimonial home and amount of maintenance should aid the wife to live in a similar life style as she enjoyed in the matrimonial home. Merely applicant – husband is having a liability to repay loan is not a ground to reduce the maintenance amount. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Deepa Joshi vs. Gaurav Joshi** reported in **2026 INSC 370**. Herein, alongwith the status, wife is under ailment and treatment papers are also produced on record and considering the continuous treatment, learned Family Judge has considered the said aspect also while awarding the maintenance. Meanwhile, alleged recession or close down of the business in absence of any material is not enough to deny the maintenance more particularly considering able bodied husband is presumed to be capable of earning sufficient money to maintain his wife and cannot contend that he is not in position to sufficiently maintain his family and the onus is on the husband to establish that the necessary material that there are sufficient grounds to show that he is unable to maintain the family and discharge his legal obligation for reason beyond his control. Herein, husband failed to disclose not only actual income but any other circumstances as argued before this Court. Hence, adverse inference may be drawn by the Court considering the conduct of present applicant and as per the law laid down by the Hon'ble Supreme Court in the case of **Shamima Farooqui**

**vs. Shahid Khan** reported in **(2015) 5 SCC 705**, wherein the Hon'ble Supreme Court has held that merely reduction or decrease in income is not a ground to deny or to absolve from the liability to pay the maintenance. The obligation of the husband to provide the maintenance stands on a higher pedestal than the wife. Therefore also, the learned Family Judge has not committed any error which calls for interference at the hands of this Court in exercise of revisional jurisdiction.

[5.5] Further, it is needless to say that the revisional jurisdiction can be exercised where there is a palpable error or non-compliance with the provision of law and where decision is completely erroneous and where the judicial discretion is exercised arbitrarily. Herein, if we examine the reasons assigned by the learned Family Judge, it appears that learned Family Judge has already appreciated the facts and finding of fact not to be upset unless it is found perverse and finding of fact not to be substituted keeping in mind the ratio of Hon'ble Supreme Court in the case of **Amit Kapoor vs. Ramesh Chander & Anr.** reported in **(2012)9 SCC 460** as no perversity is found in the reasons assigned by the learned Family Judge. The learned Family Judge has assigned well-founded reasons while awarding the maintenance to the respondent – wife and such findings are based on evidence led before it and hence also, no interference at the hands of this Court in exercise of revisional jurisdiction is required.

[5.6] It would also be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of **Malkeet Singh Gill vs. State of Chhatisgarh** reported in **(2022)8 SCC 204** wherein the Hon'ble Supreme Court held that section 397/401 CrPC vests jurisdiction for the purpose of satisfying itself or himself as to the correctness,

legality or propriety of any finding and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction of law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings. It is a settled legal proposition that if the Court below recorded the finding of fact, the question of re-appreciation of evidence by the revisional Court does not arise unless it is found to be totally perverse.

[6.0] In wake of aforesaid conspectus, present criminal revision application stands **dismissed**. Resultantly, the impugned order dated 10.12.2021 passed by the learned Principal Judge, Family Court, Anand in Criminal Misc. Application No.81 of 2019 is hereby confirmed. Rule is hereby discharged. Interim relief stands vacated forthwith.

In view of dismissal of criminal revision application, interim applications being CR.MA (For Stay) Nos.1/2022; 1/2023 (For Vacating Interim Relief) and 1 of 2024 (For Interim Relief) in Criminal Revision Application No.175/2022 also stand disposed of.

Sd/-  
**(HASMUKH D. SUTHAR, J.)**

Ajay