



IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.01 of 2025

An application under section 19(4) of the Family Court Act, 1984.

Bibhuprasad Sahoo **Petitioner**

-Versus-

Snigdha Samaranika Das **Opp. Party**

Advocates appeared in the case:

For Petitioner : (Ms. Rita Singh, Advocate)

For Opp. Party : Mr. Debidutta Mohapatra,
Advocate

CORAM:
THE HON'BLE MR. JUSTICE MRUGANKA SEKHAR SAHOO

J U D G M E N T

Decided on 04th May, 2026

MRUGANKA SEKHAR SAHOO, J.

1. The petitioner-husband is before this Court seeking revision of the judgment dated 21.09.2024 passed by the learned Judge, Family Court, Bhubaneswar in Cr.P. No.07 of 2020. By the said judgment, the petition U/s.125 Cr.P.C. (since repealed and substituted by *pari material* provision



contained in Section 144 of BNSS, 2023) claiming a sum of Rs.50,000/- per month filed by the wife in the marriage was allowed. However, the learned Judge, Family Court directed Rs.6,000/- as monthly maintenance from the date of application i.e. 09.01.2020.

2. The matter is kept pending since 20.01.2025 when it was taken up for the first time. On 21.03.2026, notices were issued. Thereafter, since the requisites were not filed, further time was granted on 05.05.2025 for filing of requisites. On 22.01.2026, the matter was adjourned by the petitioner. It was mentioned by the learned counsel for the Opp. Party that due to stay of operation of the judgment granting maintenance, the Opp. Party is not getting any maintenance. The order dated 22.01.2026 is reproduced herein:

“1. Learned counsel for the petitioner seeks adjournment.

2. Learned counsel for the Opp. Party opposes the same submitting that due to operation of the interim order, the Opp. Party-wife in the marriage is not getting any benefits of the direction of granting maintenance.

3. List in the week commencing 23.02.2026, when efforts shall be made for disposal of the application.”

3. The learned counsel for the petitioner was heard at length on 05.03.2026, the facts and proposition of law were noted in detail. Relevant portion of the order dated 05.03.2026 is reproduced herein:



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“3. For issuance of notice a stand has been taken as recorded by the coordinate Bench by order dated 21.03.2025 that the petitioner-husband is doing nothing. The opposite party-wife is working as an Assistant Revenue Inspector in the office of the Tahasildar, Cuttack, therefore it cannot be said that the wife is unable to maintain herself so as to entitle herself for maintenance.

4. On being asked, learned counsel for the petitioner submits that the petitioner-husband has chosen to remain in default of the entire amount due which comes to Rs. 4,32,000/- (from 09.01.2020 to 09.02.2026), 73 months x Rs.6,000/- = Rs.4,38,000/-.

5. Mr. Mohapatra, learned counsel for the opposite party-wife submits that the petitioner has paid Rs.7,000/- out of the said due of amount of Rs.4,38,000/-.

6. Both the issues raised before this Court that the wife earning/capacity to earn has been answered by the judgment of the Hon'ble Apex Court in **Rajnesh v Neha:(2021) 2 SCC 324**, which are reproduced herein.

“(c) Where wife is earning some income

90. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:

90.1. In *Shailja v. Khobbanna* [*Shailja v. Khobbanna*, (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308; See also the decision of the



Karnataka High Court in P. Suresh v. S. Deepa, 2016 SCC OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar)], this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] Sustenance does not mean, and cannot be allowed to mean mere survival. [Vipul Lakhanpal v. Pooja Sharma, 2015 SCC OnLine HP 1252 : 2015 Cri LJ 3451].

90.2. In Sunita Kachwaha v. Anil Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589] the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

90.3. The Bombay High Court in Sanjay Damodar Kale v. Kalyani Sanjay Kale [Sanjay Damodar Kale v. Kalyani Sanjay Kale, 2020 SCC OnLine Bom 694] while relying upon the judgment in Sunita Kachwaha [Sunita



Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589], held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

90.4. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in *Chander Parkash v. Shila Rani* [*Chander Parkash v. Shila Rani*, 1968 SCC OnLine Del 52 : AIR 1968 Del 174]. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court.

90.5. This Court in *Shamima Farooqui v. Shahid Khan* [*Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785] cited the judgment in *Chander Parkash* [*Chander Parkash v. Shila Rani*, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.”



7. In the judgment rendered by the Hon'ble Supreme Court in **Shamima Farooqui v. Shahid Khan: (2015) 5 SCC 705**, the Court has considered the scope of interference by the High Court in orders granting maintenance U/s.125 of Cr.P.C. Paragraphs-19 and 20 of the said judgment being apposite are reproduced herein:

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8. The learned Judge, Family Court while considering the application U/s.125 Cr.P.C. has dealt with the evidence and material on record and noted that the petitioner-husband was then working as Senior Project Engineer, LLOYDS with salary of Rs.1,00,000/- per month apart from getting Rs.5,00,000/- per annum from agriculture. The details of the gifts received by the husband from the wife's side during marriage have been noted at paragraph-5. Learned trial Court has also noted the fact that the petitioner-wife before the said Court has mentioned her designation as Assistant Revenue Inspector in the office of the Tahasildar, Cuttack.

9. At this stage, learned counsel for the petitioner was asked for continuance of the interim order whether the petitioner will secure the decree i.e. the amount awarded by the learned Court which comes to Rs.4,38,000/- - Rs.7,000/- = Rs.4,31,000/-. She submits that she wants to bring on record further documents by filing affidavit which in view of the pronouncement of law in **Shamima Farooqui (supra)** is not permissible.



10. She further submits that she will obtain instruction how the amount will be secured for sustaining the challenge.”

4. Thereafter, two months have elapsed. Prior to today’s listing, the matter was adjourned on 25.03.2026 and 09.04.2026 by the learned counsel for the petitioner.

None appears for the petitioner, though the matter is called twice over once when it reached before the lunch break and again after resumption of the proceeding after the lunch break.

5. In view of the above, it is apparent that the petitioner is not cooperating in taking up of the matter even after having been granted sufficient indulgence for more than four months.

6. As observed while hearing the learned counsel for the petitioner on 05.03.2025, in **Shamima Farooqui v. Shahid Khan**¹, the Hon’ble Supreme Court has elaborately dealt with the scope of interference by this Court in exercising revisional jurisdiction when revision of judgment rendered by Family Court is sought for.

7. In **Shamima Farooqui** (*supra*) the Apex Court dealt with scope of revision by High Court of a judgment passed by the learned Family Court in a proceeding under Section 125 of Cr.P.C. and have laid down the law authoritatively. The paragraphs those would be apt to be applied for the

¹ (2015) 5 SCC 705: AIR 2015 SC 2025



present case, paragraphs-20 and 21 (from SCC Online print) are reproduced herein:

“20. In the instant case, as is seen, the High Court has reduced the amount of maintenance from Rs 4000 to Rs 2000. As is manifest, the High Court has become oblivious of the fact that she has to stay on her own. Needless to say, the order of the learned Family Judge is not manifestly perverse. There is nothing perceptible which would show that order is a sanctuary of errors. In fact, when the order is based on proper appreciation of evidence on record, no Revisional Court should have interfered with the reason on the base that it would have arrived at a different or another conclusion. When substantial justice has been done, there was no reason to interfere. There may be a shelter over her head in the parental house, but other real expenses cannot be ignored. Solely because the husband had retired, there was no justification to reduce the maintenance by 50%. It is not a huge fortune that was showered on the wife that it deserved reduction. It only reflects the non-application of mind and, therefore, we are unable to sustain the said order.

21. Having stated the principle, we would have proceeded to record our consequential conclusion. But, a significant one, we cannot be oblivious of the asseverations made by the appellant. It has been asserted that the respondent had taken voluntary retirement after the judgment dated 17-2-2012 with the purpose of escaping the liability to pay the maintenance amount as directed to the petitioner; that the last-drawn salary of the respondent taken into account by the learned Family Judge was Rs



17,564 as per salary slip of May 2009 and after deduction of AFPP Fund and AGI, the salary of the respondent was Rs 12,564 and hence, even on the basis of the last basic pay (i.e. Rs 9830) of the respondent the total pension would come to Rs 14,611 and if 40% of commutation is taken into account then the pension of the respondent amounts to Rs 11,535; and that the respondent, in addition to his pension, had received encashment of commutation to the extent of 40% i.e. Rs 3,84,500 and other retiral dues i.e. AFPP, AFGI, gratuity and leave encashment to the tune of Rs 16,01,455. The aforesaid aspects have gone uncontroverted as the respondent husband has not appeared and contested the matter. Therefore, we are disposed to accept the assertions. This exposition of facts further impels us to set aside the order of the High Court.”

8. In the present case, the learned Judge, Family Court has taken note of the pleadings and submissions made by the present petitioner who was the opposite party, at paragraph-05.2 of judgment which is reproduced herein and considered by this court for the present adjudication:

“05.2. The purpose and object of Sec.125 Cr.P.C. is to provide immediate relief to the wife and children. It aims to prevent vagrancy and destitution. The provision U/s.125 Cr.P.C. is enacted for social justice and specially to protect women and children as also old and infirm poor parents and falls within the constitutional sweep of Article 15(3). It gives effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves. The very



object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can do so to support those, who are unable to support themselves and who have a moral claim to support. Claiming maintenance by the wife is her independent right. It is also independent duty of the opposite party to maintain his wife, if she is unable to maintain her.

It may not be out of place to quote here that an order of maintenance cannot be passed where the husband had neither ill-treated the wife nor has refused or neglected to maintain her, but she of her own accord and without any just ground, left husband's home and refuses to live with him.

Maintenance is always granted considering the following parameters such as

“(i) position and status of the parties (ii) reasonable wants of the claimant towards food, clothing, shelter and medical attendance (iii) income of the respondent (iv) income, if any of the claimant (v) number of persons the respondent is obliged to maintain.””

9. Witnesses have been examined by the learned Judge, Family Court such as PW, OPW-1 to arrive at conclusion. Exhibits 1 to 4 have been marked by petitioner and exhibits A to B, B/1, C and D have been marked on behalf of the Opp. Party. The factum of marriage has been proved as indicated in paragraph-2 of the impugned judgment. The following issues have been framed by the learned Family Court:



“(I) Whether the petitioners are unable to maintain themselves?”

“(II) Whether the opposite party having sufficient means is neglecting or refusing to maintain the petitioners without any lawful reason?”

10. The discussions of the materials on record such as - pleadings, written statement, depositions have been noted in detail by the learned Family Court and the issues have been answered.

11. The paragraphs from ***Shamima Farooqui*** (*supra*) are noted by this Court, the principles of law laid down therein are applied to consider whether this Court can interfere with the judgment in exercise of revisional jurisdiction. The relevant paragraphs from ***Shamima Farooqui*** (*supra*) are reproduced herein :

“8. So far as the point no.1 relating to the inability of the petitioners is concerned, the petitioner no.1 in her affidavit evidence has stated specifically that she has no independent source of income to maintain herself and her minor daughter and her father is a very poor man, who is also unable to maintain the petitioners. It is seen that during her cross-examination, the aforesaid evidence was not challenged specifically nor did the opposite party adduce any evidence to establish any independent source of income of the petitioner no.1. In that view of the matter, this court having found that the petitioner no.2 has no independent source of income and the petitioner no.2 being the minor, has held that the petitioners are unable to maintain themselves.

9. So far as the sufficient means of the opposite party is concerned, law is well settled that “sufficient



means” always does not indicate any visible means or property and if a person is healthy and able to bodied, he should be held to have “sufficient means” to maintain his wife, children and parents.

In the instant case, though the petitioner no.1 has stated in her affidavit evidence that the opposite party owns and possesses sufficient agricultural land and carrying business and his monthly income from both the sources is Rs.30,000/- per month, during her cross-examination., she stated that the opposite party is an electrician by profession. The opposite party has also stated in his objection that he is an electrical mechanic. Therefore, in absence of any other materials regarding the business or landed property of the opposite party except the oral evidence of P.W.1 and P.W.2, the alleged income of the opposite party cannot be accepted. However, considering the fact that the opposite party is an electrician by profession and he being an able bodied man, this Court has held that the opposite party has sufficient means to maintain the petitioners.

10. So far as refusal and neglect on the part of the opposite party in maintaining the petitioners is concerned, the petitioner no.1 corroborating the averments made in the petition has stated categorically in her affidavit evidence that after marriage, she was subjected to torture for non-fulfillment of further demand of Rs.1,00,000/- and consequent thereupon, she was also abused and her daughter was also not taken care properly by the opposite party and his family members. It is stated that for the aforesaid reason, she was taken by her father to her parental house on 24.09.2016. The aforesaid evidence of the petitioner no.1 goes to show about the neglect on the part of the opposite party in maintaining them. The petitioners have been residing separately from the opposite party since the year 2016, but there is nothing on record, which would go to show that the opposite party has paid anything



towards their maintenance, rather the evidence of the petitioners goes to show that the opposite party had filed a proceeding for divorce vide C.P.No.186 of 2021 though he has subsequently withdrawn the same. Though the opposite party gave suggestion during the cross-examination of the petitioner no.1 that the petitioner no.1 had filed a divorce proceeding vide C.P. No.155 of 2017 in the court of the learned Civil Judge (Sr. Divn.), Jagatsinghpur, but nothing was adduced from the side of the opposite party to substantiate the same. Therefore, considering the aforesaid oral evidence of the petitioner no.1 and her father, this court held that it is the opposite party, who has neglected in maintaining the petitioners and now refusing to maintain them. It is argued on behalf of the opposite party that since this court has already passed an interim order of maintenance in C.P. No.186 of 2021, no further maintenance should be awarded in favour of the opposite party. But the fact remains that the C.P. No.186 of 2021 has been disposed of in the mean time and such order of maintenance passed for pendentlite maintenance of the petitioner no.1 is no more in force. The opposite party has not stated or proved any other ground to deny paying maintenance to the petitioners. It is already held that the opposite party has sufficient means to maintain the petitioners. Therefore, the opposite party should be directed to pay maintenance to the petitioners.”

[Underlined to supply emphasis]

12. Further, analysis regarding quantum of maintenance has been made in the judgment of the learned Family Court that is considered by this Court for present adjudication:

“05.3 On perusal of the materials on record it is found that the petitioner is now working as Assistant Revenue Inspector in the Office of the Tahasildar, Cuttack Sadar and according to her disclosure



statements of assets and liabilities filed by the opposite party, it is found that he has no income, but according to the petitioner, the opposite party has completed his Master in Engineering and earning from his private job and from the variety store at Jaraka Market. It is the duty of the husband to see the welfare of the wife and to see that she is leading a live at par to his life. In course of his evidence, he has admitted of his service at Harman Company and then Wipro earlier and so, he is quite capable of earning and as they are staying separately, he is liable to pay maintenance to the petitioner.”

13. Learned counsel for the petitioner submits that the judgment of the learned Family Court is erroneous as the learned court has not appreciated evidence in its proper perspective. Learned counsel has been apprised of the law laid down in **Shamima Farooqui** (supra) and that it is required to be shown from the written statement filed by the petitioner and evidence laid before learned trial court in terms of the law laid down by the Hon’ble apex Court in **Shamima Farooqui** (supra), to support the contentions raised.

14. Regarding the liability of the husband to pay the maintenance at paragraphs 16, 17, 18 of **Shamima Farooqui** (supra) the apex Court have extensively dealt with the issue. The law laid down is applied by this Court to the present adjudication and the paragraphs (from SCC Online Print) are reproduced herein :

16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court.
In Chaturbhuj v. Sita Bai [(2008) 2 SCC 316 : (2008) 1



SCC (Civ) 547 : (2008) 1 SCC (Cri) 356], it has been ruled that : (SCC p. 320, para 6)

“6. ... 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 Capt. Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70: 1978 SCC (Cri) 508] falls within the 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. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787].”

17. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

18. In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in Chander Parkash Bodh Raj v. Shila Rani Chander Prakash [1968 SCC OnLine Del 52 : AIR 1968 Del 174] wherein it has been opined thus : (SCC OnLine Del para 7)

7. ... an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for



holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.”

[Underlined to supply emphasis]

15. Regarding the plea of the petitioner-herein, before the learned trial court that he is unable/in capable to pay, the discussions and the observations made by the apex Court in ***Shamima Farooqui*** (*supra*) at paragraphs-15, 16, 17, 18 and 19 are apposite and are reproduced herein:

“15. While determining the quantum of maintenance, this Court in *Jasbir Kaur Sehgal v. District Judge, Dehradun* [(1997) 7 SCC 7] has held as follows : (SCC p. 12, para 8)

“8. ... 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.”

16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court.



In Chaturbhuj v. Sita Bai [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] , it has been ruled that : (SCC p. 320, para 6)

“6. ... 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 Capt. Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508] falls within the 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. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787]”

17. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

18. In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in Chander Parkash Bodh Raj v. Shila Rani Chander Prakash [1968 SCC OnLine Del 52 : AIR 1968 Del 174] wherein it has been opined thus : (SCC OnLine Del para 7)

7. ... an able-bodied young man has to be presumed to be capable of earning sufficient



money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.

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 her faith in life reduces. Sometimes, she feels 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.”

16. By applying the above principles to the present case, it is apparent that the present petitioner husband being able bodied, has to be presumed to be capable of earning sufficient money to maintain his wife, he cannot be heard to say that he is not in a position to earn enough. It was for the



opposite party-husband to show cogent grounds to the learned Family Court to hold that for reasons beyond his control he is unable to earn enough, to discharge his legal obligation. From reading of the judgment impugned it is apparent that before the learned Judge, Family Court the petitioner-herein has not made any such endeavor. There was no legally permissible ground shown before the learned Judge, Family Court to accept the plea of the petitioner that he would not pay any maintenance.

To deny his employment and earning therefrom the opposite party-husband did not bother to adduce any positive evidence.

17. In ***Shamima Farooqui*** (*supra*) the Hon'ble Supreme Court commenting on reduction of amount of maintenance from ₹4,000/- to ₹2,000/- by order of the High Court observed "*it only reflects the non-application of mind and, therefore, we are unable to sustain the said order...*"

18. Following the above well settled legal principles, it has to be and is held that it is the obligation of the husband to maintain his wife and minor children, he cannot be heard to plead that he is unable to maintain his wife due to financial constraint as long as he is able bodied and/or educated and/or capable of earning.

19. Nature and scope of Section 125 CrPC (since repealed and substituted by *pari materia* provision contained in Section 144 of the BNSS, 2023), the legislative policy behind the enactment and the constitutional philosophy that has



guided such enactment have been elaborately discussed in the judgment rendered by the Hon'ble Supreme Court in **Rajnish v Neha**².

The paragraphs from **Rajnish** (*supra*) relied upon and applied by this Court for deciding the present revision application are reproduced herein (from SCC Online web edition print):

“(d) Section 125 CrPC

32. Chapter IX of the Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 CrPC may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 CrPC is to provide immediate relief to an applicant. An application under Section 125 CrPC is predicated on two conditions : (i) the husband has sufficient means; and (ii) “neglects” to maintain his wife, who is unable to maintain herself. In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors.

33. The remedy provided by Section 125 is summary in nature, and the substantive disputes with respect to dissolution of marriage can be determined by a civil court/Family Court in an appropriate proceeding, such as the Hindu Marriage Act, 1955.

² (2021) 2 SCC 324



34. In *Bhagwan Dutt v. Kamla Devi* [*Bhagwan Dutt v. Kamla Devi*, (1975) 2 SCC 386 : 1975 SCC (Cri) 563] the Supreme Court held that under Section 125(1) CrPC only a wife who is “unable to maintain herself” is entitled to seek maintenance. The Court held : (SCC p. 392, para 19)

“19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments.”

(emphasis supplied)

35. Prior to the amendment of Section 125 in 2001, there was a ceiling on the amount which could be awarded as maintenance, being Rs 500 “in the whole”. In view of the rising costs of living and inflation rates, the ceiling of Rs 500 was done away with by the 2001 Amendment Act. The Statement of Objects and Reasons of the Amendment Act states that the wife had to wait for several years before being granted maintenance. Consequently, the Amendment Act introduced an express provision for grant of “interim maintenance”. The Magistrate was vested with the power to order the respondent to make a monthly allowance towards interim maintenance during the pendency of the petition. Under sub-section (2) of Section 125, the court is conferred with the



discretion to award payment of maintenance either from the date of the order, or from the date of the application. Under the third proviso to the amended Section 125, the application for grant of interim maintenance must be disposed of as far as possible within sixty days from the date of service of notice on the respondent.

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37. In *Chaturbhuj v. Sita Bai* [*Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316: (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] this Court held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife by providing her food, clothing and shelter by a speedy remedy. Section 125 CrPC is a measure of social justice especially enacted to protect women and children, and falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution.

38. Proceedings under Section 125 Cr PC are summary in nature. In *Bhuwan Mohan Singh v. Meena* [*Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200] this Court held that Section 125 CrPC was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since 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.

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III. Criteria for determining quantum of maintenance

77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

79. In Manish Jain v. Akanksha Jain [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is



conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. 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.

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] The maintenance amount awarded must be



reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

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84. The Delhi High Court in *Bharat Hegde v. Saroj Hegde* [*Bharat Hegde v. Saroj Hegde*, 2007 SCC OnLine Del 622 : (2007) 140 DLT 16] laid down the following factors to be considered for determining maintenance : (SCC OnLine Del para 8)

- “1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.



10. The non-applicant to defray the cost of litigation.

11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act.”

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Discussion and Directions

109. The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded. Even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in Section 125(2) CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 CrPC. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

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V. Enforcement of orders of maintenance

114. Enforcement of the order of maintenance is the most challenging issue, which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law. The Bombay High Court in *Sushila Viresh Chhadva v. Viresh Nagshi Chhadva* held that : (SCC OnLine Bom para 7)



“7. ... The direction of interim alimony and expenses of litigation under Section 24 is one of urgency and it must be decided as soon as it is raised and ... the law takes care that nobody is disabled from prosecuting or defending the matrimonial case by starvation or lack of funds.”

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117. Section 125(3) CrPC provides that if the party against whom the order of maintenance is passed fails to comply with the order of maintenance, the same shall be recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier.

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VI. Final Directions

127. In view of the foregoing discussion as contained in Part B — I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India.

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(d) Date from which maintenance is to be awarded

131. We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in part B-IV above.”

20. Having perused the judgment of the learned Family Court, the discussions in the judgment regarding examination in chief of P.W.1, P.W.2 and the discussions



made on the pleadings of the parties; by applying the tests laid down in **Shamima Farooqui** (*supra*) it has to be and is held that there is nothing perceptible which would show that the judgment of the learned Judge, Family Court is a sanctuary of errors. Further it has to be and is held that the order is based on proper appreciation of evidence on record.

As observed by the Hon'ble apex Court, this Court in exercise of revisional jurisdiction would not interfere with, as because, this Court would arrive at a different or another conclusion.

21. Learned counsel for the Opp. Party submits that the C.P. No.190 of 2023, in the meanwhile has been disposed of by the learned Judge, Family Court, Bhubaneswar granting decree of divorce as sought for by the Opp. Party. He refers to paragraph 8 of the judgment and order dated 28.03.2026, the said paragraph is reproduced herein from the authenticated copy produced before this Court by the learned counsel for the Opp. Party along with memo of date:

"Issue No. iv.

08. No doubt, the petitioner has already made out a case of divorce by proving mental cruelty and desertion against the respondent-husband. It appears from the disclosure statement of petitioner that she is 36 years old and her qualification is B.Com. Their date of marriage is 10.12.2016 and since 26.11.2018 they are staying separately. Her monthly expenditure is at Rs.30,000/-. She is working as ARI in the Office of the Tahasildar, Sadar, Cuttack with a monthly salary of Rs.31,000/-. According to her, the respondent has completed his Masters degree in Engineering and



working in a private company and running a variety store at Jaraka Market. On the other hand, it appears from the disclosure statements of the assets and liabilities of the respondent that he is aged about 40 years. His educational qualification is MBA. Their date of marriage is 10.12.2016 and since 26.11.2018 they are staying separately. His general monthly expenditure is at Rs.25,000/-. He has mentioned his income as Nil. As per him, the qualification of the petitioner is B.Com and she is working as ARI in the Office of the Tahasildar, Cuttack Sadar. It is submitted that the petitioner is awarded with Rs.6,000/- per month as maintenance in Criminal Proceeding No.07 of 2020 vide judgment dated 21.09.2024. Considering the economic status of both the parties, their needs, potentialities, social status, age, it would be just to direct the respondent to continue such payment of Rs.6,000/- (Rupees six thousand only) per month to the petitioner towards her monthly maintenance as per Sec.25 of the Hindu Marriage Act.”

The memo shall be taken on record. Scanned copy be updated.

22. In view of the judgment passed by the learned Judge, Family Court, Bhubaneswar granting alimony at the rate that was directed by earlier judgment dated 21.09.2024 in CRP No.07 of 2020 along with decree of divorce, further, continuance of the present RPFAM would not be in the interest of justice.

23. Further it has to be held that this Court would not interfere when in the case at hand substantial justice has been done by the learned Family Court. The maintenance amount of ₹6,000/- per month is not a huge fortune that



has been showered on the wife and it does not deserve reduction.

24. In considered opinion of this Court, no case is made out for revision of the judgment of the learned Judge, Family Court, Bhubaneswar dated 21.09.2024 passed in Criminal Proceeding No.07 of 2020. The revision application being devoid of any merit fails and is dismissed.

(Mruganka Sekhar Sahoo)
Judge

Orissa High Court, Cuttack
The 4th May, 2026/Rajesh