

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/CRIMINAL REVISION APPLICATION (FOR MAINTENANCE)**  
**NO. 569 of 2013**

**FOR APPROVAL AND SIGNATURE:**

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

Approved for Reporting	Yes	No

KAJALBEN W/O HARESHBHAI BHARADIA  
 Versus  
 STATE OF GUJARAT & ANR.

Appearance:

MR PRATIK Y JASANI(5325) for the Applicant(s) No. 1  
 MR BHAVIK J PANDYA(5002) for the Respondent(s) No. 2  
 MR ROHAN H. RAVAL, APP for the Respondent(s) No. 1  
 SHRIKAR H BHATT(2573) for the Respondent(s) No. 2

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

**Date : 21/04/2026**

**JUDGMENT**

- 1) By way of present revision application under Sections 397 read with 401 of the Code of Criminal Procedure, 1973, the applicant – wife has prayed for quashing and setting aside the judgment and order dated 19.07.2013, in Criminal Misc. Application No.450 of 2010, passed by the learned Principal Judge, Family Court, Rajkot, whereby, the Family Court has been pleased to dismiss the application for maintenance under Section 125 of the

Code of Criminal Procedure (which shall hereinafter be referred to as "**the Code**") filed by the applicant. Being aggrieved by the said order the present Revision Application has been filed.

- 2) Brief facts of the case is that the applicant married with respondent no.2 on 19.11.2009 at Rajkot and since then both started residing in joint family. Initially, the applicant was treated nicely, however, after sometime the respondent no.2 started ill-treating the applicant. Further, the family members of the respondent no.2 were harassing the applicant by using abusive language hence, the applicant informed about the same to her parents. Thereafter, the respondent no.2 by giving flimsy reasons dropped the applicant at her parents home and despite requesting him on several occasions, has not returned to take back the applicant for fulfilling her matrimonial obligations. As the applicant was severely beaten by the respondent no.2 and family members she constrained to lodge a complaint and also filed application being Criminal Misc. Application No.450 of 2010, under Section 125 of the Code seeking maintenance form the respondent no.2 – husband. However, the learned Family Court, Rajkot, vide order dated 19.07.2013, has been pleased to dismiss the said application. Hence, the present revision application.

- 3) Learned Advocate for the applicant has submitted that the learned Family Judge has erred in brushing aside the purport and scope of Section 125 of the Code which has been enacted by the legislature for safeguarding the social and financial interest of the lady who has been ill-treated and deserted by her husband. He has further submitted that the Family Judge failed to consider that the applicant has no source of income and is fully dependent upon her father for her maintenance. He has further submitted that the Court below erred in relying on the statement of the respondent no.2 to the effect that he wants to take the applicant back on uncertain terms and since the applicant has denied the said proposal the applicant is not entitled to maintenance and the Court without considering that the said proposal was for the purpose of convincing the applicant to withdraw the application as well as to give co-operation for disposing the criminal case which was filed by the applicant the Court has rejected the said application. He has further submitted that provision of Section 125(4) of the Code has no application to the facts of the case because the proposal to cohabit on the terms of the applicant was a mere attempt of the respondent by which the litigation between the parties comes to an end and thereafter to continue with his past acts. Hence, he has requested to allow the present revision application.

- 4) Learned APP for the respondent – State and learned Advocate for the respondent no.2, have jointly submitted that the learned Family Judge has properly appreciated the evidence on record and hence no interference of this Court is required. They have further submitted that the applicant failed to prove that the respondent no.2 deserted her and it is proved that the applicant has voluntarily left her matrimonial home and residing separately and therefore by relying on the provision of Section 125(4) of the Code the learned Family Judge has rightly dismiss the application of the applicant. Hence, they have prayed to dismiss the present revision application.
- 5) Having heard learned Advocates for the respective parties and perusing the material placed on record, it appears that the in order to prove her case the applicant has tendered examination-in-chief at Exhibit 9 and produced on record seven documentary evidence at Exhibits 36 to 42. On the contrary the respondent – husband has examined himself at Exhibit 16, and one documentary evidence at Exhibit 34, to prove his defence. The applicant – wife has examined herself at Exhibit 9, and in her cross-examination she has admitted that she has not stated in application or in her examination in chief that the respondent has thrown her out or deserted her. She has further admitted that even if the respondent wants to take her back from the

Court, she does not want to go with him. She has further stated that even the respondent agrees to her condition then also she does not want to go back with him. She has further stated that if the respondent – husband is ready to live separately from the joint family then also she does not agree for the same and to go back.

- 6) It is worthwhile to reproduce provision of the Section 125(4) of the Code, hereunder for ready reference:

*"No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."*

- 7) Furthermore, a specific question was put to the applicant as to whether she is ready and willing to go or stay with the respondent no.2 – husband but she has denied to live with the respondent no.2 at any place. Moreover, the respondent no.2 has filed a pursis at Exhibit 11 declaring his willingness to take the applicant with him and live happily. But considering the recalcitrant approach on the part of the applicant – wife as she voluntarily left her matrimonial home and deserted her husband and that too without proper or any justifiable reason and in absence of any explanation as to under which circumstances she

had left the matrimonial home or no evidence is produced on record which suggest or is enough to draw presumption that the husband or in-laws have meted out cruelty to the applicant – wife and from the evidence the case clearly falls under the purview of Section 125(4) of the Code. As the applicant fails to perform her obligation as wife and to perform her matrimonial obligation the learned Family Judge has rightly dismiss the application for claiming maintenance. Therefore, this Court is of the view that if a wife has chosen to live separately from her husband without any valid reason or justifiable cause, she is not entitled for maintenance under Section 125 (4) of the Code.

- 8) Moreover, 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 Court, it appears that learned Family Court 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 trial Court. Learned trial Court has properly assigned reasons and

given the finding based on evidence led before him and hence also, no interference at the hands of this Court in exercise of revisional jurisdiction is required.

- 9) In wake of aforesaid conspectus, present revision application fails and stands **dismissed**.
- 10) Record and proceedings, if any, be sent to the concerned Court forthwith.

ANKIT JANSARI

**(HASMUKH D. SUTHAR,J)**