

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (RECALL) NO. 15576 of 2024
In R/CRIMINAL REVISION APPLICATION/824/2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI Sd/-

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Approved for Reporting	Yes	No
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Appearance:
MR I H SYED SENIOR ADVOCATE with MS VIDHI J BHATT(6155) for the Applicant(s) No. 1
MR HEMANT B RAVAL(3491) for the Respondent(s) No. 1,2,3
MR NIRAJ SHARMA APP for the Respondent(s) No. 4

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 05/05/2026

JUDGMENT

1. The applicant-husband had filed this Criminal Miscellaneous Application No.15576 of 2024 in Criminal Revision Application No.824 of 2022 for recalling the oral order dated 03.07.2024 passed in the captioned Criminal Revision Application No.824 of 2022 and for the revival of the said Criminal Revision Application No.824 of 2022 restoring it to its

original file for hearing the matter on merits and had made a prayer to direct the mother of opponent nos.1 to 3, to comply with the oral order dated 15.12.2023 passed by this Hon'ble Court in the captioned Revision Application No.824 of 2022 by filing an affidavit of disclosure as mandated by the decision of the Hon'ble Supreme Court in the case of **Rajnesh vs. Neha**, reported in **(2021) 2 SCC 324**.

2. The order dated 03.07.2024 was passed in the Criminal Revision Application No.824 of 2022 filed by the three minor triples, aged about nine, through their mother [REDACTED]. The order is reproduced here-in-under:

*"1. The affidavit is produced in compliance of the order dated 15.12.2023 in view of the judgment of the Hon'ble Apex Court in the case of **Rajnesh v. Neha, (2021) 2 SCC 324**. The respondent no.2 is serving as a Water Bearer at the District Consumer Redressal Forum and according to his affidavit, he is earning about Rs.14,800/- and that as per the order, he is working for six hours daily. The statement shows that in the month of December, 2023, he has received Rs.14,800/- after necessary deductions. The EMI is paid of Rs.1,824/- and Rs.2,140/- towards the loan which he has taken for his second wife. As per the affidavit, the purpose of taking loan for the second wife is to conduct small scale self-employment activities for livelihood which itself shows that over and above six hours service, the respondent no.2 has self employed means, but has failed to disclose the said fact in the affidavit. The earning of the divorce wife has been shown as Rs.70,000/- being Government teacher, but the present*

application is filed by 3 minor triplets. Mr. Raval submitted that the applicant has failed to maintain three children and the application for enhancement has been rejected. While the order under Section 125 of the Cr.P.C. dated 31.1.2017 passed by the learned 6th Additional JMFC, Nadiad makes an order for the payment of Rs.1,800/- to each of the three minors.

2. Considering the fact that the respondent no.2 has remarried and in view of the income which gets disclosed by way of affidavit, the order passed by the learned Family Court, Nadiad dated 30.4.2019 in Criminal Misc. Application no. 140 of 2018 is required to be modified since the respondent no.2 at that time has submitted that he was earning Rs.5,500/- by his temporary job. The fact noted that the children are receiving scholarship for studies and the fact that the father is required to maintain the children and therefore, the order passed under Section 125 of the Cr.P.C. requires enhancement. The school scholarship as has been noted comes to about Rs.1,850/- and hence, taking into consideration the income of the father with the fact of the scholarship received, the order of Rs.1,800/- passed on 31.1.2017 which was to be paid from the date of application as 7.1.2016, the maintenance amount is ordered to be increased to Rs.2,500/- per child.

3. Accordingly, the present application is disposed of in the above terms."

3. Thereafter, this Court had passed an order on 30.08.2024 in Criminal Miscellaneous Application No.15576 of 2024 in Criminal Revision Application No.824 of 2022, which is reproduced here-in-under:

"1. By way of the present application, a prayer is made to recall the order of this Court dated 03.07.2024 passed in the above main matter.

2. Heard learned Senior Counsel Mr. I.H. Syed for the applicant, who submits that the decision of the Hon'ble Apex Court in the case of **Rajnesh v. Neha and Another** reported in **(2021) 2 SCC 324** mandates that an Affidavit be filed by the wife also and thus, in absence of the Affidavit of the wife, the above order is required to be recalled.

3. Heard learned Advocates for the private respondents Mr. H.B. Raval.

4. In view of the facts stated, the order dated 03.07.2024 was passed by this Court enhancing the amount. If at all, the applicant is aggrieved then he can move the concerned learned Family Court for any change or modification and claiming benefit of the case of **Rajnesh v. Neha** (supra).

5. The application stands disposed of in the aforesaid terms.

Direct Service is permitted."

4. Aggrieved by the order, the present applicant had moved the Hon'ble Supreme Court by filing Special Leave to Appeal (Criminal) Nos.17759-17760 of 2024, whereby through the order dated 30.04.2025, the matter was remitted back to this Court with a direction to restore CR.MA (R) No.15576 of 2024 in CR.RA No.824 of 2022 to the file and to decide the same afresh in accordance with law.

5. This Court, in view of the observations made by the Hon'ble Apex Court, directed the parties to file an affidavit in light of judgment in case of Rajnesh vs. Neha, 2021 (2) SCC 324.

6. In the interregnum, this Court had even requested the learned Advocate on record to come to some consensus for the amount to be paid for the minor triplets and had also referred to mediation centre, but the mediation had also remained unsuccessful. Hence, the matter was heard finally on merits.

6.1 Heard learned Senior Advocate Mr. I H Syed with learned Advocate Ms. Vidhi J Bhatt for the applicant no.1, learned Advocate Mr. Hemant B Raval for the respondent nos.1,2,3 and learned APP Mr. Niraj Sharma for the State in Criminal Miscellaneous Application (RECALL) No.15576 of 2024 and learned Advocate Mr. Hemant B Raval for the applicant nos.1, 2, 3, learned Senior Advocate Mr. I H Syed with learned Advocate Ms. Vidhi J Bhatt for the respondent no.2 and learned APP Mr. Niraj Sharma for the State in Criminal Revision Application (FOR MAINTENANCE) No.824 of 2022.

7. The present CR.RA No.824 of 2022 filed by three minors through their mother against the order dated 30.04.2019 passed by the learned Principal Judge, Family Court, Nadiad in CR.MA No.140 of 2018 rejecting the application under Section 127 of the Cr.PC.

8. The mother had filed Criminal Miscellaneous Application No.30 of 2016 before the learned Judicial Magistrate First Class for the three children against the father making a prayer for maintenance under Section 125 of the Cr.PC. Learned 6th Additional Judicial Magistrate First Class, Nadiad by an order dated 31.01.2017 ordered the father to pay Rs.1800/- to the guardian of the minors per month from the date of the application.

8.1 Thereafter, before the Family Court, Nadiad, the mother as a guardian of the three children had filed application for enhancement of the maintenance amount under Section 127 of the Cr.PC on 30.04.2018. The learned trial Court Judge while rejecting the application on 30.04.2019 had noted about the fact that the applicant were falling under Scheduled Caste category and all the three children were getting scholarship from the government and noted that the salary of the mother was more than Rs.40,000/-. When original order was passed, respondent-father was earning Rs.5500/- per month and at that time, the applicant – mother was earning Rs.27,500/-, while during the trial, at that time of her testimony, her income had increased to Rs.36,000/-.

8.2 The Family Court observed that the increase in salary has not been disclosed by the applicant – mother and the fact of children receiving scholarship has also been suppressed. The learned Judge noted that the father was commuting at the place of his service which was at a distance of 20 kms and

9.2 In the affidavit, the mother has disclosed that she is a primary teacher in Balvatika earning salary of Rs.88,368/-, while is paying monthly loan EMI of Rs.12,779/-, activa loan of Rs.3,488/-, petrol expenses of Rs.2,400/-. Here property is self-acquired.

9.3 The father's affidavit records that his monthly expense is approximately Rs.10,000/-, his date of first marriage is 30.09.1999. As his dependents, he has shown his mother - [REDACTED] and his second wife - [REDACTED]. The mother is receiving pension of Rs.8,000/-. The approximate expenses on the dependent has been shown as Rs.3,500/-. In the details of his income his designation shown is as 'water bearer' in District Consumer Redressal Forum, earning monthly income of Rs.14,600/-. He has also referred to payment of LIC premium of Rs.560/- per month, Rs.455/- per month in the name of his child - [REDACTED]. The details of his EMI is shown as Rs.2140/-. The said payment of EMI is made in the name of his second wife for a loan of Rs.40,000/- and has also referred that his father was suffering from paralysis and to cover the medical expenses, his second wife had put the jewellery for mortgage, the father had passed away on 01.08.2023 and therefore, to get the jewellery back, the applicant had taken the loan in the name of his second wife which is being paid by the applicant.

10. The contention raised was that mother is earning more than father, and comparing the income, no burden should be laid down on the father. In the case of **Rajnish v. Neha,**

(2021) 2 SCC 324, it was held by Hon'ble Supreme Court as under:

"(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.*

(d) Maintenance of minor children

91. *The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed.*

92. *Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties.*

(e) Serious disability or ill health

93. *Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance."*

10.1 In the case of **Deepa Joshi v. Gaurav Joshi**, reported in **2026 SCC OnLine SC 597**, it was observed by Hon'ble Supreme Court in para 13 and 16 as under:

"13. However, deductions arising out of financial commitments such as loan repayments, particularly where they contribute towards creation of assets, cannot be placed on the same footing as necessary expenditure so as to substantially reduce the liability of maintenance. The liability to maintain a spouse is a primary obligation and cannot be subordinated to such financial arrangements.

16. The obligation of the husband to maintain his spouse is a primary and continuing duty, which must be discharged in a manner that enables the wife to live with dignity and in a standard commensurate with that enjoyed during the subsistence of the marriage. Viewed thus, deductions on account of asset-generating repayments cannot be permitted to substantially dilute the respondent's real earning capacity for the purpose of determining maintenance. We are of the opinion that a sum of Rs. 25,000/- per month would be just, fair and reasonable in the facts of the present case."

11. The respondent as father has shown his income as Rs.14,600/-. The regular payment of EMI has stated to be toward the loan of Rs.40,000/- to cover the medical expenses of father which was taken on the jewellery of the second wife being mortgaged.

12. The respondent – father has married again and from that marriage, he is having a child. He is also paying insurance premium of the child name – [REDACTED] Having considered the judgment of *Rajnesh (supra)*, where inspite of the fact that wife is earning, the liability of the father to maintain his child cannot be denied. The mother individually is handling the educational and medical expenses of all the three children. Mother is only the total support system for the three children. Some centre demand sheet has been produced which reflects the name of Pushpaben - the second wife of the respondent – father. What is that document has not been clarified. Since no evidence could be led and that no cross-examination could be conducted, this Court would not make any appreciation or analysis of that document, to be read as evidence.

13. Having noticed in the judgment of *Deepa Joshi (supra)*, that deduction arising out of financial commitment such as loan repayment cannot be placed on the same footing as necessary expenditure so as to substantially reduce the liability of the maintenance, considering the fact that the father in the present case has been not ordered to pay for the maintenance amount for his first wife, but his liability to maintain the child cannot be subordinate to any such financial arrangement of paying EMI or loan repayment. The father cannot deny payment for the food, clothing, residence, medical need of the children, even the tuition expenses.

14. The father has to proportionally bear the expense. The dependents for respondent would be the three applicant

children, his second wife and his son from second marriage. The mother of respondent-father is having her pension income, thus excluding her with the respondent-father, the total unit would be six. Considering the father income as Rs.14,600/- from the notification dated 16.07.2019, individual unit would have the share of Rs.2433.33 paise. Since the prayer was made to enhance the maintenance amount from Rs.1800/- to Rs.3,000/-. The same prayer is allowed from the date of notification of the father's salary i.e. 16.07.2019. Each applicant - child would be entitled for support amount of Rs.1,000/- each, from that day. The amount already paid would be appropriated accordingly.

15. In view of the above observations, the present both the applications are **allowed**. The order dated 03.07.2024 passed in the present CR.RA NO.824 OF 2022 is recalled and set aside. The order of the Family Court, Nadiad dated 30.04.2019 in CR.MA No.140 of 2018 is set aside. The prayer made of increasing the maintenance amount from Rs.1800/- to Rs.3,000/- per month is allowed. The respondent - father is ordered to pay Rs.3,000/- per month maintenance amount to the applicant - children, from the date 16.07.2019.

PARMAR KRISH

Sd/-
(GITA GOPI,J)