

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION (FOR MAINTENANCE) NO. 666 of
2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE S.V. PINTO****Sd/-**

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Approved for Reporting	Yes	No
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NAYNABEN BHUPATBHAI RATHOD
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR PARTH S TOLIA(5617) for the Applicant(s) No. 1
SHIRISHCHANDRA B TOLIA(8163) for the Applicant(s) No. 1
MR TULSHI R SAVANI(3070) for the Respondent(s) No. 2
MR SOAHAM M JOSHI, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE S.V. PINTO**Date : 30/07/2026****ORAL JUDGMENT**

1. Rule. Learned APP waives service of rule for the respondent-State and learned advocate Mr. Tulshi R. Savani waives service of rule for the respondent No.2

2. By way of the present Criminal Revision Application, the applicant-original applicant has invoked the revisional jurisdiction of this Court under Sections 397 read

with 401 of the Code of Criminal Procedure, 1973 and has called in question the judgment and order dated 21.04.2023 passed by the learned Principal Judge, Family Court, Bhavnagar in Criminal Misc. Application No. 504 of 2021, whereby the application preferred by the applicant under Section 125 of the Code seeking maintenance from respondent No.2-husband came to be rejected.

3. With consent of learned advocates for the respective parties, the applicant is taken up for final hearing.

4. The facts emerging from the record indicate that the marriage between the applicant and respondent No.2 was solemnised on 08.06.2021 according to the customs and rites prevailing between the parties. The matrimonial relationship, however, subsisted for a very short period. According to the material on record, the applicant left the matrimonial home on 14.08.2021 and thereafter, on 16.08.2021, the parties executed a deed of divorce by mutual consent.

4.1. The applicant thereafter instituted proceedings under Section 125 of the Code claiming maintenance from respondent No.2. In support of her claim, the applicant alleged that she was subjected to ill-treatment and

harassment by respondent No.2 and his family members and that she was, therefore, compelled to leave the matrimonial home.

4.2. The respondent No.2 contested the proceedings and denied the allegations levelled against him and his family members. It was also contended that the applicant had voluntarily left the matrimonial home and that she was living in adultery and, therefore, in view of the statutory bar contained in Section 125(4) of the Code, she was not entitled to claim maintenance.

4.3. The learned Family Court, after appreciating the oral as well as documentary evidence on record, found that the applicant had failed to substantiate the allegations of cruelty and ill-treatment made against respondent No.2 and his family members. The learned Family Court further recorded a finding, on the basis of the evidence before it, that the applicant had left the matrimonial home voluntarily and was living in adultery. Consequently, the application under Section 125 of the Code came to be rejected.

5. Being aggrieved by the said judgment and order, the original applicant has preferred the present Revision Application.

6. Heard learned advocate Mr. Parth S. Tolia for the applicant, learned advocate Mr. Tulshi R. Savani for the respondent No.2 and learned Additional Public Prosecutor Mr. Soham M. Joshi for the respondent No.1 - State.

7. Learned advocate Mr. Parth S. Tolia for the applicant has submitted that the learned Family Court, Bhavnagar has committed an error in rejecting the application for maintenance. It is contended that the findings regarding the applicant having voluntarily left the matrimonial home and living in adultery are contrary to the evidence on record. It is further submitted that the applicant has no independent source of income sufficient for her maintenance and that respondent No.2, having sufficient means, is legally bound to maintain her.

8. Per contra, learned APP Mr. Soham M. Joshi for the respondent No.1-State and learned advocate Mr. Tulshi R. Savani for respondent No.2 have jointly supported the impugned judgment and order. It is submitted that the

learned Family Court, Bhavnagar has recorded findings of fact after a detailed appreciation of the oral and documentary evidence and that no perversity or patent illegality has been demonstrated warranting interference in the limited revisional jurisdiction of this Court.

9. At the outset, it is necessary to bear in mind the limited scope of interference available to this Court while exercising jurisdiction under Sections 397 and 401 of the Code. Revisional jurisdiction is essentially supervisory in character and cannot be equated with appellate jurisdiction. The Revisional Court is not expected to undertake a fresh appreciation of the entire evidence merely for the purpose of arriving at a conclusion different from that reached by the Court below.

9.1. In **State of Kerala v. Puttumana Illath Jathavedan Namboodiri**, reported in **(1999) 2 SCC 452**, the Hon'ble Supreme Court in Para-5 has observed as under:

"5. In Its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, or propriety of any finding, sentence or order. In words, the jurisdiction is one of Supervisory Jurisdiction

exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

9.2. In **Amit Kapoor v. Ramesh Chander**, reported in **(2012) 9 SCC 460**, the Hon'ble Supreme Court in Para-12 has observed as under:

"12. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The

jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex liquid alicui concedit, conceder videtur id quo res ipsa esse non protest*, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused."

9.3. Thus, it is settled law that unless the findings recorded by the learned Family Court are shown to be perverse, based on no evidence, contrary to the material on record or suffering from a manifest error of law, this Court would not be justified in interfering with such findings merely by undertaking a fresh reappreciation of the evidence.

10. Section 125 of the Code is a measure of social justice intended to prevent destitution and vagrancy by providing a speedy remedy to persons who are unable to maintain themselves. At the same time, the right to claim

maintenance under the provision is subject to the express statutory limitations contained therein.

10.1. Section 125(4) of the Code provides as under:

“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, 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.”

10.2. The provision, therefore, contemplates three distinct circumstances in which a wife would not be entitled to maintenance: first, where she is living in adultery; secondly, where she refuses to live with her husband without sufficient reason; and thirdly, where the parties are living separately by mutual consent.

10.3. It is equally well settled that proceedings under Section 125 of the Code are of a summary nature. The standard applicable is that governing civil proceedings, namely, proof on a preponderance of probabilities, and not

proof beyond reasonable doubt as applicable to a criminal prosecution.

11. In the present case, the learned Family Court has considered the evidence adduced by both sides in detail. The marriage between the parties was solemnised on 08.06.2021. The applicant admittedly left the matrimonial home on 14.08.2021 and the parties thereafter executed the divorce deed dated 16.08.2021. Thus, the matrimonial cohabitation between the parties was for a relatively short period and the parties mutually decided to part ways and reside separately from 16.08.2021.

11.1. The applicant sought to justify her departure from the matrimonial home by making allegations of harassment and ill-treatment against respondent No.2 and his family members. However, upon appreciation of the evidence, the learned Family Court found that the applicant had failed to establish the material allegations levelled by her. The allegations were not found to be supported by reliable and cogent evidence and the deed executed on 16.08.2021, states that as they could not reside together, they have mutually decided to part ways.

11.2. It is settled law that merely because the applicant failed to establish the allegations of cruelty would not, by itself, automatically disentitle her to maintenance. The entitlement or dis-entitlement must ultimately be determined in accordance with the requirements of Section 125, including the statutory exceptions under sub-Section 4. The crucial question, therefore, is whether the findings recorded by the learned Family Court attracting Section 125(4) are supported by the evidence and are legally sustainable.

11.3. In this context, Section 125(4) of the Code assumes significance, which specifically provides, inter alia, that a wife shall not be entitled to receive maintenance from her husband if, without any sufficient reason, she refuses to live with him or if the parties are living separately by mutual consent. In the present case, the learned Family Court, upon appreciation of the oral and documentary evidence, has recorded a categorical finding that the applicant had left the matrimonial home of her own free will and had failed to establish any just or sufficient reason for residing separately from respondent No.2. The subsequent execution of the divorce deed within two days of her leaving the matrimonial

home, viewed along with the other evidence on record, further lends support to the finding regarding the circumstances in which the parties came to reside separately. Thus, the findings recorded by the learned Family Court regarding the applicant's voluntary separation and absence of sufficient cause are based upon the evidence on record and attract the statutory restriction contemplated under Section 125(4) of the Code. In the absence of any perversity, patent illegality or material irregularity in such findings, no case is made out for interference in exercise of the limited revisional jurisdiction of this Court, and the order rejecting the claim for maintenance warrants confirmation.

11.4. It must, however, be clarified that a mere inability to prove allegations of cruelty does not invariably lead to the conclusion that a wife has left the matrimonial home without sufficient cause. Each case must necessarily depend upon its own evidence. In the present case, the conclusion is sustainable because the learned Family Court has considered the entire evidence and recorded a specific finding regarding the circumstances in which the applicant left the matrimonial home.

11.5. The execution of the divorce deed dated 16.08.2021 has also been considered by the learned Family Court. The legal effect and validity of such a deed would necessarily depend upon the personal law governing the parties and the applicable legal requirements. However, for deciding the present Revision Application, this Court does not find it necessary to pronounce independently upon the validity of the said deed, since the rejection of the claim has been founded principally upon the factual findings attracting the statutory bar under Section 125(4) of the Code.

12. Having gone through the impugned judgment, this Court finds that the learned Family Court has considered the evidence in its proper perspective and has assigned reasons for arriving at its conclusions. The findings cannot be said to be perverse or such as no reasonable Court could have arrived at on the material available before it.

13. The submissions advanced on behalf of the applicant essentially invite this Court to undertake a fresh reappreciation of the evidence and substitute a different factual conclusion for the one reached by the learned Family Court. Such an exercise is beyond the legitimate scope of

revisional jurisdiction, particularly when the findings recorded by the Court below are possible findings based upon the evidence on record. No material has been pointed out to demonstrate that the learned Family Court has excluded material evidence from consideration, relied upon inadmissible material, applied an incorrect legal standard or arrived at a conclusion which is manifestly unreasonable. Merely because another view of the evidence may conceivably be possible would not constitute a ground for interference in revision.

14. In view of the aforesaid discussion, this Court is of the considered opinion that the applicant has failed to make out any case of patent illegality, perversity, jurisdictional error or material irregularity warranting exercise of revisional powers under Sections 397 and 401 of the Code.

15. For the foregoing reasons, the present Criminal Revision Application fails and is hereby rejected.

16. The judgment and order dated 21.04.2023 passed by the learned Judge, Family Court, Bhavnagar in Criminal Misc. Application No. 504 of 2021, rejecting the application

preferred by the applicant under Section 125 of the Code of Criminal Procedure, 1973, is hereby confirmed.

17. Rule is discharged. Interim relief, if any, stands vacated.

18. It is clarified that the observations made herein are confined to the adjudication of the present Revision Application and shall not affect any other independent proceedings between the parties.

Sd/-

(S. V. PINTO,J)

ROHAN SONI