# IN THE HIGH COURT OF MADHYA PRADESH
# AT GWALIOR

BEFORE

**HON'BLE SHRI JUSTICE PUSHPENDRA YADAV**

**ON THE 26th OF OCTOBER, 2026**

**CRIMINAL REVISION No. 38 of 2024**

*Versus*

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*Shri Divakar Vyas - Advocate for the petitioner.*

*Shri Sarvesh Kumar Sharma and Shri Priyanshu Yadav – Advocate for respondents.*

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**CRIMINAL REVISION No. 399 of 2024**

*Versus*

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*Shri SarveshKumar Sharma and Shri Priyanshu Yadav - Advocate for the petitioner.*

*Shri Divakar Vyas – Advocate for respondents.*

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**ORDER**

With the consent of the parties matter is heard finally .

2. This order shall govern and dispose of CRR No.38/2024 filed by the husband - and CRR No.399/2024 filed by the wife- Smt.

and minor daughter through her mother.

3. Both the revisions arise from an order dated 04.12.2023 passed by the learned Additional Judge to the Principal Judge, Family Court, Gwalior (M.P.) in MJCR No. 30300/2021. By the said order, the learned Family Court allowed the application filed by the wife and the daughter under Section 125 of Cr.P.C. and

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directed the husband to pay maintenance of Rs.6,000/- per month to the wife and Rs.5,000/- per month to the daughter, total of Rs.11,000/- per month in all, from the date of the application.

4. Criminal Revision No. 38/2024 has been filed by the husband, challenging the award of maintenance and its quantum of Rs.6,000/- per month to wife and Rs.5,000/- per month to the minor daughter, whereas Criminal Revision No.399/2024 has been filed by the wife and the daughter, seeking enhancement of the maintenance amount to Rs.30,000/- per month.

5. The necessary facts for the disposal of the present revisions in short are that the marriage between the husband and the wife was solemnized on 12.02.2010 according to Hindu rites and customs and out of the said wedlock, a daughter, namely , was born, who resides with her mother. Wife filed an application under Section 125 of Cr.P.C. alleging that her father gave cash, jewellery and household articles at the time of the marriage thereafter, husband and his family members demanded a further sum of Rs.5,00,000/- as dowry. On 09.02.2011, she was beaten and, being about four months pregnant, was turned out of the matrimonial home. A complaint in this regard has been lodged with the police. An earlier application under Section 125 of Cr.P.C. was closed on 08.12.2011 upon a compromise between the parties, but, according to the wife, the husband did not abide by its terms and neglected to maintain her and the daughter. It is further alleged that she has no independent source of income, that she is dependent upon her father, that the daughter is pursuing her education at a private school, and that husband, who is employed as a Medical Officer and is also running a private clinic, has sufficient means to maintain them. On the said premise, maintenance of Rs.30,000/- per month for the wife and Rs.15,000/- per

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month for the daughter, along with medical and litigation expenses, was claimed.

6. The husband filed his reply and denied the allegations contending that wife pressured him to live separately from his family and she left the matrimonial home on her own and did not return after December 2010. She lodged several criminal cases against him and his family members, and that she is a qualified dentist earning Rs.40,000/- to Rs.50,000/- per month. Husband relied upon the acquittal in the case u/s 498-A of IPC and the decree of divorce passed in his favour on the ground of cruelty.

7. Learned Family Court noted that the wife admitted having passed the B.D.S. examination but denied practicing or earning, and that there was no evidence of any income of the wife. It is further noted that the husband's admission, as per the pay slip (Exhibit P/19), that his salary was Rs.67,520/- per month and Rs.56,400/- after deductions. The learned Family Court also took note regarding his aged parents, the acquittal and the divorce decree dated 13.12.2022. Thereafter, it allowed the application and directed the husband to pay Rs.6,000/- per month to the wife and Rs.5,000/- per month to the daughter from the date of the application, with Rs.3,000/- as costs. Challenging the said order, both the revisions have been filed, one by the husband and one by the wife.

8. Learned counsel for the husband submits that the learned Family Court has erred in awarding maintenance to the wife, as she is an educated woman and a qualified dentist, and is capable of maintaining herself as well as her daughter. It is further submitted that in the criminal case registered under Section 498-A of the IPC, an order of acquittal has already been passed, which shows that there was no demand for dowry and there is a decree of divorce in his favour therefore, also wife is not entitled for any maintenance. Learned counsel for the husband further

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submits that decree of divorce has already been affirmed by the Division Bench of this Court vide order dated 25.11.2024 passed in F.A. No.137/2023. Learned Division Bench has also awarded permanent alimony of Rs.15,00,000/- in favour of the wife and minor daughter. Thus, in such a situation, wife and the minor daughter are not entitled to any further maintenance.

9. Per contra, learned counsel for the wife and the daughter submits that the amount of Rs.11,000/- per month is wholly inadequate in view of the husband's income, the standard of living to which they are entitled, and the rising cost of the daughter's education, which is stated to be around Rs.10,000/- per month. It is argued that there is no evidence that the wife has any income, and that the Family Court failed to give due weight to the status of the parties and the husband's capacity to pay. Learned counsel for the wife and daughter has also submitted that so far as the permanent alimony granted by the Division Bench of this Court is concerned, she is not agreeing with the said order and has already filed an SLP before the Supreme Court, which is pending. Therefore, merely on the ground that permanent alimony has been granted by this Court, the respondent-wife and daughter cannot be held to be disentitled to claim maintenance.

10. It is further submitted by learned counsel that after passing the impugned order and during the pendency of present revisions the pay scale of the husband has been revised and he has been granted the benefit of the Seventh Pay Commission with effect from 01.01.2017, along with the arrears thereof. The income of the husband has accordingly increased from approximately Rs.56,000/- per month, as considered by the learned Family Court, to a figure now stated to be more than Rs.1,00,000/- per month and the said fact has been placed by I.A.No.15479/2026 and on said premise, learned counsel for the wife prayed for

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enhancement of maintenance accordingly,

11. Considered the submissions made by the counsels for the parties and perused the record.

12. Before adverting to the merits of the case, it is apposite to notice the legal framework governing the present proceedings. Section 125 of the Cr.P.C. (corresponding to Section 144 of B.N.S.S.) is a measure of social justice, enacted to protect wives, children and parents from vagrancy and destitution, and it is to be construed liberally in favour of the claimant. For the grant of maintenance under it, it must be shown that the claimant is the legally wedded wife or the legitimate or illegitimate minor child of the person from whom maintenance is sought; that such person has sufficient means, which include his overall earning capacity, that he has neglected or refused to maintain the claimant, and that claimant is unable to maintain herself or himself. Once these ingredients are established, the quantum is to be determined with regard to the social and financial status of the parties, the needs of the claimants and the capacity of the person liable to pay.

13. Further, Section 127(1) of the Cr.P.C. (corresponding to Section 146 of BNSS) provides that, on proof of a change in the circumstances of any person receiving a monthly allowance under Section 125, or of any person ordered to pay it, the Magistrate may make such alteration in the allowance as he thinks fit. An order under Section 125 therefore, does not attain finality as regards its quantum, and may be altered on proof of a change in the relevant circumstances, such as a change in the income of the person liable to pay, the rise in the cost of necessaries of life, or the growing age and needs of the person receiving maintenance, though

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proof of such change is essential. This being a revision, the inquiry of this Court is strictly confined to its supervisory jurisdiction under Sections 397/401 of Cr.P.C. and is not appellate in nature, so that the legality and propriety of the impugned order has to be examined only on the material that was available before learned Family Court when it was passed. On these parameters, this Court proceeds to consider the merits of present revisions.

14. In the present case, this Court finds that the learned Family Court considered the evidence and, on appreciation of the same, recorded its findings that the wife and the daughter are unable to maintain themselves, and husband has sufficient means to maintain them. The primary object of Section 125 of the Cr.P.C. is to provide a speedy remedy of social justice to prevent vagrancy and destitution of wives and children who are unable to maintain themselves. The income of the husband was determined by the learned Family Court on the basis of his own pay slip (Exhibit P/19) and his admission in cross-examination that his salary is Rs.67,520/- per month, and approximately Rs.56,400/- per month after deductions, and the quantum was fixed on that footing. The maintenance of Rs. 6,000/- per month awarded to the wife and Rs.5,000/- per month to the daughter, total Rs. 11,000/- per month, is appropriate and cannot be said to be arbitrary, excessive or inadequate. The obligation of the husband to support his aged parents is a relevant factor in assessing his financial capacity, but it does not absolve him of his primary statutory duty to maintain his wife and minor daughter.

15. As regards the assertion of the husband that the wife is a dentist and earns Rs.40,000/- to Rs.50,000/- per month from her dental practice, the same is not supported by any evidence. The husband has completely failed to establish the alleged source or extent of her income. Therefore, the learned Family Court has

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Signing time: 05-Nov-26 10:32:40 AM

committed no perversity in not accepting the said contention. Moreover, it is well settled in law that merely because the wife is well-qualified and is earning some income, the same, by itself, would not be a ground to deny her claim for maintenance. The Hon'ble Supreme Court in the case of **Sunita Kachwaha And Ors vs Anil Kuchwah** reported in **2014 (16) SCC 715** and held that:-

> *10. The learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.*

16. So far as the contention of husband that there is already a decree of divorce dated 13.12.2022, this Court is of opinion that decree of divorce dated 13.12.2022 does not extinguish the wife's right to maintenance, as Explanation (b) to Section 125(1) of the Cr.P.C. includes a divorced woman who has not remarried within the meaning of "wife", and there is neither pleading nor proof of remarriage.

17. The Hon'ble Supreme Court in the case of **Rohtash Singh vs Smt. Ramendri And Ors.** reported in **2000 (3) SCC 180** held that "A woman who has been divorced by her husband on account of a decree passed by the Family Court under the Hindu Marriage Act, continues to enjoy the status of a wife for the

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Signing time: 05-Nov-26 10:32:40 AM

limited purpose of claiming Maintenance Allowance from her ex-husband. A woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was, once, her husband continues to be under a statutory duty and obligation to provide maintenance to her."

18. The Hon'ble Supreme Court in the case of **Captain Ramesh Chander Kaushal vs Mrs. Veena Kaushal And Ors.** reported in **1978 (4) SCC 70** has also held that "The right of wife to maintenance continues unless parties make adjustments and come to terms regarding the quantum or the right to maintenance.

19. In view of the explanation (B) appended to Section 125 (1) of Cr.P.C. as well as law laid down, it is clear that the divorced woman is also entitled for maintenance therefore, the submission of counsel for the petitioner that there is a decree in favour of the husband therefore, respondent is not entitled for maintenance has no force and is hereby rejected.

20. So far as the acquittal in the criminal case under Section 498-A of IPC is concerned the same also does not debar the wife to claim maintenance. This Court in the case of **Prashant Shrivastava vs Smt. Sushma Shrivastava** reported in **ILR 10 MP 1216** has held that the acquittal in the criminal case relating to the offences punishable under Section 498A of IPC would not be sufficient to wash out the statement of the wife on oath that she had been treated with cruelty at her matrimonial home. The relevant para is as under:-

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Signing time: 05-Nov-26 10:32:40 AM

> *"11. This apart, it is well settled that the prosecution for the offence under Section 498A of the IPC affords a reasonable ground to the wife to live separately (See. Lajja Bai v. Ram Singh (1997) DMC 1. Moreover, as explained in Dalibai v. Rajendra Singh (2006) 1 MPLJ 495, the acquittal in the criminal case relating to the offences punishable under Section 498A of IPC and Section 3 read with S.4 of Dowry Prohibition Act would not be sufficient to wash out the statement of the respondent no.1 on oath that she had been treated with cruelty at her matrimonial home. "*

21. The acquittal in the criminal case under Section 498-A of the IPC (Exhibit D/1) was recorded on the standard of proof beyond reasonable doubt, whereas proceedings under Section 125 of the Cr.P.C. are summary in nature, and the acquittal does not by itself establish that the wife is living separately without sufficient cause. Therefore, this Court does not find any patent illegality, perversity or material irregularity in the impugned order.

22. So far, the subsequent revision of the husband's salary, after getting the benefit of the Seventh Pay Commission w.e.f 01.01.2017 and the receipt of substantial arrears, which were admittedly not available before the learned Family Court at the time of passing the impugned order, constitute, if duly established, a substantial change in the circumstances of the parties. The statutory mechanism for addressing such subsequent developments is provided under Section 127 Cr.P.C (corresponding to Section 146 BNSS 2023), which empowers the competent Court to alter the allowance of maintenance upon proof of a change in circumstances. The learned Family Court, being the adjudicatory Court which passed the impugned order, is the appropriate forum to examine such claims, to call for authentic documents and to record evidence.

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23. Accordingly, CRR.No.399/2024, filed by the wife and the minor daughter, is **disposed of** with liberty to file an appropriate application for alteration and enhancement of maintenance under Section 127 of the Cr.P.C. (Section 146 of BNSS) before the learned Family Court, placing on record all relevant documents with affidavit of disclosure of assets and liabilities, including the pay revision notifications, proof of arrears, and the present educational expenses of the daughter. The husband shall also be at liberty to file his reply, along with documents relating to his income with affidavit of disclosure of assets and liabilities and the payments already made by him. If such an application is filed, the learned Family Court shall provide a fair opportunity of hearing to both the parties and decide the same in accordance with law expeditiously.

24. The parties shall cooperate with the learned Family Court for its early disposal. Till the disposal of such application, the impugned order dated 04.12.2023 shall continue to operate, and the husband shall continue to pay the maintenance in terms thereof.

25. Upon careful examination of the impugned order, this Court finds that the conclusions arrived at by the learned Family Court are based on a proper appreciation of the oral and documentary evidence on record and on settled principles of law. The impugned order suffers from no patent illegality, jurisdictional error or perversity so as to warrant interference in exercise of revisional jurisdiction. Consequently, CRR.No.38/2024, filed by the husband, being devoid of merit, is hereby **dismissed** and the order dated 04.12.2023 passed by the learned Additional Judge to the Principal Judge, Family Court, Gwalior in MJCR No.30300/2021 stands affirmed, subject to any alteration that may be ordered by the competent Court under Section 127 of the Cr.P.C. (Section 146 of

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BNSS).

26. Let copy of this order be placed in the record of the connected criminal revision, and a copy along with record of the Court below, be sent forthwith to the learned Family Court concerned for information and necessary compliance.

27. Pending interlocutory applications if any stands disposed of.

**(PUSHPENDRA YADAV)**
**JUDGE**

Ashish*

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