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SUPREME COURT CASES

(2008) 2 SCC

(2008) 2 Supreme Court Cases 316

(BEFORE DR. ARIJIT PASAYAT AND AFTAB ALAM, JJ.)

CHATURBHUI

.. Appellant; ^a

Versus

SITA BAI

.. Respondent.

Criminal Appeal No. 1627 of 2007[†], decided on November 27, 2007

A. Criminal Procedure Code, 1973 — S. 125 — Maintenance — Claim of, by deserted wife — Requisites for maintaining proceedings — Held, burden in the first place is upon wife to show that means of her husband are sufficient — Also, an inseparable condition has to be established that wife is unable to maintain herself — These two conditions, held, are in addition to the requirement that husband must have neglected or refused to maintain his wife — In the instant case, there was no dispute that appellant husband had requisite means — He had placed material to show that respondent wife was earning some income — Held, that was not sufficient to rule out application of S. 125 as it had to be established that with the amount she earned she was able to maintain herself — Herein, the trial court, the Revisional Court and the High Court had analysed evidence and held that respondent wife was unable to maintain herself — Conclusions, held, are essentially factual and are not perverse — Hence, there is no scope for interference (Paras 7 and 9) ^b

B. Criminal Procedure Code, 1973 — S. 125 — Maintenance — Claim of, by wife — Requisite for maintaining proceedings — Condition to establish that wife unable to maintain herself — Basis of and test required, considered — Words and Phrases — “Unable to maintain herself” — Meaning of, clarified ^d

Where the wife was surviving by begging, it would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. The wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression “unable to maintain herself” does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 CrPC. ^e

Bhagwan Dutt v. Kamla Devi, (1975) 2 SCC 386 : 1975 SCC (Cri) 563 : AIR 1975 SC 83, *relied on*

C. Criminal Procedure Code, 1973 — S. 125 — Maintenance proceedings — Object of — Held, is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support — Words and Phrases — “Unable to maintain herself” — Meaning of — Means inability of wife to maintain herself in the way she was used to in the place of her husband ^g

[†] Arising out of SLP (Crl.) No. 4379 of 2006. From the Judgment and Order dated 31-3-2006 of the High Court of Madhya Pradesh, Bench at Indore in Misc. Crl. Case No. 1385 of 2006 ^h

CHATURBHUI v. SITA BAI (*Pasayat, J.*)

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a The respondent wife had filed an application before the trial court under Section 125 CrPC claiming maintenance from the appellant husband. The appellant and the respondent had entered into marital knot about four decades back and for more than two decades they were living separately. In the application it was claimed that she was unemployed and unable to maintain herself.

b Considering the evidence on record, the trial court found that the respondent applicant had no sufficient means to maintain herself and hence direction to pay her Rs 1500 p.m. was given. Revision filed thereagainst was dismissed. Application was filed by the appellant in the High Court under Section 482 CrPC. The High Court noticed that the conclusions had been arrived at on appreciation of evidence and, therefore, there was no scope for any interference. Hence the present appeal.

Dismissing the appeal, the Supreme Court

Held :

c The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase “unable to maintain herself” in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. (Para 6)

d **D. Criminal Procedure Code, 1973 — S. 125 — Maintenance proceedings — Scope and effect under — Held, S. 125 is a measure of social justice specially enacted to protect women and children and falls within constitutional sweep of Art. 15(3) reinforced by Art. 39 — Object is to prevent vagrancy and destitution — It provides a speedy remedy for 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 — Constitution of India, Arts. 15(3) and 39** (Para 6)

Captain Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807; *Savitaben Somabhai Bhatiya v. State of Gujarat*, (2005) 3 SCC 636 : 2005 SCC (Cri) 787 : (2005) 2 Supreme 503, *relied on*

Y-M/AK/36996/CR

f Advocates who appeared in this case :
Shashindra Tripathi, Ms Sharad Tripathi and Debasis Misra, Advocates, for the Appellant;
Shashi Bhushan Kumar, Advocate, for the Respondent.

Chronological list of cases cited

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| g | 1. (2005) 3 SCC 636 : 2005 SCC (Cri) 787 : (2005) 2 Supreme 503, <i>Savitaben Somabhai Bhatiya v. State of Gujarat</i> | 320b-c |
| | 2. (1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807, <i>Captain Ramesh Chander Kaushal v. Veena Kaushal</i> | 320a-b |
| | 3. (1975) 2 SCC 386 : 1975 SCC (Cri) 563 : AIR 1975 SC 83, <i>Bhagwan Dutt v. Kamla Devi</i> | 320f |

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J.— Leave granted.

h 2. Challenge in this appeal is to the order passed by a learned Single Judge of the Madhya Pradesh High Court, Indore Bench, dismissing the

revision petition filed by the appellant in terms of Section 482 of the Code of Criminal Procedure, 1973 (in short “CrPC”). The challenge before the High Court was to the order passed by the learned Judicial Magistrate, First Class, Neemuch, M.P. as affirmed by the learned Additional Sessions Judge, Neemuch, M.P. a

3. The respondent had filed an application under Section 125 CrPC claiming maintenance from the appellant. Undisputedly, the appellant and the respondent had entered into marital knot about four decades back and for more than two decades they were living separately. In the application it was claimed that she was unemployed and unable to maintain herself. The appellant had retired from the post of Assistant Director of Agriculture and was getting about Rs 8000 as pension and a similar amount as house rent. Besides this, he was lending money to people on interest. The respondent claimed Rs 10,000 as maintenance. The stand of the appellant was that the applicant was living in the house constructed by the present appellant who had purchased 7 bighas of land in Ratlam in the name of the applicant. She let out the house on rent and since 1979 was residing with one of their sons. The applicant sold the agricultural land on 13-3-2003. The sale proceeds were still with the applicant. The appellant was getting pension of about Rs 5700 p.m. and was not getting any house rent regularly. He was getting 2-3 thousand rupees per month. The plea that the appellant had married another lady was denied. It was further submitted that the applicant at the relevant point of time was staying in the house of the appellant and electricity and water dues were being paid by him. The applicant can maintain herself from the money received from the sale of agricultural land and rent. Considering the evidence on record, the trial court found that the respondent applicant did not have sufficient means to maintain herself. b

4. Revision petition was filed by the present appellant. Challenge was to the direction to pay Rs 1500 p.m. by the trial court. The stand that the applicant was able to maintain herself from her income was reiterated. The Revisional Court analysed the evidence and held that the appellant’s monthly income was more than Rs 10,000 and the amount received as rent by the respondent claimant was not sufficient to maintain herself. The revision was accordingly dismissed. The matter was further carried before the High Court by filing an application in terms of Section 482 CrPC. The High Court noticed that the conclusions have been arrived at on appreciation of evidence and, therefore, there is no scope for any interference. c

5. Section 125 CrPC reads as follows: d

“125. *Order of maintenance of wives, children and parents.*—(1) If any person having sufficient means neglects or refuses to maintain— e

- (a) his wife, unable to maintain herself, or f
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or g
- (d) his father or mother, unable to maintain himself or herself, h

a a Magistrate of the First Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in Clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

b *Explanation.*—For the purposes of this Chapter,—

(a) ‘minor’ means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) ‘wife’ includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

c (2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

d (3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month’s allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

e Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

f *Explanation.*—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife’s refusal to live with him.

g (4) 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.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.”

h 6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have

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a moral claim to support. The phrase “unable to maintain herself” in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. 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 *Captain Ramesh Chander Kaushal v. Veena Kaushal*¹ falls within 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*².

7. Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. In the instant case there is no dispute that the appellant has the requisite means. But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be established that the wife was unable to maintain herself. The appellant has placed material to show that the respondent wife was earning some income. That is not sufficient to rule out application of Section 125 CrPC. It has to be established that with the amount she earned the respondent wife was able to maintain herself.

8. In an illustrative case where the wife was surviving by begging, it would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 CrPC. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In *Bhagwan Dutt v. Kamla Devi*³ it was observed that the wife should be in a position to maintain a standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression “unable to maintain herself” does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 CrPC.

9. In the instant case the trial court, the Revisional Court and the High Court have analysed the evidence and held that the respondent wife was unable to maintain herself. The conclusions are essentially factual and they are not perverse. That being so there is no scope for interference in this appeal which is dismissed.

1 (1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807

2 (2005) 3 SCC 636 : 2005 SCC (Cri) 787 : (2005) 2 Supreme 503

3 (1975) 2 SCC 386 : 1975 SCC (Cri) 563 : AIR 1975 SC 83

BHUWAN MOHAN SINGH v. MEENA

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(2015) 6 Supreme Court Cases 353

(BEFORE DIPAK MISRA AND V. GOPALA GOWDA, JJ.)

a

BHUWAN MOHAN SINGH

.. Appellant;

Versus

MEENA AND OTHERS

.. Respondents.

Criminal Appeal No. 1331 of 2014[†], decided on July 15, 2014

b

A. Criminal Procedure Code, 1973 — S. 125 — Maintenance — Object of — Duty of husband towards wife to provide proper maintenance, and said duty continues until when — Maintenance of wife for her sustenance — “Sustenance” does not mean animal existence but signifies leading life in similar manner as she would have lived in house of her husband — Husband has bounden duty to enable wife to live life with dignity according to their social status and strata — Regard being had to solemn pledge at the time of marriage and also in consonance with statutory law that governs the field, it is the obligation of husband to see that wife does not become a destitute, a beggar — A situation is not to be maladroitley created whereunder she is compelled to resign to her fate and think of life “dust unto dust” — It is totally impermissible — In fact, it is sacrosanct duty to render financial support even if husband is required to earn money with physical labour, if he is able-bodied — There is no escape route unless there is an order from court that wife is not entitled to get maintenance from husband on any legally permissible grounds — Constitution of India — Art. 21 — Words and Phrases — “Sustenance” — Family and Personal Laws — Maintenance

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B. Criminal Procedure Code, 1973 — Ss. 125 and 354(6) — Maintenance — When payable from date of application — Family Court took 9 yrs in granting maintenance for wife and her son during which period it granted adjournments in routine manner — Wife left to state of vagrancy and destitution during long pendency of proceedings — In circumstances, held, High Court justified in granting maintenance from date of her application — Family and Personal Laws — Maintenance

g

C. Criminal Procedure Code, 1973 — S. 125 — Maintenance — Delay in granting — Proceedings summary in nature are intended to provide speedy remedy — Application under S. 125 filed by wife (respondent) claiming from husband maintenance for herself and for son — Proceedings continued for 9 yrs during which period Family Court granted adjournments in routine manner and finally granted maintenance — Held, improper — Proceedings enormously delayed — Such delay defeats purpose of the provision — Family and Personal Laws — Maintenance

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[†] Arising out of SLP (Crl) No. 1565 of 2013. From the Judgment and Order dated 28-5-2012 in SBCRR No. 1526 of 2011 passed by the High Court of Rajasthan at Jaipur

D. Family and Personal Laws — Family Courts Act, 1984 — S. 7 — Application for grant of maintenance — Duty of Family Court — Adjournments in routine manner should not be granted — Dilatory tactics of parties should be sternly dealt with — Delay in adjudication is not only against human rights but also against basic embodiment of dignity of person — Family Court should strike a balance by avoiding procrastination of proceedings but without showing undue haste being conscious about dealing with sensitive issues relating to marriage and ancillary matters — Human and Civil Rights — Human Rights/Rights of Man — Delay in granting maintenance by Family Court — Constitution of India — Art. 21 — Family and Personal Laws — Maintenance

The marriage between the appellant and the respondent was solemnised on 27-11-1997 as per Hindu rites and rituals, and in the wedlock a son was born on 16-12-1998. The respondent, under certain circumstances, had to leave the marital home and thereafter she filed an application on 28-8-2002 under Section 125 CrPC in the Family Court, claiming Rs 6000 per month towards maintenance. During the continuance of the Family Court proceedings, a number of adjournments were granted, some taken by the husband and some by the wife.

The Family Judge being dissatisfied with the material brought on record came to hold on 24-8-2011 that the respondent wife was entitled to maintenance and, accordingly, awarded monthly maintenance of Rs 2500 to the respondent wife and Rs 1500 to the second respondent son and directed that the maintenance be paid from the date of the order. The respondent wife filed a revision petition before the High Court contending that the maintenance should have been granted from the date of application, and that she had received nothing during the proceedings and suffered immensely. Accepting the contention, the High Court directed that the maintenance should be granted from the date of filing of the application.

Dismissing the husband's appeal, the Supreme Court

Held :

The Family Court, while dealing with an application under Section 7 of the Family Courts Act, which includes determination of grant of maintenance to persons as entitled under the provision, should not allow adjournments in an extremely liberal manner remaining oblivious of the Objects and Reasons of the Act and also keeping the windows of wisdom closed and the sense of judicial responsiveness suspended to the manifest perceptibility of vagrancy, destitution, impecuniosity, struggle for survival and the emotional fracture, a wife is likely to face under these circumstances and further exhibiting absolute insensitivity to her condition, who, after losing support of the husband who has failed to husband the marital status denies the wife to have maintenance for almost nine years as that much time is consumed to decide the lis and, in addition, to restrict the grant of maintenance to the date of order on some kind of individual notion. Both the approaches, not only defeat the command of the legislature but also frustrate the hope of wife and children who are deprived of adequate livelihood and whose aspirations perish like mushroom and possibly the brief candle of sustenance joins the marathon race of extinction. This delay in adjudication by the Family Court is not only against human rights but also against the basic embodiment of dignity of an individual.

(Para 1)

a The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. This does not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. It is hoped that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the Objects and Reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc. (Para 13)

K.A. Abdul Jaleel v. T.A. Shahida, (2003) 4 SCC 166 : 2003 SCC (Cri) 810, *relied on*

d In the case at hand the proceeding before the Family Court was conducted without being alive to the Objects and Reasons of the Family Courts Act and the spirit of the provisions under Section 125 CrPC. The Supreme Court in a number of decisions has observed that the proceedings under Section 125 CrPC are of summary nature and are intended to prevent vagrancy and destitution. Section 125 CrPC was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. e Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds. g

(Paras 13 and 2)

Dukhtar Jahan v. Mohd. Farooq, (1987) 1 SCC 624 : 1987 SCC (Cri) 237; *Vimala (K.) v. Veeraswamy (K.)*, (1991) 2 SCC 375 : 1991 SCC (Cri) 442; *Kirtikant D. Vadodaria v. State of Gujarat*, (1996) 4 SCC 479 : 1996 SCC (Cri) 762; *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356; *Nagendrappa Natikar v. Neelamma*, (2014) 14 SCC 452 : (2015) 1 SCC (Cri) 407 : (2015) 1 SCC (Civ) 346, *relied on* h

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Capt. Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70 : 1978 SCC (Cri) 508; *Savitaben Somabhai Bhatiya v. State of Gujarat*, (2005) 3 SCC 636 : 2005 SCC (Cri) 787, *cited*

In this case, there was enormous delay in disposal of the proceeding under Section 125 CrPC and most of the time the husband had taken adjournments and sometimes the court dealt with the matter showing total laxity. The wife sustained herself as far as she could in that state for a period of nine years. The circumstances required grant of maintenance from the date of application and by so granting the High Court has not committed any legal infirmity. However, it is directed, as prayed for the appellant husband, that he may be allowed to pay the arrears along with the maintenance awarded at present in a phased manner. The respondent wife did not object to such an arrangement being made. Hence it is directed that while paying the maintenance as fixed by the Family Court Judge per month by 5th of each succeeding month, the arrears shall be paid in a proportionate manner within a period of three years from the date of this decision. (Para 16)

Shail Kumari Devi v. Krishan Bhagwan Pathak, (2008) 9 SCC 632 : (2008) 3 SCC (Cri) 839, *relied on*

Meena v. State of Rajasthan, Criminal Revision Petition No. 1526 of 2011, order dated 28-5-2012 (Raj), *affirmed*

Krishna Jain v. Dharam Raj Jain, 1992 Cri LJ 1028 (MP), *held, approved*

K. Sivaram v. K. Mangalamba, 1990 Cri LJ 1880 (AP), *held, partly overruled and partly approved*

R-D/53539/CVR

Advocates who appeared in this case :

Jay Kishor Singh, Advocate, for the Appellant;

Ms Ruchi Kohli, Brijesh Sharma and Mohit Paul, Advocates, for the Respondents.

Chronological list of cases cited

on page(s)

1. (2014) 14 SCC 452 : (2015) 1 SCC (Cri) 407 : (2015) 1 SCC (Civ) 346, *Nagendrappa Natikar v. Neelamma* 360a
2. Criminal Revision Petition No. 1526 of 2011, order dated 28-5-2012 (Raj), *Meena v. State of Rajasthan* 358c-d
3. (2008) 9 SCC 632 : (2008) 3 SCC (Cri) 839, *Shail Kumari Devi v. Krishan Bhagwan Pathak* 361a, 361b-c, 361f
4. (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356, *Chaturbhuj v. Sita Bai* 359e-f
5. (2005) 3 SCC 636 : 2005 SCC (Cri) 787, *Savitaben Somabhai Bhatiya v. State of Gujarat* 360a
6. (2003) 4 SCC 166 : 2003 SCC (Cri) 810, *K.A. Abdul Jaleel v. T.A. Shahida* 360b
7. (1996) 4 SCC 479 : 1996 SCC (Cri) 762, *Kirtikant D. Vadodaria v. State of Gujarat* 359c
8. 1992 Cri LJ 1028 (MP), *Krishna Jain v. Dharam Raj Jain* 361b-c, 361d-e
9. (1991) 2 SCC 375 : 1991 SCC (Cri) 442, *Vimala (K.) v. Veeraswamy (K.)* 359b
10. 1990 Cri LJ 1880 (AP), *K. Sivaram v. K. Mangalamba* (**held, partly overruled and partly approved**) 361e
11. (1987) 1 SCC 624 : 1987 SCC (Cri) 237, *Dukhtar Jahan v. Mohd. Farooq* 359a
12. (1978) 4 SCC 70 : 1978 SCC (Cri) 508, *Capt. Ramesh Chander Kaushal v. Veena Kaushal* 359f-g

The Judgment of the Court was delivered by

- DIPAK MISRA, J.**— Leave granted. The two issues that pronouncedly emanate from this appeal by special leave are whether the Family Court while deciding an application under Section 7 of the Family Courts Act, 1984 (for brevity “the Act”) which includes determination of grant of maintenance to the persons as entitled under that provision, should allow adjournments in an extremely liberal manner remaining oblivious of the Objects and Reasons of the Act and also keeping the windows of wisdom closed and the sense of judicial responsiveness suspended to the manifest perceptibility of vagrancy, destitution, impecuniosity, struggle for survival and the emotional fracture, a wife is likely to face under these circumstances and further exhibiting absolute insensitivity to her condition, who, after losing support of the husband who has failed to husband the marital status denies the wife to have maintenance for almost nine years as that much time is consumed to decide the lis and, in addition, to restrict the grant of maintenance to the date of order on some kind of individual notion. Both the approaches, as we perceive, not only defeat the command of the legislature but also frustrate the hope of wife and children who are deprived of adequate livelihood and whose aspirations perish like mushroom and possibly the brief candle of sustenance joins the marathon race of extinction. This delay in adjudication by the Family Court is not only against human rights but also against the basic embodiment of dignity of an individual.

2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

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3. Presently to the facts which lie in an extremely small compass. The marriage between the appellant and the respondent was solemnised on 27-11-1997 as per Hindu rites and rituals, and in the wedlock a son was born on 16-12-1998. The respondent, under certain circumstances, had to leave the marital home and thereafter filed an application on 28-8-2002 under Section 125 of the Code in the Family Court, Jaipur, Rajasthan, claiming Rs 6000 per month towards maintenance. The Family Court finally decided the matter on 24-8-2011 awarding monthly maintenance of Rs 2500 to the respondent wife and Rs 1500 to the second respondent son. Be it stated, during the continuance of the Family Court proceedings, a number of adjournments were granted, some taken by the husband and some by the wife. The learned Family Judge being dissatisfied with the material brought on record came to hold that the respondent wife was entitled to maintenance and, accordingly, fixed the quantum and directed that the maintenance be paid from the date of the order.

4. Being dissatisfied with the aforesaid order the respondent wife preferred SB Criminal Revision Petition No. 1526 of 2011 before the High Court of Judicature of Rajasthan and the learned Single Judge, vide order dated 28-5-2012¹, noted the contention of the wife that the maintenance should have been granted from the date of application, and that she had received nothing during the proceedings and suffered immensely and, eventually, directed that the maintenance should be granted from the date of filing of the application.

5. Criticising the aforesaid order, it is submitted by Mr Jay Kishor Singh, learned counsel for the appellant that when a number of adjournments were sought by the wife, grant of maintenance from the date of filing of the application by the High Court is absolutely illegal and unjustified. It is his submission that the wife cannot take advantage of her own wrong.

6*. Mr Mohit Paul, learned counsel for the respondents would submit that the Family Court adjourned the matter sometimes on its own and the enormous delay took place because of non-cooperation of the husband in the proceedings and, therefore, the wife who was compelled to sustain herself and her son with immense difficulty should not be allowed to suffer. It is proposed by him that the High Court by modifying the order and directing that the maintenance should be granted from the date of filing of the application has not committed any legal infirmity and hence, the order is unexceptionable.

7. At the outset, we are obliged to reiterate the principle of law how a proceeding under Section 125 of the Code has to be dealt with by the court, and what is the duty of a Family Court after establishment of such courts by

¹ *Meena v. State of Rajasthan*, Criminal Revision Petition No. 1526 of 2011, order dated 28-5-2012 (Raj)

* **Ed.**: Para 6 corrected vide Official Corrigendum No. F.3/Ed.B.J./46/2014 dated 28-8-2014.

the Family Courts Act, 1984. In *Dukhtar Jahan v. Mohd. Farooq*² the Court opined that: (SCC p. 631, para 16)

a “16. ... Proceedings under Section 125 [of the Code], it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.”

b 8. A three-Judge Bench in *Vimala (K.) v. Veeraswamy (K.)*³, while discussing about the basic purpose under Section 125 of the Code, opined that: (SCC p. 378, para 3)

“3. Section 125 of the Code of Criminal Procedure 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.”

c 9. A two-Judge Bench in *Kirtikant D. Vadodaria v. State of Gujarat*⁴, while advertng to the dominant purpose behind Section 125 of the Code, ruled that: (SCC p. 489, para 15)

d “15. ... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

e 10. In *Chaturbhuj v. Sita Bai*⁵, reiterating the legal position the Court held: (SCC p. 320, para 6)

f “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*⁶ falls within 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.

2 (1987) 1 SCC 624 : 1987 SCC (Cri) 237

3 (1991) 2 SCC 375 : 1991 SCC (Cri) 442

4 (1996) 4 SCC 479 : 1996 SCC (Cri) 762

5 (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356

6 (1978) 4 SCC 70 : 1978 SCC (Cri) 508

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The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat*⁷.”

11. Recently in *Nagendrappa Natikar v. Neelamma*⁸, it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. a

12. The Family Courts have been established for adopting and facilitating the conciliation procedure and to deal with family disputes in a speedy and expeditious manner. A three-Judge Bench in *K.A. Abdul Jaleel v. T.A. Shahida*⁹, while highlighting on the purpose of bringing in the Family Courts Act by the legislature, opined thus: (SCC p. 170, para 10) b

“10. The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.” c

13. The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being alive to the Objects and Reasons of the Act and the spirit of the provisions under Section 125 of the Code. It is unfortunate that the case continued for nine years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the Objects and Reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc. d
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7 (2005) 3 SCC 636 : 2005 SCC (Cri) 787

8 (2014) 14 SCC 452 : (2015) 1 SCC (Cri) 407 : (2015) 1 SCC (Civ) 346

9 (2003) 4 SCC 166 : 2003 SCC (Cri) 810

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14. While dealing with the relevant date of grant of maintenance, in *Shail Kumari Devi v. Krishan Bhagwan Pathak*¹⁰, the Court referred to the Code of Criminal Procedure (Amendment) Act, 2001 (50 of 2001) and came to hold that: (SCC p. 639, para 21)

“21. ... Even after the amendment of 2001, an order for payment of maintenance can be made by a court either from the date of the order or where an express order is made to pay maintenance from the date of application, then the amount of maintenance can be paid from that date i.e. from the date of application.”

The Court referred to the decision in *Krishna Jain v. Dharam Raj Jain*¹¹ wherein it has been stated that: (*Shail Kumari Devi case*¹⁰, SCC p. 645, para 37)

“37. ... To hold that, normally maintenance should be made payable from the date of the order and not from the date of the application unless such order is backed by reasons would amount to inserting something more in the sub-section which the legislature never intended. The [High Court had] observed that it was unable to read in sub-section (2) laying down any rule to award maintenance from the date of the order or that the grant from the date of the application is an exception.”

The High Court had also opined that whether maintenance is granted from the date of the order or from the date of application, the Court is required to record reasons as required under sub-section (6) of Section 354 of the Code.

15. After referring to the decision in *Krishna Jain*¹¹, the Supreme Court adverted to the decision of the High Court of Andhra Pradesh in *K. Sivaram v. K. Mangalamba*¹² wherein it has been ruled that the maintenance would be awarded from the date of the order and such maintenance could be granted from the date of the application only by recording special reasons. The view of the learned Single Judge of the High Court of Andhra Pradesh stating that it is a normal rule that the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance was not accepted by this Court. Eventually, the Court ruled thus: (*Shail Kumari Devi case*¹⁰, SCC p. 647, para 43)

“43. We, therefore, hold that while deciding an application under Section 125 of the Code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the court. In our judgment, no such requirement can be read in sub-section (1) of Section 125 of the Code in absence of express provision to that effect.”

¹⁰ (2008) 9 SCC 632 : (2008) 3 SCC (Cri) 839

¹¹ 1992 Cri LJ 1028 (MP)

¹² 1990 Cri LJ 1880 (AP)

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16. In the present case, as we find, there was enormous delay in disposal of the proceeding under Section 125 of the Code and most of the time the husband had taken adjournments and sometimes the court dealt with the matter showing total laxity. The wife sustained herself as far as she could in that state for a period of nine years. The circumstances, in our considered opinion, required grant of maintenance from the date of application and by so granting the High Court has not committed any legal infirmity. Hence, we concur with the order of the High Court. However, we direct, as prayed by the learned counsel for the appellant, that he may be allowed to pay the arrears along with the maintenance awarded at present in a phased manner. The learned counsel for the respondents did not object to such an arrangement being made. In view of the aforesaid, we direct that while paying the maintenance as fixed by the learned Family Court Judge per month by 5th of each succeeding month, the arrears shall be paid in a proportionate manner within a period of three years from today.

17. Consequently, the appeal, being devoid of merits, stands dismissed.

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SHAMIMA FAROOQUI v. SHAHID KHAN

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(BEFORE DIPAK MISRA AND PRAFULLA C. PANT, JJ.)

a SHAMIMA FAROOQUI . . . Appellant;

Versus

SHAHID KHAN . . . Respondent.

Criminal Appeals Nos. 564-65 of 2015[†], decided on April 6, 2015

b **A. Family and Personal Laws — Family Courts Act, 1984 — Ss. 7(1) Expln. (f) and 7(2)(a) — Maintenance — Family Court can grant maintenance allowance to divorced Muslim woman under S. 125 CrPC — Criminal Procedure Code, 1973 — S. 125(1) Expln. (b) — Reiterated, applicable to divorced Muslim woman**

c **B. Criminal Procedure Code, 1973 — Ss. 125(2) & (1) second proviso — Speedy disposal of application for maintenance essential — Belated disposal without grant of interim maintenance not justified — Court's approach — In case of delay caused by dilatory tactics adopted by parties, court should endeavour to curtail such designed procrastination of proceedings — On its own part, court should avoid lethargy and apathy and adopt a proactive approach which should be instilled by judicial academies functioning under High Court — Maintenance granted from date of application in 1998 till passing of order of maintenance in 2012, without any grant of interim maintenance, not justified — Family Courts Act, 1984, S. 7**

e **C. Criminal Procedure Code, 1973 — S. 125 — Maintenance allowance to wife — Wife has absolute right of maintenance — Husband not absolved from his obligation to provide maintenance merely on his plea of financial constraints, so long as he is healthy, able-bodied and capable of earning for his own support**

f **D. Criminal Procedure Code, 1973 — S. 125 — Maintenance allowance to wife — Quantum — Principle of sustenance — Sustenance does not mean bare survival and it gains more weightage when children are also with wife — Quantum should be adequate so as to enable wife to live with dignity, similar to standard with which she would have lived in her matrimonial home — In this context status and strata become relevant — Retirement of husband from service cannot be sole consideration for High Court for further reduction of a nominal amount of maintenance awarded by Family Court — Constitution of India — Art. 21 — Family and Personal Laws — Maintenance — Quantum — Right to live with dignity**

E. Criminal Procedure Code, 1973 — Ss. 401 and 125 — Revisional jurisdiction of High Court — Non-application of mind — Findings of lower court neither perverse nor erroneous but instead based on proper

h [†] Arising out of SLPs (Crl.) Nos. 6380-81 of 2014. From the Judgments and Orders dated 17-9-2013 and 26-3-2014 of the High Court of Judicature of Allahabad in Crl. Revision No. 134 of 2012 and CMA No. 106544 of 2013 in Crl. Revision No. 134 of 2012

appreciation of evidence on record and endeavour to do substantial justice — Interference of High Court therewith, only because it would have arrived at a different or another conclusion, held, reflects non-application of mind and not sustainable a

The appellant filed an application under Section 125 CrPC in 1998 alleging that she married the respondent in 1992 but during her stay in matrimonial home, she was subjected to continuous harassment for having not met the husband's demand for a car and that in due course, on coming to know about the respondent husband's illicit relationship with another woman when she asked about the affair she was assaulted. As the situation gradually worsened and being deserted and ill-treated and suffering from fear psychosis, it became unbearable for her to stay at the matrimonial home, her parents came and took her back to the parental home. The appellant, therefore, sought grant of maintenance @ Rs 4000 p.m. on the basis that her husband was working on the post of Nayak in the Army and getting a salary of Rs 10,000 approximately apart from other perks. b

The Family Court before which the proceedings commenced, did not accept the primary objection as regards the maintainability of the application under Section 125 CrPC on the ground of the applicant being a Muslim woman and came to hold that even after the divorce the application of the wife under Section 125 CrPC was maintainable in the Family Court. The Family Court found that the husband had divorced the applicant appellant in 1997, that on being ill-treated at her matrimonial home, she had come back and stayed with her parents, that the husband had not made any provision for grant of maintenance; that the wife did not have any source of income to support her and that as the husband was getting at the time of disposal of the application as per the salary certificate Rs 17,654 she would be entitled to a sum of Rs 2500 as monthly maintenance allowance from the date of submission of the application till the date of judgment and thereafter Rs 4000 p.m. from the date of judgment till the date of remarriage. c

The respondent husband filed a revision before the High Court which held that the Family Court had not ascribed any reason for grant of maintenance from the date of the application, yet when the case for maintenance filed in the year 1998 was decided on 17-2-2012 and there was no order for interim maintenance, the grant of Rs 2500 as monthly maintenance from the date of application was neither illegal nor excessive. The High Court took note of the fact that the husband had retired on 1-4-2012 and consequently reduced the maintenance allowance to Rs 2000 from 1-4-2012 till remarriage of the appellant. The High Court therefore, modified the order of the Family Court accordingly. d

Allowing the appellant wife's appeal, the Supreme Court e

Held : f

Section 125 CrPC has been rightly held by the Family Court to be applicable to a Muslim woman who has been divorced. (Para 9) g

Shamim Bano v. Asraf Khan, (2014) 12 SCC 636 : (2014) 5 SCC (Civ) 145 : (2014) 5 SCC (Cri) 162; *Danial Latifi v. Union of India*, (2001) 7 SCC 740 : (2007) 3 SCC (Cri) 266; *Khatoon Nisa v. State of U.P.*, (2014) 12 SCC 646 : (2014) 5 SCC (Civ) 155 : (2014) 5 SCC (Cri) 170; *Shabana Bano v. Imran Khan*, (2010) 1 SCC 666 : (2010) 1 SCC (Civ) 216 : (2010) 1 SCC (Cri) 873, followed h

In the present case, it is disturbing that though the application for grant of maintenance was filed in the year 1998, it was not decided till 17-2-2012. It is also shocking to note that there was no order for grant of interim maintenance. (Para 11)

An application for grant of maintenance has to be disposed of at the earliest. When an application for grant of maintenance is filed by the wife the delay in disposal of the application, to say the least, is an unacceptable situation. It is, in fact, a distressing phenomenon. These litigations can really corrode the human relationship not only today but will also have the impact for years to come and has the potentiality to take a toll on the society. This would be the greatest tragedy that can happen to the adjudicating system which is required to deal with most sensitive matters between the man and wife or other family members relating to matrimonial and domestic affairs. (Paras 11 and 13)

It occurs either due to the uncontrolled design of the parties or the lethargy and apathy shown by the Judges who man the Family Courts. As far as the first aspect is concerned, it is the duty of the courts to curtail them. There need not be hurry but procrastination should not be manifest, reflecting the attitude of the court. As regards the second facet, the Family Courts, which have been established to deal with the matrimonial disputes, which include application under Section 125 CrPC, have become absolutely apathetic to the same. It is the duty of the court to have the complete control over the proceeding and not permit the lis to swim the unpredictable grand river of time without knowing when shall it land on the shores or take shelter in a corner tree that stands “still” on some unknown bank of the river. There has to be a proactive approach in this regard and the said approach should be instilled in the Family Court Judges by the Judicial Academies functioning under the High Courts. (Paras 13 and 11)

Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353; *K.A. Abdul Jaleel v. T.A. Shahida*, (2003) 4 SCC 166 : 2003 SCC (Cri) 810, *followed*

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. Grant of maintenance to wife has been perceived as a measure of social justice. An order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right. Thus, 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. (Paras 14, 16, 17 and 19)

Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 SCC 7; *Chaturbuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356, *relied on*

Chander Parkash Bodh Raj v. Shila Rani Chander Prakash, 1968 SCC OnLine Del 52 : AIR 1968 Del 174, *approved*

Capt. Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70 : 1978 SCC (Cri) 508; *Savitaben Somabhai Bhatiya v. State of Gujarat*, (2005) 3 SCC 636 : 2005 SCC (Cri) 787, *cited*

The inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there has to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. (Para 14)

In the present case, the High Court has shown immense sympathy to the husband by reducing the amount of maintenance after his retirement. The High Court, without indicating any reason, has reduced the amount of maintenance from Rs 4000 to Rs 2000. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs 2000 per month. It has been asserted on behalf of the appellant 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 appellant wife; that the last-drawn salary of the respondent taken into account by the 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, the assertions can be accepted.

(Paras 14, 20 and 21)

The High Court has become oblivious of the fact that she has to stay on her own. The order of the 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

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reduction. It only reflects the non-application of mind and, therefore, it is not possible to sustain the said order. Hence, the order of the Family Judge is restored. (Para 20)

- a *Shahid Khan v. Shamima Farooqui*, Criminal Revision No. 134 of 2012, order dated 17-9-2013 (All), *reversed*
- Anita Rani v. Rakeshpal Singh*, (1991) 2 Crimes 725 (All); *Dharmendra Kumar Gupta v. Chandra Prabha Devi*, 1990 SCC OnLine All 275 : 1990 Cri LJ 1884; *Rakesh Kumar Dikshit v. Jayanti Devi*, 1999 SCC OnLine All 531 : (1999) 39 ACC 4 : (1999) 2 JIC 323 (ACC); *Ashutosh Tripathi v. State of U.P.*, 1999 SCC OnLine All 641 : (1999) 39 ACC 434 : (1999) 2 JIC 763; *Paras Nath Kurmi v. Sessions Judge, Mau*, 1997 SCC OnLine All 1083 : 1998 All LJ 77 : (1999) 2 JIC 522; *Sartaj v. State of U.P.*, (2000) 2 JIC 967 (All), *referred to*
- b

R-D/54684/CVR

Advocates who appeared in this case :

Dr J.N. Dubey, Senior Advocate (Anurag Dubey, Ms Anu Sawhney, Meenesh Dubey and S.R. Setia, Advocates) for the Appellant.

- c **Chronological list of cases cited** **on page(s)**
1. (2015) 6 SCC 353, *Bhuwan Mohan Singh v. Meena* 713e-f
 2. (2014) 12 SCC 646 : (2014) 5 SCC (Civ) 155 : (2014) 5 SCC (Cri) 170, *Khatoon Nisa v. State of U.P.* 712d, 713a
 3. (2014) 12 SCC 636 : (2014) 5 SCC (Civ) 145 : (2014) 5 SCC (Cri) 162, *Shamim Bano v. Asraf Khan* 712c-d, 712d
 - d 4. Criminal Revision No. 134 of 2012, order dated 17-9-2013 (All), *Shahid Khan v. Shamima Farooqui (reversed)* 711f
 5. (2010) 1 SCC 666 : (2010) 1 SCC (Civ) 216 : (2010) 1 SCC (Cri) 873, *Shabana Bano v. Imran Khan* 712f-g
 6. (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356, *Chaturbhuj v. Sita Bai* 716a
 - e 7. (2005) 3 SCC 636 : 2005 SCC (Cri) 787, *Savitaben Somabhai Bhatiya v. State of Gujarat* 716c
 8. (2003) 4 SCC 166 : 2003 SCC (Cri) 810, *K.A. Abdul Jaleel v. T.A. Shahida* 713f-g
 9. (2001) 7 SCC 740 : (2007) 3 SCC (Cri) 266, *Danial Latifi v. Union of India* 712d, 712e-f, 712f-g
 10. (2000) 2 JIC 967 (All), *Sartaj v. State of U.P.* 711f
 - f 11. 1999 SCC OnLine All 641 : (1999) 39 ACC 434 : (1999) 2 JIC 763, *Ashutosh Tripathi v. State of U.P.* 711f
 12. 1999 SCC OnLine All 531 : (1999) 39 ACC 4 : (1999) 2 JIC 323 (ACC), *Rakesh Kumar Dikshit v. Jayanti Devi* 711f
 13. (1997) 7 SCC 7, *Jasbir Kaur Sehgal v. District Judge, Dehradun* 715f
 14. 1997 SCC OnLine All 1083 : 1998 All LJ 77 : (1999) 2 JIC 522, *Paras Nath Kurmi v. Sessions Judge, Mau* 711f
 - g 15. (1991) 2 Crimes 725 (All), *Anita Rani v. Rakeshpal Singh* 711e-f
 16. 1990 SCC OnLine All 275 : 1990 Cri LJ 1884, *Dharmendra Kumar Gupta v. Chandra Prabha Devi* 711e-f
 17. (1978) 4 SCC 70 : 1978 SCC (Cri) 508, *Capt. Ramesh Chander Kaushal v. Veena Kaushal* 716a-b
 18. 1968 SCC OnLine Del 52 : AIR 1968 Del 174, *Chander Parkash Bodh Raj v. Shila Rani Chander Prakash* 716d
 - h

The Judgment of the Court was delivered by

DIPAK MISRA, J.— Leave granted. When centuries old obstructions are removed, age-old shackles are either burnt or lose their force, the chains get rusted, and the human endowments and virtues are not indifferently treated and emphasis is laid on “free identity” and not on “annexed identity”, and the women of today can gracefully and boldly assert their legal rights and refuse to be tied down to the obscurant conservatism, and further determined to ostracise the “principle of commodity”, and the “barter system” to devoutly engage themselves in learning, criticising and professing certain principles with committed sensibility and participating in all pertinent and concerned issues, there is no warrant or justification or need to pave the innovative multi-avenues which the law does not countenance or give its stamp of approval. Chivalry, a perverse sense of human egotism, and clutching of feudal megalomaniacal ideas or for that matter, any kind of condescending attitude have no room. They are bound to be sent to the ancient woods, and in the new horizon people should proclaim their own ideas and authority. They should be able to say that they are the persons of the modern age and they have the ideas of today’s “Bharat”. Any other idea floated or any song sung in the invocation of male chauvinism is the proposition of an alien, a total stranger—an outsider. That is the truth in essentiality.

2. The facts which are requisite to be stated for adjudication of these appeals are that the appellant filed an application under Section 125 of the Code of Criminal Procedure (CrPC) contending, inter alia, that she married Shahid Khan, the respondent herein, on 26-4-1992 and during her stay at the matrimonial home she was prohibited from talking to others, and the husband not only demanded a car from the family but also started harassing her. A time came when he sent her to the parental home where she was compelled to stay for almost three months. The indifferent husband did not come to take her back to the matrimonial home, but she returned with the fond and firm hope that the bond of wedlock would be sustained and cemented with love and peace but as the misfortune would have it, the demand for the vehicle continued and the harassment was used as a weapon for fulfilment of the demand. In due course she came to learn that the husband had illicit relationship with another woman and he wanted to marry her. Usual to sense of human curiosity and wife’s right when she asked him she was assaulted. The situation gradually worsened and it became unbearable for her to stay at the matrimonial home. At that juncture, she sought help of her parents who came and took her to the parental home at Lucknow where she availed treatment. Being deserted and ill-treated and, in a way, suffering from fear psychosis she took shelter in the house of her parents and when all her hopes got shattered for reunion, she filed an application for grant of maintenance @ Rs 4000 per month on the foundation that the husband was working on the post of Nayak in the Army and getting a salary of Rs 10,000 approximately apart from other perks.

a 3. The application for grant of maintenance was resisted with immense vigour by the husband disputing all the averments pertaining to demand of dowry and harassment and further alleging that he had already given divorce to her on 18-6-1997 and has also paid the mehar to her.

4. A reply was filed to the same by the wife asserting that she had neither the knowledge of divorce nor had she received an amount of mehar.

b 5. During the proceeding before the learned Family Judge the appellant wife examined herself and another, and the respondent husband examined four witnesses, including himself. The learned Family Judge, Family Court, Lucknow while dealing with the application forming the subject-matter of Criminal Case No. 1120 of 1998 did not accept the primary objection as regards the maintainability under Section 125 CrPC as the applicant was a Muslim woman and came to hold even after the divorce the application of the wife under Section 125 CrPC was maintainable in the Family Court.
c Thereafter, the learned Family Judge appreciating the evidence brought on record came to opine that the marriage between the parties had taken place on 26-4-1992; that the husband had given divorce on 18-6-1997; that she was ill-treated at her matrimonial home; and that she had come back to her parental house and was staying there; that the husband had not made any provision for grant of maintenance; that the wife did not have any source of income to support her, and the plea advanced by the husband that she had means to sustain her had not been proved; that as the husband was getting at the time of disposal of the application as per the salary certificate Rs 17,654 and accordingly directed that a sum of Rs 2500 should be paid as monthly maintenance allowance from the date of submission of the application till the date of judgment and thereafter Rs 4000 per month from the date of judgment till the date of remarriage.
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f 6. The aforesaid order passed by the learned Family Judge came to be assailed before the High Court in criminal revision wherein, the High Court after adumbrating the facts referred to the decisions in *Anita Rani v. Rakeshpal Singh*¹, *Dharmendra Kumar Gupta v. Chandra Prabha Devi*², *Rakesh Kumar Dikshit v. Jayanti Devi*³, *Ashutosh Tripathi v. State of U.P.*⁴, *Paras Nath Kurmi v. Sessions Judge, Mau*⁵ and *Sartaj v. State of U.P.*⁶ and came to hold⁷ that though the learned Principal Judge, Family Court had not ascribed any reason for grant of maintenance from the date of the application, yet when the case for maintenance was filed in the year 1998 decided on 17-2-2012 and there was no order for interim maintenance, the grant of Rs 2500 as monthly maintenance from the date of application was neither illegal nor excessive. The High Court took note of the fact that the husband
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1 (1991) 2 Crimes 725 (All)

2 1990 SCC OnLine All 275 : 1990 Cri LJ 1884

3 1999 SCC OnLine All 531 : (1999) 39 ACC 4 : (1999) 2 JIC 323 (ACC)

4 1999 SCC OnLine All 641 : (1999) 39 ACC 434 : (1999) 2 JIC 763

5 1997 SCC OnLine All 1083 : 1998 All LJ 77 : (1999) 2 JIC 522

h 6 (2000) 2 JIC 967 (All)

7 *Shahid Khan v. Shamima Farooqui*, Criminal Revision No. 134 of 2012, order dated 17-9-2013 (All)

had retired on 1-4-2012 and consequently reduced the maintenance allowance to Rs 2000 from 1-4-2012 till remarriage of the appellant herein. Being of this view the learned Single Judge modified the order passed by the Family Court. Hence, the present appeal by special leave, at the instance of the wife. a

7. We have heard Dr J.N. Dubey, learned Senior Counsel for the appellant. Despite service of notice, none has appeared for the respondent.

8. It is submitted by Dr Dubey, learned Senior Counsel that Section 125 CrPC is applicable to the Muslim women and the Family Court has jurisdiction to decide the issue. It is urged by him that the High Court has fallen into error by opining that the grant of maintenance @ Rs 4000 per month is excessive and hence, it should be reduced to Rs 2000 per month from the date of retirement of the husband i.e. 1-4-2012 till her remarriage. It is also contended that the High Court failed to appreciate the plight of the appellant and reduced the amount and hence, the impugned order is not supportable in law. b
c

9. First of all, we intend to deal with the applicability of Section 125 CrPC to a Muslim woman who has been divorced. In *Shamim Bano v. Asraf Khan*⁸, this Court after referring to the Constitution Bench decisions in *Danial Latifi v. Union of India*⁹ and *Khatoon Nisa v. State of U.P.*¹⁰ had opined as follows: (*Shamim Bano case*⁸, SCC p. 644, paras 13-14) d

“13. The aforesaid principle clearly lays down that even after an application has been filed under the provisions of the Act, the Magistrate under the Act has the power to grant maintenance in favour of a divorced Muslim woman and the parameters and the considerations are the same as stipulated in Section 125 of the Code. We may note that while taking note of the factual score to the effect that the plea of divorce was not accepted by the Magistrate which was upheld by the High Court, the Constitution Bench⁹ opined that as the Magistrate could exercise power under Section 125 of the Code for grant of maintenance in favour of a divorced Muslim woman under the Act, the order did not warrant any interference. Thus, the emphasis was laid on the retention of the power by the Magistrate under Section 125 of the Code and the effect of ultimate consequence. e
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14. Slightly recently, in *Shabana Bano v. Imran Khan*¹¹, a two-Judge Bench, placing reliance on *Danial Latifi*⁹, has ruled that: (*Shabana Bano case*¹¹, SCC p. 672, para 21)

‘21. The appellant’s petition under Section 125 CrPC would be maintainable before the Family Court as long as the appellant does not remarry. The amount of maintenance to be awarded under Section 125 CrPC cannot be restricted for the *iddat* period only.’ g

8 (2014) 12 SCC 636 : (2014) 5 SCC (Civ) 145 : (2014) 5 SCC (Cri) 162

9 (2001) 7 SCC 740 : (2007) 3 SCC (Cri) 266

10 (2014) 12 SCC 646 : (2014) 5 SCC (Civ) 155 : (2014) 5 SCC (Cri) 170

11 (2010) 1 SCC 666 : (2010) 1 SCC (Civ) 216 : (2010) 1 SCC (Cri) 873 h

a Though the aforesaid decision was rendered interpreting Section 7 of the Family Courts Act, 1984, yet the principle stated therein would be applicable, for the same is in consonance with the principle stated by the Constitution Bench in *Khatoon Nisa*¹⁰.”

In view of the aforesaid dictum, there can be no shadow of doubt that Section 125 CrPC has been rightly held to be applicable by the learned Family Judge.

b 10. On a perusal of the order passed by the Family Court, it is manifest that it has taken note of the fact that the salary of the husband was Rs 17,654 in May 2009. It had fixed Rs 2500 as monthly maintenance from the date of submission of the application till the date of order i.e. 17-2-2012 and from the date of order, @ Rs 4000 per month till the date of remarriage. The High Court has opined that while granting maintenance from the date of the application, judicial discretion has to be appropriately exercised, for the High Court has noted that the grant of maintenance @ Rs 2500 per month from the date of application till the date of the order, did not call for modification.

c 11. The aforesaid finding of the High Court, affirming the view of the learned Family Judge is absolutely correct. But what is disturbing is that though the application for grant of maintenance was filed in the year 1998, it was not decided till 17-2-2012. It is also shocking to note that there was no order for grant of interim maintenance. It needs no special emphasis to state that when an application for grant of maintenance is filed by the wife the delay in disposal of the application, to say the least, is an unacceptable situation. It is, in fact, a distressing phenomenon. An application for grant of maintenance has to be disposed of at the earliest. The Family Courts, which have been established to deal with the matrimonial disputes, which include application under Section 125 CrPC, have become absolutely apathetic to the same.

12. The concern and anguish that was expressed by this Court in *Bhuwan Mohan Singh v. Meena*¹², is to the following effect: (SCC paras 12-13)

f “12. The Family Courts have been established for adopting and facilitating the conciliation procedure and to deal with family disputes in a speedy and expeditious manner. A three-Judge Bench in *K.A. Abdul Jaleel v. T.A. Shahida*¹³, while highlighting on the purpose of bringing in the Family Courts Act by the legislature, opined thus: (SCC p. 170, para 10)

g ‘10. The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.’

13. The purpose of highlighting this aspect is that in the case at hand the proceeding before the Family Court was conducted without being

h 10 *Khatoon Nisa v. State of U.P.*, (2014) 12 SCC 646 : (2014) 5 SCC (Civ) 155 : (2014) 5 SCC (Cri) 170

12 (2015) 6 SCC 353 : AIR 2014 SC 2875

13 (2003) 4 SCC 166 : 2003 SCC (Cri) 810

alive to the Objects and Reasons of the Act and the spirit of the provisions under Section 125 of the Code. It is unfortunate that the case continued for nine years before the Family Court. It has come to the notice of the Court that on certain occasions the Family Courts have been granting adjournments in a routine manner as a consequence of which both the parties suffer or, on certain occasions, the wife becomes the worst victim. When such a situation occurs, the purpose of the law gets totally atrophied. *The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. When we say this, we do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation. A Family Court Judge should remember that the procrastination is the greatest assassin of the lis before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness.* It leads to the cold refrigeration of the hidden feelings, if still left. The delineation of the lis by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the lis before him pertains to emotional fragmentation and delay can feed it to grow. We hope and trust that the Family Court Judges shall remain alert to this and decide the matters as expeditiously as possible keeping in view the Objects and Reasons of the Act and the scheme of various provisions pertaining to grant of maintenance, divorce, custody of child, property disputes, etc.” (emphasis supplied)

13. When the aforesaid anguish was expressed, the predicament was not expected to be removed with any kind of magic. However, the fact remains, these litigations can really corrode the human relationship not only today but will also have the impact for years to come and has the potentiality to take a toll on the society. It occurs either due to the uncontrolled design of the parties or the lethargy and apathy shown by the Judges who man the Family Courts. As far as the first aspect is concerned, it is the duty of the courts to curtail them. There need not be hurry but procrastination should not be manifest, reflecting the attitude of the court. As regards the second facet, it is the duty of the court to have the complete control over the proceeding and not permit the lis to swim the unpredictable grand river of time without knowing when shall it land on the shores or take shelter in a corner tree that stands “still” on some unknown bank of the river. It cannot allow it to sing the song of the brook. “Men may come and men may go, but I go on forever.” This would be the greatest tragedy that can happen to the adjudicating system which is required to deal with most sensitive matters between the man and wife or other family members relating to matrimonial and domestic affairs. There has to be a proactive approach in this regard and the said approach should be instilled in the Family Court Judges by the Judicial Academies functioning under the High Courts. For the present, we say no more.

14. Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was getting a monthly salary of Rs 17,654. The High Court, without indicating any reason, has reduced the monthly maintenance allowance to Rs 2000. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs 2000 per month. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.

15. While determining the quantum of maintenance, this Court in *Jasbir Kaur Sehgal v. District Judge, Dehradun*¹⁴ 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*¹⁵, 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*¹⁶ 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*¹⁷.”

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*¹⁸ 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.

15 (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356

16 (1978) 4 SCC 70 : 1978 SCC (Cri) 508

17 (2005) 3 SCC 636 : 2005 SCC (Cri) 787

18 1968 SCC OnLine Del 52 : AIR 1968 Del 174

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.

22. Consequently, the appeals are allowed, the orders passed by the High Court are set aside and that of the Family Court is restored. There shall be no order as to costs.

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2J

(BEFORE INDU MALHOTRA AND R. SUBHASH REDDY, JJ.)

RAJNESH

.. Appellant;

Versus

NEHA AND ANOTHER

.. Respondents.

Criminal Appeal No. 730 of 2020[†], decided on November 4, 2020

A. Constitution of India — Preamble and Arts. 39, 15(3) and 142 — Maintenance to wife, children and parents — Overlapping statutes — Remedy of maintenance in both secular laws and personal laws — Objective and manner of interpretation — Held, there is a need for framing guidelines under Art. 142 of the Constitution laying down uniform and consistent standards and for ensuring timely disposal of applications seeking maintenance under all the applicable statutes — Directions issued accordingly (see Shortnotes B to I) — Rationale for, explained

— *Conflicting orders resulting from overlapping jurisdiction* — Simultaneous operation of statutes would lead to multiplicity of proceedings and conflicting orders — This process requires to be streamlined so that the respondent husband is not obligated to comply with successive orders of maintenance passed under different enactments

— *No inconsistency though different statutes have distinct objectives* — There is no inconsistency between CrPC and the Hindu Adoptions and Maintenance Act, 1956 (HAMA) and both can stand together — Though there are different enactments providing for maintenance, each enactment provides an independent and distinct remedy framed with a specific object and purpose — Provision of maintenance in secular laws like the Special Marriage Act, 1954 (SMA), S. 125 CrPC and the Protection of Women from Domestic Violence Act, 2005 (the DV Act), are irrespective of religious community to which they belong and apart from other remedies provided in personal laws like dissolution of marriage or restitution of conjugal rights, etc.

— *Constitutional objective* — Remedy of maintenance is a measure of social justice as envisaged under the Constitution to prevent wives and children from falling into destitution and vagrancy — Preamble and Arts. 39 and 15(3) of the Constitution envisage social justice and positive State action for the empowerment of women and children (Paras 12 to 18, 37, 38, 4, 5 and 127)

Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70 : 1978 SCC (Cri) 508; *Nanak Chand v. Chandra Kishore Aggarwal*, (1969) 3 SCC 802 : 1970 SCC (Cri) 127; *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356; *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200, *relied on*

Ram Singh v. State, 1962 SCC OnLine All 191 : AIR 1963 All 355; *Mahabir Agarwalla v. Gita Roy*, (1962) 2 Cri LJ 528 (Cal); *Nalini Ranjan Chakravarty v. Kiran Rani Chakravarty*, 1964 SCC OnLine Pat 160 : AIR 1965 Pat 442, *cited*

[†] Arising out of SLP (Crl.) No. 9503 of 2018. Arising from the Judgment and Order in *Rajnesh v. Neha*, 2018 SCC OnLine Bom 2181 [Bombay High Court, Nagpur Bench, WP (Crl.) No. 875 of 2015, dt. 14-8-2018]

B. Family and Personal Laws — Maintenance proceedings — Overlapping jurisdictions under various statutes — Rights and duties of litigants, and approach and duty of court while re-adjudicating and varying previous orders passed under different statutes — Clarified, and necessary directions issued

— Simultaneous proceedings and re-adjudication of issue of maintenance considering distinct scope of different statutes is permissible —

A wife can make a claim for maintenance under different statutes — There is no bar to seek maintenance both under the DV Act and S. 125 CrPC, or under HMA — The mere fact that two proceedings were initiated by a party, would not imply that one would have to be adjourned sine die — There is a distinction in the scope and power exercised by the Magistrate under S. 125 CrPC and the DV Act — An order passed in a maintenance proceedings would not debar re-adjudication of the issue of maintenance in any other proceeding — Proceedings under S. 125 CrPC are summary in nature, and are intended to provide a speedy remedy to the wife — Any order passed under S. 125 CrPC by compromise or otherwise would not foreclose the remedy under S. 18 of the HAMA — Maintenance granted to an aggrieved person under the DV Act, would be in addition to an order of maintenance under S. 125 CrPC, or under the HMA (Paras 50 to 61)

— Disclosure as to award of maintenance in any other proceeding mandatory — If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment — For instance while granting relief under DV Act, the Magistrate has to consider if any similar relief has been obtained by aggrieved person — The applicant shall disclose the previous maintenance proceeding, and the orders passed therein (Paras 54 and 128.2)

— Modification or variation of previous order — If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the court concerned in the previous proceeding — So, for instance once an order for permanent alimony under HMA is passed, same could be modified by the same court by exercising its power under S. 25(2) of the HMA and an application under S. 125 CrPC would be treated as an application under S. 25(2) of the HMA and be disposed of accordingly (Paras 61, 57 and 128.3)

— Adjustment or set-off, permissible — Though the wife can simultaneously claim maintenance under the different enactments, it would be inequitable to direct husband to pay the maintenance awarded in each of the said proceedings, independent of the relief granted in a previous proceeding — Adjustment is permissible and the adjustment can be allowed of the lower amount against the higher amount — The court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount (Paras 54, 60 and 128.1)

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— *While deciding quantum of maintenance in subsequent proceeding, civil court/Family Court shall take into account maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant* — If Magistrate awards any further amount over and above the maintenance already awarded in other proceedings, he has to record reasons in writing for the same — Magistrate cannot ignore maintenance awarded in other legal proceedings — Hindu Adoptions and Maintenance Act, 1956 — S. 18 — Criminal Procedure Code, 1973, S. 125 (Paras 50 to 61, 128.2 and 128.3)

Held :

Issue of overlapping jurisdiction

The following directions are issued in exercise of powers under Article 142 of the Constitution: To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. It is directed that:

(i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.

(ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.

(iii) If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding. (Paras 50 to 61 and 128 to 128.3)

Chand Dhawan v. Jawaharlal Dhawan, (1993) 3 SCC 406 : 1993 SCC (Cri) 915; *Rakesh Malhotra v. Krishna Malhotra*, 2020 SCC OnLine SC 239; *Nagendrappa Natikar v. Neelamma*, (2014) 14 SCC 452 : (2015) 1 SCC (Civ) 346 : (2015) 1 SCC (Cri) 407; *Sudeep Chaudhary v. Radha Chaudhary*, (1997) 11 SCC 286 : 1998 SCC (Cri) 160, *relied on*

Panditrao Chimaji Kalure v. Gayabai Panditrao Kalure, 2001 SCC OnLine Bom 165 : (2002) 2 Mah LJ 53; *Vishal v. Aparna*, 2018 SCC OnLine Bom 1207; *R.D. v. B.D.*, 2019 SCC OnLine Del 9526; *Tanushree v. A.S. Moorthy*, 2018 SCC OnLine Del 7074, *approved*

Ashok Singh Pal v. Manjulata, 2008 SCC OnLine MP 18 : AIR 2008 MP 139; *Mohan Swaroop Chauhan v. Mohini*, 2015 SCC OnLine MP 7427 : (2016) 2 MP LJ 179; *Sujit Adhikari v. Tulika Adhikari*, 2017 SCC OnLine Cal 15484 : (2018) 2 CHN 129; *Chandra Mohan Das v. Tapati Das*, 2015 SCC OnLine Cal 9554, *overruled*

C. Family and Personal Laws — Maintenance proceedings under various statutes, including interim maintenance proceedings — Objective assessment and expeditious disposal of applications — Directions and clarifications issued with respect to manner in which responsible pleadings are to be made and particulars to be provided, including affidavits of disclosure of assets and liabilities as per Enclosures I, II and III appended with this judgment; availability of marriage counsellors; for expeditious disposal of the applications; and incidental and related issues

- Streamlining the procedure of pleadings during interim maintenance is necessary** — Parties often submit scanty materials, incorrect details, suppress vital information and conceal actual income — Applications for maintenance remain pending for several years because of docket pressure, adjournments and enormous time taken for completion of pleadings at interim stage itself, etc.
- a**
- Marriage counsellors** — Given the large and growing percentage of matrimonial litigation, a professional Marriage Counsellor must be made available in every Family Court — If the endeavour for settlement of disputes is unsuccessful, the Family Court would proceed with the matter on merits
- b**
- Concise application** — Application claiming maintenance must be a concise application accompanied with an affidavit of disclosure of assets as per annexed in Enclosures I, II and III of the judgment — The court in its discretion may issue necessary directions for modification of format of affidavit if exigencies require or more information is required
- c**
- Affidavit of disclosure of assets and liabilities** — The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of the judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrates Court concerned, as the case may be, throughout the country — It must be filed to enable court to make an objective assessment of the quantum of interim maintenance — Such affidavit should be filed within a maximum period of four weeks — The courts may not grant more than two opportunities for submission of such affidavit
- d**
- Reply-affidavit** — If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings — On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on basis of the affidavit filed by the applicant and the pleadings on record
- e**
- Disputes with regard to affidavit** — Aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Or. 11 CPC — On filing of the affidavit, the court may invoke the provisions of Or. 10 CPC or S. 165 or S. 106 of the Evidence Act, 1872, if it considers it necessary to do so
- f**
- Amended/supplementary affidavit** — If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination
- g**
- Responsible pleadings should be filed** — If false statements and misrepresentations are made, the court may consider initiation of proceeding under S. 340 CrPC, and for contempt of court
- h**

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— **Exemption from filing affidavit** — In case the parties belong to the economically weaker sections (EWS), or are living below the poverty line (BPL), or are casual labourers, the requirement of filing the affidavit would be dispensed with

a

— **Reasoned order within six months of affidavit** — Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court — Evidence Act, 1872 — Ss. 165 and 106 — Civil Procedure Code, 1908 — S. 11 and Or. 10 — Criminal Procedure Code, 1973, S. 340 (Paras 62 to 72 and 129)

b

Held :

Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution:

c

(a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

d

(b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

(c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on basis of the affidavit filed by the applicant and the pleadings on record;

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(d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

(e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

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(f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not

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within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

a (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

b (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

c (i) In case the parties belong to the economically weaker sections (“EWS”), or are living below the poverty line (“BPL”), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

(j) The Family Court/District Court/Magistrate’s Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

d (k) A professional Marriage Counsellor must be made available in every Family Court. (Para 72)

The above directions are issued in exercise of powers under Article 142 of the Constitution: The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrates Court concerned, as the case may be, throughout the country. (Paras 62 to 72 and 129)

e *Kaushalya v. Mukesh Jain*, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915, *relied on*
Puneet Kaur v. Inderjit Singh Sawhney, 2011 SCC OnLine Del 3841 : ILR (2012) 1 Del 73;
Kusum Sharma v. Mahinder Kumar Sharma, 2014 SCC OnLine Del 7627; *Kusum Sharma v. Mahinder Kumar Sharma*, 2015 SCC OnLine Del 6793; *Kusum Sharma v. Mahinder Kumar Sharma*, 2017 SCC OnLine Del 11796; *Kusum Sharma v. Mahinder Kumar Sharma*, 2017 SCC OnLine Del 12534; *Kusum Sharma v. Mahinder Kumar Sharma*, 2020 SCC OnLine Del 931, *considered*

f *Rajnesh v. Neha*, 2019 SCC OnLine SC 1918, *referred to*

D. Family and Personal Laws — Determination of permanent alimony — Factors to be considered, including provision for adequate child support — Enumerated (non-exhaustively)

g — **Duration of marriage** — Duration of the marriage is a relevant factor for determining whether permanent alimony has to be paid or not — In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life

h — **Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc.** before the court concerned, for fixing the permanent alimony payable to the spouse

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— *Marriage expenses of children* — Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife — The expenses would be determined by taking into account the financial position of the husband and the customs of the family

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— *Trust funds/investments* — If there are any trust funds/investments created by any spouse/grandparents in favour of the children, this would also be taken into consideration while deciding the final child support (Paras 73 to 76)

b

Held :

Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the court concerned, for fixing the permanent alimony payable to the spouse. (Para 73)

In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid. (Para 74)

c

Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family. (Para 75)

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If there are any trust funds/investments created by any spouse/grandparents in favour of the children, this would also be taken into consideration while deciding the final child support. (Para 76)

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E. Family and Personal Laws — Quantum of maintenance — Determination of — Factors and criteria, enumerated — Clarified that factors and criteria enumerated are not exhaustive and the court concerned may exercise its discretion to consider any other factor(s) which may be necessary or of relevance in the facts and circumstances of a case

— *Balance* — *There is no straitjacket formula for fixing quantum of maintenance — A careful and just balance must be drawn between all relevant factors — 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 — Sustenance does not mean, and cannot be allowed to mean mere survival — The object behind right to maintenance 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 — S. 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance (Paras 77 to 82, 90.1 and 130)

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- Financial status and reasonable needs of applicant — It is no answer to a claim of maintenance that the wife is educated and could support herself**
- a — The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support** — No doubt it is relevant as to whether the applicant is educated and professionally qualified and has independent source of income or not — But the court has to see whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home [S. 20(2) of the DV Act]
- b — The provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant are relevant factors for determining maintenance** (Paras 78 to 83)
- Age of parties and employability and reasons why wife sacrificed her employment opportunities, are relevant** — The court should find out whether the applicant was employed prior to her marriage and/or was working during the subsistence of the marriage or was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family — This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and retrain herself to secure a job in the paid workforce to rehabilitate herself —
- c — With advancement of age, it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years** (Paras 86 and 79)
- Duration of marriage** — In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration (Para 86)
- Reasonable costs of litigation for a non-working wife should be considered by the court — The non-applicant has to defray the cost of litigation** (Paras 79 and 83)
- e — Financial status and liabilities of non-applicant and higher obligation of husband — The obligation of the husband to provide maintenance stands on a higher pedestal than the wife — If the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband —**
- f — Plea that the husband 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 — 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** — 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 (Paras 80 to 83 and 90 to 90.5)
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- h**

— **Right to residence** — The Magistrate may pass a residence order inter alia directing the respondent to secure the same level of alternate accommodation for the aggrieved woman as enjoyed by her in the “shared household” — S. 2(s) r/w Ss. 17 and 19 of the DV Act entitles a woman to the right of residence in a shared household, irrespective of her having any legal interest in the same (*see* Shortnote *M* on meaning of “shared household”) (Paras 87 to 89)

— **Maintenance of minor children** — 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 — It should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed (Para 91)

— **Educational expenses of children** — 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 (Para 92)

— **Serious disability or ill health** — 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 (Para 93)

— **What is not relevant** — **The financial position of parents of wife is not material for determining the quantum of maintenance** — Crimes Against Women and Children — Protection of Women from Domestic Violence Act, 2005, Ss. 20(2) and 2(s) r/w Ss. 17 and 19 (Paras 77 to 93 and 130)

Held :

Criteria for determining quantum of maintenance — No straitjacket formula

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. (Para 77)

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. (Para 78)

Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 SCC 7; *Vinny Parmvir Parmar v. Parmvir Parmar*, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290, *relied on*

a 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. (Para 79)

b *Manish Jain v. Akanksha Jain*, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712, *relied on*

c 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. (Para 80)

Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339, *relied on*

d 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. 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. (Para 81)

e *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356, *relied on*

f Section 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Section 23(2) of the HAMA provides the following factors which may be taken into consideration: (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source. (Para 82)

g Section 20(2) of the DV Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home. (Para 83)

Factors for determining maintenance

The following factors have been laid down for determining maintenance:

1. Status of the parties.
2. Reasonable wants of the claimant.
- h* 3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.

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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.

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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.

b

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. (Para 84)

Bharat Hegde v. Saroj Hegde, 2007 SCC OnLine Del 622, *approved*

Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable: (Para 85)

c

(a) Age and employment of parties

In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and retrain herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years. (Para 86)

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(b) Right to residence — Shared household

Section 19(1)(f) of the DV Act provides that the Magistrate may pass a residence order inter alia directing the respondent to secure the same level of alternate accommodation for the aggrieved woman as enjoyed by her in the shared household. While passing such an order, the Magistrate may direct the respondent to pay the rent and other payments, having regard to the financial needs and resources of the parties. (Para 89)

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Section 2(s) read with Sections 17 and 19 of the DV Act entitles a woman to the right of residence in a shared household, irrespective of her having any legal interest in the same. There is no requirement of law that the husband should be a member of the joint family, or that the household must belong to the joint family, in which he or the aggrieved woman has any right, title or interest. The shared household may not necessarily be owned or tenanted by the husband singly or jointly. (Paras 87 and 88)

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Satish Chander Ahuja v. Sneha Ahuja, (2021) 1 SCC 414, *relied on*

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(c) Where wife is earning some income — Obligation of husband to provide maintenance is higher

- a** The obligation of the husband to provide maintenance stands on a higher pedestal than the wife. Thus, the courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. In fact, furthermore, 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. Sustenance does not mean, and cannot be allowed to mean mere survival. (Paras 90 to 90.5)
- b**

(d) Presumption — Adverse inference against husband when permissible

- 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. 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. (Para 90.4)
- c**

- d** *Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785; *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356; *Shailja v. Khobbanna*, (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308, *relied on*

Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589, *affirmed*

- e** *P. Suresh v. S. Deepa*, 2016 SCC OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar); *Sanjay Damodar Kale v. Kalyani Sanjay Kale*, 2020 SCC OnLine Bom 694; *Vipul Lakhanpal v. Pooja Sharma*, 2015 SCC OnLine HP 1252 : 2015 Cri LJ 3451; *Chander Parkash v. Shila Rani*, 1968 SCC OnLine Del 52 : AIR 1968 Del 174, *approved*

(e) Maintenance of minor children

- 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. (Para 91)
- f**

- 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. (Para 92)
- g**

(f) Serious disability or ill health

- 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. (Para 93)
- h** The following directions are issued in exercise of powers under Article 142 of the Constitution: For determining the quantum of maintenance payable to an

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applicant, the court shall take into account the criteria enumerated in Part B-III (contained in paras 77 to 93, and also set out above) of the judgment. The factors are however not exhaustive, and the court concerned may exercise its discretion to consider any other factor(s) which may be necessary or of relevance in the facts and circumstances of a case. (Para 130)

F. Family and Personal Laws — Date from which maintenance is to be awarded — Held, date of filing of application must always be regarded as the starting point for grant of maintenance — Further, held, even though a judicial discretion is conferred upon court to grant maintenance either from the date of application or from the date of the order in S. 125(2) CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including S. 125 CrPC — Rationale for, explained

— *Significant delay in disposal in applications for interim maintenance* — The period during which the maintenance proceedings remained pending is not within the control of the applicant — Therefore, it would be in the interest of justice and fair play that maintenance is awarded from date of application — Where a litigation is prolonged, either on account of the conduct of the opposite party, or due to the heavy docket in courts, or for unavoidable reasons, it would be unjust and contrary to the object of the provision, to provide maintenance from the date of the order (Paras 97, 109 and 110 and 113)

— *Social justice objective of maintenance should not be defeated* — While dealing with the application of a destitute wife or hapless children or parents, the court is dealing with the marginalised sections of the society — Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice — Financial constraints of a dependent spouse hampers their capacity to be effectively represented before the court — When legislature has provided summary, quick and comparatively inexpensive remedy, maintenance should be awarded from date of application to prevent a dependant from being reduced to destitution and vagrancy (Paras 96, 97, 111 and 112)

— *Absence of uniform regime* — There is a vast variance in the practice adopted by the Family Courts in the country, with respect to the date from which maintenance must be awarded — There is no provision in the HMA or the DV Act as to date from which maintenance is to be awarded — S. 125(2) CrPC is the only statutory provision which provides that the Magistrate may award maintenance either from the date of the order, or from the date of application — It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned — Criminal Procedure Code, 1973, S. 125(2) (Paras 94 to 113 and 131)

G. Criminal Procedure Code, 1973 — S. 125 — Date from which maintenance is to be awarded — From date of filing application — Held, 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 S. 125(2)

CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including S. 125 CrPC (Para 109)

a Held :

Date from which maintenance to be awarded

There is no provision in the HMA with respect to the date from which an order of maintenance may be made effective. Similarly, Section 12 of the DV Act does not provide the date from which the maintenance is to be awarded. Section 125(2) CrPC is the only statutory provision which provides that the Magistrate may award maintenance either from the date of the order, or from the date of application. (Para 94)

K. Sivaram v. K. Mangalamba, 1989 SCC OnLine AP 60 : (1989) 1 AP LJ 604, *referred to*

In the absence of a uniform regime, there is a vast variance in the practice adopted by the Family Courts in the country, with respect to the date from which maintenance must be awarded. The divergent views taken by the Family Courts are: *first*, from the date on which the application for maintenance was filed; *second*, the date of the order granting maintenance; *third*, the date on which the summons was served upon the respondent. (Paras 95 and 108)

Maintenance has to be awarded from date of application

The view that maintenance ought to be granted from the date when the application was made, is based on the rationale that the primary object of maintenance laws is to protect a deserted wife and dependent children from destitution and vagrancy. If maintenance is not paid from the date of application, the party seeking maintenance would be deprived of sustenance, owing to the time taken for disposal of the application, which often runs into several years. (Para 96)

The legislature intended to provide a summary, quick and comparatively inexpensive remedy to the neglected person. Where a litigation is prolonged, either on account of the conduct of the opposite party, or due to the heavy docket in courts, or for unavoidable reasons, it would be unjust and contrary to the object of the provision, to provide maintenance from the date of the order. (Para 97)

Susmita Mohanty v. Rabindra Nath Sahu, (1996) 1 OLR 361, *approved*

Even though the decision to award maintenance either from the date of application, or from the date of order, was within the discretion of the court, it would be appropriate to grant maintenance from the date of application. (Para 98)

Kanhu Charan Jena v. Nirmala Jena, 2000 SCC OnLine Ori 217 : 2001 Cri LJ 879; *Arun Kumar Nayak v. Urmila Jena*, 2010 SCC OnLine Ori 30 : (2010) 93 AIC 726; *Krishna v. Dharam Raj*, 1991 SCC OnLine MP 6, *approved*

The law governing payment of maintenance under Section 125 CrPC from the date of application, was extended to HAMA. The Court held that the date of application should always be regarded as the starting point for payment of maintenance. (Para 100)

Ganga Prasad Srivastava v. Addl. District Judge, Gonda, 2019 SCC OnLine All 5428; *Lavlesh Shukla v. Rukmani*, 2019 SCC OnLine Del 11709, *approved*

There are 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

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from the date of application in all cases, including Section 125 CrPC. In the practical working of the provisions relating to maintenance, 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. (Para 109)

The entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application. (Para 110)

Shail Kumari Devi v. Krishan Bhagwan Pathak, (2008) 9 SCC 632 : (2008) 3 SCC (Cri) 839; *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200, *followed*

The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hampers their capacity to be effectively represented before the court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned. (Para 111)

While dealing with the application of a destitute wife or hapless children or parents under this provision, the court is dealing with the marginalised sections of the society. The purpose is to achieve “social justice” which is the constitutional vision, enshrined in the Preamble of the Constitution. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society. (Para 112)

Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51, *followed*

It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant. (Para 113)

Bina Devi v. State of U.P., 2010 SCC OnLine All 236 : (2010) 69 ACC 19; *Amit Verma v. Sangeeta Verma*, 2020 SCC OnLine MP 2657; *S. Radhakumari v. K.M.K. Nair*, 1982 SCC OnLine Ker 51 : AIR 1983 Ker 139; *Samir Kr. Banerjee v. Sujata Banerjee*, 1965 SCC OnLine Cal 196; *Gouri Das v. Pradyumna Kumar Das*, (1986) 2 OLR 44; *Kalpna Das v. Sarat Kumar Das*, 2009 SCC OnLine Ori 21 : AIR 2009 Ori 133, *overruled*

The following directions are issued in exercise of powers under Article 142 of the Constitution: It is made clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B-IV of the judgment (contained in paras 94 to 113 of the judgment, and set out above). (Para 131)

H. Family and Personal Laws — Enforcement of orders of maintenance — Object behind timely enforcement and manner of enforcement — Law clarified

— Object behind timely enforcement — Very object of social welfare legislation would be defeated if orders of maintenance are not enforced in timely manner

— Manner of enforcement — An order or decree of maintenance may be enforced under S. 28-A of the HMA, 1955; S. 20(6) of the DV Act; and S. 128 CrPC, as may be applicable — The order of maintenance may be enforced as a money decree of a civil court as per the provisions of CPC, more particularly Ss. 51, 55, 58 and 60 r/w Or. 21 — It can 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 [S. 125(3) CrPC]

— Criminal Procedure Code, 1973 — Ss. 125 to 128 — Civil Procedure Code, 1908 — Ss. 51, 55, 58 and 60 r/w Or. 21 — Hindu Marriage Act, 1955 — S. 28-A — Crimes Against Women and Children — Protection of Women from Domestic Violence Act, 2005, S. 20(6) (Paras 114, 117, 125 and 132)

Held :

Enforcement of orders of maintenance

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. (Para 114)

Sushila Viresh Chhadva v. Viresh Nagshi Chhadva, 1995 SCC OnLine Bom 315 : AIR 1996 Bom 94, approved

An application for execution of an order of maintenance can be filed under the following provisions:

- (a) Section 28-A of the Hindu Marriage Act, 1955 read with Section 18 of the Family Courts Act, 1984 and Order 21 Rule 94 CPC for executing an order passed under Section 24 of the Hindu Marriage Act (before the Family Court);
- (b) Section 20(6) of the DV Act (before the Judicial Magistrate); and
- (c) Section 128 CrPC before the Magistrate's Court. (Para 115)

Section 18 of the Family Courts Act, 1984 provides that orders passed by the Family Court shall be executable in accordance with CPC/CrPC. (Para 116)

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. (Para 117)

Decree of maintenance may be enforced like a decree of a civil court

The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of CPC, more particularly Sections 51, 55, 58, 60 read with Order 21 CPC. (Para 125)

The following directions are issued in exercise of powers under Article 142 of the Constitution: For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of

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the HMA, 1955; Section 20(6) of the DV Act; and Section 128 CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of CPC, more particularly Sections 51, 55, 58, 60 read with Order 21. (Para 132)

a

I. Family and Personal Laws — Maintenance and Financial Provision/ Alimony/Palimony — Striking off the defence — When permissible — Principles summarised — Held, striking off the defence of the respondent is an order which ought to be passed in the last resort, if the courts find default to be wilful and contumacious, particularly to a dependent unemployed wife, and minor children — Contempt proceedings for wilful disobedience may be initiated before the appropriate court — Criminal Procedure Code, 1973, S. 125 (Paras 118 to 126)

b

Kaushalya v. Mukesh Jain, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915, *partly affirmed and partly limited*

Rani v. Parkash Singh, 1996 SCC OnLine P&H 52 : AIR 1996 P&H 175; *Mohinder Verma v. Sapna*, 2014 SCC OnLine P&H 25147; *Satish Kumar v. Meena*, 2001 SCC OnLine Del 817 : (2001) 60 DRJ 246; *Santosh Sehgal v. Murari Lal Sehgal*, 2006 SCC OnLine Del 585 : AIR 2007 Del 210, *clarified and partly approved and partly limited*

c

Gurvinder Singh v. Murti, 1990 SCC OnLine P&H 35; *Venkateshwar Dwivedi v. Ruchi Dwivedi*, 2017 SCC OnLine MP 2065; *Ravindra Kumar v. Renuka*, 2009 SCC OnLine Kar 481; *Davis v. Thomas*, 2007 SCC OnLine Ker 358 : ILR (2007) 4 Ker 389; *Sakeer Hussain T.P. v. Naseera*, 2016 SCC OnLine Ker 23592 : ILR (2016) 4 Ker 917, *overruled*

d

J. Criminal Procedure Code, 1973 — S. 125 — S. 125 CrPC vis-à-vis S. 3(b) of the HAMA — Distinction of rights under — Purpose and object of S. 125 CrPC is to provide immediate relief to the wife and children in a summary proceeding, whereas under S. 20 r/w S. 3(b) of the HAMA, a much larger right is contemplated, which requires determination by a civil court — (see also Shortnote B on how relief under overlapping jurisdictions for grant of maintenance under various statutes is to be given) — Hindu Adoptions and Maintenance Act, 1956, S. 3(b) (Paras 30 to 35)

e

Abhilasha v. Parkash, 2020 SCC OnLine SC 736; *Bhagwan Dutt v. Kamla Devi*, (1975) 2 SCC 386 : 1975 SCC (Cri) 563, *relied on*

K. Family and Personal Laws — Maintenance and Financial Provision/ Alimony/Palimony — Live-in relationship — Presumption of marriage — Strict proof of marriage should not be a precondition for grant of maintenance under S. 125 CrPC — Evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption of marriage — Criminal Procedure Code, 1973, S. 125 (Paras 39 and 40)

f

Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141 : (2011) 1 SCC (Civ) 53 : (2011) 2 SCC (Cri) 666; *Kamala v. M.R. Mohan Kumar*, (2019) 11 SCC 491 : (2019) 4 SCC (Civ) 732 : (2019) 4 SCC (Cri) 242, *relied on*

g

Malimath Committee Report on Reforms of Criminal Justice System published in 2003, *referred to*

L. Crimes Against Women and Children — Protection of Women from Domestic Violence Act, 2005 — Ss. 2(a), (f), (q), 3 and 17(2) — “Domestic relationship” in S. 2(f) of the DV Act — Expression “a relationship in the

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- nature of marriage” or live-in relationship akin to de facto marriage or common law marriage — When can a relationship fall within the expression “a relationship in the nature of marriage” under S. 2(f) of the DV Act —**
- a Guidelines though not exhaustive, reiterated (Paras 43 and 44)**
- D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469 : (2010) 4 SCC (Civ) 223 : (2011) 1 SCC (Cri) 59; *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755 : (2014) 5 SCC (Civ) 440 : (2014) 6 SCC (Cri) 593, *relied on*
- M. Crimes Against Women and Children — Protection of Women from Domestic Violence Act, 2005 — S. 2(s) and Ss. 17, 19 and 12 — Definition of**
- b “shared household” in S. 2(s) — Meaning of — Law summarised**
- *Legal interest in shared household not relevant* — An aggrieved woman’s right to residence in a “shared household” is irrespective of her having any legal interest in the same — A shared household under S. 2(s) need not be owned singly by the husband — It may or may not be jointly owned or taken on rent by the husband — The intention of the parties and the nature of living,
- c including the nature of the household, must be considered, to determine as to whether the parties intended to treat the premises as a “shared household” or not (Para 47)**
- *The “shared household” is the household which is the dwelling place of the aggrieved person in present time* — It does not mean all the houses where the aggrieved person has lived in a domestic relationship along with the
- d relatives of the husband — There will be a number of shared households, which was never contemplated by the legislative scheme — Mere fleeting or casual living at different places would not make it a shared household (Para 47)**
- *Balance required, especially when right is claimed against parents-in-law* — The right to residence under S. 19 is, not an indefeasible right, especially when a daughter-in-law is claiming a right against aged parents-in-law — While granting relief under S. 12 of the DV Act, or in any civil
- e proceeding, the court has to balance the rights between the aggrieved woman and the parents-in-law (Para 47)**
- *Right of residence is in addition to maintenance under S. 125 CrPC (Para 48)*
- Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414, *followed*
- f S.R. Batra v. Taruna Batra, (2007) 3 SCC 169 : (2007) 2 SCC (Cri) 56, *held, overruled***
- N. Crimes Against Women and Children — Protection of Women from Domestic Violence Act, 2005 — Ss. 2(a), (f) & (q) — Definitions of “aggrieved person” in S. 2(a), “domestic relationship” in S. 2(f) and “respondent” in S. 2(q) — Principles reiterated — Definition of “respondent” in S. 2(q) is gender neutral (Paras 41 and 42)**
- g Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165 : (2017) 1 SCC (Civ) 468 : (2017) 1 SCC (Cri) 1, *relied on***
- O. Crimes Against Women and Children — Protection of Women from Domestic Violence Act, 2005 — Ss. 22 and 23 — Claim for compensation and damages by aggrieved party for acts of domestic violence perpetrated by respondent — Ex parte orders — Scope of — Held, such ex parte orders can be granted by Magistrate if he is satisfied from the application and affidavit**
- h of aggrieved party that such domestic violence was committed or continuing or is likely to be committed by the respondent (Para 49)**

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P. Family and Personal Laws — Maintenance Pendente Lite/Interim Maintenance — Expeditious payment and adjudication — Expeditious payment of interim maintenance which was delayed by more than seven years, directed — Expeditious adjudication of substantive application under S. 125 CrPC, directed as proceedings pending for more than seven years — Challenge to order of interim maintenance by husband, rejected — Interim maintenance awarded by courts below for wife and son, affirmed — Criminal Procedure Code, 1973, S. 125 (Paras 9 to 11)

a

Q. Family and Personal Laws — Maintenance Pendente Lite/Interim Maintenance — Appeal by husband — In the appeal filed by the husband, prayer of wife for enhancement of interim maintenance for son, held, not maintainable — Liberty, however, given to wife to agitate/move Family Court for claiming said relief — Criminal Procedure Code, 1973, S. 125 (Paras 9.1 to 9.4)

b

Rajnesh v. Neha, 2018 SCC OnLine Bom 2181, *affirmed*

Rajnesh v. Neha, 2018 SCC OnLine SC 3641; *Rajnesh v. Neha*, 2019 SCC OnLine SC 1916;

Rajnesh v. Neha, 2019 SCC OnLine SC 1917; *Rajnesh v. Neha*, 2019 SCC OnLine SC 1918;

Rajnesh v. Neha, 2020 SCC OnLine SC 940; *Rajnesh v. Neha*, 2020 SCC OnLine SC 941;

Rajnesh v. Neha, 2020 SCC OnLine SC 942, *referred to*

c

R. Family and Personal Laws — Hindu Law — Adoption, Maintenance and Financial Provision — Maintenance/Financial Provision — Generally — Right to maintenance under HAMA and HMA — Distinctions and interplay — Explained — Hindu Marriage Act, 1955 — Ss. 24 and 25 — Hindu Adoptions and Maintenance Act, 1956, Ss. 18 and 19 (Paras 27 to 29)

d

S. Family and Personal Laws — Maintenance and Financial Provision/ Alimony/Palimony — Maintenance to Wife, Children and Parents under Sections 125-128 CrPC — Quantum of maintenance — There is no ceiling on maintenance amount under Section 125 CrPC after 2001 Amendment — Introduction of express powers to grant interim maintenance — Criminal Procedure Code, 1973, S. 125 (Para 35)

e

SS-D/66655/CVR

Advocates who appeared in this case :

Anitha Shenoy and Gopal Sankaranarayanan, Senior Advocates (*Amici Curiae*), for the appearing parties.

Chronological list of cases cited

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1. (2021) 1 SCC 414, *Satish Chander Ahuja v. Sneha Ahuja* 361a, 361a-b, 373g f
2. (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915, *Kaushalya v. Mukesh Jain (partly limited)* 370a-b, 380f-g
3. 2020 SCC OnLine MP 2657, *Amit Verma v. Sangeeta Verma (overruled)* 377f-g
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14. 2019 SCC OnLine Del 9526, *R.D. v. B.D.* 364f

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15. 2019 SCC OnLine All 5428, *Ganga Prasad Srivastava v. Addl. District Judge, Gonda* 376f-g
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17. 2019 SCC OnLine SC 1917, *Rajnesh v. Neha* 345g
18. 2019 SCC OnLine SC 1916, *Rajnesh v. Neha* 345f-g
19. (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308, *Shailja v. Khobbanna* 374d
20. 2018 SCC OnLine Del 7074, *Tanushree v. A.S. Moorthy* 365d-e
21. 2018 SCC OnLine SC 3641, *Rajnesh v. Neha* 345f
22. 2018 SCC OnLine Bom 2181, *Rajnesh v. Neha* 345e-f, 345f, 348a
- b 23. 2018 SCC OnLine Bom 1207, *Vishal v. Aparna* 363g, 364c-d
24. (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712, *Manish Jain v. Akanksha Jain* 371f
25. 2017 SCC OnLine Cal 15484 : (2018) 2 CHN 129, *Sujit Adhikari v. Tulika Adhikari (overruled)* 363e
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27. 2017 SCC OnLine Del 11796, *Kusum Sharma v. Mahinder Kumar Sharma* 368d-e
- c 28. 2017 SCC OnLine MP 2065, *Venkateshwar Dwivedi v. Ruchi Dwivedi (overruled)* 383a
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32. (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200, *Bhuwan Mohan Singh v. Meena* 358d-e, 379b
- d 33. (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785, *Shamima Farooqui v. Shahid Khan* 375b
34. 2015 SCC OnLine Cal 9554, *Chandra Mohan Das v. Tapati Das (overruled)* 363e-f
35. 2015 SCC OnLine MP 7427 : (2016) 2 MP LJ 179, *Mohan Swaroop Chauhan v. Mohini (overruled)* 363e
- e 36. 2015 SCC OnLine Del 6793, *Kusum Sharma v. Mahinder Kumar Sharma* 368d
37. 2015 SCC OnLine HP 1252 : 2015 Cri LJ 3451, *Vipul Lakhanpal v. Pooja Sharma* 374e
38. (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589, *Sunita Kachwaha v. Anil Kachwaha* 374e-f, 374f-g
39. (2014) 14 SCC 452 : (2015) 1 SCC (Civ) 346 : (2015) 1 SCC (Cri) 407, *Nagendrappa Natikar v. Neelamma* 366d
- f 40. (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51, *Badshah v. Urmila Badshah Godse* 379d-e
41. 2014 SCC OnLine P&H 25147, *Mohinder Verma v. Sapna (partly limited)* 381a-b
42. 2014 SCC OnLine Del 7627, *Kusum Sharma v. Mahinder Kumar Sharma* 368c-d
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- g 45. (2011) 1 SCC 141 : (2011) 1 SCC (Civ) 53 : (2011) 2 SCC (Cri) 666, *Chanmuniya v. Virendra Kumar Singh Kushwaha* 358f-g
46. 2011 SCC OnLine Del 3841 : ILR (2012) 1 Del 73, *Puneet Kaur v. Inderjit Singh Sawhney* 368c-d
47. (2010) 10 SCC 469 : (2010) 4 SCC (Civ) 223 : (2011) 1 SCC (Cri) 59, *D. Velusamy v. D. Patchaiammal* 360a
- h 48. 2010 SCC OnLine All 236 : (2010) 69 ACC 19, *Bina Devi v. State of U.P. (overruled)* 377e-f

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49.	2010 SCC OnLine Ori 30 : (2010) 93 AIC 726, <i>Arun Kumar Nayak v. Urmila Jena</i>	376d	
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53.	(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356, <i>Chaturbhuj v. Sita Bai</i>	358c-d, 372b-c, 374e	
54.	2008 SCC OnLine MP 18 : AIR 2008 MP 139, <i>Ashok Singh Pal v. Manjulata (overruled)</i>	363c-d	b
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57.	2007 SCC OnLine Ker 358 : ILR (2007) 4 Ker 389, <i>Davis v. Thomas (overruled)</i>	383b	
58.	2006 SCC OnLine Del 585 : AIR 2007 Del 210, <i>Santosh Sehgal v. Murari Lal Sehgal (partly limited)</i>	382a, 382a-b	c
59.	2001 SCC OnLine Del 817 : (2001) 60 DRJ 246, <i>Satish Kumar v. Meena (partly limited)</i>	381g-h, 382c-d	
60.	2001 SCC OnLine Bom 165 : (2002) 2 Mah LJ 53, <i>Panditrao Chimaji Kalure v. Gayabai Panditrao Kalure</i>	353e-f	
61.	2000 SCC OnLine Ori 217 : 2001 Cri LJ 879, <i>Kanhu Charan Jena v. Nirmala Jena</i>	376c	
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69.	1990 SCC OnLine P&H 35, <i>Gurvinder Singh v. Murti (overruled)</i>	382e-f	
70.	1989 SCC OnLine AP 60 : (1989) 1 AP LJ 604, <i>K. Sivaram v. K. Mangalamba</i>	375f-g	
71.	(1986) 2 OLR 44, <i>Gouri Das v. Pradyumna Kumar Das (overruled)</i>	378b	
72.	1982 SCC OnLine Ker 51 : AIR 1983 Ker 139, <i>S. Radhakumari v. K.M.K. Nair (overruled)</i>	378a	f
73.	(1978) 4 SCC 70 : 1978 SCC (Cri) 508, <i>Ramesh Chander Kaushal v. Veena Kaushal</i>	349a	
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76.	1968 SCC OnLine Del 52 : AIR 1968 Del 174, <i>Chander Parkash v. Shila Rani</i>	375a, 375b-c	g
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80.	1962 SCC OnLine All 191 : AIR 1963 All 355, <i>Ram Singh v. State</i>	349g-h	h

The Judgment of the Court was delivered by

INDU MALHOTRA, J.—

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b

PART A

c Order passed in Criminal Appeal No. 730 of 2020

1. Leave granted. The present criminal appeal arises out of an application for interim maintenance filed in a petition under Section 125 CrPC by the respondent wife and minor son. Respondent 1 wife left the matrimonial home in January 2013, shortly after the birth of the son — Respondent 2. On 2-9-2013, the wife filed an application for interim maintenance under Section 125 CrPC on behalf of herself and the minor son. The Family Court vide a detailed order dated 24-8-2015 awarded interim maintenance of Rs 15,000 per month to Respondent 1 wife from 1-9-2013; and Rs 5000 per month as interim maintenance for Respondent 2 son from 1-9-2013 to 31-8-2015; and @ Rs 10,000 per month from 1-9-2015 onwards till further orders were passed in the main petition.

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2. The appellant husband challenged the order of the Family Court vide Criminal Writ Petition No. 875 of 2015 filed before the Bombay High Court, Nagpur Bench. The High Court dismissed the writ petition vide order dated 14-8-2018¹, and affirmed the judgment passed by the Family Court.

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3. The present appeal has been filed to impugn the order dated 14-8-2018¹. This Court issued notice² to the wife and directed the appellant husband to file his income tax returns and assessment orders for the period from 2005-2006 till date. He was also directed to place a photocopy of his passport on record. By a further order dated 11-9-2019³, the appellant husband was directed to make payment of the arrears of Rs 2,00,000 towards interim maintenance to the wife; and a further amount of Rs 3,00,000, which was due and payable to the wife towards arrears of maintenance, as per his own admission. By a subsequent order dated 14-10-2019⁴, it was recorded that only a part of the arrears had been paid. A final opportunity was granted to the appellant husband to make payment of the balance amount by 30-11-2019, failing which, the Court would

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¹ *Rajnesh v. Neha*, 2018 SCC OnLine Bom 2181

² *Rajnesh v. Neha*, 2018 SCC OnLine SC 3641

³ *Rajnesh v. Neha*, 2019 SCC OnLine SC 1916

⁴ *Rajnesh v. Neha*, 2019 SCC OnLine SC 1917

proceed under the Contempt of Courts Act for wilful disobedience of the orders passed by this Court.

4. In the backdrop of the facts of this case, we considered it fit to frame guidelines on certain aspects pertaining to the payment of maintenance in matrimonial matters. There are different statutes providing for making an application for grant of maintenance/interim maintenance, if any person having sufficient means neglects, or refuses to maintain his wife, children, parents. The different enactments provide an independent and distinct remedy framed with a specific object and purpose. In spite of time-frames being prescribed by various statutes for disposal of interim applications, we have noticed, in practice that in a vast majority of cases, the applications are not disposed of within the time-frame prescribed. To address various issues which arise for consideration in applications for grant of maintenance/interim maintenance, it is necessary to frame guidelines to ensure that there is uniformity and consistency in deciding the same. To seek assistance on these issues, we have appointed Ms Anitha Shenoy and Mr Gopal Sankaranarayanan, Senior Advocates as Amici Curiae, who have graciously accepted to assist this Court.

5. By a further order dated 17-12-2019⁵, the appellant was directed to pay an amount of Rs 1,45,000 to Respondent 1 wife within a period of 45 days. On the issue of framing guidelines, the National Legal Services Authority was directed to elicit responses from the State Legal Services Authorities of various States.

6. By a subsequent order dated 5-8-2020⁶, it was recorded that an affidavit of compliance had been filed on 4-8-2020 by the appellant husband, wherein it was stated that arrears of Rs 1,45,000 till 11-9-2019 had been paid by him in January 2020. However, he had made no further payment to the wife thereafter. With respect to the amount of Rs 10,000 p.m. payable for the minor son, the order had been complied with till July 2020. A statement was made by the counsel for the appellant that he was not disputing the payment of maintenance for his son, and would continue to pay the same. A direction was issued by this Court to pay the entire arrears of maintenance to the wife @ Rs 15,000 p.m. as fixed by the Family Court, and continue to pay the said amount during the pendency of proceedings.

7. By the order dated 25-8-2020⁷, it was noted that the appellant had filed an affidavit dated 23-8-2020 wherein he had admitted and acknowledged that an amount of Rs 5,00,000 was pending towards arrears of maintenance to Respondent 1 wife. The appellant was directed to pay 50% of the arrears within a period of 4 weeks to Respondent 1, failing which, he was directed to remain present before the Court on the next date of hearing. The counsel for the husband placed on record a chart of various proceedings pending between the parties. Taking note of the aforesaid facts, we considered it appropriate to refer the matter for mediation by Mr Shridhar Purohit, Advocate, a well-known

⁵ *Rajnish v. Neha*, 2019 SCC OnLine SC 1918

⁶ *Rajnish v. Neha*, 2020 SCC OnLine SC 940

⁷ *Rajnish v. Neha*, 2020 SCC OnLine SC 941

Mediator in Nagpur, to resolve all disputes pending between the parties, and arrive at an overall settlement.

- 8.** On 8-10-2020⁸, we were informed that the mediation had failed. The husband appeared before the Court, and made an oral statement that he did not have the financial means to comply with the order of maintenance payable to Respondent 1 wife, and had to borrow loans from his father to pay the same. He however stated that he had paid the maintenance awarded to the son, and would continue to do so without demur. Both parties addressed arguments and filed their written submissions.

9. We have heard the counsel for the parties, and perused the written submissions filed on their behalf.

- 9.1.** The husband has inter alia submitted that he was presently unemployed, and was not in a position to pay maintenance to Respondent 1 wife. He stated that he did not own any immovable property, and had only one operational bank account. The husband declined to pay any further amount towards the maintenance of his wife. It was further submitted that the Family Court had erroneously relied upon the income tax returns of 2006, while determining the maintenance payable in 2013. He further submitted that he was exploring new business projects, which would enable him to be in a better position to sustain his family.

- 9.2.** The wife has inter alia submitted that the amount of Rs 10,000 awarded for the son was granted when he was 2½ years old in 2015. The said amount was now highly inadequate to meet the expenses of a growing child, who is 7½ years old, and is a school-going boy. It was further submitted that the admission fee for the current academic year 2020-2021 had not yet been paid. If the fee was not paid within time, the school would discontinue sending the link for online classes. She submitted that she was being overburdened by the growing expenses, with no support from the husband.

- 9.3.** With respect to the contention of the husband that he had no income, she submitted that the husband had made investments in real estate projects, and other businesses, which he was concealing from the Court, and diverting the income to his parents. It has also been alleged that the appellant had retained illegal possession of her *streedhan*, which he was refusing to return. Despite orders being passed by this Court, and in the proceedings under the DV Act, he was deliberately not complying with the same. In these circumstances, it was submitted that there was a major trust deficit, and there was no prospect for reconciliation.

- 9.4.** With respect to the issue of enhancement of maintenance for the son, the respondent is at liberty to move the Family Court for the said relief. We cannot grant this relief in the present appeal, as it has been filed by the husband.

10. In the facts and circumstances of the case, we order and direct that:

- 10.1.** (a) The judgment and order dated 24-8-2015 passed by the Family Court, Nagpur, affirmed by the Bombay High Court, Nagpur Bench vide order

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dated 14-8-2018¹ for payment of interim maintenance @ Rs 15,000 p.m. to Respondent 1 wife, and Rs 10,000 p.m. to Respondent 2 son, is hereby affirmed by this Court.

10.2. (b) The husband is directed to pay the entire arrears of maintenance @ Rs 15,000 p.m., within a period of 12 weeks from the date of this judgment, and continue to comply with this order during the pendency of the proceedings under Section 125 CrPC before the Family Court.

10.3. (c) If the appellant husband fails to comply with the aforesaid directions of this Court, it would be open to the respondents to have the order enforced under Section 128 CrPC, and take recourse to all other remedies which are available in accordance with law.

10.4. (d) The proceedings for payment of interim maintenance under Section 125 CrPC have been pending between the parties for a period of over 7 years now. We deem it appropriate that the Family Court decides the substantive application under Section 125 CrPC in Petition No. E-443/2013 finally, in light of the directions/guidelines issued in the present judgment, within a period of 6 months from the date of this judgment.

11. The Registry is directed to forward a complete copy of the pleadings, along with the written submissions filed by the parties, and the record of the proceedings in the present criminal appeal, to the Family Court, Nagpur. The present criminal appeal is disposed of accordingly.

PART B

12. Given the backdrop of the facts of the present case, which reveal that the application for interim maintenance under Section 125 CrPC has remained pending before the courts for seven years now, and the difficulties encountered in the enforcement of orders passed by the courts, as the wife was constrained to move successive applications for enforcement from time to time, we deem it appropriate to frame guidelines on the issue of maintenance, which would cover overlapping jurisdiction under different enactments for payment of maintenance, payment of interim maintenance, the criteria for determining the quantum of maintenance, the date from which maintenance is to be awarded, and enforcement of orders of maintenance.

Guidelines/Directions on maintenance

13. Maintenance laws have been enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy. Article 15(3) of the Constitution of India provides that:

“**15. (3)** Nothing in this article shall prevent the State from making any special provision for women and children.”

Article 15(3) reinforced by Article 39 of the Constitution of India, which envisages a positive role for the State in fostering change towards the empowerment of women, led to the enactment of various legislations from time to time.

¹ *Rajnish v. Neha*, 2018 SCC OnLine Bom 2181

14. Krishna Iyer, J. in his judgment in *Ramesh Chander Kaushal v. Veena Kaushal*⁹ held that the object of maintenance laws is: (SCC p. 74, para 9)

- a* “9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause — the cause of the derelicts.”
- b*

- c* **15.** The legislations which have been framed on the issue of maintenance are the Special Marriage Act, 1954 (“SMA”), Section 125 of the Criminal Procedure Code, 1973; and the Protection of Women from Domestic Violence Act, 2005 (“the DV Act”) which provide a statutory remedy to women, irrespective of the religious community to which they belong, apart from the personal laws applicable to various religious communities.

I. Issue of Overlapping Jurisdiction

- d* **16.** Maintenance may be claimed under one or more of the aforementioned statutes, since each of these enactments provides an independent and distinct remedy framed with a specific object and purpose. For instance, a Hindu wife may claim maintenance under the Hindu Adoptions and Maintenance Act, 1956 (“HAMA”), and also in a substantive proceeding for either dissolution of marriage, or restitution of conjugal rights, etc. under the Hindu Marriage Act, 1955 (“HMA”) by invoking Sections 24 and 25 of the said Act.
- e*

17. In *Nanak Chand v. Chandra Kishore Aggarwal*¹⁰, the Supreme Court held that there was no inconsistency between the CrPC and HAMA. Section 4(b) of the HAMA would not repeal or affect the provisions of Section 488 of the old CrPC. It was held that: (SCC pp. 804-05, para 4)

- f* “4. ... Both can stand together. The Maintenance Act is an act to amend and codify the law relating to adoptions and maintenance among Hindus. The law was substantially similar before and nobody ever suggested that Hindu Law, as in force immediately before the commencement of this Act, insofar as it dealt with the maintenance of children, was in any way inconsistent with Section 488 CrPC. The scope of the two laws is different.
- g* Section 488 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. Recently the question came before the Allahabad High Court in *Ram Singh v. State*¹¹, before the Calcutta High Court in *Mahabir*

h ⁹ (1978) 4 SCC 70 : 1978 SCC (Cri) 508

¹⁰ (1969) 3 SCC 802 : 1970 SCC (Cri) 127

¹¹ 1962 SCC OnLine All 191 : AIR 1963 All 355

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*Agarwalla v. Gita Roy*¹² and before the Patna High Court in *Nalini Ranjan Chakravarty v. Kiran Rani Chakravarty*¹³. The three High Courts have, in our view, correctly come to the conclusion that *Section 4(b) of the Maintenance Act does not repeal or affect in any manner the provisions contained in Section 488 CrPC.*” (emphasis supplied)

18. While it is true that a party is not precluded from approaching the Court under one or more enactments, since the nature and purpose of the relief under each Act is distinct and independent, it is equally true that the simultaneous operation of these Acts, would lead to multiplicity of proceedings and conflicting orders. This would have the inevitable effect of overlapping jurisdiction. This process requires to be streamlined, so that the respondent husband is not obligated to comply with successive orders of maintenance passed under different enactments. For instance, if in a previous proceeding under Section 125 CrPC, an amount is awarded towards maintenance, in the subsequent proceeding filed for dissolution of marriage under the Hindu Marriage Act, where an application for maintenance pendente lite is filed under Section 24 of that Act, or for maintenance under Section 25, the payment awarded in the earlier proceeding must be taken note of, while deciding the amount awarded under HMA.

1. Statutory provisions under various enactments

(a) The Special Marriage Act, 1954 (“SMA”)

19. Section 4 of the Special Marriage Act, 1954 provides that a marriage between any two persons who are citizens of India may be solemnised under this Act, notwithstanding anything contained in any other law for the time being in force. It is a secular legislation applicable to all persons who solemnise their marriage in India.

20. Section 36 of the Special Marriage Act provides that a wife is entitled to claim pendente lite maintenance, if she does not have sufficient independent income to support her and for legal expenses. The maintenance may be granted on a weekly or monthly basis during the pendency of the matrimonial proceedings. The court would determine the quantum of maintenance depending on the income of the husband, and award such amount as may seem reasonable. Section 36 reads as:

“36. Alimony pendente lite.—Where in any proceeding under Chapter V or Chapter VI it appears to the District Court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as, having regard to the husband’s income, it may seem to the court to be reasonable:

¹² (1962) 2 Cri LJ 528 (Cal)

¹³ 1964 SCC OnLine Pat 160 : AIR 1965 Pat 442

a Provided that the application for the payment of the expenses of the proceeding and such weekly or monthly sum during the proceeding under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the husband.”

b 21. Section 37 provides for grant of permanent alimony at the time of passing of the decree, or subsequent thereto. Permanent alimony is the consolidated payment made by the husband to the wife towards her maintenance for life. Section 37 reads as:

c “37. *Permanent alimony and maintenance.*—(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband’s property, such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband’s property and ability, the conduct of the parties and other circumstances of the case, as it may seem to the court to be just.

d (2) If the District Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under subsection (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the District Court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life, it may, at the instance of the husband, vary, modify or rescind any such order and in such manner as the court may deem just.”

e (b) *The Hindu Marriage Act, 1955 (“HMA”)*

f 22. The HMA is a complete code which provides for the rights, liabilities and obligations arising from a marriage between two Hindus. Sections 24 and 25 make provision for maintenance to a party who has no independent income sufficient for his or her support, and necessary expenses. This is a gender-neutral provision, where either the wife or the husband may claim maintenance. The prerequisite is that the applicant does not have independent income which is sufficient for her or his support, during the pendency of the lis.

g 23. Section 24 of the HMA provides for maintenance pendente lite, where the court may direct the respondent to pay the expenses of the proceeding, and pay such reasonable monthly amount, which is considered to be reasonable, having regard to the income of both the parties. Section 24 reads as:

h “24. *Maintenance pendente lite and expenses of proceedings.*—Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has *no independent income sufficient for her or his support and the necessary expenses* of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner *the expenses of the proceeding, and monthly during the proceeding*

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such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be." (emphasis supplied)

The proviso to Section 24 providing a timeline of 60 days for disposal of the application was inserted vide Act 49 of 2001 w.e.f. 24-9-2001.

24. Section 25 provides for grant of permanent alimony, which reads as:

"25. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under this Act may, at the time of *passing any decree or at any time subsequent thereto*, on application made to it for the purpose by either the wife or the husband, as the case may be, order that *the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.*

(2) If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just."

25. Section 26 of the HMA provides that the court may from time to time pass interim orders with respect to the custody, maintenance and education of the minor children.

(c) **Hindu Adoptions & Maintenance Act, 1956 ("HAMA")**

26. HAMA is a special legislation which was enacted to amend and codify the laws relating to adoption and maintenance amongst Hindus, during the subsistence of the marriage. Section 18 provides that a Hindu wife shall be entitled to be maintained by her husband during her lifetime. She is entitled to make a claim for a separate residence, without forfeiting her right to maintenance. Section 18 read in conjunction with Section 23 states the factors required to be considered for deciding the quantum of maintenance to be paid. Under sub-section (2) of Section 18, the husband has the obligation to maintain his wife, even though she may be living separately. The right of separate

residence and maintenance would however not be available if the wife has been unchaste, or has converted to another religion. Section 18 reads as follows:

a “18. **Maintenance of wife.**—(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance—

b (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

c (c) [* * *]

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying living separately.

d (3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.”

e 27. The distinction between maintenance under HMA and HAMA is that the right under Section 18 of the HAMA is available during the subsistence of a marriage, without any matrimonial proceeding pending between the parties. Once there is a divorce, the wife has to seek relief under Section 25 of the HMA.¹⁴ Under HMA, either the wife, or the husband, may move for judicial separation, restitution of conjugal rights, dissolution of marriage, payment of interim maintenance under Section 24, and permanent alimony under Section 25 of the Act, whereas under Section 18 of the HAMA, only a wife may seek maintenance.

f 28. The interplay between the claim for maintenance under HMA and HAMA came up for consideration by the Supreme Court in *Chand Dhawan v. Jawaharlal Dhawan*¹⁵. The Supreme Court, while considering the various laws relating to marriage amongst Hindus, discussed the scope of applications under the HMA and HAMA in the following words: (SCC pp. 415-16, para 23)

g “23. ... Section 18(1) of the Hindu Adoptions and Maintenance Act, 1956 entitles a Hindu wife to claim maintenance from her husband during her lifetime. Sub-section (2) of Section 18 grants her the right to live

h 14 *Panditrao Chimaji Kalure v. Gayabai Panditrao Kalure*, 2001 SCC OnLine Bom 165 : (2002) 2 Mah LJ 53

15 (1993) 3 SCC 406 : 1993 SCC (Cri) 915

separately, without forfeiting her claim to maintenance, if he is guilty of any of the misbehaviours enumerated therein or on account of his being in one of objectionable conditions as mentioned therein. So while sustaining her marriage and preserving her marital status, the wife is entitled to claim maintenance from her husband. On the other hand, under the Hindu Marriage Act, in contrast, her claim for maintenance pendente lite is durated (sic) on the pendency of a litigation of the kind envisaged under Sections 9 to 14 of the Hindu Marriage Act, and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce, with or without her consent. Thus when her marital status is to be affected or disrupted the court does so by passing a decree for or against her. On or at the time of the happening of that event, the court being seized of the matter, invokes its ancillary or incidental power to grant permanent alimony. Not only that, the court retains the jurisdiction at subsequent stages to fulfil this incidental or ancillary obligation when moved by an application on that behalf by a party entitled to relief. The court further retains the power to change or alter the order in view of the changed circumstances. Thus the whole exercise is within the gammit (sic gamut) of a diseased or a broken marriage. And in order to avoid conflict of perceptions the legislature while codifying the Hindu Marriage Act preserved the right of permanent maintenance in favour of the husband or the wife, as the case may be, dependent on the court passing a decree of the kind as envisaged under Sections 9 to 14 of the Act. In other words without the marital status being affected or disrupted by the matrimonial court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same socio-legal scheme revolutionising the law applicable to Hindus." (emphasis supplied)

29. Section 19 of the HAMA provides that a widowed daughter-in-law may claim maintenance from her father-in-law if (i) she is unable to maintain herself out of her own earnings or other property; or, (ii) where she has no property of her own, is unable to obtain maintenance; (a) from the estate of her husband, or her father or mother, or (b) from her son or daughter, if any, or his or her estate.

30. Section 20 of the HAMA provides for maintenance of children and aged parents. Section 20 casts a statutory obligation on a Hindu male to maintain an unmarried daughter, who is unable to maintain herself out of her own earnings, or other property. In *Abhilasha v. Parkash*¹⁶, a three-Judge Bench of this Court held that Section 20(3) is a recognition of the principles of Hindu law, particularly the obligation of the father to maintain an unmarried

a daughter. The right is absolute under personal law, which has been given statutory recognition by this Act. The Court noted the distinction between the award of maintenance to children under Section 125 CrPC, which limits the claim of maintenance to a child, until he or she attains majority. However, if an unmarried daughter is by reason of any physical or mental abnormality or injury, unable to maintain herself, under Section 125(1)(c), the father would be obligated to maintain her even after she has attained majority. The maintenance contemplated under HAMA is a wider concept. Section 3(b) contains an inclusive definition of maintenance including marriage expenses. The purpose and object of Section 125 CrPC is to provide immediate relief to the wife and children in a summary proceeding, whereas under Section 20 read with Section 3(b) of the HAMA, a much larger right is contemplated, which requires determination by a civil court.

b
c 31. Section 22 provides for maintenance of dependants. Section 23 provides that while awarding maintenance, the court shall have due regard to the criteria mentioned therein:

d “23. *Amount of maintenance.*—(1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the court shall have due regard to the consideration set out in sub-section (2) or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to—

- (a) the position and status of the parties;
- (b) the reasonable wants of the claimant;
- e (c) if the claimant is living separately, whether the claimant is justified in doing so;
- (d) the value of the claimant’s property and any income derived from such property, or from the claimant’s own earning or from any other source;
- (e) the number of persons entitled to maintenance under this Act.

f (3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to—

- (a) the net value of the estate of the deceased after providing for the payment of his debts;
- (b) the provision, if any, made under a will of the deceased in respect, of the dependant;
- g (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependant;
- (e) the past relations between the dependant and the deceased;
- (f) the value of the property of the dependant and any income derived from such property, or from his or her earnings or from any other course;
- h (g) the number of dependants entitled to maintenance under this Act.”

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(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.

34. In *Bhagwan Dutt v. Kamla Devi*¹⁷ 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.

36. The amended Section 125 reads as under:

“125. Order for maintenance of wives, children and parents.—(1) If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

¹⁷ (1975) 2 SCC 386 : 1975 SCC (Cri) 563

- (b) *his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
- a (c) *his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*
- (d) *his father or mother, unable to maintain himself or herself,*
- a Magistrate of the First Class may, upon proof of such neglect or refusal, *order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:*
- b
- Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:
- c
- Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:
- d
- Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.
- Explanation.—For the purposes of this Chapter—
- e (a) “**minor**” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;
- (b) “**wife**” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.
- f (2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.
- (3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month’s allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:
- g
- h Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

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Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. a

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be a just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or 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. b

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.” (emphasis supplied) c

37. In *Chaturbhuj v. Sita Bai*¹⁸ 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. d

38. Proceedings under Section 125 CrPC are summary in nature. In *Bhuwan Mohan Singh v. Meena*¹⁹ 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. e

39. The issue whether presumption of marriage arises when parties are in a live-in relationship for a long period of time, which would give rise to a claim under Section 125 CrPC came up for consideration in *Chanmuniya v. Virendra Kumar Singh Kushwaha*²⁰ before the Supreme Court. It was held that where a man and a woman have cohabited for a long period of time, in the absence of legal necessities of a valid marriage, such a woman would be entitled to maintenance. A man should not be allowed to benefit from legal loopholes, by enjoying the advantages of a de facto marriage, without undertaking the duties and obligations of such marriage. A broad and expansive interpretation f

18 (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356

19 (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200

20 (2011) 1 SCC 141 : (2011) 1 SCC (Civ) 53 : (2011) 2 SCC (Cri) 666. This judgment was referred to a larger Bench. h

- must be given to the term “wife”, to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time. Strict proof of marriage should not be a precondition for grant of maintenance under Section 125 CrPC. The Court relied on the Malimath Committee Report on Reforms of Criminal Justice System published in 2003, which recommended that evidence regarding a man and woman living together for a reasonably long period, should be sufficient to draw the presumption of marriage.
- 40.** The law presumes in favour of marriage, and against concubinage, when a man and woman cohabit continuously for a number of years. Unlike matrimonial proceedings where strict proof of marriage is essential, in proceedings under Section 125 CrPC such strict standard of proof is not necessary.²¹
- (e) Protection of Women from Domestic Violence Act, 2005 (“the DV Act”)**
- 41.** The DV Act stands on a separate footing from the laws discussed hereinabove. The DV Act provides relief to an aggrieved woman who is subjected to “domestic violence”. The “aggrieved person” has been defined by Section 2(a) to mean any woman who is, or has been, in a domestic relationship with the respondent, and alleges to have been subjected to any act of domestic violence. Section 2(f) defines “domestic relationship” to include a relationship between two persons who live, or have at any point of time lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption, or are family members living together as a joint family.
- 42.** Section 2(q) of the Act defined “respondent” to mean an “adult male person” who is, or has been, in a domestic relationship with the aggrieved woman. In *Hiral P. Harsora v. Kusum Narottamdas Harsora*²² this Court held that the “respondent” could also be a female in a domestic relationship with the aggrieved person. Section 3 of the DV Act gives a gender-neutral definition to “domestic violence”. Physical abuse, verbal abuse, emotional abuse and economic abuse can also be inflicted by women against other women. Even sexual abuse may, in a given fact circumstance, be by one woman on another. Section 17(2) provides that the aggrieved person cannot be evicted or excluded from a “shared household”, or any part of it by the “respondent”, save in accordance with the procedure established by law. If “respondent” is to be read as only an adult male person, women who evict or exclude the aggrieved person would then not be covered by the ambit of the Act, and defeat the very object, by putting forward female persons who can evict or exclude the aggrieved woman from the shared household. The Court struck down the words “adult male” before the word “person” in Section 2(q) of the 2005 Act, and deleted the proviso to Section 2(q), as being contrary to the object of the Act.

²¹ *Kamala v. M.R. Mohan Kumar*, (2019) 11 SCC 491 : (2019) 4 SCC (Civ) 732 : (2019) 4 SCC (Cri) 242

²² (2016) 10 SCC 165 : (2017) 1 SCC (Civ) 468 : (2017) 1 SCC (Cri) 1

43. The expression “relationship in the nature of marriage” as being akin to a common law or a de facto marriage, came up for consideration in *D. Velusamy v. D. Patchaiahmmal*²³. It was opined that a common law marriage is one which requires that although a couple may not be formally married: (a) the couple hold themselves out to society as being akin to spouses; (b) the parties must be of legal age to marry; (c) the parties must be otherwise qualified to enter into a legal marriage, including being unmarried; and (d) the parties must have voluntarily cohabited, and held themselves out to the world as being akin to spouses for a significant period of time. However, not all live-in relationships would amount to a relationship in the nature of marriage to avail the benefit of the DV Act. Merely spending weekends together, or a one-night stand, would not make it a “domestic relationship”.

44. For a live-in relationship to fall within the expression “relationship in the nature of marriage”, this Court in *Indra Sarma v. V.K.V. Sarma*²⁴ laid down the following guidelines: (a) duration of period of relationship; (b) shared household; (c) domestic arrangements; (d) pooling of resources and financial arrangements; (e) sexual relationship; (f) children; (g) socialisation in public; and (h) intention and conduct of the parties. The Court held that these guidelines were only indicative, and not exhaustive.

45. “Domestic violence” has been defined in Section 3 of the Act, which includes economic abuse as defined in Explanation 1(iv) to Section 3, as:

“Economic abuse which means deprivation of all or any economic or financial resources, to which the aggrieved person is entitled under any law or custom, whether payable under an order of a court or otherwise, or which the aggrieved person requires out of necessity, including but not limited to household necessities for the aggrieved person, or her children.”

46. Section 17 by a non obstante clause provides that notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the “shared household”, irrespective of whether she has any right, title or beneficial interest in the same. Section 17 reads as:

“17. Right to reside in a shared household.—(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.”

Section 19 deals with residence orders, grant of injunctive reliefs, or for alternate accommodation/payment of rent by the respondent.

²³ (2010) 10 SCC 469 : (2010) 4 SCC (Civ) 223 : (2011) 1 SCC (Cri) 59

²⁴ (2013) 15 SCC 755 : (2014) 5 SCC (Civ) 440 : (2014) 6 SCC (Cri) 593

47. A three-Judge Bench of this Court in *Satish Chander Ahuja v. Sneha Ahuja*²⁵ has overruled the judgment in *S.R. Batra v. Taruna Batra*²⁶ wherein a two-Judge Bench held that the wife is entitled to claim a right of residence in a “shared household” under Section 17(1), which would only mean the house belonging to, or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. In *Satish Chander Ahuja*²⁵, the Court has held that although the judgment in *S.R. Batra*²⁶ noticed the definition of shared household under Section 2(s), it did not advert to different parts of the definition, which makes it clear that there was no requirement for the shared household to be owned singly or jointly by the husband, or taken on rent by the husband. If the interpretation given in *S.R. Batra*²⁶ is accepted, it would frustrate the object of the Act. The Court has taken the view that the definition of “shared household” in Section 2(s) is an exhaustive definition. The “shared household” is the household which is the dwelling place of the aggrieved person in present time. If the definition of “shared household” in Section 2(s) is read to mean all the houses where the aggrieved person has lived in a domestic relationship along with the relatives of the husband, there will be a number of shared households, which was never contemplated by the legislative scheme. The entire scheme of the legislation is to provide immediate relief to the aggrieved person with respect to the shared household where the aggrieved woman lives or has lived. The use of the expression “at any stage has lived”, is with the intent of not denying protection to an aggrieved woman merely on the ground that she was not living there on the date of the application, or on the date when the Magistrate passed the order under Section 19. The words “lives, or at any stage has lived in a domestic relationship” has to be given its normal and purposeful meaning. Living of the woman in a household must refer to a living which has some permanency. Mere fleeting or casual living at different places would not make it a shared household. The intention of the parties and the nature of living, including the nature of the household, must be considered, to determine as to whether the parties intended to treat the premises as a “shared household” or not. Section 2(s) read with Sections 17 and 19 grant an entitlement in favour of an aggrieved woman to the right of residence in a “shared household”, irrespective of her having any legal interest in the same or not. From the definition of “aggrieved person” and “respondent”, it was clear that:

- (i) it is not the requirement of law that the aggrieved person may either own the premises jointly or singly, or by tenancing it jointly or singly;
- (ii) the household may belong to a joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title, or interest in the shared household;
- (iii) the shared household may either be owned, or tenanted by the respondent singly or jointly.

²⁵ (2021) 1 SCC 414, by a Bench comprising of Hon’ble Ashok Bhushan, R. Subhash Reddy and M.R. Shah, JJ.

²⁶ (2007) 3 SCC 169 : (2007) 2 SCC (Cri) 56

The right to residence under Section 19 is, however, not an indefeasible right, especially when a daughter-in-law is claiming a right against aged parents-in-law. While granting relief under Section 12 of the DV Act, or in any civil proceeding, the court has to balance the rights between the aggrieved woman and the parents-in-law.

48. Section 20 provides for monetary relief to the aggrieved woman:

“20. Monetary reliefs.—(1) While disposing of an application under sub-section (1) of Section 12, *the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and such relief may include, but is not limited to—*

(a) *the loss of earnings;*

(b) *the medical expenses;*

(c) *the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person; and*

(d) *the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.*

(2) *The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.*

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.” (emphasis supplied)

Section 20(1)(d) provides that maintenance granted under the DV Act to an aggrieved woman and children, would be given effect to, in addition to an order of maintenance awarded under Section 125 CrPC, or any other law in force. Under sub-section (6) of Section 20, the Magistrate may direct the employer or debtor of the respondent, to directly pay the aggrieved person, or deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

49. Section 22 provides that the Magistrate may pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence perpetrated by the respondent. Section 23 provides that the Magistrate may grant an ex parte order, including an order under Section 20 for monetary relief. The Magistrate must be satisfied that the application filed by the aggrieved woman discloses that the respondent is committing, or has committed an act of domestic violence, or that there is a likelihood that the respondent may commit an act of domestic violence. In such a case, the Magistrate is empowered to pass an ex parte order on the basis of the affidavit of the aggrieved woman.

50. Section 26 of the DV Act provides that any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding before a civil court, Family Court or criminal court. Sub-section (2) of Section 26 provides that the relief mentioned in sub-section (1) may be sought in addition to, and along with any other relief that the aggrieved person may seek in a suit or legal proceeding before a civil or criminal court. Section 26(3) provides that in case any relief has been obtained by the aggrieved person in any proceeding other than proceedings under this Act, the aggrieved woman would be bound to inform the Magistrate of the grant of such relief.

51. Section 36 provides that the DV Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

2. Conflicting judgments on overlapping jurisdiction

52. Some High Courts have taken the view that since each proceeding is distinct and independent of the other, maintenance granted in one proceeding cannot be adjusted or set off in the other. For instance, in *Ashok Singh Pal v. Manjulata*²⁷ the Madhya Pradesh High Court held that the remedies available to an aggrieved person under Section 24 of the HMA is independent of Section 125 CrPC. In an application filed by the husband for adjustment of the amounts awarded in the two proceedings, it was held that the question as to whether adjustment is to be granted, is a matter of judicial discretion to be exercised by the court. There is nothing to suggest as a thumb rule which lays down as a mandatory requirement that adjustment or deduction of maintenance awarded under Section 125 CrPC must be off-set from the amount awarded under Section 24 of the HMA, or vice versa. A similar view was taken by another Single Judge of the Madhya Pradesh High Court in *Mohan Swaroop Chauhan v. Mohini*²⁸. Similarly, the Calcutta High Court in *Sujit Adhikari v. Tulika Adhikari*²⁹ held that adjustment is not a rule. It was held that the quantum of maintenance determined by the Court under HMA is required to be added to the quantum of maintenance under Section 125 CrPC.

53. A similar view has been taken in *Chandra Mohan Das v. Tapati Das*³⁰, wherein a challenge was made on the point that the Court ought to have adjusted the amount awarded in a proceeding under Section 125 CrPC, while determining the maintenance to be awarded under Section 24 of the HMA, 1955. It was held that the quantum of maintenance determined under Section 24 of the HMA was to be paid in addition to the maintenance awarded in a proceeding under Section 125 CrPC.

54. On the other hand, the Bombay and Delhi High Courts, have held that in case of parallel proceedings, adjustment or set-off must take place. The Bombay High Court in a well-reasoned judgment delivered in *Vishal v. Aparna*³¹, has taken the correct view. The Court was considering the issue whether interim

²⁷ 2008 SCC OnLine MP 18 : AIR 2008 MP 139

²⁸ 2015 SCC OnLine MP 7427 : (2016) 2 MP LJ 179

²⁹ 2017 SCC OnLine Cal 15484 : (2018) 2 CHN 129

³⁰ 2015 SCC OnLine Cal 9554

³¹ 2018 SCC OnLine Bom 1207

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monthly maintenance awarded under Section 23 read with Section 20(1)(d) of the DV Act could be adjusted against the maintenance awarded under Section 125 CrPC. The Family Court held that the order passed under the DV Act and the CrPC were both independent proceedings, and adjustment was not permissible. The Bombay High Court set aside the judgment of the Family Court, and held that Section 20(1)(d) of the DV Act makes it clear that the maintenance granted under this Act, would be in addition to an order of maintenance under Section 125 CrPC, and any other law for the time being in force. Sub-section (3) of Section 26 of the DV Act enjoins upon the aggrieved person to inform the Magistrate, if she has obtained any relief available under Sections 18, 19, 20, 21 and 22, in any other legal proceeding filed by her, whether before a civil court, Family Court, or criminal court. The object being that while granting relief under the DV Act, the Magistrate shall take into account and consider if any similar relief has been obtained by the aggrieved person. Even though proceedings under the DV Act may be an independent proceeding, the Magistrate cannot ignore the maintenance awarded in any other legal proceedings, while determining whether over and above the maintenance already awarded, any further amount was required to be granted for reasons to be recorded in writing. The Court observed: (*Vishal case*³¹, SCC OnLine Bom para 18)

“18. What I intend to emphasise is the fact that the adjustment is permissible and the adjustment can be allowed of the lower amount against the higher amount. *Though the wife can simultaneously claim maintenance under the different enactments, it does not in any way mean that the husband can be made liable to pay the maintenance awarded in each of the said proceedings.*” (emphasis supplied)

It was held that while determining the quantum of maintenance awarded under Section 125 CrPC, the Magistrate would take into consideration the interim maintenance awarded to the aggrieved woman under the DV Act.

55. The issue of overlapping jurisdictions under the HMA and the DV Act or CrPC came up for consideration before a Division Bench of the Delhi High Court in *R.D. v. B.D.*³² wherein the Court held that maintenance granted to an aggrieved person under the DV Act, would be in addition to an order of maintenance under Section 125 CrPC, or under the HMA. The legislative mandate envisages grant of maintenance to the wife under various statutes. It was not the intention of the legislature that once an order is passed in either of the maintenance proceedings, the order would debar re-adjudication of the issue of maintenance in any other proceeding. In paras 16 and 17 of the judgment, it was observed that: (SCC OnLine Del)

“16. A conjoint reading of the aforesaid Sections 20, 26 and 36 of the DV Act would clearly establish that the provisions of the DV Act dealing with maintenance are supplementary to the provisions of other laws and

31 *Vishal v. Aparna*, 2018 SCC OnLine Bom 1207

32 2019 SCC OnLine Del 9526 : (2019) 7 AD 466

RAJNESH v. NEHA (*Indu Malhotra, J.*)

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a therefore maintenance can be granted to the aggrieved person(s) under the DV Act which would also be in addition to any order of maintenance arising out of Section 125 CrPC.

b 17. On the converse, if any order is passed by the Family Court under Section 24 of the HMA, the same would not debar the Court in the proceedings arising out of the DV Act or proceedings under Section 125 CrPC instituted by the wife/aggrieved person claiming maintenance. However, it cannot be laid down as a proposition of law that once an order of maintenance has been passed by any court then the same cannot be re-adjudicated upon by any other court. The legislative mandate envisages grant of maintenance to the wife under various statutes such as HMA, Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as 'HAMA'), Section 125 CrPC as well as Section 20 of the DV Act. As such various statutes have been enacted to provide for the maintenance to the wife and it is nowhere the intention of the legislature that once any order is passed in either of the proceedings, the said order would debar re-adjudication of the issue of maintenance in any other court."
c (emphasis supplied)

d The Court held that under Section 20(1)(d) of the DV Act, maintenance awarded to the aggrieved woman under the DV Act is in addition to an order of maintenance provided under Section 125 CrPC. The grant of maintenance under the DV Act would not be a bar to seek maintenance under Section 24 of the HMA.

e 56. Similarly, in Tanushree v. A.S. Moorthy³³ the Delhi High Court was considering a case where the Magistrate's Court had sine die adjourned the proceedings under Section 125 CrPC on the ground that parallel proceedings for maintenance under the DV Act were pending. In an appeal filed by the wife before the High Court, it was held that a reading of Section 20(1)(d) of the DV Act indicates that while considering an application under Section 12 of the DV Act, the Court would take into account an order of maintenance passed under Section 125 CrPC, or any other law for the time being in force. The mere fact that two proceedings were initiated by a party, would not imply that one would have to be adjourned sine die. There is a distinction in the scope and power exercised by the Magistrate under Section 125 CrPC and the DV Act. With respect to the overlap in both statutes, the Court held: (SCC OnLine Del para 5)

g "5. Reading of Section 20(1)(d) of the DV Act further shows that the two proceedings are independent of each other and have different scope, though there is an overlap. Insofar as the overlap is concerned, law has catered for that eventuality and laid down that at the time of consideration of an application for grant of maintenance under Section 12 of the DV Act, the maintenance fixed under Section 125 CrPC shall be taken into account."
h (emphasis supplied)

57. The issue whether maintenance under Section 125 CrPC could be awarded by the Magistrate, after permanent alimony was granted to the wife in the divorce proceedings, came up for consideration before the Supreme Court in *Rakesh Malhotra v. Krishna Malhotra*³⁴. The Court held that once an order for permanent alimony was passed, the same could be modified by the same court by exercising its power under Section 25(2) of the HMA. The Court held that: (SCC OnLine SC para 16)

“16. Since Parliament has empowered the Court under Section 25(2) of the Act and kept a remedy intact and made available to the party concerned seeking modification, the logical sequitur would be that the remedy so prescribed ought to be exercised rather than creating multiple channels of remedy seeking maintenance. One can understand the situation where considering the exigencies of the situation and urgency in the matter, a wife initially prefers an application under Section 125 of the Code to secure maintenance in order to sustain herself. In such matters the wife would certainly be entitled to have a full-fledged adjudication in the form of any challenge raised before a competent court either under the Act or similar such enactments. But the reverse cannot be the accepted norm.”

The Court directed that the application under Section 125 CrPC be treated as an application under Section 25(2) of the HMA and be disposed of accordingly.

58. In *Nagendrappa Natikar v. Neelamma*³⁵ this Court considered a case where the wife instituted a suit under Section 18 of the HAMA, after signing a consent letter in proceedings under Section 125 CrPC, stating that she would not make any further claims for maintenance against the husband. It was held that the proceedings under Section 125 CrPC were summary in nature, and were intended to provide a speedy remedy to the wife. Any order passed under Section 125 CrPC by compromise or otherwise would not foreclose the remedy under Section 18 of the HAMA.

59. In *Sudeep Chaudhary v. Radha Chaudhary*³⁶ the Supreme Court directed adjustment in a case where the wife had filed an application under Section 125 CrPC, and under HMA. In the Section 125 proceedings, she had obtained an order of maintenance. Subsequently, in proceedings under the HMA, the wife sought alimony. Since the husband failed to pay maintenance awarded, the wife initiated recovery proceedings. The Supreme Court held that the maintenance awarded under Section 125 CrPC must be adjusted against the amount awarded in the matrimonial proceedings under HMA, and was not to be given over and above the same.

3. Directions on overlapping jurisdictions

60. It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the DV Act and Section 125 CrPC, or under HMA. It would, however,

34 2020 SCC OnLine SC 239

35 (2014) 14 SCC 452 : (2015) 1 SCC (Civ) 346 : (2015) 1 SCC (Cri) 407

36 (1997) 11 SCC 286 : 1998 SCC (Cri) 160

- a be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/Family Court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.
- b **61.** To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the
- c previous proceeding requires any modification or variation, the party would be required to move the court concerned in the previous proceeding.

II. Payment of Interim Maintenance

- d **62.** The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f. 24-9-2001), and the third proviso to Section 125 CrPC (inserted vide Act 50 of 2001 w.e.f. 24-9-2001) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that applications remain pending for several years in most of the cases. The delays are caused by various factors, such as tremendous
- e docket pressure on the Family Courts, repetitive adjournments sought by parties, enormous time taken for completion of pleadings at the interim stage itself, etc. Pendency of applications for maintenance at the interim stage for several years defeats the very object of the legislation.

- f **63.** At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guesswork or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income.
- g It has therefore become necessary to lay down a procedure to streamline the proceedings, since a dependent wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

- h **64.** In the first instance, the Family Court in compliance with the mandate of Section 9 of the Family Courts Act, 1984 must make an endeavour for settlement of the disputes. For this, Section 6 provides that the State

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Government shall, in consultation with the High Court, make provision for counsellors to assist a Family Court in the discharge of its functions. Given the large and growing percentage of matrimonial litigation, it has become necessary that the provisions of Sections 5 and 6 of the Family Courts Act are given effect to, by providing for the appointment of marriage counsellors in every Family Court, which would help in the process of settlement. If the proceedings for settlement are unsuccessful, the Family Court would proceed with the matter on merits. a

65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, along with an Affidavit of Disclosure of Assets and Liabilities before the court concerned, as a mandatory requirement. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage. b
c

66. The Delhi High Court in a series of judgments beginning with *Puneet Kaur v. Inderjit Singh Sawhney*³⁷ and followed in *Kusum Sharma v. Mahinder Kumar Sharma*³⁸ ("*Kusum Sharma I*") directed that applications for maintenance under the HMA, HAMA, the DV Act, and the CrPC be accompanied with an affidavit of assets, income and expenditure as prescribed. In *Kusum Sharma* 2³⁹, the Court framed a format of affidavit of assets, income and expenditure to be filed by both parties at the threshold of a matrimonial litigation. This procedure was extended to maintenance proceedings under the Special Marriage Act and the Divorce Act, 1869. In *Kusum Sharma* 3⁴⁰ the Delhi High Court modified the format of the affidavit, and extended it to maintenance proceedings under the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956. In *Kusum Sharma* 4⁴¹ the Court took notice that the filing of affidavits along with pleadings gave an unfair advantage to the party who files the affidavit subsequently. In this judgment, it was clarified that the affidavit must be filed simultaneously by both parties. In *Kusum Sharma* 5⁴² the Court consolidated the format of the affidavits in the previous judgments, and directed that the same be filed in maintenance proceedings. d
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67. Given the vastly divergent demographic profile of our country, which comprises of metropolitan cities, urban areas, rural areas, tribal areas, etc. it was considered appropriate to elicit responses from the various State Legal Services Authorities ("SLSAs"). This Court vide its order dated 17-12-2019⁵ requested the National Legal Services Authority ("NALSA") to submit a report of the g

37 2011 SCC OnLine Del 3841 : ILR (2012) 1 Del 73

38 2014 SCC OnLine Del 7627 : (2014) 214 DLT 493

39 *Kusum Sharma v. Mahinder Kumar Sharma*, 2015 SCC OnLine Del 6793 : (2015) 217 DLT 706

40 *Kusum Sharma v. Mahinder Kumar Sharma*, 2017 SCC OnLine Del 11796 : (2017) 241 DLT 252

41 *Kusum Sharma v. Mahinder Kumar Sharma*, 2017 SCC OnLine Del 12534 : (2018) 246 DLT 1

42 *Kusum Sharma v. Mahinder Kumar Sharma*, 2020 SCC OnLine Del 931

5 *Rajnish v. Neha*, 2019 SCC OnLine SC 1918 h

suggestions received from the SLSAs for framing guidelines on the Affidavit of Disclosure of the Assets and Liabilities to be filed by the parties.

a **68.** The NALSA submitted a comprehensive report dated 17-2-2020 containing suggestions from all the State Legal Services Authorities throughout the country. We find the various suggestions made by the SLSAs to be of great assistance in finalising the Affidavit of Disclosure which can be used by the Family Courts for determining the quantum of maintenance to be paid.

b **69.** Keeping in mind the varied landscape of the country, and the recommendations made by the SLSAs, it was submitted that a simplified Affidavit of Disclosure may be framed to expedite the process of determining the quantum of maintenance.

c **70.** We feel that the affidavit to be filed by parties residing in urban areas, would require to be entirely different from the one applicable to rural areas, or tribal areas. For this purpose, a comprehensive Affidavit of Disclosure of Assets and Liabilities is being attached as *Enclosures I* and II*** to this judgment.

d **71.** We have been informed by the Meghalaya State Legal Services Authority that the State of Meghalaya has a predominantly tribal population, which follows a matrilineal system of society. The population is comprised of three tribes viz. the Khasis, Jaintia and Garo tribes. In Meghalaya, the youngest daughter is the custodian of the property, and takes important decisions relating to family property in consultation with her maternal uncle. The majority of the population is employed in the unorganised sector, such as agriculture. Under Section 10(26) of the Income Tax Act, 1961, the tribals residing in this State are exempted from payment of income tax. The Meghalaya State Legal Services Authority has suggested that the declaration in Meghalaya be made in the format enclosed with this judgment as *Enclosure III*#*.

e **72.** Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:

f **72.1. (a)** The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

g **72.2. (b)** The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of

h * Set out at pp. 384 et. seq., below.

** Set out at pp. 389-390, below.

*# Set out at pp. 390 et. seq. below.

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Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings⁴³. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

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72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

b

72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

72.6. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

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72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

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72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

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72.9. (i) In case the parties belong to the economically weaker sections ("EWS"), or are living below the poverty line ("BPL"), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

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72.11. (k) A professional Marriage Counsellor must be made available in every Family Court.

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43 *Kaushalya v. Mukesh Jain*, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915

Permanent alimony

- 73.** Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the court concerned, for fixing the permanent alimony payable to the spouse.

- 74.** In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.

75. Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family.

- 76.** If there are any trust funds/investments created by any spouse/grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.

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.⁴⁴

- 79.** In *Manish Jain v. Akanksha Jain*⁴⁵ 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.

⁴⁴ Refer to *Jasbir Kaur Sehgal v. District Judge, Dehradun*, (1997) 7 SCC 7; Refer to *Vinny Parmvir Parmar v. Parmvir Parmar*, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290

⁴⁵ (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712

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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.⁴⁶

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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.⁴⁷ 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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82. Section 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of the HAMA provides the following factors which may be taken into consideration: (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

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83. Section 20(2) of the DV Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

84. The Delhi High Court in *Bharat Hegde v. Saroj Hegde*⁴⁸ laid down the following factors to be considered for determining maintenance: (SCC OnLine Del para 8)

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“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.

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5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.

46 *Reema Salkan v. Sumer Singh Salkan*, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339

47 *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356

48 2007 SCC OnLine Del 622 : (2007) 140 DLT 16

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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."

85. Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.

(a) Age and employment of parties

- 86.** In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and retrain herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years.

(b) Right to residence

- 87.** Section 17 of the DV Act grants an aggrieved woman the right to live in the "shared household". Section 2(s) defines "shared household" to include the household where the aggrieved woman lived at any stage of the domestic relationship; or the household owned and rented jointly or singly by both, or singly by either of the spouses; or a joint family house, of which the respondent is a member.

- 88.** The right of a woman to reside in a "shared household" defined under Section 2(s) entitles the aggrieved woman for right of residence in the shared household, irrespective of her having any legal interest in the same. This Court in *Satish Chander Ahuja v. Sneha Ahuja*²⁵ held that "shared household" referred to in Section 2(s) is the shared household of the aggrieved person where she was living at the time when the application was filed, or at any stage lived in a domestic relationship. The living of the aggrieved woman in the shared household must have a degree of permanence. A mere fleeting or

²⁵ (2021) 1 SCC 414, by a Bench comprising of Hon'ble Ashok Bhushan, R. Subhash Reddy and M.R. Shah, JJ.

casual living at different places would not constitute a “shared household”. It is important to consider the intention of the parties, nature of living, and nature of the household, to determine whether the premises is a “shared household”. Section 2(s) read with Sections 17 and 19 of the DV Act entitles a woman to the right of residence in a shared household, irrespective of her having any legal interest in the same. There is no requirement of law that the husband should be a member of the joint family, or that the household must belong to the joint family, in which he or the aggrieved woman has any right, title or interest. The shared household may not necessarily be owned or tenanted by the husband singly or jointly.

89. Section 19(1)(f) of the DV Act provides that the Magistrate may pass a residence order inter alia directing the respondent to secure the same level of alternate accommodation for the aggrieved woman as enjoyed by her in the shared household. While passing such an order, the Magistrate may direct the respondent to pay the rent and other payments, having regard to the financial needs and resources of the parties.

(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*⁴⁹, 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.⁴⁷ Sustenance does not mean, and cannot be allowed to mean mere survival.⁵⁰

90.2. In *Sunita Kachwaha v. Anil Kachwaha*⁵¹ 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*⁵² while relying upon the judgment in *Sunita Kachwaha*⁵¹, 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.

49 (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)

47 *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356

50 *Vipul Lakhanpal v. Pooja Sharma*, 2015 SCC OnLine HP 1252 : 2015 Cri LJ 3451

51 (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589

52 2020 SCC OnLine Bom 694

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*⁵³. 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*⁵⁴ cited the judgment in *Chander Parkash*⁵³ 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.

IV. Date from which Maintenance to be Awarded

94. There is no provision in the HMA with respect to the date from which an order of maintenance may be made effective. Similarly, Section 12 of the DV Act, does not provide the date from which the maintenance is to be awarded. Section 125(2) CrPC is the only statutory provision which provides that the Magistrate may award maintenance either from the date of the order, or from the date of application.⁵⁵

95. In the absence of a uniform regime, there is a vast variance in the practice adopted by the Family Courts in the country, with respect to the date from which maintenance must be awarded. The divergent views taken by the Family Courts are: *first*, from the date on which the application for maintenance was filed; *second*, the date of the order granting maintenance; *third*, the date on which the summons was served upon the respondent.

⁵³ 1968 SCC OnLine Del 52 : AIR 1968 Del 174

⁵⁴ (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785

⁵⁵ *K. Sivaram v. K. Mangalamba*, 1989 SCC OnLine AP 60 : (1989) 1 AP LJ 604

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(a) From date of application

96. The view that maintenance ought to be granted from the date when the application was made, is based on the rationale that the primary object of maintenance laws is to protect a deserted wife and dependent children from destitution and vagrancy. If maintenance is not paid from the date of application, the party seeking maintenance would be deprived of sustenance, owing to the time taken for disposal of the application, which often runs into several years.

97. The Orissa High Court in *Susmita Mohanty v. Rabindra Nath Sahu*⁵⁶ held that the legislature intended to provide a summary, quick and comparatively inexpensive remedy to the neglected person. Where a litigation is prolonged, either on account of the conduct of the opposite party, or due to the heavy docket in courts, or for unavoidable reasons, it would be unjust and contrary to the object of the provision, to provide maintenance from the date of the order.

98. In *Kanhu Charan Jena v. Nirmala Jena*⁵⁷, the Orissa High Court was considering an application under Section 125 CrPC, wherein it was held that even though the decision to award maintenance either from the date of application, or from the date of order, was within the discretion of the court, it would be appropriate to grant maintenance from the date of application. This was followed in *Arun Kumar Nayak v. Urmila Jena*⁵⁸, wherein it was reiterated that dependants were entitled to receive maintenance from the date of application.

99. The Madhya Pradesh High Court in *Krishna v. Dharam Raj*⁵⁹ held that a wife may set up a claim for maintenance to be granted from the date of application, and the husband may deny it. In such cases, the court may frame an issue, and decide the same based on evidence led by parties. The view that the “normal rule” was to grant maintenance from the date of order, and the exception was to grant maintenance from the date of application, would be to insert something more in Section 125(2) CrPC, which the legislature did not intend. Reasons must be recorded in both cases. i.e. when maintenance is awarded from the date of application, or when it is awarded from the date of order.

100. The law governing payment of maintenance under Section 125 CrPC from the date of application, was extended to HAMA by the Allahabad High Court in *Ganga Prasad Srivastava v. Addl. District Judge, Gonda*⁶⁰. The Court held that the date of application should always be regarded as the starting point for payment of maintenance. The Court was considering a suit for maintenance under Section 18 of the HAMA, wherein the Civil Judge directed

⁵⁶ (1996) 1 OLR 361

⁵⁷ 2000 SCC OnLine Ori 217 : 2001 Cri LJ 879

⁵⁸ 2010 SCC OnLine Ori 30 : (2010) 93 AIC 726

⁵⁹ 1991 SCC OnLine MP 6 : (1993) 2 MPJR 63

⁶⁰ 2019 SCC OnLine All 5428 : (2019) 6 ADJ 850

a that maintenance be paid from the date of judgment. The High Court held that the normal inference should be that the order of maintenance would be effective from the date of application. A party seeking maintenance would otherwise be deprived of maintenance due to the delay in disposal of the application, which may arise due to paucity of time of the court, or on account of the conduct of one of the parties. In this case, there was a delay of seven years in disposing of the suit, and the wife could not be made to starve till such time. The wife was held to be entitled to maintenance from the date of application/suit.

b **101.** The Delhi High Court in *Laylesh Shukla v. Rukmani*⁶¹ held that where the wife is unemployed and is incurring expenses towards maintaining herself and the minor child/children, she is entitled to receive maintenance from the date of application. Maintenance is awarded to a wife to overcome the financial crunch, which occurs on account of her separation from her husband. It is neither a matter of favour to the wife, nor any charity done by the husband.

c **(b) From the date of order**

d **102.** The second view that maintenance ought to be awarded from the date of order is based on the premise that the general rule is to award maintenance from the date of order, and grant of maintenance from the date of application must be the exception. The foundation of this view is based on the interpretation of Section 125(2) CrPC which provides:

“**125. (2)** Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, *if so ordered*, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.” (emphasis supplied)

e The words “or, if so ordered” in Section 125 have been interpreted to mean that where the court is awarding maintenance from the date of application, special reasons ought to be recorded.⁶²

f **103.** In *Bina Devi v. State of U.P.*⁶² the Allahabad High Court on an interpretation of Section 125(2) CrPC held that when maintenance is directed to be paid from the date of application, the court must record reasons. If the order is silent, it will be effective from the date of the order, for which reasons need not be recorded. The Court held that Section 125(2) CrPC is prima facie clear that maintenance shall be payable from the date of the order.

g **104.** The Madhya Pradesh High Court in *Amit Verma v. Sangeeta Verma*⁶³ directed that maintenance ought to be granted from the date of the order.

(c) From the date of service of summons

105. The third view followed by some courts is that maintenance ought to be granted from the date of service of summons upon the respondent.

h ⁶¹ 2019 SCC OnLine Del 11709

⁶² *Bina Devi v. State of U.P.*, 2010 SCC OnLine All 236 : (2010) 69 ACC 19

⁶³ 2020 SCC OnLine MP 2657

106. The Kerala High Court in *S. Radhakumari v. K.M.K. Nair*⁶⁴ was considering an application for interim maintenance preferred by the wife in divorce proceedings filed by the husband. The High Court held that maintenance must be awarded to the wife from the date on which summons were served in the main divorce petition. The Court relied upon the judgment of the Calcutta High Court in *Samir Kr. Banerjee v. Sujata Banerjee*⁶⁵ and held that Section 24 of the HMA does not contain any provision that maintenance must be awarded from a specific date. The court may, in exercise of its discretion, award maintenance from the date of service of summons.

107. The Orissa High Court in *Gouri Das v. Pradyumna Kumar Das*⁶⁶ was considering an application for interim maintenance filed under Section 24 HMA by the wife, in a divorce petition instituted by the husband. The Court held that the ordinary rule is to award maintenance from the date of service of summons. It was held that in cases where the applicant in the maintenance petition is also the petitioner in the divorce petition, maintenance becomes payable from the date when summons is served upon the respondent in the main proceeding.

108. In *Kalpana Das v. Sarat Kumar Das*⁶⁷ the Orissa High Court held that the wife was entitled to maintenance from the date when the husband entered appearance. The Court was considering an application for interim maintenance under Section 24 HMA in a petition for restitution of conjugal rights filed by the wife. The Family Court awarded interim maintenance to the wife and minor child from the date of the order. In an appeal filed by the wife and minor child seeking maintenance from the date of application, the High Court held that the Family Court had failed to assign any reasons in support of its order, and directed: (SCC OnLine Ori para 8)

“8. ... The learned Judge, Family Court has not assigned any reason as to why he passed the order of interim maintenance w.e.f. the date of order. When admittedly the parties are living separately and prima facie it appears that the petitioners have no independent source of income, therefore, *in our view order should have been passed for payment of interim maintenance from the date of appearance of the opposite party-husband.*” (emphasis supplied)

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

64 1982 SCC OnLine Ker 51 : AIR 1983 Ker 139

65 1965 SCC OnLine Cal 196 : (1965-66) 70 CWN 633

66 (1986) 2 OLR 44

67 2009 SCC OnLine Ori 21 : AIR 2009 Ori 133

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.

110. In *Shail Kumari Devi v. Krishan Bhagwan Pathak*⁶⁸, this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. In *Bhuwan Mohan Singh v. Meena*⁶⁹, this Court held that repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.

111. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hamper their capacity to be effectively represented before the court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned.

112. In *Badshah v. Urmila Badshah Godse*⁷⁰, the Supreme Court was considering the interpretation of Section 125 CrPC. The Court held: (SCC p. 196, para 13)

“13.3. ... purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve “social justice” which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.” (emphasis supplied)

113. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made

⁶⁸ (2008) 9 SCC 632 : (2008) 3 SCC (Cri) 839

⁶⁹ (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200

⁷⁰ (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51

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before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.

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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*⁷¹ held that: (SCC OnLine Bom para 7)

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“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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115. An application for execution of an order of maintenance can be filed under the following provisions:

(a) Section 28-A of the Hindu Marriage Act, 1955 read with Section 18 of the Family Courts Act, 1984 and Order 21 Rule 94 CPC for executing an order passed under Section 24 of the Hindu Marriage Act (before the Family Court);

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(b) Section 20(6) of the DV Act (before the Judicial Magistrate); and

(c) Section 128 CrPC before the Magistrate's Court.

116. Section 18 of the Family Courts Act, 1984 provides that orders passed by the Family Court shall be executable in accordance with the CPC/CrPC.

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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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Striking off the Defence

118. Some Family Courts have passed orders for striking off the defence of the respondent in case of non-payment of maintenance, so as to facilitate speedy disposal of the maintenance petition. In *Kaushalya v. Mukesh Jain*⁴³, the Supreme Court allowed a Family Court to strike off the defence of the respondent, in case of non-payment of maintenance in accordance with the interim order passed.

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119. The Punjab and Haryana High Court in *Rani v. Parkash Singh*⁷² was considering a case where the husband failed to comply with the maintenance

71 1995 SCC OnLine Bom 315 : AIR 1996 Bom 94

43 (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915

72 1996 SCC OnLine P&H 52 : AIR 1996 P&H 175

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order, despite several notices, for a period of over two years. The Court taking note of the power to strike off the defence of the respondent, held that: (SCC OnLine P&H para 7)

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“7. ... Law is not that powerless as not to bring the husband to book. If the husband has failed to make the payment of maintenance and litigation expenses to wife, his defence be struck out.”

120. The Punjab and Haryana High Court in *Mohinder Verma v. Sapna*⁷³, discussed the issue of striking off the defence in the following words: (SCC OnLine P&H para 8)

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“8. Section 24 of the Act empowers the matrimonial court to award maintenance pendente lite and also litigation expenses to a needy and indigent spouse so that the proceedings can be conducted without any hardship on his or her part. The proceedings under this section are summary in nature and confer a substantial right on the applicant during the pendency of the proceedings. *Where this amount is not paid to the applicant, then the very object and purpose of this provision stands defeated. No doubt, remedy of execution of decree or order passed by the matrimonial court is available under Section 28-A of the Act, but the same would not be a bar to striking off the defence of the spouse who violates the interim order of maintenance and litigation expenses passed by the said court.* In other words, the striking off the defence of the spouse not honouring the court’s interim order is the instant relief to the needy one instead of waiting endlessly till its execution under Section 28-A of the Act. Where the spouse who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to adopt time consuming execution proceedings for realising the amount. Court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it showing its helplessness in its instant implementation. It would, thus, be appropriate even in the absence of any specific provision to that effect in the Act, to strike off the defence of the erring spouse in exercise of its inherent power under Section 151 of the Code of Civil Procedure read with Section 21 of the Act rather than to leave the aggrieved party to seek its enforcement through execution as execution is a long and arduous procedure. Needless to say, the remedy under Section 28-A of the Act regarding execution of decree or interim order does not stand obliterated or extinguished by striking off the defence of the defaulting spouse. Thus, where the spouse who is directed to pay the maintenance and litigation expenses, the legal consequences for its non-payment are that the defence of the said spouse is liable to be struck off.” (emphasis supplied)

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121. The Delhi High Court in *Satish Kumar v. Meena*⁷⁴ held that the Family Court had inherent powers to strike off the defence of the respondent, to ensure that no abuse of process of the court takes place.

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⁷³ 2014 SCC OnLine P&H 25147

⁷⁴ 2001 SCC OnLine Del 817 : (2001) 60 DRJ 246

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122. The Delhi High Court in *Santosh Sehgal v. Murari Lal Sehgal*⁷⁵, framed the following issue for consideration: (SCC OnLine Del para 3)

“3. ... whether the appeal against the decree of divorce filed by the appellants wife can be allowed straightaway without hearing the respondent husband in the event of his failing to pay interim maintenance and litigation expenses granted to the wife during the pendency of the appeal.”

The reference was answered as follows: (*Santosh Sehgal case*⁷⁵, SCC OnLine Del para 5)

“5. The reference to the portion of the judgment in *Rani case*⁷² extracted hereinabove would show that the Punjab and Haryana High Court and the Orissa High Court have taken a unanimous view that in case the husband commits default in payment of interim maintenance to his wife and children then he is not entitled to any matrimonial relief in proceedings by or against him. The view taken by the Punjab and Haryana High Court in *Rani case*⁷² has been followed by a Single Judge of this Court in *Satish Kumar v. Meena*⁷⁴. We tend to agree with this view as it is in consonance with the first principle of law. We are of the view that when a husband is negligent and does not pay maintenance to his wife as awarded by the Court, then how such a person is entitled to the relief claimed by him in the matrimonial proceedings. We have no hesitation in holding that in case the husband fails to pay maintenance and litigation expenses to his wife granted by the Court during the pendency of the appeal, then the appeal filed by the wife against the decree of divorce granted by the trial court in favour of the husband has to be allowed. Hence the question referred to us for decision is answered in the affirmative.”

The Court concluded that if there was non-payment of interim maintenance, the defence of the respondent is liable to be struck off, and the appeal filed by the appellants wife can be allowed, without hearing the respondent.

123. The Punjab and Haryana High Court in *Gurvinder Singh v. Murti*⁷⁶ was considering a case where the trial court struck off the defence of the husband for non-payment of ad interim maintenance. The High Court set aside the order of the trial court, and held that instead of following the correct procedure for recovery of interim maintenance as provided under Section 125(3) or Section 421 CrPC the trial court erred in striking off the defence of the husband. The error of the court did not assist in recovery of interim maintenance, but rather prolonged the litigation between the parties.

124. The issue whether defence can be struck off in proceedings under Section 125 CrPC came up before the Madhya Pradesh High Court in

⁷⁵ 2006 SCC OnLine Del 585 : AIR 2007 Del 210

⁷² *Rani v. Parkash Singh*, 1996 SCC OnLine P&H 52 : AIR 1996 P&H 175

⁷⁴ 2001 SCC OnLine Del 817 : (2001) 60 DRJ 246

⁷⁶ 1990 SCC OnLine P&H 35 : (1990) 1 DMC 559

- Venkateshwar Dwivedi v. Ruchi Dwivedi*⁷⁷. The Court held that neither Section 125(3) CrPC nor Section 10 of the Family Courts Act either expressly or by necessary implication empower the Magistrate or Family Court to strike off the defence. A statutory remedy for recovery of maintenance was available, and the power to strike off defence does not exist in a proceeding under Section 125 CrPC. Such power cannot be presumed to exist as an inherent or implied power. The Court placed reliance on the judgment of the Kerala High Court in *Davis v. Thomas*⁷⁸, and held that the Magistrate does not possess the power to strike off the defence for failure to pay interim maintenance.

Discussion and Directions on Enforcement of orders of Maintenance

- 125.** The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.

- 126.** Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the courts find default to be wilful and contumacious, particularly to a dependent unemployed wife, and minor children. Contempt proceedings for wilful disobedience may be initiated before the appropriate court.

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.

(a) Issue of overlapping jurisdiction

128. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

- 128.1. (i)** Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.

128.2. (ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.

- 128.3. (iii)** If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding.

⁷⁷ 2017 SCC OnLine MP 2065 : (2018) 2 DMC 103 (MP). The Karnataka High Court affirmed this view in *Ravindra Kumar v. Renuka*, 2009 SCC OnLine Kar 481.

⁷⁸ 2007 SCC OnLine Ker 358 : ILR (2007) 4 Ker 389. See also *Sakeer Hussain T.P. v. Naseera*, 2016 SCC OnLine Ker 23592 : ILR (2016) 4 Ker 917

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(b) Payment of Interim Maintenance

129. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrates Court concerned, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

130. For determining the quantum of maintenance payable to an applicant, the court shall take into account the criteria enumerated in Part B — III of the judgment. The aforesaid factors are however not exhaustive, and the court concerned may exercise its discretion to consider any other factor(s) which may be necessary or of relevance in the facts and circumstances of a case.

(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.

(e) Enforcement/Execution of orders of maintenance

132. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.

133. Before we part with this judgment, we note our appreciation of the valuable assistance provided by the learned Amici Curiae Ms Anitha Shenoy and Mr Gopal Sankaranarayanan, Senior Advocates in this case.

134. A copy of this judgment be communicated by the Secretary General of this Court, to the Registrars of all High Courts, who would in turn circulate it to all the District Courts in the States. It shall be displayed on the website of all District Courts/Family Courts/Courts of Judicial Magistrates for awareness and implementation.

ENCLOSURE I

Affidavit of Assets and Liabilities for Non-Agrarian Deponents

I _____, d/o _____ or s/o _____, aged about _____ years, resident of _____, do hereby solemnly affirm and declare as under:

A. Personal Information

1. Name:
2. Age/Sex:
3. Qualifications (Educational and Professional):

4. Whether the Applicant is staying in the matrimonial house/parental home/separate residence. Please provide the current residential address of matrimonial home or place of residence and details of ownership of residence, if owned by other family member.
5. Date of marriage:
6. Date of separation:
7. General monthly expenses of the Applicant (rent, household expenses, medical bills, transportation, etc.):
- B. Details of Legal Proceedings and Maintenance being paid**
 1. Particulars of any ongoing or past legal proceedings with respect to maintenance or child support between the Applicant and Non-Applicant.
 2. Whether any maintenance has been awarded in any proceeding arising under the DV Act, CrPC, HMA, HAMA, etc.? If yes, provide details of the quantum of maintenance awarded in the proceedings.
 3. If so, provide particulars thereof, along with a copy of the order(s) passed.
 4. Whether the order of maintenance passed in earlier proceedings has been complied with. If not, arrears of maintenance.
 5. Whether any voluntary contribution towards maintenance has been made/will be made in the future? If yes, provide details of the same.
- C. Details of dependent family members**
 1. Details of dependent family members, if any.
 - (a) Relationship with dependants:
 - (b) Age and sex of dependant(s):
 2. Disclose if any independent source(s) of income of the dependants, including interest income, assets, pension, tax liability on any such income and any other relevant details.
 3. The approximate expenses incurred on account of the dependant.
- D. Medical details if any, of the deponent and/or dependent family members**
 1. Whether either party or child/children is suffering from any physical/mental disability, or any other serious ailment. If yes, produce medical records.
 2. Whether any dependent family member has serious disability, requiring continuous medical expenditure. If yes, produce disability certificate and approximate medical expenditure incurred on such medical treatment.
 3. Whether either party or child/children or any other dependent family member is suffering from life-threatening diseases, which would entail expensive and regular medical expenditure? If yes, provide details of the same along with summary of previous details of hospitalisation/medical expenses incurred.

E. Details of children of the parties

1. Number of children from the existing marriage/marital relationship/previous marriage. a
2. Name and age of children.
3. Details of the parent who has the custody of the children.
4. Expenditure for maintenance of dependent children.
 - (a) Towards food, clothing and medical expenses.
 - (b) Towards expenses for education, and a summary of general expenses. b
 - (c) Towards expenses, if any, of any extra educational, vocational or professional/educational course, specialised training or special skills programme of dependent children.
 - (d) Details of any loan, mortgage, charge incurred or instalment plan (being paid or payable), if any, on account of any educational expenses of children.
5. Whether any voluntary contribution by either of the parties is being made towards these educational expenses? If yes, provide details of the same. Also provide an estimate of any additional contribution that may be required. c
6. Whether any financial support is being provided by a third party for the educational expenses of the children? d

F. Details of Income of the Deponent

1. Name of employer:
2. Designation:
3. Monthly income:
4. If engaged in government service, furnish latest salary certificates or current pay slips or proof of deposit in bank account, if being remitted directly by employer. e
5. If engaged in the private sector, furnish a certificate provided by the employer stating the designation and gross monthly income of such person, and Form 16 for the relevant period of current employment.
6. If any perquisites, benefits, house rent allowance, travel allowance, dearness allowance or any other service benefit is being provided by the employer during the course of current employment. f
7. Whether assessed to income tax?

If yes, submit copies of the Income Tax Returns for the periods given below:

 - (i) One year prior to marriage
 - (ii) One year prior to separation g
 - (iii) At the time when the application for maintenance is filed
8. Income from other sources, such as rent, interest, shares, dividends, capital gains, FDRs, Post office deposits, mutual funds, stocks, debentures, agriculture, or business, if any, along with TDS in respect of any such income. h
9. Furnish copies of bank statement of all accounts for the last 3 years.

G. Assets (movable and immovable) owned by the Deponent

1. Self-acquired property, if any:
- a* 2. Properties jointly owned by the parties after marriage:
3. Share in any ancestral property:
4. Other joint properties of the parties (accounts/investments/FDR/mutual funds, stocks, debentures, etc.), their value and status of possession:
- b* 5. Status of possession of immovable property and details of rent, if leased:
6. Details of loans taken or given by the Deponent:
7. Brief description of jewellery and ornaments of parties acquired during/after marriage:
8. Details of transfer deeds or transactions of alienation of properties previously owned by the applicant, executed during the subsistence of the marriage. Also provide brief reasons for such sale or transaction, if any.
- c*

H. Details of Liabilities of the Deponent

1. Loans, liabilities, mortgage, or charge outstanding against the Deponent, if any.
- d* 2. Details of any EMIs being paid.
3. Date and purpose of taking loan or incurring any such liability:
4. Actual amount borrowed, if any, and the amount paid up to date of filing the Affidavit:
5. Any other information which would be relevant to describe current liabilities of the Deponent.

I. Self-employed persons/Professionals/Business Persons/Entrepreneur

- e* 1. Brief description of nature of business/profession/vocation/self-employed/work activity.
2. Whether the business/profession/self-employment is carried on as an individual, sole proprietorship concern, partnership concern, LLP, company or association of persons, HUF, joint family business or any other form? Give particulars of Applicant's share in the partnership/business/professional association/self-employment. In case of partnership, specify the share in the profit/losses of the partnership.
- f* 3. Net Income from the business/profession/partnership/self-employment.
- g* 4. Business/partnership/self-employment liabilities, if any, in case of such activity.
5. In case of business of company, provide brief details of last audited balance sheet to indicate profit and loss of the company in which such party is in business in the company.
- h* 6. In case of a partnership firm, provide details of the filings of the last Income Tax Return of partnership.

7. In case of self-employed individual, provide the filings of the last Income Tax Return from any such professional/business/vocational activity.

a

J. Information provided by the Deponent with respect to the income, assets and liabilities of the other Spouse

1. Educational and professional qualifications of the other spouse:
2. Whether spouse is earning? If so, give particulars of the occupation and income of the spouse.
3. If not, whether he/she is staying in his/her own accommodation, or in a rented accommodation or in accommodation provided by employer/business/partnership?
4. Particulars of assets and liabilities of spouse as known to the deponent, along with any supporting documents.

b

K. Details of Applicant or the other Spouse, in case parties are Non-Resident Indians, Overseas Citizens of India, Foreign Nationals or Persons living abroad outside India

c

1. Details of Citizenship, Nationality and current place of residence, if the Applicant or other spouse is residing abroad outside India, temporarily or permanently.
2. Details of current employment and latest income in foreign currency of such applicant/spouse, duly supported by relevant documentation of employment and income from such foreign employer or overseas institution by way of employment letter or testimonial from foreign employer or overseas institution or latest relevant bank statement.
3. Details of household and other expenditure of such applicant/spouse in foreign jurisdiction.
4. Details of tax liability of applicant/other spouse in foreign jurisdiction.
5. Details of income of applicant/other spouse from other sources in India/foreign jurisdiction.
6. Details of expenses incurred or contribution made on account of spousal maintenance, child support or any other educational expenses, medical treatment of spouse or children.
7. Any other relevant detail of expenses or liabilities, not covered under any of the above headings and any other liabilities to any other dependent family members in India or abroad.

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f

Declaration

1. I declare that I have made a full and accurate disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than as stated in this affidavit.
2. I undertake to inform this Court immediately with respect to any material change in my employment, assets, income, expenses or any other information included in this affidavit.

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h

- a* 3. I understand that any false statement in this affidavit, apart from being contempt of court, may also constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code punishable with imprisonment up to seven years and fine, and Section 209 of the Indian Penal Code punishable with imprisonment up to two years and fine. I have read and understood Sections 191, 193, 199 and 209 of the Indian Penal Code, 1860.

DEPONENT

b **Verification**

- c* Verified at ____ on this ____ day of ____ that the contents of the above affidavit are true to my personal knowledge, no part of it is false and nothing material has been concealed therefrom, whereas the contents of the above affidavit relating to the assets, income and expenditure of my spouse are based on information believed to be true on the basis of record. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals.

DEPONENT

ENCLOSURE II

d **Details for Affidavit for Agrarian Deponents (Krishi)**

1. Total extent of the rural land(s) owned, or the specific shareholding in the same land:
2. Jamabandis/Mutations to show ownership.
3. Location of the land owned by the party.
- e* 4. Nature of land : whether wet land or dry land.
5. Whether such land is agricultural land or non-agricultural land:
6. Nature of agriculture/horticulture:
7. Nature of crops cultivated during the year:
8. If rural land is not cultivable, whether the same is being used for business, leasing or other activity:
- f* 9. Income generated during the past 3 years from the land.
10. Whether any land is taken on lease/battai (or any other term used for a lease in the local area of the jurisdiction concerned where rural/agricultural land is located.)
- g* 11. (a) Whether owner of any livestock, such as buffaloes, cows, goats, cattle, poultry, fishery, bee keeping, piggery, etc. the number thereof and income generated therefrom?
(b) Whether engaged in dairy farming, poultry, fish farming or any other livestock activity.
12. Loans, if any obtained against the land. Furnish details of such loans.
13. Any other sources of income:
- h* 14. Liabilities, if any.
15. Any other relevant information:

Declaration

1. I declare that I have made a full and accurate disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than as stated in this affidavit. a
2. I undertake to inform this Court immediately with respect to any material change in my employment, assets, income, expenses or any other information included in this affidavit.
3. I understand that any false statement in this affidavit, apart from being contempt of court, may constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code punishable with imprisonment up to seven years and fine, and Section 209 of the Indian Penal Code punishable with imprisonment up to two years and fine. I have read and understood Sections 191, 193, 199 and 209 of the Indian Penal Code, 1860. b

DEPONENT

Verification

Verified at ____ on this ____ day of ____ that the contents of the above affidavit are true to my personal knowledge, no part of it is false and nothing material has been concealed therefrom. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals. c

DEPONENT

ENCLOSURE III

Affidavit for the State of Meghalaya

1. Whether the woman is the youngest daughter of the family. e
2. Whether the woman is staying with her husband in her family property.
3. Whether she has any maternal uncle, who plays a very important role in their family matters, which includes settlement of matrimonial disputes. The woman should also disclose her clan and her lineage. f
4. The woman should disclose if her children have adopted the surname of her mother, inasmuch as Khasi has been defined as “a person who adopts the surname of his or her mother”.
5. The woman should disclose if she gets any financial assistance from her clan or family member. g
6. The woman should disclose if her parents are alive more specifically, her mother, and how many siblings she has.
7. In event of a woman not being the youngest daughter, she has to disclose who the youngest daughter is.
8. The woman should disclose if she has any movable or any immovable property, self-acquired or inherited from her clan. h

RAJNESH v. NEHA (*Indu Malhotra, J.*)

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9. The woman should disclose if she is married to tribal or non-tribal.
The above format may be modified or adapted by the court concerned,
as may be considered appropriate.

Declaration

1. I declare that I have made a full and accurate disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than as stated in this affidavit.
2. I undertake to inform this Court immediately with respect to any material change in my employment, assets, income, expenses or any other information included in this affidavit.
3. I understand that any false statement in this affidavit, apart from being contempt of court, may also constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code punishable with imprisonment up to seven years and fine, and Section 209 of the Indian Penal Code punishable with imprisonment up to two years and fine. I have read and understood Sections 191, 193, 199, and 209 of the Indian Penal Code, 1860.

DEPONENT

Verification

Verified at _____ on this _____ day of _____ that the contents of the above affidavit are true to my personal knowledge, no part of it is false and nothing material has been concealed therefrom, whereas the contents of the above affidavit relating to the assets, income and expenditure of my spouse are based on information believed to be true on the basis of record. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals.

DEPONENT

Shahjahan
v.
The State of Uttar Pradesh & Anr.
R1: The State of Uttar Pradesh
R2: Sri Gaffar Khan

(Criminal Appeal No. 2112 of 2025)

04 February 2025

[Sudhanshu Dhulia and Ahsanuddin Amanullah,* JJ.]

Issue for Consideration

Matter pertains to the correctness of the order passed by the High Court upholding the order passed by family court not awarding any maintenance to the appellant-wife.

Headnotes[†]

Code of Criminal Procedure, 1973 – s.125 – Maintenance – Appellant-wife married to respondent no.2-husband according to Islamic customs and had two children – Husband filed divorce suit against the appellant in the ‘Court of Kazi’ which came to be dismissed in terms of the compromise between the parties – Three years later, husband filed for divorce in the ‘Court of (Darul Kaja) Kajiyaat’ which was allowed – Thereafter, appellant filed suit u/s.125 seeking maintenance for herself and two children – Family court allowed the petition for maintenance for the children, however rejected the appellant’s claim for maintenance on the finding that husband did not leave the appellant rather she left the matrimonial home – Revision petition by the appellant – Dismissed by the High Court – Correctness:

Held: Reasoning by the Family court that since it was the second marriage of the parties, there is no possibility of demand of dowry by husband, as he would be trying to rehabilitate his house is unknown to the canons of law and is based on mere conjecture and surmise – Family court could not have presumed that second marriage for both parties would necessarily entail no dowry

* Author

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demand – Family court, taking note of the compromise deed, opined that it was the appellant's character and conduct which led to the rift in the conjugal life of the parties based on the purported fact that the appellant in the compromise deed had admitted to her mistake, however in the compromise deed there was no such admission – Very basis/reasoning for rejecting the appellant's claim for maintenance appears to be *ex-facie* unsustainable – Maintenance could not have been denied to the appellant-wife under the prevailing circumstances – Respondent no.2 to pay Rs.4,000/- pm as maintenance to the appellant – Maintenance to be paid from the date of filing of the maintenance petition before the Family Court – Order of family court and impugned order set aside. [Paras 14, 15]

Judicial fora – Informal justice delivery system – ‘Court of Kazi’, ‘Court of (Darul Kaja) Kajiyat’, ‘Sharia Court’ – Recognition in law:

Held: ‘Court of Kazi’, ‘Court of (Darul Kaja) Kajiyat’, ‘Sharia Court’ etc. by whatever name styled have no recognition in law – Any declaration/decision by such bodies, by whatever name labelled, is not binding on anyone and is unenforceable by resort to any coercive measure – Only way such declaration/decision can withstand scrutiny in the eye of law could be when the affected parties accept such declaration/decision by acting thereon or accepting it and when such action does not conflict with any other law – Even then, such declaration/decision, at best, would only be valid inter-se the parties that choose to act upon/accept the same, and not a third-party. [Para 23]

Case Law Cited

***Rajnesh v. Neha* [2020] 13 SCR 1093 : (2021) 2 SCC 324 – relied on.**

***Nagarathinam v. State, through the Inspector of Police* [2023] 4 SCR 1124 : 2023 SCC OnLine SC 559; *Vishwa Lochan Madan v. Union of India* [2014] 8 SCR 195 : (2014) 7 SCC 707 – referred to.**

List of Acts

Code of Criminal Procedure, 1973.

Shahjahan v. The State of Uttar Pradesh & Anr.**List of Keywords**

Divorce under Islamic law; Maintenance; 'Court of (Darul Kaja) Kajiyat'; 'Court of Kazi'; Unknown to canons of law; Mere conjecture and surmise; *Ex-facie* unsustainable; Beneficial piece of legislation; Date of filing of maintenance petition; Decision valid inter-se parties; Revision petition; Compromise; Family court; Demand of dowry; Maintenance to be paid from the date of filing of maintenance petition before Family Court; Informal justice delivery system; 'Court of (Darul Kaja) Kajiyat'; 'Sharia Court'.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2112 of 2025

From the Judgment and Order dated 03.08.2018 of the High Court of Judicature at Allahabad in CRR No. 2829 of 2010

Appearances for Parties

Advs. for the Appellant:

Sushil Kumar Dubey, Rameshwar Prasad Goyal.

Advs. for the Respondents:

A.K. Misra, Sr. Adv. / A.G., Arup Banerjee, Amitabh Poddar, Priyanshu Raj, Harshita Raghuvanshi, Rajiv Agnihotri.

Judgment / Order of the Supreme Court**Judgment**

Ahsanuddin Amanullah, J.

Leave granted.

2. The present appeal is directed against the Final Judgment and Order dated 03.08.2018 in Criminal Revision No.2829/2010 (hereinafter referred to as the 'Impugned Order')¹ passed by the High Court of Judicature at Allahabad (hereinafter referred to as the 'High Court'), whereby the revision petition filed by the appellant-wife was dismissed

1 2018 SCC OnLine All 7101 : (2018) 6 All LJ 55.

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and the Order dated 23.04.2010 in Petition No.335 of 2008 passed by the Principal Judge, Family Court, Jhansi (hereinafter referred to as the 'Family Court') not awarding any maintenance to the appellant-wife, was upheld.

FACTUAL BACKGROUND:

3. The marriage of the appellant-wife was solemnized with the respondent no. 2-husband on 24.09.2002 according to Islamic customs. This was the second marriage of both. From their wedlock, the appellant gave birth to two children, namely daughter Aatika (aged about 21 years presently) and son Muzammil (aged about 16 years presently). In 2005, respondent no.2 filed 'Divorce Suit No.325 of 2005'² against the appellant in the 'Court of Kazi',³ Bhopal, Madhya Pradesh, which came to be dismissed in terms of the compromise dated 22.11.2005 entered into between the two parties.
4. The appellant alleged that respondent no.2 used to beat her demanding dowry and turned her out of the matrimonial home along with her children in May, 2008. On 16.09.2008, respondent no.2 filed 'Suit No.221 of 2008'⁴ in the 'Court of (Darul Kaja) Kajiyat',⁵ Bhopal seeking divorce. Soon thereafter, on 13.10.2008, the appellant filed Suit No.335/2008 under Section 125⁶ of the Code of Criminal

2 The usage of the apostrophe is deliberate; we will advert to this in the latter part of the Judgment.

3 *Ibid.*

4 *Ibid.*

5 *Ibid.*

6 '**125. Order for maintenance of wives, children and parents.**—(1) If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses

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Procedure, 1973 (hereinafter referred to as the 'Code') seeking maintenance of Rs.5,000/- (Rupees Five Thousand) per month for herself and Rs.1,000/- (Rupees One Thousand) per month for each of the children. The 'suit' of respondent no.2 for divorce was allowed, and, accordingly *Talaqnama* dated 22.01.2009 was prepared.

5. The Family Court *vide* Order dated 23.04.2010 partly allowed the petition for maintenance and granted Rs.1,500/- (Rupees One Thousand Five Hundred) per month to the daughter Aatika and Rs.1,000/- (Rupees One Thousand) per month to the son Muzammil. The Family Court dismissed the appellant's claim for maintenance on the finding that the respondent no.2-husband did not leave the appellant and rather, she herself, due to her nature and conduct, was the main reason for the dispute and her consequent departure from the matrimonial home.

of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.—For the purposes of this Chapter,—

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) 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.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.'

Supreme Court Reports

6. Aggrieved by the Order *supra* of the Family Court, the appellant-wife approached the High Court by filing Criminal Revision No.2829/2010. The High Court *vide* the Impugned Order dismissed the revision petition noting that since the appellant is living separately from her husband-respondent no.2 without sufficient reason, therefore, the findings recorded by the Court below cannot be termed illegal or perverse.

SUBMISSIONS BY THE APPELLANT:

7. Learned counsel for the appellant submitted that the Courts below erred in not granting maintenance ignoring the fact that the appellant is an illiterate lady having no source of income of her own and totally dependent upon her father and other family members. It was contended that there is nothing on the record to show that respondent no.2 was willing and ready to keep the appellant with him and the truth is that respondent no.2 had filed 'divorce suits' thrice before the 'Sharia Court'.
8. It was further submitted that the Courts below erred in holding that the appellant was living separately without any reason ignoring the fact and evidence that she was turned out of the matrimonial house by the respondent no.2. It was argued that the appellant tried her best to live peacefully with the respondent no.2 and this fact is established by the compromise dated 22.11.2005. Learned counsel pointed out that the Courts below recorded a perverse finding that the appellant had admitted her wrongdoing/misbehaviour in the compromise dated 22.11.2005.
9. It was canvassed that the appellant categorically stated that she was turned out from the house by the respondent no.2 after being subjected to abuse, beating and cruelty to her, and the Courts below erroneously held that she is living separately without reasonable cause. The Courts below, submitted learned counsel, also fell in error in finding that as it was the second marriage of both parties, there was no possibility of dowry demand by respondent no.2, ignoring the evidence on record.
10. It was argued that both children have grown up now and the meagre amount of maintenance granted to them is insufficient today, while the salary and other income(s) of respondent no.2 have increased. On these grounds, learned counsel prayed for (a) allowing the appeal;

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(b) enhancing the maintenance to the children, and; (c) awarding maintenance to the appellant-wife.

SUBMISSIONS BY THE RESPONDENT NO.1-STATE:

11. Learned counsel for the State argued that *vide* the Impugned Order, maintenance was rightly allowed only to the children. Since the appellant is living separately from her husband without having any sufficient reason, therefore, findings recorded by the courts below cannot be termed to be without any basis. It was submitted that the appeal be dismissed.

RESPONDENT NO.2 IN ABSENTIA:

12. Despite finally being duly served,⁷ none appeared for the respondent no.2-husband.

ANALYSIS, REASONING AND CONCLUSION:

13. We have heard learned counsel for the appellant and respondent no.1 and carefully perused the material on record. The Family Court as well as the High Court denied the appellant's claim for maintenance altogether and awarded a meagre sum totalling Rs.2,500/- (Rupees Two Thousand Five Hundred) as maintenance for the two children. Let us first examine the reason(s) assigned by the Courts below for non-suiting the appellant.
14. In her application for maintenance filed under Section 125 of the Code, the appellant contended that respondent no.2 had caused cruelty to her as she was not able to fulfil his demand for a motorcycle and Rs.50,000/- (Rupees Fifty Thousand). On this aspect, the Family Court noted that since it was their second marriage, there is no possibility of demand of dowry by respondent no.2, as he would be trying to rehabilitate his house. Such reasoning/observation by the Family Court is unknown to the canons of law and is based on mere conjecture and surmise. The Family Court will do well, henceforth, to bear in mind the observation in ***Nagarathinam v State, through the Inspector of Police, 2023 SCC OnLine SC 559*** that the '*...Court is not an institution to sermonise society on*

⁷ Per the learned Registrar's Order dated 15.05.2024.

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morality and ethics ...'. The Family Court could not have presumed that a second marriage for both parties would necessarily entail no dowry demand.

15. Further, the Family Court, taking note of the compromise deed dated 22.11.2005, opined that it was the appellant's character and conduct which led to the rift in the conjugal life of the parties. This reasoning is based on the purported fact that the appellant in the compromise deed had admitted to her mistake. However, from a bare perusal of the compromise deed, it would become apparent that it records no such admission. The first 'divorce suit' instituted by the husband in 2005 was dismissed on the basis of this compromise, wherein both parties decided to live together and agreed that they would not give the other party any occasion to complain. Hence, the very basis/reasoning for rejecting the appellant's claim for maintenance appears to be *ex-facie* unsustainable. The Impugned Order has merely noted the findings returned by the Family Court with approval.
16. The appellant, in her application before the Family Court, had claimed that the respondent no. 2 was serving on the post of *Aarakshak* in the Border Security Force and receiving around Rs.20,000/- (Rupees Twenty Thousand) per month as salary. The respondent no.2 on the other hand admitted in his evidence to receiving Rs.15,000/- (Rupees Fifteen Thousand) per month. It is to be borne in mind that this was the situation in 2008-2009 (nearly 16 years ago) and much water would have flown under the bridge since then. We are of the view that maintenance could not have been denied to the appellant-wife under the prevailing circumstances.
17. This brings us to the next question, i.e., from which date will the maintenance be payable – the date of the application or the date of the Order? The appellant has contested the direction of the Family Court wherein it has made the maintenance payable from the date of the order instead of the date of application. Of course, Section 125(2) of the Code empowers the Court to award maintenance from the date of the order but the same has to be justified in the background of the attendant facts and circumstances and should not cause unnecessary hardship to the applicant. In our view, Section 125 of the Code is a beneficial piece of legislation which has been enacted to protect the wife and children from destitution and vagrancy and, in the usual course, it would not be appropriate

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to disadvantage the applicant for the delay in the disposal of the application by the judicial system. It would be beneficial to reproduce the relevant discussion in **Rajnesh v Neha, (2021) 2 SCC 324**, which is extracted hereunder:

*‘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.***

110. In Shail Kumari Devi v. Krishan Bhagwan Pathak [Shail Kumari Devi v. Krishan Bhagwan Pathak, (2008) 9 SCC 632: (2008) 3 SCC (Cri) 839], this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. 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 repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.

111. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the

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wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hamper their capacity to be effectively represented before the court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned.

112. In *Badshah v. Urmila Badshah Godse* [*Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188: (2014) 1 SCC (Civ) 51], the **Supreme Court was considering the interpretation of Section 125 CrPC**. The Court held: (SCC p. 196, para 13)

*“13.3. ... purposive interpretation needs to be given to the provisions of Section 125 CrPC. **While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve “social justice” which is the constitutional vision, enshrined in the Preamble of the Constitution of India.** The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. **Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.**”*

(emphasis supplied)

113. *It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that **maintenance be***

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awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.'

(emphasis supplied by bolding; underlining reflects emphasis supplied in original)

18. No doubt, **Rajnesh** (*supra*) was pronounced after the Family Court's Order and Impugned Order were passed, but its enunciation of the law would entail that maintenance should be reckoned as awarded from the date of filing of the application in this behalf. Having regard to the totality of the facts and circumstances, we direct the respondent no.2 to pay Rs.4,000/- (Rupees Four Thousand) per month as maintenance to the appellant, from the date of filing of the maintenance petition before the Family Court. The maintenance awarded to the children will also be payable from the date of filing of the maintenance petition before the Family Court. We take judicial notice that during the pendency of the appeal before this Court, the daughter Aatika has attained majority. Having due regard to the scheme of Section 125 of the Code, it is clarified that the maintenance awarded in her favour will only be payable up to the date of her attaining majority. The entire amount of arrears shall be deposited by the respondent no.2 in the Family Court within four months from today, after adjustment of amount(s), if any, already paid/deposited by him.
19. Accordingly, the Order of the Family Court as well as the Impugned Order are set aside. The appeal is disposed of in the above terms.⁸
20. No order as to costs.
21. I.A. No.164654/2018 is allowed; exemption sought for is granted.

POST-SCRIPT:

22. In the opening portions of this Judgment, we have noted 'Court of Kazi', 'Court of (Darul Kaja) Kajiyat', '*Sharia Court*' etcetera. In

8 Disposed of *vide* Order dated 04.02.2025. The present Judgment provides reasons for the same.

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Vishwa Lochan Madan v Union of India, (2014) 7 SCC 707, it was observed:

‘12. From the pleadings of the parties there does not seem to be any dispute that several Dar-ul-Qazas presided over by the Qazis exist and they do issue fatwas. In the present case, what we have been called upon to examine is as to whether Dar-ul-Qaza is a parallel court and “fatwa” has any legal status.

13. As it is well settled, the adjudication by a legal authority sanctioned by law is enforceable and binding and meant to be obeyed unless upset by an authority provided by law itself. The power to adjudicate must flow from a validly made law. A person deriving benefit from the adjudication must have the right to enforce it and the person required to make provision in terms of adjudication has to comply that and on its failure consequences as provided in law are to ensue. These are the fundamentals of any legal judicial system. In our opinion, the decisions of Dar-ul-Qaza or the fatwa do not satisfy any of these requirements. Dar-ul-Qaza is neither created nor sanctioned by any law made by the competent legislature. Therefore, the opinion or the fatwa issued by Dar-ul-Qaza or for that matter anybody is not adjudication of dispute by an authority under a judicial system sanctioned by law. A Qazi or Mufti has no authority or powers to impose his opinion and enforce his fatwa on anyone by any coercive method. In fact, whatever may be the status of fatwa during Mogul or British Rule, it has no place in independent India under our constitutional scheme. It has no legal sanction and cannot be enforced by any legal process either by the Dar-ul-Qaza issuing that or the person concerned or for that matter anybody. The person or the body concerned may ignore it and it will not be necessary for anybody to challenge it before any court of law. It can simply be ignored. In case any person or body tries to impose it, their act would be illegal. Therefore, the grievance of the petitioner that Dar-ul-Qazas and Nizam-e-Qaza are running a parallel judicial system is misconceived.

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14. As observed earlier, the fatwa has no legal status in our constitutional scheme. Notwithstanding that it is an admitted position that fatwas have been issued and are being issued. The All India Muslim Personal Law Board feels the “necessity of establishment of a network of judicial system throughout the country and Muslims should be made aware that they should get their disputes decided by the Qazis”. According to the All India Muslim Personal Law Board “this establishment may not have the police powers but shall have the book of Allah in hand and sunnat of the Rasool and all decisions should be according to the book and the sunnat. This will bring the Muslims to the Muslim courts. They will get justice”.

15. The object of establishment of such a court may be laudable but we have no doubt in our mind that it has no legal status. It is bereft of any legal pedigree and has no sanction in laws of the land. They are not part of the corpus juris of the State. A fatwa is an opinion, only an expert is expected to give. It is not a decree, nor binding on the court or the State or the individual. It is not sanctioned under our constitutional scheme. But this does not mean that existence of Dar-ul-Qaza or for that matter practice of issuing fatwas are themselves illegal. It is informal justice delivery system with an objective of bringing about amicable settlement between the parties. It is within the discretion of the persons concerned either to accept, ignore or reject it. However, as the fatwa gets strength from the religion; it causes serious psychological impact on the person intending not to abide by that. As projected by Respondent 10 “Godfearing Muslims obey the fatwas”. In the words of Respondent 10 “it is for the persons/parties who obtain fatwa to abide by it or not”. He, however, emphasises that “the persons who are Godfearing and believe that they are answerable to the Almighty and have to face the consequences of their doings/deeds, such are the persons, who submit to the fatwa”. Imrana’s case is an eye-opener in this context. Though she became the victim of lust of her father-in-law, her marriage was declared unlawful and the innocent

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husband was restrained from keeping physical relationship with her. In this way a declaratory decree for dissolution of marriage and decree for perpetual injunction were passed. Though neither the wife nor the husband had approached for any opinion, an opinion was sought for and given at the instance of a journalist, a total stranger. In this way, the victim has been punished. A country governed by rule of law cannot fathom it.

16. *In our opinion, one may not object to issuance of fatwa on a religious issue or any other issue so long it does not infringe upon the rights of individuals guaranteed under the law. Fatwa may be issued in respect of issues concerning the community at large at the instance of a stranger but if a fatwa is sought by a complete stranger on an issue not concerning the community at large but individual, then the Dar-ul-Qaza or for that matter anybody may consider the desirability of giving any response and while considering it should not be completely unmindful of the motivation behind the fatwa. Having regard to the fact that a fatwa has the potential of causing immense devastation, we feel impelled to add a word of caution. We would like to advise the Dar-ul-Qaza or for that matter anybody not to give any response or issue fatwa concerning an individual, unless asked for by the person involved or the person having direct interest in the matter. However, in a case the person involved or the person directly interested or likely to be affected being incapacitated, by any person having some interest in the matter. Issuance of fatwa on rights, status and obligation of individual Muslims, in our opinion, would not be permissible, unless asked for by the person concerned or in case of incapacity, by the person interested. Fatwas touching upon the rights of an individual at the instance of rank strangers may cause irreparable damage and therefore, would be absolutely uncalled for. It shall be in violation of basic human rights. It cannot be used to punish the innocent. No religion including Islam punishes the innocent. Religion cannot be allowed to be merciless to the victim. Faith cannot be used as the dehumanising force.*

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17. In the light of what we have observed above, the prayer made by the petitioner in the terms sought for cannot be granted. However, we observe that no Dar-ul-Qazas or for that matter, anybody or institution by any name, shall give verdict or issue fatwa touching upon the rights, status and obligation, of an individual unless such an individual has asked for it. In the case of incapacity of such an individual, any person interested in the welfare of such person may be permitted to represent the cause of individual concerned. In any event, the decision or the fatwa issued by whatever body being not emanating from any judicial system recognised by law, it is not binding on anyone including the person, who had asked for it. Further, such an adjudication or fatwa does not have a force of law and, therefore, cannot be enforced by any process using coercive method. Any person trying to enforce that by any method shall be illegal and has to be dealt with in accordance with law.'

(emphasis supplied)

23. 'Court of Kazi', 'Court of (Darul Kaja) Kajiyat', 'Sharia Court' etcetera by whatever name styled have no recognition in law. As noted in **Vishwa Lochan Madan** (*supra*), any declaration/decision by such bodies, by whatever name labelled, is not binding on anyone and is unenforceable by resort to any coercive measure. The only way such declaration/decision can withstand scrutiny in the eye of law could be when the affected parties accept such declaration/decision by acting thereon or accepting it and when such action does not conflict with any other law. Even then, such declaration/decision, at best, would only be valid *inter-se* the parties that choose to act upon/accept the same, and not a third-party.
24. The position in law stands clarified as above.

A SETTLEMENT THAT WASN'T:

25. It appears that the appellant and respondent no.2 had agreed to a settlement before the District Legal Services Authority, Jhansi as per its Secretary's letter dated 11.07.2024. Although the letter suggests that the prescribed settlement format was also signed by

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both parties, the Special Lok Adalat held in this Court on 31.07.2024 referred the matter back to Court recording '*settlement seems not possible*'.

26. As such, we have disposed of the appeal on the basis of the pleadings and arguments.

Result of the case: Appeal disposed of.

**Headnotes prepared by:* Nidhi Jain



2026 INSC 370

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. OF 2026
(ARISING OUT OF SLP (CRL.) NO.15662 OF 2025)**

DEEPA JOSHI

... APPELLANT(S)

VERSUS

GAURAV JOSHI

...RESPONDENT(S)

J U D G M E N T

AUGUSTINE GEORGE MASI, J.

1. Leave Granted.
2. The present Criminal Appeal arises out of the judgment and order dated 26.06.2025 passed by the High Court of Uttarakhand at Nainital in Criminal Revision No.201 of 2025, whereby the High Court partly allowed the revision preferred by the appellant-wife and enhanced the maintenance awarded by the

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RAJNI MUKH
Date: 2026.04.16
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Reason:

Family Court from ₹8,000/- per month to ₹15,000/- per month, payable from the date of the application i.e. 18.09.2024.

3. The appellant-wife and the respondent-husband were married on 07.05.2023 at New Delhi in accordance with Hindu rites and customs. Following the marriage, the appellant resided at the matrimonial home along with the respondent and his family members. The record indicates that the relationship between the parties did not remain cordial and, according to the appellant, she was subjected to neglect and acts of physical as well as mental harassment during her stay in the matrimonial home.
4. Within a year of their marriage, the appellant was forced to leave the matrimonial home and return to her parental residence. Since then, she has been residing separately and is stated to have no independent source of income for her sustenance.

5. In these circumstances, the appellant instituted proceedings under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter BNSS), on 18.09.2024 before the competent court at Tanakpur, District Champawat, seeking maintenance quantified at ₹50,000/- per month. Upon establishment of the Family Court at Champawat, the proceedings stood transferred and were registered as Misc. Criminal Case No. 54 of 2024. Despite service of notice, the respondent did not enter appearance and the matter proceeded ex parte.
6. The Family Court, by judgment dated 25.02.2025, awarded maintenance of ₹8,000/- per month to the appellant, taking into account the respondent's salary structure and the deductions reflected therein. Aggrieved by the quantum so fixed, appellant preferred Criminal Revision No. 201 of 2025 before the High Court of Uttarakhand. The High Court, vide the impugned judgment dated 26.06.2025, partly allowed the revision and enhanced the maintenance to ₹15,000/- per month,

maintaining the date of commencement as 18.09.2024. Still dissatisfied, the appellant has approached this Court by way of the present appeal.

7. Learned counsel for the appellant submits that the amount of ₹15,000/- per month is grossly inadequate and does not reflect the true earnings of the respondent. It is urged that the respondent is in salaried employment and is earning a substantial monthly income, which has not been correctly appreciated by the courts below. It is further contended that the appellant has no independent source of income and is wholly dependent upon maintenance as claimed.
8. It is submitted that both the Family Court and the High Court have placed undue reliance on deductions reflected in the respondent's salary, particularly those arising out of loan repayments and financial commitments. According to the appellant, such deductions are largely voluntary in nature and relate to

acquisition of assets and, therefore, cannot be permitted to dilute the respondent's primary obligation to maintain his wife. It is also contended that the respondent possesses sufficient means and that the maintenance awarded constitutes only a small fraction of his income, thereby rendering it wholly disproportionate.

9. Per contra, learned counsel for the respondent submits that the High Court has already enhanced the maintenance after due consideration of the material on record and no further interference for enhancement is warranted. It is contended that the respondent's actual disposable income is reduced on account of various financial liabilities and deductions, which have been rightly taken into account. It is further submitted that the respondent does not have unlimited financial capacity and that the amount awarded is reasonable in the facts and circumstances of the case.

10. Having considered the submissions and the material placed on record, we are of the view that the quantum of maintenance fixed by the High Court requires a limited reconsideration.
11. The object of maintenance proceedings is well settled. In ***Chaturbhuji v. Sita Bai***¹, this Court held that the provision is intended to prevent destitution and that a wife is not required to establish absolute inability to survive before claiming maintenance. In ***Shamima Farooqui v. Shahid Khan***², it was emphasized that maintenance must not be illusory and should enable the wife to live with dignity. Further, in ***Rajnish v. Neha and Another***³, this Court reiterated that maintenance must be fair, reasonable and commensurate with the status of the parties and the financial capacity of the husband.
12. Tested on the aforesaid principles, it emerges

¹ (2008) 2 SCC 316

² (2015) 5 SCC 705

³ (2021) 2 SCC 324

that the determination of maintenance must be guided by a balanced assessment of the earning capacity of the husband and the reasonable needs of the wife. In the present case, it is not in dispute that the respondent is in salaried employment and has a regular source of income. The Family Court, while determining maintenance, appears to have accorded considerable weight to deductions reflected in the salary, and the High Court has, to an extent, corrected the inadequacy by enhancing the amount.

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.

14. It is also not in dispute that the appellant has

no independent source of income and has been residing separately shortly after the marriage. The maintenance awarded must therefore enable her to sustain herself with a reasonable degree of dignity, consistent with the status of the parties. At the same time, it is necessary to ensure that the determination remains fair and reasonable and does not impose an excessive burden upon the respondent. The exercise is one of achieving a just balance between competing considerations.

15. Insofar as the financial capacity of the respondent is concerned, it is borne out from the compliance affidavit filed pursuant to the order dated 06.02.2026 that the respondent is employed as a Manager with Canara Bank and is drawing a gross monthly income of ₹1,15,670/-. The Courts below have taken note of certain deductions from the said income, including repayments towards loans. However, it is well settled that repayments of loans, particularly where such repayments result in creation or acquisition of assets, partake the

character of capital investment and cannot be equated with essential or unavoidable expenditure. Such financial commitments, being voluntary in nature, cannot be accorded precedence over the statutory and legally enforceable obligation of maintenance.

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 ₹25,000/- per month would be just, fair and reasonable in the facts of the present case.
17. The impugned judgment dated 26.06.2025, passed by the High Court of Uttarakhand, is modified to the extent that the maintenance

payable to the appellant-wife shall be enhanced to ₹25,000/- per month.

18. Arrears, if any, shall be cleared within a period of three months. The maintenance amount shall be paid on or before the 7th day of each calendar month.
19. The appeal is disposed of in above terms.
20. Pending application(s), if any, shall stand disposed of.

.....J.
[SANJAY KAROL]

.....J.
[AUGUSTINE GEORGE MASIH]

**NEW DELHI;
APRIL 16, 2026.**