

**Cri.M.A. No.288/2019**  
**Sayogita Kath Vs. Ajay Malhotra**  
**Exh.5**

This is an application under second proviso of section 125 of Cr.P Code.

2. Perused the application, say, assets and liabilities of both the parties and record of the file.

3. Perused written argument of applicants and heard argument of the respondents.

4. It is pleaded by the applicants that the respondent is husband of applicant no.1. Applicant no.2 is their daughter. In the month of July 2019 the respondent left the petitioners in rented accommodation since then they are living separately. The respondent intentionally and deliberately neglected to maintain the petitioners. Applicant no.1 was forced by the respondent and his mother to resign from her job. Therefore, now she is jobless.

5. It is further pleaded by the applicants that the respondent is well educated and working as a phone banking manager with HDB Finance Pvt. Ltd. He earns Rs.60,000/- per months. Total income of the respondent is not less than 80,000 per month. Applicant no.1 is unable to maintain herself and her daughter. The respondent would tend to delay the matter. It will take time for the final disposal of the matter. Lastly the applicants prayed 40,000/- per month as a interim maintenance since date of filing the application.

6. The respondent appeared and filed his say. He admitted relationship with the applicants but denied all the allegations against him. His say in brief is that applicant no.1 is a highly educated and well bodied lady. She is able to herself very

well. The respondent earns only Rs. 50,000/- per month. Lastly he prayed to reject the application. It is further pleaded by the respondent that applicant no.2 is working as a kids model and earn handsomely.

7. Application Exh.5 was filed along with main application on 4/10/2019. Meanwhile the applicant filed assets and liabilities on 28/07/2022. As per the said assets and liabilities applicant no.1 get in hand salary of Rs. 86,956/-. Applicant no.1 has shown Rs.15,850/- EMI. Applicant no.1 has mentioned salary of respondent no.1 Rs.70,000/- but the respondent denied the same. No any proof on record to show that respondent gets salary of Rs. 70,000/-.

8. As per the assets and liabilities of the respondent his monthly net income is Rs.35,000/-. Salary slip filed by the respondent shows that in the month of June 2023 he received Rs.46,639/- gross salary and Rs.44,713 net salary.

9. To support the application the applicants have relied on following case laws.

1. Rajnesh Vs. Sneha and another[Criminal appeal no. 730/2020 decided on 04/11/2020(SC)]

I have carefully perused the above judgment. As per the above judgment it is expected that the respondent should submit his reply alongwith the affidavit of discloser of assets and liabilities and that to without any delay. Initially the respondent did not submit reply and affidavit of discloser. Meanwhile after written argument and submission of the above judgment. The respondent submitted his reply alongwith affidavit of discloser.

2. Nagendrappa Natikar Vs. Neelamma AIR 2023 Supreme Court 1541

I have carefully perused the above judgment. In the above

said judgment it has been observed in para 10 as under ; section 125 Cr.P is piece of social legislation provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of parties, which is in the nature of a civil proceeding, though are governed by the provisions of the Cr.PC and the order made under section 125 Cr.PC is tentative and is subject to final determination of the rights in a civil court.

3. Sunita Kachwaha and Ors. Vs. Anil Kachwaha

I have carefully perused the above judgment. It has been held in para 8 that the proceeding under section 125 of Cr.P. Code is summary in nature and it is not necessary for the court to see as to who was in wrong and the minute details of the matrimonial disputes.

4. Shanima Farooqui Vs. Shahid Khan[Criminal appeal no. 564/565/2015 decided on 06/04/2015(SC)]

I have carefully perused the above judgment. In the above cited case divorce and Mehar was given to the applicant and the respondent had raised an objection about maintainability. Family court held that section 125 of Cr.P. Code is applicable and it was confirmed.

10. It is argued on behalf of the applicant that at the time of filing this application she was jobless. Now she earns but it is responsibility of the respondent to pay maintenance for the daughter. It is not disputed that daughter applicant no.2 is with applicant no.1. Being father it is responsibility of the respondent to contribute for maintenance of the daughter. Record shows that applicant no.1 earns more than the respondents. But applicant no.1 has responsibility of her daughter and the respondent is liable to pay

maintenance for the daughter. No evidence on record to show that the respondent contributed anything for the maintenance of the daughter.

11. Under the above circumstances the application is liable to be partly allowed. At present applicant no.1 is not entitled for maintenance for herself but she is entitled for maintenance for her daughter. Say of the respondent doesn't show that he has any responsibility except applicant no.2. Hence the following order.

### **Order**

1. The application is partly allowed.
2. The respondent shall pay Rs.7,000/- (Rupees Seven thousand only) per month as interim maintenance for applicant no.2 from the date of filing this application till decision of the matter.

sd/-

Pune.  
Dt.20/10/2023

( S.G. Dubale)  
Judicial Magistrate First Class,  
Khadki,Pune.