

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION (FOR MAINTENANCE) NO. 399 of
2020**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Approved for Reporting	Yes	No

MANISHABEN VIJAYBHAI SHAH W/O BHAVESHBHAI RAMNIKLAL SHAH
Versus
STATE OF GUJARAT & ANR.

Appearance:

BHAVIN B THAKAR(9371) for the Applicant(s) No. 1
MR TAPASWI P RAVAL(10534) for the Applicant(s) No. 1
DR.ABHISST K THAKER(7010) for the Respondent(s) No. 2
MR ROHAN RAVAL, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

**Date : 24/03/2026
JUDGMENT**

1. By way of present application, applicant has sought the following reliefs:

“[A] The Hon'ble Court may be pleased to call for record and proceedings of Criminal Misc. Application No. 214 of 2016 in order to examine the legality, validity and propriety of the impugned judgment and award dated 09.01.2020 passed by the Court of Learned Judge, Family Court, Ahmedabad which is at ANEXURE-A and consequently, be pleased enhance the amount of maintenance as prayed for to by the petitioner in her maintenance application and quash and set aside the direction no.3 of the same in the interest of justice;”

2. The case of the applicant is that her marriage with respondent No. 2 was solemnized on 11.12.2000 as per Hindu rites, and thereafter she resided at her matrimonial home at Bhavnagar. It

is alleged that she was driven out of the matrimonial home on 01.08.2007, and since then she has been residing with her parents at Ahmedabad. The applicant filed proceedings under Section 12 of the Domestic Violence Act being Criminal Misc. Application No. 352 of 2016 before the learned JMFC, Ahmedabad (Rural), wherein respondent No. 2 was directed to pay Rs. 8,000/- per month. The applicant also filed an application under Section 125 of the Code of Criminal Procedure being Criminal Misc. Application No. 214 of 2016, which was partly allowed by the learned Family Court, Ahmedabad, directing respondent No. 2 to pay Rs. 15,000/- per month as maintenance.

3. Heard learned advocates for the respective parties.

4. It appears that by the impugned order dated 09.01.2020, the learned Family Court directed respondent No. 2 to pay maintenance of Rs. 15,000/- per month from the date of application i.e. 25.01.2016. However, the learned Family Court further directed that the amount voluntarily paid by respondent No. 2 prior to filing of the application shall be given set-off.

5. Learned advocate for the applicant, while restricting the challenge, has submitted that such direction granting set-off for the amount paid prior to filing of the application is contrary to law, particularly in view of the finding that maintenance is payable from the date of the application.

6. If we perused the provision of Section 125 (ii) of the Cr.P.C. which reads as under:

“125(ii) 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.”

7. On perusal of Section 125(2) of the Code of Criminal Procedure, it is clear that maintenance can be awarded either from the date of the order or from the date of the application, as directed by the Court.

8. Herein, in paragraph 2 of the operative part, it is clearly stated that respondent No. 2 is directed to pay maintenance of Rs. 15,000/- from 25.01.2016. However, in paragraph 3, a contrary direction has been issued granting set-off for the amount paid prior to filing of the proceedings under Section 125 of the Cr.P.C.

9. In view of the above, this Court is of the considered opinion that, to that extent, the learned Family Court has committed an error in granting set-off for the amount paid prior to the date of the application. The crucial date for entitlement of maintenance is 25.01.2016, i.e., the date of filing of the application. If any arrears are payable, and if any amount has been paid subsequent to 25.01.2016, i.e., after filing of the application, respondent No. 2 shall be entitled to claim set-off of such amount.

10. To that extent, the present application is partly allowed, and the operative part of the order dated 09.01.2020 stands modified accordingly. Rule is made absolute to the aforesaid extent.

(HASMUKH D. SUTHAR,J)

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