

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION (FOR MAINTENANCE) NO. 992 of
2018**

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JITENDRASINH GOBARJI CHAVDA

Versus

NILPABEN JITENDRASINH CHAVDA & ORS.

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Appearance:

MR PATHIK M ACHARYA(3520) for the Applicant(s) No. 1

HCLS COMMITTEE(4998) for the Respondent(s) No. 1,2,3

MR PV PATADIYA(5924) for the Respondent(s) No. 1,2,3

MS. KRINA P. CALLA, APP for the Respondent(s) No. 4

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CORAM:HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 01/07/2026

ORAL ORDER

1 The present application is filed by the applicant-husband under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as "Code, 1973"), challenging the order dated 21.06.2018 (hereinafter to be referred as "the impugned judgment and order") passed by the learned Principal Judge, Family Court, Ahmedabad in Criminal Misc. Application No. 1160 of 2016.

1.1 By the said impugned judgment and order, the learned Judge has partly allowed the application of the present respondent-wife under Section 127 (3) of the Code, 1973, thereby enhancing the amount of maintenance from Rs.4,000/- to Rs.6,500/- per month in

favour of respondent no.1-wife and Rs.3000/- each i.e. Rs. 6,000/- to the minor children from the date of the application i.e. 11.05.2016.

2. Considering the grounds raised in the Revision Application, and upon hearing the learned advocate for the applicant, the learned Single Judge of this Court, by an oral order dated 12.09.2018, had admitted the present Revision Application and, had stayed the execution of the impugned order on the condition to pay Rs. 9,000/- per month to the private respondents, instead of Rs. 12,500/-, from the date of filing of the application, till the final disposal of the present Revision Application. The respondents were duly served. The matter was taken up for final hearing with the able assistance of the learned advocates on record.

3. Learned advocate Mr. Pathik M. Acharya appearing for the applicant-husband, has assailed the impugned judgment and order by submitting that there is no circumstantial change to enhance the amount of maintenance from Rs. 9,000/- to Rs. 12,500/- per month. It is pointed out that the original application under Section 125 of the Code, 1973, was preferred by the respondent-wife in the year 2004. At the relevant stage, the Family Court had passed the order dated 26.03.2007 awarding Rs. 2,000/- per month i.e. Rs. 1,000/- towards the maintenance of the wife and Rs. 500/- to each child.

3.1 Inviting my attention to the findings and reasons assigned by the learned Family Judge in the aforesaid application under Section 125 of the Code, 1973, it is pointed out that, though the case was pleaded by the respondent-wife that the husband was earning Rs. 25,000/- per month from the business of building materials and, was also earning Rs.4,000/- by attending a private job and an additional amount of Rs.5,000/- by working as an agent, and the income generated from the agricultural field was annually between Rs. 30,000/- to Rs. 40,000/-, the learned Judge, having appreciated the entire evidence on record, has fixed the amount of maintenance at Rs. 1,000/- per month to the wife and Rs. 500/- to each child. It was submitted that no challenge was made against aforesaid order before any higher forum.

3.2 He has further submitted that the respondent-wife had, thereafter, moved an application under Section 127 of the Code, 1973 praying for enhancement. The learned Principal Judge, by an order dated 02.04.2012, had allowed the application and enhanced the amount of maintenance from Rs.2,000/- to Rs. 7,000/- per month retrospectively from the date of the application i.e. 19.06.2009. Thus, the respondent-wife was held entitled to Rs. 4,000/- per month towards maintenance and each of the children was awarded Rs.

1,500/- per month. He has further submitted that a second enhancement was sought for in the year 2016, wherein the learned Principal Judge had partly allowed the application, thereby further enhancing the maintenance amount to Rs.12,500/- per month i.e. Rs. 6,500/- in favour of the wife and Rs. 3,000/- to each child from the date of the said application, which is 11.05.2016. Hence, the applicant-husband, being aggrieved by the aforesaid enhancement, is before this Court in the present Revision.

3.3 Referring to the aforesaid judgments of the respective courts, learned advocate has submitted that the learned Judge, while considering the second enhancement, has arbitrarily, without appreciating the documentary evidence on record, passed the impugned order of enhancement of maintenance. According to learned advocate, there is no material change in the circumstances to give any cause to the learned Judge to enhance such amount. It is submitted that the applicant is a salaried employee in a private company and, is hardly earning Rs. 9,500/- per month. It is pointed out that the aforesaid aspect can be verified from the salary slips and the income tax returns of the last three years produced on record, wherein the annual income of the applicant reflected is around Rs. 1,01,040/- to Rs. 1,12,200/-. In such circumstances, the impugned order passed by the court below is illogical and irrational.

3.4 It is submitted that an individual earning hardly a salary of Rs. 9,500/- is directed to pay maintenance of Rs.12,500/-. It is further submitted that the applicant is living hand-to-mouth and, in fact, his financial condition is not good. The applicant is also required to meet with the expenses of his ailing mother, who is undergoing cardiac treatment. It is further submitted that, in fact, the brother of the applicant is taking care of him and the applicant is completely dependent upon his brother.

3.5 Learned advocate, under instructions, has submitted that the wife and the children have left the matrimonial home approximately 14 years ago and, since then they have been residing separately. It is further submitted that pending the present proceedings, the children have turned major and, in fact, the daughter has got married and has settled abroad, whereas the son is also well-educated and is independently earning. It is further submitted that all throughout, the applicant has diligently paid the amount of maintenance without any single default. Considering the protracted nature of 14 years' litigation involving multiple applications seeking enhancement, cross-litigations, and the escalating hostility, alternatively, a request was made to consider the amount of Rs. 6,500/- from today in favour of the wife, as the children are no longer dependent on the maintenance amount.

3.6 While concluding his arguments, learned advocate has placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Bhagwan Dutt vs. Kamla Devi** reported in **(1975) 2 SCC 386**, to contend that the Court must take into account the husband's actual means and his other obligations. The maintenance cannot be awarded in the realm of speculation. He has re-emphasized on the prerequisite criteria to be satisfied while considering an application praying for enhancement of maintenance under Section 127 of the Code, 1973. It was emphasized that a change in the circumstances must be pleaded and proved by cogent evidence. Learned advocate has, therefore, urged this Court to allow the present Revision Application, by passing appropriate orders.

4. Learned advocate Mr. P. V. Patadiya has entered appearance on behalf of respondent no.1-wife through Legal- Aid. Learned APP Ms. Krina P. Calla has appeared on behalf of respondent no.4- State.

5. Learned advocate appearing for respondent no.1-wife has objected to the aforesaid submissions made by learned advocate for the applicant-husband. Inviting my attention to the orders passed by the court below while considering the original application under Section 125 of the Code, 1973 and the first application praying for enhancement of maintenance under Section 127 of the Code, 1973, it

is submitted that the original application was filed in the year 2004, and a palpable amount of Rs. 2,000/- per month was awarded to the wife and children. It is further pointed out that the enhancement application was filed almost after a period of five years, which came to be allowed; and thereafter, the second enhancement was sought for in view of the application preferred in the year-2016. He has, therefore, submitted that the respondent-wife was not only required to maintain herself but was also required to take care of her two minor children. She was expected to meet with the educational expenses. It is further pointed out from the findings and reasons assigned by the learned Judge in the impugned order that the applicant is holding agricultural fields, as is evident from the Village Form No. 8A produced on record. In such circumstances, no error can be found with the approach of the learned Judge in entertaining the application preferred by respondent no. 1 for enhancement.

5.1 As regards the submissions made by the learned advocate of facing financial burden of the ailing mother's treatment is concerned, it is pointed out that the mother is, in fact, receiving pension. Learned advocate has, therefore, urged this Court to dismiss the present Revision Application.

6. I have heard the learned advocates appearing for the respective parties and have also appreciated their submissions, in light of the findings and reasons assigned by the learned Family Judge in the impugned order. I have carefully considered the record & proceedings of the courts below. Having appreciated the findings and reasons assigned by the learned Judge in light of the various documentary evidences, more particularly the holding of agricultural land—though running in the joint ownership of the family members, it can be readily inferred that the applicant must be earning additional income from the sale of agricultural produce. It is apparent from the bare reading of the Village Form No. 8A that the applicant is the co-owner of agricultural land admeasuring 27,529 sq. mtrs. It is also required to be noted that the applicant is holding a passport and, has travelled abroad in past, as evident from the endorsements made in the passport.

7. Though, during the course of argument, learned advocate for the applicant has disputed the aforesaid documents by contending that most of the immovable properties, including the residential houses, are in the name of his brother, this Court has no hesitation in holding that, considering the protracted litigation between husband and wife, the parties must have acted mutually in order to save the property from the litigation. It is further required to be noted that the

salary slip and the income tax returns filed by the applicant have been produced on record. However, it is evident that the applicant is also earning additional income from sell of building material as can be inferred from the visiting card produced on record at Mark 17/9, which runs in the name of the present applicant as well as his brother. The aforesaid aspect has not been disputed by the applicant. With such evidence on record, it cannot be said that orders are passed on mere speculation. Thus, judgment relied upon by learned advocate for the applicant would not be applicable in facts of the present case. It is required to be noted that the respondent-wife is currently staying at her parents' house. Though, the children have turned major and, have independently settled, the husband owes an obligation to maintain his wife. It is also required to be noted that, though it is contended that the applicant is required to bear the expenses of medical treatment of his ailing mother, the fact remains that the mother is receiving pension.

8. With all such circumstances on record, and considering the inflation rate witness by this Court in last decade, in my view, an amount of Rs.6,500/- per month is a minimum amount expected to meet basic living standard, this Court does not find any palpable error, jurisdictional error, or any illegality or infirmity in the impugned order

to exercise the revisional jurisdiction conferred under Section 397 read with Section 401 of the Code, 1973.

9. For the foregoing reasons, the present Revision Application is not entertained. However, considering the fact that the children have turned major and, are independently settled in their respective lives, it is clarified that the impugned order stands modified to the extent of holding the applicant liable to pay amount of maintenance in the sum of Rs. 6,500/- per month to respondent no. 1-wife, from the date of the application, which is 11.05.2016.

10. With these observations, the present Revision Application stands disposed of. Record & proceedings are directed to be sent back to the concerned court forthwith.

SUYASH SRIVASTAVA

(NISHA M. THAKORE,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SUYASH KUMAR SRIVASTAVA(HC01570), PRIVATE SECRETARY, at High Court of Gujarat on 02/07/2026 18:53:56