IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (FOR MAINTENANCE) NO. 1333 of 2024

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JYOTIBEN HASMUKHBHAI PALA
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MS URMILA N DESAI(5609) for the Applicant(s) No. 1
PARTY IN PERSON(5000) for the Respondent(s) No. 2
MS ASMITA PATEL, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE GITA GOPI**

Date : 20/04/2026

ORDER

1. By way of this application under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the applicant has, *inter-alia*, prayed for quashing and setting aside the judgment and order dated 26.3.2024 passed by the learned Principal Judge, Family Court, Jamnagar in Criminal Misc. Application no. 193 of 2022 and to enhance the amount of maintenance as well as to pay interim maintenance to respondent no.2 – son. The applicant, aged about 63 years, has filed a petition against the son, aged about 35 years, by moving the Family Court, Jamnagar in Criminal Misc. Application no. 193 of 2022.

2. Learned advocate Ms. Urmila Desai for the applicant has referred to the grounds raised in the application submitted

that the applicant-mother has raised three children and presently, is residing with her elder daughter, named, Simaben, who is having a matrimonial dispute with the husband and the applicant is also having a minor grand daughter and another daughter is Bhavnaben, who is married and is residing with her husband at Chhattisgarh, while the present respondent no.2 – son is working in Tata Consultancy Services (TCS) at Jamnagar on the post of Manager.

2.1 Advocate Ms. Desai submitted that income of the son is recorded and proved before the Family Court. The format of the affidavit of assets, income and expenditure filed by the respondent no.2 shows that his monthly income was Rs.93,500/-. While referring to his expenditure as Rs.19,227/-, the learned Judge has considered the economical conditions of the three children of the applicant and has considered that it should be divided into five parts and thus, considering the economical status of the respondent no.2, the mother would be entitled for a monthly maintenance amount of Rs.10,000/-, but however, had ordered that it is the equal responsibility of all the three children to maintain the mother and hence, had finally ordered an amount of Rs.3,500/- to be paid by the son.

2.2 Ms. Desai has submitted that with the very meager widow pension of Rs.1,250/- and adding amount of Rs.3,500/-, as granted to the applicant, the applicant-mother would not be in a position to pay the rent amount and stated that one property, though is in the name of the mother, the possession of the house has not been given to the mother and that property, though is still running in the name of the mother, is still in possession of the respondent no.2 – son.

3. Considering the facts of the matter, which have been admitted by the respondent no.2 that he has the responsibility of wife and two children and if the responsibility of the mother as a dependent is considered, then, the income of the respondent no.2 would be divided into five parts. The daughter, who has come back, is having her own matrimonial issues and as per the respondent no.2, sister is taking care of the mother who is also having her own daughter and according to the respondent no.2, the said sister Simaben is paying the rent of the house.

4. This Court has considered the judgment in the case of **Rajnesh v. Neha, (2021) 2 SCC 324** and the judgment of the Hon'ble Supreme Court in the case of **Deepa Joshi v. Gaurav Joshi**, rendered in Criminal Appeal @ Special Leave Petition

(Criminal) no. 15662 of 2025, wherein it has been observed in Paragraphs 11 to 16 as under:-

> "11. The object of maintenance proceedings is well settled. In Chaturbhuj v. Sita Bai, (2008) 2 SCC 316, 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 (2015) 5 SCC 705, it was emphasized that maintenance must not be illusory and should enable the wife to live with dignity. Further, in Rajnesh v. Neha and Another, (2021) 2 SCC 324, this Court reiterated that maintenance must be fair, reasonable and commensurate with the status of the parties and the financial capacity of the husband.
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> 12. Tested on the aforesaid principles, it emerges 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.
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> 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.
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> 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.”

5. It is submitted by the respondent no.2 – son who is party-in-person that the mother is receiving monthly widow pension of Rs.1,250/- from the Government and the mother is residing with her daughter and she receives comprehensive domestic and financial care from the daughter and thus, the mother's monthly liquidity would be Rs.9,250/- ensuring the high standard of living and hence, stated that the mother, at the most, would be entitled to the amount of Rs.8,000/- per month.

6. The respondent no.2 has given his written submissions and while referring to chronic abuse of process and infringement of Article 21, has submitted that the applicant was engaged in a consistent pattern of fragmented and vexatious litigation, having filed repeated applications against the respondent no.2 in the years 2019, 2021, 2022, and 2024 and that such a pattern of "serial litigation" constitutes a gross abuse of the process of the Court. It is submitted that being subjected to perpetual legal battles without finality infringes upon his right to live with dignity and mental peace, as guaranteed under Article 21 of the Constitution of India, thus, prayed to this Court to put a final quietus to this matter to prevent further judicial harassment.

6.1 The respondent no.2 has submitted that the present application is filed under Section 125 of the CrPC and the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "the 2007 Act") provides a specialized framework for parental maintenance. Section 9(2) of the 2007 Act prescribes a maximum limit of Rs.10,000/-. It is submitted that this statutory cap reflects the legislative wisdom of the Parliament and should serve as a benchmark to ensure that maintenance awards are balanced and not punitive.

6.2 The respondent no.2 has contended that the applicant is currently well-supported and possesses independent liquidity and that the applicant receives a monthly widow pension of Rs.1,250/- from the Government and is residing with her daughter and receives comprehensive domestic and financial care and with the current proposal of the respondent no.2, the applicant's total monthly liquidity would be Rs.9,250/-, ensuring a high standard of living. The respondent no.2 further submitted that notwithstanding the Family Court's findings that the case lacked merits, and the existing duties of the respondent no.2 toward his minor children, the respondent no.2 proposes to enhance the maintenance amount to Rs.8,000/- per month and submitted that this constitutes a significant Rs.4,500/- or 129% increase from the initial Family Court order of Rs.3,500/- and that this offer is made in good faith to resolve all pending disputes and ensure the welfare of the applicant while respecting the financial capacity of the respondent no.2.

7. The contention about the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 would not be relevant since the house in the name of the mother is still in the possession of the respondent no.2 – son.

8. Having considered the fact that the respondent no.2 – son has the responsibility of wife and two children, with his family of four and including the responsibility of the mother, the unit that could be decided for even distribution would be of five. Keeping in mind the observation of the Apex Court in the case of **Deepa Joshi** (supra), deduction arising out of financial commitment as loan repayment, which contributes towards the creation of assets, cannot be considered at par to necessary expenditure and hence, when the income is of Rs.93,500/-, the individual head of each unit would be Rs.18,700/- and the widow pension of Rs.1,250/- is deducted, the mother would be entitled for an amount of Rs.17,450/-

per month and therefore, the order of the learned Principal Judge, Family Court, Jamnagar dated 26.3.2024 requires modification with a direction to the respondent no.2 to pay monthly amount of Rs.17,450/- to the mother from the date of the application .

9. Further, the respondent no.2 has submitted that the amount if at all is enhanced, it should be from the date of the order of this Court and not from the application.

10. The respondent no.2 – party-in-person stated that the learned Judge has erred in writing the date of application in the operative part, but he has continuously paid the money from the date of application and has never fell in arrears towards the payment.

11. Countering the said argument, Ms. Desai submitted that the application was filed before the Family Court on 15.7.2022 and stated that learned Judge has made a reference of the date of institution of the application as 15.7.2021, and has committed an error in recording it as 1.7.2023 in the operative part of the order impugned dated 26.3.2024.

12. Having considered the facts of the case, since the mother has not been in a position to stay in her house and she is staying

with the divorced daughter in her rental house, the mother would also be required to pay for the rent for her own. Though the respondent no.2-son does not admit of having neglected the matter and failed to take care the evidence and facts of the matter proves otherwise, and as per the provision of Section 125 of the Code of Criminal Procedure, 1973, if any person having sufficient means neglects or refuses to maintain the parents, necessary monthly allowance is required to be ordered.

13. In view of the aforesaid facts and circumstances, the amount of maintenance of Rs.17,450/- shall be payable from the date of the application by the respondent no.2 – son to the applicant – mother. The judgment and order dated 26.3.2024 passed by the learned Principal Judge, Family Court, Jamnagar in Criminal Misc. Application no. 193 of 2022 is hereby modified to the aforesaid extent. Accordingly, the present application is allowed in the above terms.

(GITA GOPI,J)

Maulik