

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 390/2024

-----Petitioner

Versus



-----Respondent

Connected With

S.B. Criminal Revision Petition No. 304/2024

-----Petitioner

Versus

-----Respondent

For Petitioner(s)	:	Mr. Shankar Dayal Goswami
For Respondent(s)	:	Mr. Rakesh Matoria

HON'BLE MR. JUSTICE SANDEEP SHAH

Order

Reserved On- 12/08/2025

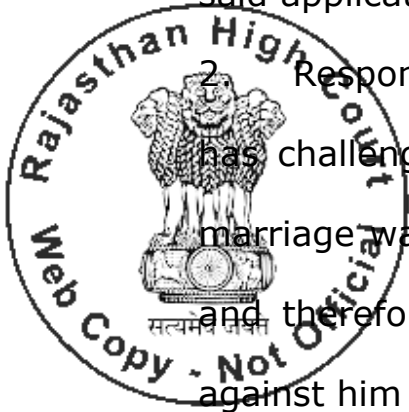
Pronounced On- 27/08/2025

1. Petitioner- Smt. Sunita Devi (wife) by filing the revision petition has sought enhancement of the maintenance amount and challenged the order dated 18.01.2024 passed by learned Judge,

Family Court No.1, Sri Ganganagar in Criminal Case No.391/2015, whereby, the learned Family Court while allowing the application under Section 125 Cr.P.C., filed by her directed the respondent – Sumit Bishnoi (husband) to pay a sum of Rs.4,000/- per month as maintenance to the petitioner-wife from the date of filing of the said application i.e. 05.11.2025.

2. Respondent- Sumit Bishnoi also by filing the revision petition has challenged the order impugned on the sole ground that the marriage was not solemnized between him and Smt. Sunita Devi, and therefore, the order impugned could not have been passed against him and in favour of Smt. Sunita Devi.

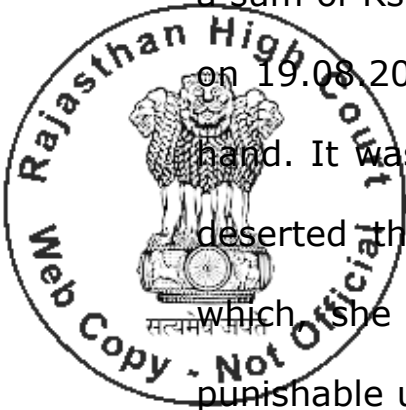
3. Shorn of unnecessary details, the relevant facts for necessary adjudication of the present revision petitions are that, Smt. Sunita Devi (hereinafter referred to as "the petitioner" for the sake of brevity) filed an application under Section 125 Cr.P.C. before the learned Family Court on 05.11.2015, emphasizing therein that she and Sumit Bishnoi (hereinafter referred to as "the respondent" for the sake of brevity) got married on 03.03.2014 as per the Hindu rituals at Radha Krishan Temple, Haryana Bhawan, Sri Ganganagar, and thereafter stayed as husband and wife at the house of the respondent situated at 63 L.N.P, Tehsil Padampur, District Sri Ganganagar. It was asserted that father of the respondent was not happy with the marriage, and therefore the respondent had refused to get the marriage registered and had denied the same. Post which, an FIR No.325/2014 for offences punishable under Section 376, read with 120-B IPC was lodged by the petitioner-wife, wherein the Police, after investigation, had filed the charge-sheet against the respondent. Thereafter, a



settlement was arrived at between the parties, and both Smt. Sunita Devi and Sumit Bishnoi stayed together as husband and wife at various places for 4 to 5 months.

3.1 It was asserted that after some time the respondent started threatening the petitioner with dire consequences and demanded a sum of Rs.2,00,000/- as dowry and also physically assaulted her on 19.08.2015, due to which, she sustained a fracture in her left hand. It was asserted that since 08.09.2015, the respondent had deserted the petitioner and was not staying with her, due to which she had again lodged an FIR No.237/2015 for offences punishable under Sections 406, 498-A, 506, 420, 120-B, 325, 377 IPC against the respondent, wherein the Police, after investigation, while treating respondent as her husband had filed charge-sheet against respondent on 05.11.2015. She further asserted that the respondent was having 25 Bighas land in Chuck at 63 LNP and 20 Bighas of land in Chuck at 24 LGW, and thus, he was having a share in 45 Bighas of ancestral land and that he was the only son of his parents.

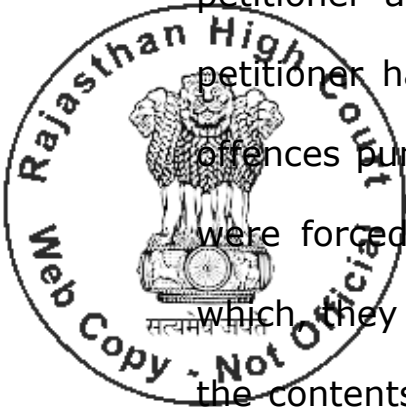
3.2 It was further asserted that the respondent by cultivating his ancestral land used to earn Rs.9,00,000/- per year (Rs.75,000/- per month), he used to earn Rs.2,50,000/- per year (Rs.20,000/- per month), by taking contract for cultivating the other land, he also used to earn Rs.20,000/- per month by doing finance work, and thus in total his earning was around Rs.1,15,000/- per month, whereas the petitioner was not doing anything and even the rent of her house was being paid by her mother-father. She thus claimed a sum of Rs.13,200/- per month being Rs.3,000/- as house rent, Rs.1,000/- for water and electricity bills, Rs.9,00/- &



Rs.2,000/-, for milk and vegetables, Rs.3,000/- for ration (grocery items), Rs.800/- for cylinder and Rs.2,000/- for her own cloths & shoes, etc.

4. The respondent filed a reply to the above-mentioned application and denied the contents thereof. He submitted that the petitioner and he were never married as per law and that the petitioner had tried to falsely implicate him in the case filed for offences punishable under Section 376 IPC, and he and his father were forced to enter into a compromise with the petitioner, for which they paid Rs.2,00,000/- to the petitioner. He further denied the contents of the FIR No.437/2015 lodged by the petitioner for offences punishable under Sections 406, 498-A, IPC etc. He further stated that he never stayed with the petitioner, and thus, there was no question of any desertion. As regards the income is concerned, he stated that the petitioner was an educated lady and was doing a job so also having knowledge of stitching and embroidery, whereas, on the contrary, he was not having any land whatsoever and his father had 8 Bighas of land, out of which, 3 Bighas of land is ancestral property, from which, the yearly income was Rs.75,000/- only.

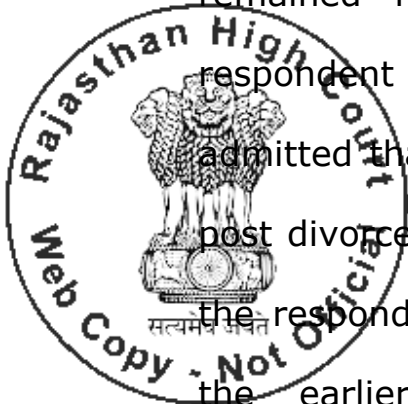
4.1 He further emphasized that his father had disowned him, and thus, he was not having any share in the property. In additional submissions, he stated that while he was in an intoxicated state, the petitioner got his signatures upon certain documents and tried to show that they were married. She further threatened him with dire consequences, including allegations of rape, due to which, he remained silent. He thus prayed for dismissal of the application in question filed by the petitioner.



5. To support her stand, the petitioner submitted her affidavit, while reiterating the contents of the application. On the contrary, the respondent submitted his own affidavit and affidavit of his father to support his defence.

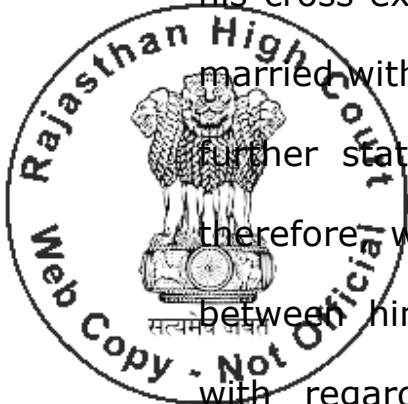
6. During the course of her cross-examination, the petitioner remained firm in her stand that she was married to the respondent on 03.03.2014 as per Hindu rites. She further admitted that earlier she was married to Rajesh Kumar, however, post divorce, she married the respondent and at the insistence of the respondent, she had given up the custody of her child from the earlier marriage. During the cross-examination, she

specifically denied that she had drugged the respondent and obtained his signatures on blank stamp papers. She also admitted that after marriage and staying together, the respondent had refused to get the marriage registered under the pressure of his parents and was trying to marry somewhere else, then petitioner had lodged an FIR for the offence under Section 376 IPC. She admitted that she had filed an application under Section 9 of the Hindu Marriage Act, 1955 along with the present application under Section 125 Cr.P.C. On specific question being asked, she admitted that post compromise in the case lodged under Section 376 of IPC, the family members and the respondent had accepted their marriage. She was cross-examined on the various photographs, which she had exhibited, wherein the petitioner and the respondent were shown together, while emphasizing that they were in a relationship of marriage, however she remained firm with regard to the photographs and the relationship between them as husband and wife.

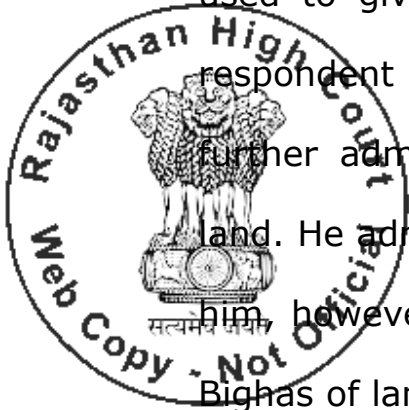


7. The respondent was also cross-examined and upon a question being asked, he admitted that in his affidavit he had mentioned the same address as that of his father, i.e., 63 NLP and also admitted that sometimes he stayed there and sometimes he stayed at somewhere else. During the initial part of his cross-examination, he specifically admitted that when he was married with the petitioner, there was no other person present. He further stated that he was not in a good state of mind, and therefore was not aware whether the marriage was solemnized between him and the petitioner. When he was cross-examined with regard to the photographs, which were exhibited, he admitted that he had not undertaken any proceedings, qua the said photographs in question nor had he filed any complaint regarding the same.

7.1 He further admitted that the photograph exhibit No.4 was of the time when he stayed with the petitioner for a period of four months at Raisinghnagar. He further admitted that he was the only son of his parents. He further admitted that after staying with the petitioner for four months, he refused to endorse her as his wife. As regards the income part, he specifically admitted that the petitioner does not have any house or any property whatsoever nor she has doing any job. He admitted that he himself was working as a daily labourer and earning an income of Rs.300/- per day, and also admitted that his father had 8 Bighas and 4 Bighas of land. He further admitted that the Police filed a charge-sheet against him for offences punishable under Section 498-A IPC, while treating him as a husband of the petitioner and further stated that he was not ready to stay with the petitioner.



8. Pursuant to the affidavit filed by father of the respondent, Shri Hanuman Bishnoi, he was cross-examined and during the course of cross-examination he could not stand firm on his statement that he had disowned the respondent and had evicted him from his house. He further stated that earlier the respondent used to give the expenses to the petitioner and admitted that respondent used to bring money to the house every month. He further admitted that he was having ownership of 8 Bighas of land. He admitted Exhibit Nos.6 & 7 showing the land belonging to him, however, stated that he was not having the ownership of 21 Bighas of land situated at 63 LNP or 25 Bighas at Khajuwala.



9. Learned Family Court thereafter proceeded to adjudicate the matter and by way of a common order dated 10.11.2017 decided the application under Section 9 of the Hindu Marriage Act, 1955 as well as the application under Section 125 of Cr.P.C., both filed by petitioner and dismissed the same, while observing that the petitioner could not prove the solemnization of marriage between both the parties.

10. Being aggrieved against the above-mentioned order petitioner filed S.B. Criminal Revision Petition No.1230/2018 before this Court, and also, separately challenged the dismissal of her application under Section 9 of the Hindu Marriage Act, 1955.

11. This Court by order dated 08.04.2021 allowed the Criminal Revision Petition filed by the petitioner and while giving a finding of marriage, remanded the matter back to the learned Family Court for consideration afresh after hearing both the parties. The relevant paragraph of the order above-mentioned is as under:-

"The petitioner in her statement has categorically stated that earlier she was married to one Rajesh Kumar and after

divorce, she got married with the respondent as per Hindu rites. A written agreement was also executed between them, however, the respondent got engaged with another woman turned her out of matrimonial home. The respondent husband in his statement has admitted that he had solemnized marriage with petitioner Sunita. The court below has also observed that the respondent and the petitioner were in relationship, however, rejected the application of petitioner on the ground that the petitioner failed to prove that marriage was solemnized between the petitioner and the respondent as per Hindu rites. In the opinion of this Court, the order dated 10.11.2017 is not sustainable and is liable to be set aside."



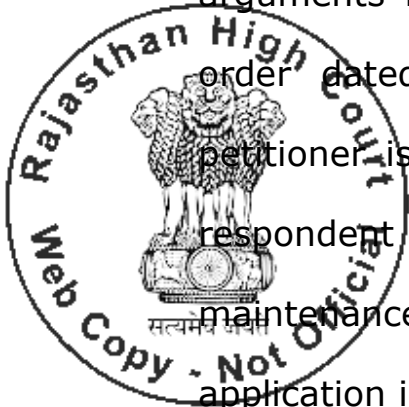
11. Further considering the observations, made by this Court in S.B. Criminal Revision Petition No.1230/2018, itself make it clear that the existence of relationship of husband and wife between petitioner and respondent is proved.

12. Post remand, in consonance with the directions issued by the Hon'ble Supreme Court in the case of "**Rajnish v. Neha & Ors.**", **reported in 2021 2 SCC 324**, affidavits of both the parties were filed. Strangely, while taking a complete somersault, the respondent filed the affidavit showing his father Shri Hanuman Bishnoi and Geeta Devi as dependant upon him and emphasized that they were not having any earning whatsoever. He further stated that he was not having any earning, nor paying Income Tax, nor having any amount in his bank and even refused to have any ancestral property. In his qualification, he specified that he was 12th pass.

13. On the contrary, in the affidavit filed by the petitioner, she emphasized that she was having a degree of M.A. & B.Ed., and at present the respondent was engaged as a Conductor and earning

Rs.10,000/-. She further stated that as far as the ancestral property of the respondent is concerned, she had given the details by way of submitting the *Jamabandi* of the land in question, from which, they were earning a sum of Rs.2,50,000/- per year.

14. Learned Family Court thereafter proceeded to hear the arguments made on behalf both the sides and by its impugned order dated 18.01.2024 gave a categorical finding that the petitioner is the wife of respondent and thereafter directed the respondent to make a payment of Rs.4,000/- per month as maintenance to the petitioner from the date of filing of the application i.e. 05.11.2025.



15. Being aggrieved against the impugned order, the present Criminal Revision Petitions have been filed by both the parties.

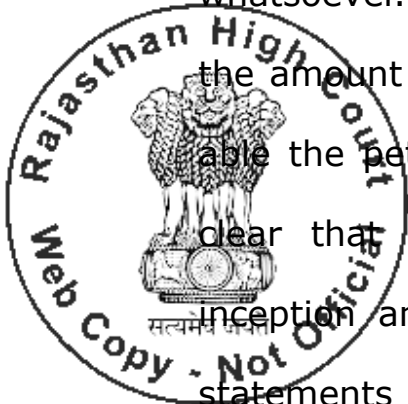
16. Learned counsel for the respondent (petitioner in S.B. Criminal Revision Petition No.304/2024 and respondent in S.B. Criminal Revision Petition No.390/2024) submitted that the earlier order passed by the learned Family Court dated 10.11.2017, while dismissing the application of the petitioner had clearly observed that the petitioner was not able to prove the marriage between the parties and that now, while taking a complete somersault, the learned Family Court, based upon the same evidence, has held the parties to be married without assigning any reason whatsoever, and therefore, the order impugned deserves to be quashed and set aside.

16.1 He further submitted that the petitioner had not placed on record a single document to prove that the marriage had taken place and still the learned Family Court, based on assumptions has

given a finding of a valid marriage subsisting between them. He thus prayed that the order impugned be quashed and set aside.

17. *Per contra*, learned counsel for the petitioner submitted that the order impugned to the extent of holding the petitioner and respondent to be married does not deserve any interference whatsoever. However, as far as the quantum part is concerned, the amount awarded was very less and would not be sufficient to enable the petitioner to maintain herself. He submitted that it was clear that the respondent was being evasive from the very inception and had taken a complete somersault, as far as the statements are concerned on different occasions, only with the purpose to conceal the truth from the Court and further to hide his income. The counsel further submitted that the respondent and his father themselves in so many words had admitted the fact of marriage and also the earnings of the respondent. He further submitted that the findings given by the Police Officials, while filing the charge-sheet against the respondent also emphasized the fact of marriage being solemnized between the parties.

17.1 He further submitted that admittedly the respondent, being the sole son of his parents was entitled to his share in the ancestral property and this coupled with the fact that the father of the respondent had admitted that his son was earning and handing over the amount to the petitioner, itself shows that the respondent is having an earning and just with a view to deny the payment of maintenance to the petitioner, the respondent had filed the false affidavit. He thus prayed that considering the details given in the application under Section 125 Cr.P.C., the petitioner was entitled to receipt of a higher amount of maintenance i.e. a

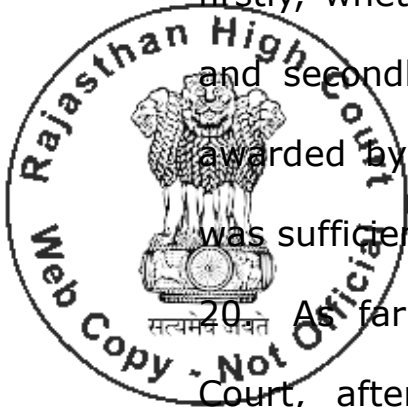


sum of Rs.13,200/- per month and to that extent the order impugned needs to be modified.

18. *Heard*, the learned counsel counsel for both the parties and perused the entire record of the learned Family Court.

19. This Court is called upon to adjudicate on two points; i.e. firstly, whether the respondent and the petitioner were married, and secondly, if so, then whether the amount of compensation awarded by the learned Family Court in favour of the petitioner was sufficient or there was a requirement to enhance the same.

20. As far as the first part is concerned, the learned Family Court, after considering the entire evidence on record, has come to a specific conclusion that the respondent and the petitioner were married and that the petitioner was the wife of respondent. A perusal of the order impugned will reveal that the learned Family Court after considering the evidence of all the three witnesses threadbare as well as the various documents exhibited by the petitioner has come to a definite conclusion that the petitioner was wife of the respondent. Learned counsel for the respondent was not able to show as to how the findings given by the learned Family Court were erroneous. This, coupled with the fact that the respondent was not able to impeach the creditworthiness of the statement of the petitioner during the course of her cross-examination, wherein she remained firm as far as the fact of marriage is concerned, as well as the inconsistencies in the statement of the respondent and his father and admission on their part with regard to the petitioner and the respondent staying as husband and wife, is by itself sufficient to concur with the finding given by the learned Family Court with regard to

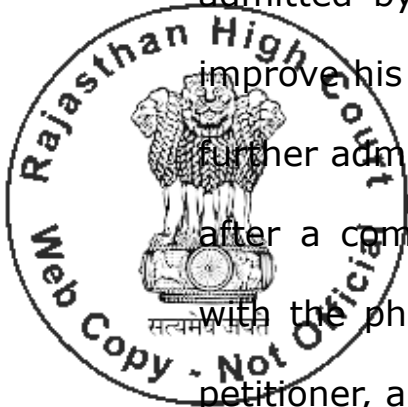


existence of a relationship of husband and wife between the petitioner and respondent.

21. Rather, the respondent himself has admitted that at the time when he married the petitioner, there was no other person present. Thus, the fact of marriage has been emphatically admitted by the respondent. However, later on, he has tried to improve his version, but in the course of his cross-examination he further admitted that he stayed with the petitioner for four months after a compromise being entered between them. This, coupled with the photographs, which have been placed on record by the petitioner, and also, a perusal of the affidavit (Exhibit No.1) signed by father of the respondent, wherein he emphasized that the respondent can stay with his wife Smt. Sunita Devi (i.e. the petitioner) anywhere, except for their parental village situated at 63LNP, Tehsil Padampur, District Sri Ganganagar, as also, the fact that he has got no objection, if the marriage between the parties is registered, by itself is sufficient admission on the part of the respondent's father to show that the marriage was solemnized.

22. Thus, this Court concurs with the finding given by the learned Family Court as far as the fact of marriage being solemnized between the petitioner and respondent is concerned. Thus, there is no substance in revision petition filed by the respondent and the same deserves dismissal.

23. As far as the second issue to be decided by this Court, with regard to whether the amount of maintenance awarded is sufficient or needs to be enhanced, a perusal of the order impugned will reveal that while awarding the maintenance and deciding the quantum, the learned Family Court has come to a



definite finding that the respondent has deserted the petitioner and has failed to take care of her maintenance.

24. The learned Family Court has also observed that the respondent himself has admitted that the petitioner was not doing any work nor she was having any property in her name. On the contrary, the respondent and his father had admitted that his father had certain ancestral property and other properties also in his name and thus, it was clear that the respondent was having sufficient income. The learned Family Court further observed that the respondent has not been in a position to show that he was mentally or physically not in a fit state to earn and that it was a moral and legal responsibility of the respondent to pay maintenance to the petitioner. However, without assigning any reasons whatsoever, the learned Further Court has directed the respondent to make the payment of Rs.4,000/- per month only to the petitioner.

25. As far as the criteria for determining the maintenance is concerned, the Hon'ble Apex Court in the case of "**Rajnesh v. Neha & Ors.**", **reported in 2021 2 SCC 324**, has discussed the provisions of various acts governing the field with regard to grant of maintenance, in length, there interplay, overlapping jurisdiction and, thereafter, has culled out the criteria for determining the quantum of maintenance, wherein the criteria has been provided as under:-

"III Criteria for determining quantum of maintenance

(i) The objective of granting interim/permanent alimony is to ensure that the dependant 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.

The factors which would weigh with the Court *inter alia* are the status of the parties; reasonable needs of the wife and dependant 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.

In *Manish Jain v. Akanksha Jain* MANU/SC/0355/2017 : (2017) 15 SCC 801 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.

On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant 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.

(ii) 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.

(iii) Section 23 of HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of 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.

(iv) Section 20(2) of the D.V. 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.

(v) The Delhi High Court in *Bharat Hedge v. Smt. Saroj Hegde* : 140 (2007) DLT 16 laid down the following factors to be considered for determining maintenance:

- 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.
- 5.** The amount should aid the Applicant to live in a similar life style as he/she enjoyed in the matrimonial home.
- 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 guess work 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 Code of Criminal Procedure is adjustable against the amount awarded Under Section 24 of the Act.



(vi) 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

58. 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 market able skills and re-train herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependant wife to get an easy entry into the work-force after a break of several years.

(b) Right to residence

59. Section 17 of the D.V. 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.

60. 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* (supra) 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 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 D.V. 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.

61. Section 19 (1)(f) of the D.V. 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

62. 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.

63. In *Shailja and Anr. v. Khobbanna*, 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. Sustenance does not mean, and cannot be allowed to mean mere survival.

64. In *Sunita Kachwaha and Ors. v. Anil Kachwaha* MANU/SC/0964/2014 : (2014) 16 SCC 715 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.

65. The Bombay High Court in *Sanjay Damodar Kale v. Kalyani Sanjay Kale* while relying upon the judgment in *Sunita Kachwaha (supra)*, 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.





66. *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 Prakash Bodhraj v. Shila Rani Chander Prakash.: AIR 1968 Delhi 174 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.*

67. *This Court in Shamima Farooqui v. Shahid Khan (2015) 5 SCC 705 cited the judgment in Chander Prakash (supra) 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

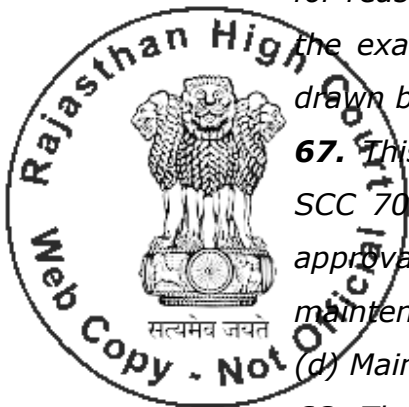
68. *The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extra-curricular/coaching classes, and not an overly extravagant amount which may be claimed.*

69. *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.*

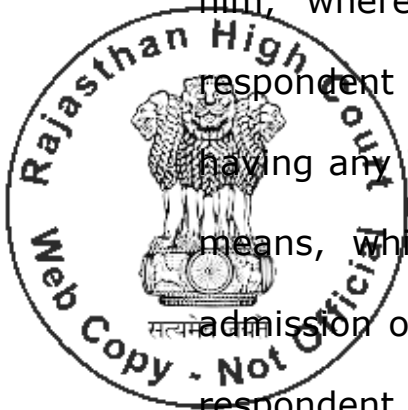
(e) Serious disability or ill health

70. *Serious disability or ill health of a spouse, child/children from the marriage/dependant relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance."*

26. Taking guidance from the above-mentioned judgment and the criteria provided therein, it is clear that there is no rebuttal to the averment made by the petitioner in her affidavit that the respondent at present was earning Rs.10,000/- per month, while working as a Conductor in Bus No.RJ13P5762. Furthermore, the fact of the ancestral property coming in share of the respondent, being the sole



son of his parents, is also not disputed as also the earning from the property in the form of agricultural land has not been disputed. Rather, the affidavit filed by the respondent will reveal that he has concealed the entire fact and has rather tried to show that his father was dependant upon him, whereas the father has asserted otherwise. The respondent has further tried to show that he was not having any income, or any ancestral property, or any other means, which fact itself is contradicted in view of the admission of the father of the respondent himself that the respondent used to earn and handed over the money to his wife, i.e. the petitioner, earlier.



26.1 Thus, the capacity of the respondent to earn and his actual earning being Rs.10,000/- (while working as a Conductor) and Rs.10,000/- further from joint agricultural property, cannot be disputed. An able-bodied husband must further be presumed to be capable of earning sufficient money to maintain his wife and he cannot take the stand that he is not in a position to earn sufficiently to maintain his family. This fact, coupled with the respondent's own admission that the petitioner was not having any income or any property whatsoever, is a relevant consideration while determining the maintenance to be paid. Thus, considering the overall scenario, including the status of the parties, the reasons and wants of the petitioner, the income of the respondent and the number of dependants and liabilities, this Court comes to the conclusion that the ends of justice would be met and the petitioner would be able to maintain

herself if the amount of maintenance awarded by the learned Family Court is enhanced to Rs.7,000/- per month instead of Rs.4,000/- per month.

27. The revision petition being (S.B. Criminal Revision Petition No.304/2024), filed by petitioner – Sumit Bishnoi, is therefore, **dismissed**.

28. In view of the above discussion, the criminal revision petition being (S.B. Criminal Revision Petition No.390/2024) filed by petitioner- Sunita Devi is **allowed** to the extent that the respondent is directed to pay a sum of Rs.7,000/- per month as maintenance instead of Rs.4,000/- per month to the petitioner from the date of filling of the application i.e. 05.11.2015 onwards and shall continue to pay the same per month. Any other amount, if being paid in any proceedings by the respondent to the petitioner, shall be deducted from the present amount of Rs.7,000/- per month, so directed to be paid. The outstanding amount payable to the petitioner- Sunita Devi, shall be paid by the husband- Sumit Bishnoi, within a period of three months from the date of passing of this order. The record of the case be sent back forthwith.

(SANDEEP SHAH),J

devrajP/-

