

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.164 OF 2019

Mr.Sanjay Damodar Kale,
Age 51 years, Occ : Business,
R/at : Aditya Plot No. 64,
Mahatma Co-operative Housing
Society, Kothrud,
Pune 411 038.

.. Applicant
(Orig. Respondent)

Versus

1. Ms.Kalyani Sanjay Kale,
Age – 47 years, Occ : Business,
R/at Flat No. 13, 2nd floor,
Aruna Apartment, above
Hotel Girija, Anand Nagar,
Sinhagad Road,
Pune 411 051.

2. The State of Maharashtra

.. Respondents

Ms.Seema Sarnaik, Advocate for applicant.

Mr.Hitesh P. Vyas for respondent No.1.

Mrs.M.H. Mhatre, APP for respondent No.2-State.

CORAM : N.J. JAMADAR, J
RESERVED FOR ORDERS ON : 27th November 2019.
PRONOUNCED ON : 26th May 2020

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JUDGMENT :

1. The challenge in this Revision Application is to the judgment and order dated 7th February, 2019 passed by Judge, Family Court No. 2, Pune in Petition No.E-102 of 2016, whereby the learned Judge was persuaded to order payment of an amount of Rs.15,000/- per month to the Respondent-wife from the date of application and an amount of Rs.7,000/- as cost of litigation under section 125 of the Code of Criminal Procedure 1973 (“the Code”).

2. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they were arraigned before the learned Judge, Family Court.

3. Shorn of the necessary details the background facts leading to this Application can be stated as under:

The marriage of the Applicant was solemnized with the Respondent on 12th November, 1997 in accordance with Hindu religious rites and ceremonies. The Applicant claimed, since inception of marital life the Respondent treated the Applicant with extreme cruelty. The Applicant was subjected to harassment in

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order to coerce her to meet unlawful demands. The Respondent had dropped the Applicant at her parental home at Satara in the month of January, 1999. Despite repeated assurances the Respondent did not come to fetch back the Applicant to her marital home. Ultimately with the intervention of police the Applicant was allowed to enter her matrimonial home at Mahatma Society, Pune. Thereafter the Respondent and Applicant moved out of the matrimonial home and started to reside separately from the in-laws of the Applicant, at Karve Nagar, Pune. Subsequently, the Applicant and Respondent shifted to an apartment at Sinhgad Road, Pune.

In the month of April, 2007 the Respondent expressed his desire to obtain divorce from the Applicant. When the Applicant remonstrated, the Respondent ill-treated her. In order to avoid harassment at the hands of the Respondent the Applicant signed the documents for presenting a Petition for obtaining divorce by mutual consent as the Respondent had assured the Applicant that he would continue to maintain the marital relationship with her despite a paper decree of divorce. Accordingly, a decree of divorce by mutual consent was obtained on 25th October, 2007. Despite, the decree of dissolution of marriage, the Respondent continued to visit the Applicant at her apartment at Sinhgad road and had marital relations as well.

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4. From the month of September, 2012 the Respondent stopped the visits to the house of the Applicant. The Respondent had not made any provision for the maintenance and livelihood of the Applicant. The Applicant has no source of income. The Applicant could sustain herself on the financial support of her father. In contrast, the Respondent has sufficient means. The Respondent deals in a thriving business under the name and style "P.C.Care". The Respondent owns a huge bungalow at Mahatma Society and another plot of land at Budhwar Peth, Pune. The Respondent also owns an office premises admeasuring 400 sq.ft. at Shaniwar Peth, Pune. Despite having sumptuous income the Respondent refused and neglected to provide for the necessities of life of the Applicant. Hence, the Applicant was constrained to prefer the application for award of maintenance at the rate of Rs.50,000/- per month, under section 125 of the Code.

5. The Respondent appeared and resisted the claim by filing written statement. The Respondent controverted the allegations that the Applicant was subjected to ill-treatment. In contrast, according to the Respondent, the Applicant was suffering from psychological illness and thus the marriage could not be consummated. At the instance of the Respondent, the Applicant availed

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treatment from leading sexologists yet there was no improvement in the psychological condition of the Applicant. As the marriage could not be consummated on account of the psychological problems, which the Applicant suffered from, the Respondent had filed a Petition under section 12(1)(a) and section 13(1)(ia) of the Hindu Marriage Act, 1955 ('the Act,1955'). In a counter-blast, the Applicant took undue advantage of the police machinery and forced herself into the matrimonial house. The Applicant and Respondent resided separately in a flat at Karve Nagar. Thereafter, the Applicant and Respondent moved to a flat on Singhgad road in August, 2004. The Applicant was desirous of perusing her carrier and opened a beauty parlor under the name and style of "Kalyani Beauty Parlor".

6. Despite earnest efforts, the marriage could not be consummated. Hence, the Applicant and Respondent mutually agreed to seek divorce by mutual consent. The Applicant had become financially independent as she was successfully running the beauty parlor business. The Applicant, thus, agreed not to claim any maintenance including Streedhan. The decree of divorce was passed on the strength of the free volition of the parties. The allegations of the said decree having been obtained by fraud were thus stoutly denied by the Respondent.

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7. The Respondent further contended that the Respondent got remarried in the month of January, 2011. Over the period of time, the business of the Respondent has eroded and is almost on the verge of closure. The bungalow at Mahatma Society is a property inherited from his late father, in which he has 1/3 share only. The Respondent's mother, unmarried sister and the second wife are dependent on the Respondent. The entitlement of the Applicant to claim maintenance is thus contested by the Respondent.

8. In the backdrop of the aforesaid pleadings, the learned Judge, Family Court recorded the evidence of Applicant and Respondent in support of, and opposition to, the claim for maintenance. The parties tendered documents in support of their rival claims. After appraising the evidence and material on record the learned Judge, Family Court was persuaded to allow the application holding inter alia that the Respondent has refused or neglected to maintain the Applicant who is unable to maintain herself, despite the Respondent having sufficient means to maintain the Applicant. The learned Judge was of the view that the fact that the Applicant had given up her claim for maintenance, when the decree for divorce by mutual consent was passed, does not detract materially from her claim as such an agreement not to claim maintenance or waive the right of maintenance was opposed to public policy. The Applicant being a wife, despite being a divorcee, within the meaning of Explanation (b) to section 125(1) of the

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Code, the agreement to reside separately from the Respondent does not disentitle her from claiming maintenance, held the learned Judge.

9. Being aggrieved by and dissatisfied with, the aforesaid reasons and findings the Respondent-husband has invoked the revisional jurisdiction of this Court. I have heard Smt.Seema Sarnaik, the learned counsel for the Respondent-husband and Mr.Hitesh Vyas, the learned counsel for the Applicant-wife at some length. Perused the material on record.

10. To start with, it would be apposite to note that there is not much controversy over the marital relationship, which the parties had. It is indisputable that the marriage was solemnized on 12th November, 1997. Initially the parties resided in the matrimonial home at Mahatma Colony, Pune along with the in-laws of the Applicant. Later on, the Applicant and Respondent started to reside separately in a rented apartment at Karve Nagar. Therefrom, they shifted to another rented apartment at Singhgad Road, Pune in the year 2004. It is indubitable that the parties had no issue out of the wedlock. The fact that the Applicant and Respondent had filed an application for divorce by mutual consent on 24th April, 2007 and a decree of divorce by mutual consent came to be passed on 25th October, 2007 is also not much in contest. However, the circumstances

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in which the said decree of divorce by mutual consent was obtained are sought to be put in contest.

11. In the application an endeavor was made by the Applicant to demonstrate that the said decree of divorce was obtained by fraud. A case was sought to be set up that the Respondent had persuaded the Applicant to execute documents and appear before the Court for obtaining the decree of divorce by giving an assurance that the marital bond would continue despite the decree of divorce and it would remain a paper decree. The learned Judge, Family Court was not persuaded to accede to this case of the Applicant. After adverting to the manner in which the Applicant fared in the cross examination as regards the circumstances in which the decree of divorce was passed, including the inaction on the part of the Applicant for almost 9 years to agitate the said grievance of the decree having been obtained by fraud, the learned Judge, and, in my view, rightly, came to the conclusion that the said claim of the Applicant did not merit acceptance. There is no material on record to indicate at any point of time till the filing of the instant Petition for award of maintenance the Applicant had ever raised any grievance about the decree of divorce having been obtained by fraud. Even if the case of the Applicant is taken at par and it is assumed that the Respondent continued to visit her upto September, 2012, the inaction on the part

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of the Applicant from the year 2012 to the year 2016, in which the Petition for maintenance came to be filed, is rather inexplicable.

12. The learned counsel for the Respondent-husband in the aforesaid setting of the matter would urge that the learned Judge, Family Court committed a manifest error in arriving at a finding that the Respondent had refused or neglected to maintain the Applicant and that the Applicant was unable to maintain herself. Amplifying the submission, the learned counsel would urge that the Applicant having voluntarily relinquished her right of maintenance when the decree of divorce by mutual consent was passed on 25th October, 2007, was not legally entitled to turn around and seek maintenance from the Respondent. According to learned counsel for the Respondent, in view of the clear and unequivocal agreement, not to seek maintenance, which was recorded by the learned Judge, Family Court while passing the decree of divorce by mutual consent, the Respondent was under no legal obligation to provide maintenance to the Applicant. Thus, under no circumstances the finding of refusal or neglect to maintain could have been recorded against the Respondent.

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13. Smt. Sarnaik urged with tenacity that even the finding that the Applicant was unable to maintain herself is infirm and not borne out by the material on record. There is unflinching material to demonstrate that when the decree of divorce was passed, in the year 2007, the Applicant was running the business under the name and style "Kalyani Beauty Parlor". This fact is even recorded in the judgment of the Family Court, whereby decree of divorce was granted. The fact that the applicant continued to carry on the said business even upto the date of filing of the application is established by the Respondent by placing documents on record. Yet the learned Judge, Family Court recorded an erroneous finding that the Applicant was not carrying on any business and was unable to maintain herself. This finding vitiated the entire order, urged Smt. Sarnaik.

14. In opposition to this, Mr.Vyas, the learned counsel for the Applicant-wife stoutly submitted that the defence sought to be put forth by the Respondent is misconceived. In view of the provisions contained in section 125(1), Explanation (b) of the Code, wife includes a woman who has been divorced or has obtained a divorce from her husband and has not remarried. Admittedly, the Applicant has not remarried. The fact that the Applicant resides separately from the Respondent in pursuance of the decree of divorce, even if taken at par, thus does not disentitle the Applicant, being a divorced wife, from claiming maintenance, urged the learned counsel for the Applicant. The agreement not to

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claim maintenance which is in teeth of the statutory provision, the object of which is to prevent vagrancy and destitution, does not operate as a bar to claim maintenance. Such an agreement, being opposed to the public policy, does not override the statutory ameliorative provisions, urged the learned counsel for the Applicant.

15. Smt. Sarnaik, the learned counsel for the Respondent endeavoured to join the issue by canvassing a submission that if Applicant was desirous of claiming maintenance, in spite of having relinquished the right to claim maintenance, the proper remedy for the Applicant was to file a Petition under section 25 of the Hindu Marriage Act, 1955. However, an application under section 125 of the Code for award of maintenance was legally untenable, urged Smt. Sarnaik.

16. The learned Judge, Family Court was not persuaded to agree with the submission on behalf of the Respondent that the agreement not to claim maintenance, recorded by the learned Judge, Family Court while granting decree of divorce by mutual consent, disentitled the Applicant from claiming maintenance. The learned Judge was of the view that such an agreement was in derogation of the statutory provision and was also opposed to public policy. The approach adopted by the learned Judge, Family Court appears to be in consonance with law.

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17. The legal position in this context is no longer *res-integra*. Sub section (4) of section 125 of the Code of Criminal Procedure, on the strength of which the submission was sought to be advanced, on behalf of the Respondent, reads as under:

“Section 125(4) in The Code Of Criminal Procedure, 1973 :

(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

18. The import of aforesaid provision fell for consideration before the Supreme Court in the case of ***Rohtash Singh vs Smt. Ramendri And Ors***,¹. The Supreme Court, after analysing the text of aforesaid provision, held that all the three circumstances contemplated by sub section (4) of section 125 of the Code, namely, wife is living in adultery, wife has refused to live with her husband without any sufficient reason and the parties are living separately by mutual consent presupposed the existence of matrimonial relations. The provision would be applicable where the marriage between the parties subsists and not where it has come to an end.

1 (2000)3 SCC 180

19. In the aforesaid case, the Supreme Court considered the question whether a wife against whom a decree of divorce has been passed on account of her deserting the husband can claim maintenance allowance under section 125 of Code of Criminal Procedure. The question was answered in the affirmative with the following observations:

"8But though the marital relations came to an end by the divorce granted by the Family Court under Section 13 of the Hindu Marriage Act, the respondent continues to be "wife" within the meaning of Section 125 Cr.P.C. on account of Explanation (b) to Sub-section (1) which provides as under :-

"Explanation. - For the purposes of this Chapter -

(a)

(b) "wife" includes woman who has been divorced by, or has obtained a divorce from her husband and has not remarried."

9 On account of the Explanation quoted above, a woman who has been divorced by her husband on account of a decree passed by the Family Court under the Hindu Marriage Act, continues to enjoy the status of a wife for the limited purpose of claiming Maintenance Allowance from her ex-husband. This Court in Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Others, AIR (1978) SC 1807, observed as under :-

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Art. 39. We have no doubt that, sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have

social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause-the cause of the derelicts."

10 Claim for maintenance under the first part of [Section 125 Cr.P.C.](#) is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation provided by Explanation (b) to Sub-section (1) of [Section 125 Cr. P.C.](#) If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to Maintenance Allowance."

(emphasis supplied)

20. The Supreme Court summarized the legal position to the effect that a woman after divorce becomes destitute. If she cannot maintain herself and remains unmarried, the man who was once her husband continues to be under a duty and obligation to provide maintenance to her.

21. In view of the aforesaid exposition of law, the resistance to the claim sought to be put forth by the Respondent on the premise that the Applicant is residing separately by mutual consent is unworthy of acceptance.

22. The second limb of the submission based on the agreement not to claim maintenance or relinquishment of the statutory right of maintenance is also equally fragile. The object of the provisions contained in section 125 of the Code cannot be lost sight of. Indisputably the provision is a measure of social justice and its object is to prevent destitution and vagrancy. The statutory right of wife of

maintenance cannot be permitted to be bartered away or infringed by setting up an agreement not to claim maintenance. Such a clause in the agreement would be void under section 23 of the Indian Contract Act, being opposed the public policy. The fact that the said agreement was recorded in the decree of divorce passed by the Family Court does not carry the matter any further. It is trite that when a decree is passed on the basis of the consent terms, the consent terms constitute nothing but contract with the imprimatur of the Court. If a term of the contract is void, being opposed to the public policy, the fact that a consent decree rests on it does not add any sanctity to such contract, nor the decree insulates it from the consequence of being declared as void.

23. A profitable reference, in this context, can be made to a judgment of this Court in the case of ***Ramchandra Laxman Kamble vs. Shobha Ramchandra Kamble, 2019 All. M.R. Cri. 426***, wherein this Court after adverting to a number of pronouncements had enunciated the legal position to the effect that, there are several rulings, which take the view that an agreement in which the wife gives up or relinquishes her right to claim maintenance at any time in future, is opposed to public policy and, therefore, such an agreement, even if voluntarily entered, is not enforceable.

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24. The aforesaid legal conspectus leads to an inference that the learned Judge, Family Court was within his rights in negating the challenge to the claim of Applicant on the count that the Applicant had relinquished her right of maintenance.

25. This propels me to the challenge to the impugned order on the aspects of determination of refusal or neglect on the part of the Respondent and inability of the Applicant to maintain herself. As regards the refusal or neglect on the part of the Respondent to maintain the Applicant, it is not the case of the Respondent that at any point of time, after the decree of divorce, the Respondent had endeavoured to make any provision for the livelihood of the Applicant. In the cross examination the Respondent conceded in no uncertain terms that he had not made any provision for the Applicant. The stand of the Respondent, on the other hand, was that in view of the relinquishment of the claim of maintenance the Respondent was not required in law to make a provision for the maintenance of the Applicant. Thus the learned Judge, Family Court was justified in recording a finding that the Respondent had refused or neglected to maintain the Applicant.

26. Smt. Sarnaik, the learned counsel for the Respondent-husband urged with a degree of vehemence that the learned Judge, Family Court totally misconstrued the evidence on record to arrive at a finding that the Applicant was

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unable to maintain herself. In the face of the admissions during the course of the cross examination that when the decree of divorce was passed the Applicant was carrying on the business under the name and style of “Kalyani Beauty Parlor”, and the documents which show that the said business was a running concern, the finding that the Applicant was unable to maintain herself and had no income at all could not have been recorded, urged Smt. Sarnaik.

27. The manner in which the Applicant fared in the cross examination assumes significance. The Applicant conceded in unequivocal terms that when she had filed Petition for divorce by mutual consent, she was running business of beauty parlor from the flat where she was residing at Singhgad road. She conceded that the said business was advertised on certain web-sites like healthfrom.com, pindar.com and sulekha.com. She went on to admit that she had taken courses of beautician and she runs the business under the name and style “Kalyani Beauty Parlor and Training” though she claimed to have never ran a training institute for conducting business of beauty parlor.

28. The aforesaid evidence is required to be appreciated in the light of the attendant circumstances and the time lag. The decree of divorce by mutual consent was passed in the year 2007. The application for award of maintenance came to be preferred in the year 2016. The Applicant was indubitably running a

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business under the name and style of “Kalyani Beauty Parlor and Training Institute” when the decree of divorce was passed in the year 2007. The said fact of the Applicant being a professional is also noted in the judgment and order passed by the Family Court while granting the decree of divorce.

29. It would be contextually relevant to note that the application is conspicuously silent about the fact that the Applicant used to run the business of Kalyani Beauty Parlor. Assertions are made in the application that the Applicant is jobless, she has no independent source of income and the father of the Applicant has been supporting her financially. In this setting of the matter when the Applicant was running a business when the decree of divorce was passed, it was expected of the Applicant to make averments regarding the circumstances under which the said business came to be closed and at what point of time. It would have been a different matter had the Applicant approached the Court with a case that the income from the said business was not sufficient to sustain her livelihood.

30. The time lag of almost 9 years in approaching the Court with a claim that the Applicant was unable to maintain herself assumes critical significance in this context. Instead it was sought to be suggested to the Respondent during the course of the cross examination that the Applicant had closed the business of

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Kalyani Beauty Parlor prior to 8 years. There is neither an assertion in the application nor oath in support thereof, put by the Applicant, to the effect that the Applicant closed the business at a particular point of time and therefore she has not been able to maintain herself since then.

31. The learned Judge, Family Court was of the view that the claim of the Applicant that she had no source of income was reliable and trustworthy and though the Applicant had the necessary qualification and experience, there was nothing to show that the Applicant was running the business of beauty parlor, in praesenti. In my considered opinion in the backdrop of the material on record, the claim of the Applicant that she had no source of income ought to have been accepted by the learned Judge, Family Court with a pinch of salt. The tenor of the evidence and the material on the record suggests that the Applicant was carrying on the said business of Kalyani Beauty Parlor and Training Institute to sustain her livelihood.

32. However, the fact that the wife carries on some business and earns some money is not the end of the matter. Neither the mere potential to earn nor the actual earning, howsoever meager it may be, is sufficient to deny the claim of maintenance. The learned Judge, Family Court was justified in placing reliance on the judgment of the Supreme Court in the case of **Sunita Kachwa vs. Anil**

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Kachwa ², wherein it was observed that, *‘the learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.’*

33. This takes me to the aspect of the quantum of maintenance. The learned counsel for the Respondent-husband submitted that the learned Judge, Family Court unjustifiably drew an inference that the Respondent was earning more than Rs.80,000/- per month. The fact that the Applicant could not lead any evidence that the Respondent owned a plot of land and had a shop premises worth crores of rupees was totally discarded by the learned Judge.

34. It would be suffice to note that the learned Judge after considering the situation in life of the Respondent and the income tax returns filed for the 2 III 2014 (DMC) 878 S.C.

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assessment years 2016-2017, 2017-2018 and 2018-2019 as well as the standard of life to which the Respondent was accustomed to, drew a legitimate inference that the Respondent was a man of sufficient means. Indisputably the Respondent had sold one of the shop premises for a consideration of Rs.27 lakhs. The Respondent was dealing in the business of computer hardware. The Respondent was maintaining a four wheeler and a two wheeler. In this backdrop, the inference the Respondent had sufficient means is not unreasonable.

35. In the case of **Jasbir Kaur Sehgal vs. District Judge, Dehradun**³ the Supreme Court enumerated the factors which are required to be taken into account while determining the quantum of maintenance in the following words:

"8 No set formula can be laid for fixing the amount of maintenance. It has, in very nature of things, to depend on the facts and circumstance of each case. Some scope for liverage can, however, be always there. Court has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and those; he is obliged under the law and statutory but involuntary payments or deductions. Amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate. In the circumstances of the present case we fix maintenance pendente lite at the rate of Rs. 5,000/- per month payable by respondent-husband to the appellant-wife."

(emphasis supplied)

3 1997(7) SCC 7

36. In the case of **Shamina Faruqi vs. Shahin Khan⁴**, the Supreme Court expounded the philosophy behind the award of maintenance. The observations of the Supreme Court in paragraph 14 are instructive. They are extracted below :

“14It can never be forgotten that the inherent and fundamental principle behind [Section 125](#) CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands there has to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of [Section 125](#) CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under [Section 125](#) CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no

4 2015 (5) SCC 705

acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under [Section 125 CrPC](#), unless disqualified, is an absolute right.....”

37. In the light of aforesaid exposition of law, reverting to the facts of the case, there is material on record to indicate that after the decree of divorce passed in 2007, the Respondent remarried in the year 2011 and has an issue out of the said wedlock. Conversely, an inference becomes inescapable that the Applicant has been dealing in the business of Kalyani Beauty Parlor and Training Centre and earns some income. In this era of inflationary economy, where the prices of commodities and services are increasing day by day, the income from the business of beauty parlor, which has an element of seasonality, may not be sufficient to support the livelihood of the Applicant, and afford her to maintain the same standard of living to which she was accustomed to when she was residing with the Respondent before the marital tie was disrupted by the decree of divorce by mutual consent. Thus the Applicant is entitled to maintenance from the Respondent even if the Applicant still carries on the business

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of Kalyani Beauty Parlor and Training Centre and earns some income out of the said business.

38. In the totality of the circumstances and upon consideration of the relevant factors including the income of the Respondent, the number of dependents upon the Respondent, the reasonable wants of the Applicant, in my considered view a sum of Rs. 12,000/- per month would be a reasonable financial support to augment the income of the Applicant.

39. The conspectus of the aforesaid consideration is that there is not only the element of potential to earn but the totality of the circumstances suggest that the Applicant has a source of income. This factor was not adequately considered by the learned Judge, Family Court. Resultantly, the impugned order is required to be interfered with to the extent of the quantum of maintenance. The Revision Application, thus, deserves to be partly allowed to this extent. Hence, the following order :

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ORDER

- 1] The Revision Application is partly allowed.
- 2] The impugned order stands modified to the extent that the Respondent-husband shall pay maintenance to the Applicant at the rate of Rs. 12,000/- per month from the date of the Petition i.e. 17th June, 2016.
- 3] The Respondent-husband shall pay the arrears of maintenance within a period of six months from today.
- 4] Rest of the order stands confirmed.
- 5] The Revision Application stands accordingly disposed of.

(N.J. JAMADAR, J.)

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