

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.509 of 2021

Arising Out of PS. Case No.- Year-0 Thana- District- Purnia

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1. Bulbul Khatoon Wife Of Md. Shamshad @ Md. Samsad, Daughter Of Md. Hafizuddin Resident Of Village - Sadhubaili, P.S. - Kasba, District - Purnea Presently Residing At Village - Chandi, Aga Tola, P.S. - Sadar Mufassil, Dist. - Purnea.
 2. Danish Raza @ Rahul Son Of Md. Shamshad @ Md. Samsad Through His Mother Bulbul Khatoon, Resident Of Village - Sadhubaili, P.S. - Kasba, District - Purnea Presently Residing At Village - Chandi, Aga Tola, P.S. - Sadar Mufassil, Dist. - Purnea.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Md. Shamshad @ Md. Samsad Son Of Late Md. Zamil @ Late Bahru Jamil Resident Of Village - Sadhubaili, P.S. - Kasba, District - Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Md Fazle Karim, Advocate
For the State	:	Mr. Anuj Kumar Shrivastava, APP
For the Informant	:	Mr. N.K. Agrawal, Sr. Advocate
		Dr. Bidhu Ranjan, Advocate
		Mr. Saroj Kumar Choudhary, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 07-07-2025

Introduction

The present Criminal Revision Petition has been preferred by the petitioners, praying for setting aside the impugned judgment/order dated 04.04.2020 and direct the O.P. No. 2 to pay Rs. 20,000/- per month to the petitioners towards their maintenance. The impugned order dated 04.04.2020 has been passed by learned Principal Judge, Family Court, Purnia in Maintenance Case No. 295 of 2017, whereby O.P. No. 2/Md.



Shamshad has been directed to pay maintenance to the petitioner No. 2/Danish Raza @ Rahul at the rate of Rs. 4,000/- per month from the date of order i.e. 04.04.2020. However, petitioner No. 1/Bulbul Khatoon has been denied any maintenance holding that she is not entitled to get any maintenance from O.P. No. 2.

The Case of the Petitioners

2. The petitioners have filed Maintenance Case No. 295 of 2017 on 30.10.2017 before the Family Court, Purnia under Section 125 Cr.PC against O.P. No. 2 herein/Md. Shamshad, who is husband of the petitioner No. 1/Bulbul Khatoon and father of petitioner No. 2/Danish Raza @ Rahul, stating that the marriage between Bulbul Khatoon and Md. Shamshad was solemnized on 18.02.2013 as per Muslim Rites and Customs and after the marriage, Bulbul Khatoon joined the matrimonial home of her husband/Md. Shamshad and subsequently, Danish Raza @ Rahul was born out of the wedlock in March, 2014. It was further stated that during the pregnancy, Bulbul Khatoon came back to her parental home on account of ill behavior of relatives of her husband and after the birth of the child, her husband and his family members started demanding Rs. 5 lac towards additional dowry and they



threatened that in case, she failed to pay the additional dowry, Md. Shamshad would solemnize second marriage with other girl. As per further case, on account of failure of Bulbul Khatoon to pay the additional dowry, she was ousted from the matrimonial home on 17.07.2017 along with newly born child and even her ornaments were snatched from her. It was further stated that after ousting his wife Bulbul Khatoon, Md. Shamshad solemnized second marriage with one Kajal Khatoon, daughter of Md. Naseem. It is also stated that Bulbul Khatoon was unable to maintain herself and her minor son, whereas Md. Shamshad has sufficient means to maintain his wife and child having ten acres of agricultural land, tractor and corn factory machine and having Rs.5 lac annual income. Bulbul Khatoon and her son Danish Raza @ Rahul had claimed for monthly maintenance @ Rs.20,000/-.

The Case of the Respondent No. 2

3. On notice, Md. Shamshad appeared before the Family Court and filed his written statement contesting the maintenance petition filed by Bulbul Khatoon and her son. However, he has admitted his marriage with Bulbul Khatoon and his paternity of Danish Raza @ Rahul. However, he claimed in his written statement that after the marriage, Bulbul Khatoon



joined his matrimonial home and thereafter, she went back to her *maike* and thereafter, she was again taken back to the matrimonial home. However, during her stay at his matrimonial home, she developed illicit relationship with one Md. Tarikat. He further claimed that Md. Tarikat hatched conspiracy to entice his wife away from his house and under his conspiracy, his wife Bulbul Khatoon left the matrimonial home on 14.06.2017 and went back to her *maike* and thereafter ran away from her parental home with Md. Tarikat along with her son. Thereafter, at 9 O'clock on 16.06.2017, Md. Shamshad called a panchayat at Library Bhawan at Sadhubaili under the Chairmanship of former Sarpanch/Md. Firoz, which was appointed by the present Mukhiya, Sarpanch and other dignitaries of the village. Panchayat was attended by Md. Hasim, father of Md. Tarikat and elder brother of Bulbul Khatoon. After hearing both the parties, the panch entrusted the responsibility to Md. Hasim, father of Md. Tarikat and elder brother of his wife to search Bulbul Khatoon and her son and hand them over to Md. Shamshad by 21.06.2017. However, his wife and son were not handed over and hence, panchayat was again called on 21.06.2017, in which Md. Hasim, father of Md. Tarikat promised that he would ensure that the wife of Md. Shamshad



and his son would be present after Eid. Thereafter, panchayat was called on 01.07.2017, but Md. Hasim refused to attend that panchayat and hence, Md. Shamshad was advised by the panchayat to move Court. Thereafter, Md. Shamshad went to Darul Kaja Edara Sharia, Koshi Commissioner, Purnia and he informed it that his wife had become characterless, because she had run away with some other man and hence, he divorced her and got a certificate of divorce from Darul Kaja Edara Sharia. It was further claimed by Md. Shamshad that Bulbul Khatoon has been living with Md. Tarikat since 14.06.2017 without any valid reason and she has been already divorced and hence, she is no longer his wife. He has also claimed that he was not given any gift or dowry at the time of marriage. Only item of Rs.10,000/- to 15,000/- was given to him on the occasion of marriage. He has also denied that any demand of dowry was made by him. He has also categorically denied that he ousted Bulbul Khatoon from his matrimonial home and as a matter of fact, there was illicit relationship between Bulbul Khatoon and Md. Tarikat and hence, she had fled away from the matrimonial home. Hence, he claims that he is not liable to pay any maintenance to Bulbul Khatoon. He has further claimed that he is a landless laborer earning hardly Rs. 3,000/- to Rs. 3,500/- per month, with no



other source of income.

Disputes Between the Parties

4. From the pleadings and the submissions of the parties, it clearly emerges that marriage between Bulbul Khatoon and Md. Shamshad is not disputed and it is also not disputed that Danish Raza @ Rahul is legitimate son of Md. Shamshad. Hence, the disputes/points which arise for determination by this Court are as follows:-

(i) whether Bulbul Khatoon has been validly divorced by her husband Md. Shamshad;

(ii) whether Bulbul Khatoon has left the matrimonial home without any rhyme and reason, and;

(iii) whether Bulbul Khatoon has been living in adultery, and;

(iv) whether Bulbul Khatoon is entitled to get maintenance and if yes, what should be the amount;

(v) whether the maintenance at the rate of Rs. 4,000/- per month awarded in favour of Danish Raza @ Rahul is just and proper;

(vi) Maintenance awarded should be payable from the date of filing the Maintenance petition or from the date of the impugned order.



Evidence of the Petitioners

5. During trial, Bulbul Khatoon has examined altogether three witnesses, including herself. Md. Azimuddin, brother of Bulbul Khatoon has been examined as **P.W.-1**, Bulbul Khatoon has been examined as **P.W.-2** and Firoza Khatoon, a co-villager of Bulbul Khatoon of her *mai*ke, has been examined as **P.W.-3**. However, no documentary evidence has been adduced by Bulbul Khatoon in support of her maintenance petition.

6. On perusal of the evidence adduced on behalf of the petitioners, I find that **petitioner/Bulbul Khatoon** has been examined as **P.W.-2**. In her **examination-in-chief**, she has reiterated her statements as made in her maintenance petition filed under Section 125 Cr.PC. In her **cross-examination**, she has deposed that she has left her matrimonial home for about 5-6 months and her son was born at her *mai*ke and she has made 4-5 visits from sasural to *mai*ke. She has also lodged one criminal complaint against her husband/Md. Shamshad. However, she has not lodged any complaint to the police regarding assault by her husband. She has not got her injury treated. She is also not able to show any document in regard to landed property belonging to her husband. She has also failed to



produce any document in support of claim that her husband has tractor. However, she has denied the suggestion that her husband is landless laborer and she is having illicit relationship with one Md. Tarikat. She has also denied the suggestion that she had fled away with Md. Tarikat on 14.06.2017. She has also denied the suggestion that any panchayat was held. She has also denied the suggestion that she has divorced by her husband. She has also denied the suggestion that she has been living with Md. Tarikat. **P.W.-1, Md. Azimuddin**, who is brother of Bulbul Khatoon has also supported the case of his sister. **P.W.-3 is Firoza Khatoon**, who is a co-villager of Bulbul Khatoon, has also supported the case of Bulbul Khatoon.

Evidence of Respondent No. 2

7. Respondent No. 2/Md. Shamshad has also examined seven witnesses including himself in support of his case. He has also got exhibited panchnama dated 16.06.2017 as **Ext.-A**, panchanama dated 01.07.2017 as **Ext. A/1** and application dated 21.06.2017 has been exhibited as **Ext.-B**.

8. **Md. Shamshad** has been examined as **OP.W.-5**. In his **examination-in-chief**, by way of affidavit, has reiterated his statements as made in his written statement. During **cross-examination**, he has deposed that Bulbul Khatoon is no longer



his wife, because she has fled away with Md. Tarikat. However, he has admitted that Danish Raza @ Rahul is his son. He has further deposed that he has solemnized second marriage and he has one daughter born out of the second marriage and he has been maintaining his second wife and his daughter. He is a labourer and his father has no landed property and he earns Rs.5000/- per month by doing labour work. He has divorced Bulbul Khatoon through Darul Kaja. He has filed one application to Darul Kaja for divorce upon which Darul Kaja had issued notice, but Bulbul Khatoon did not appear before it and he had given divorce in writing. However, talaknama does not bear the signature or thumb impression of Bulbul Khatoon. He has also admitted that he has not paid any Denmehar to Bulbul Khatoon. Talaknama has been signed by a witness, namely, Sahraj Maulana, who is a co-villager. He has further claimed that he had heard about illicit relationship of Bulbul Khatoon with Md. Tarikat and he has witnessed to it also. He can prove the illicit relationship between the two. He had denied the suggestion that he is a contractor of labourers and he earns a lot out of work of contractor. He has also denied the suggestion that he had tortured Bulbul Khatoon for dowry and grant of divorce. He has also denied the suggestion that he had ousted



Bulbul Khatoon from his matrimonial house. He has also denied the suggestion that Bulbul Khatoon had never illicit relationship with Md. Tarikat.

9. OP.W-1, Ibrahim Khan, who is co-villager of Md. Shamshad, has supported the case of Md. Shamshad. He was also signatory on the panchnama dated 16.06.2017. However, he has deposed that he has not seen Bulbul Khatoon fleeing away with Md. Tarikat. However, he had seen her thereafter. He has further deposed that he had seen Bulbul Khatoon establishing illicit relationship with Md. Tarikat. However, he had not seen Bulbul Khatoon fleeing away with Md. Tarikat. He came to know Md. Shamshad that his wife had fled away.

10. OP.W-2, Salim, who is also a co-villager of Md. Shamshad, has supported the case of Md. Shamshad. In his **cross-examination**, he has deposed that he has seen Bulbul Khatoon establishing illicit relationship with Md. Tarikat but he does not remember the date. He had seen Md. Tarikat and Bulbul Khatoon establishing relationship in the courtyard and he had informed Md. Shamshad about it, but he does remember the date but after two or four days, he had informed Md. Shamshad about this occurrence but he has not informed it to any co-villagers. He is also not aware whether Md. Shamshad has



lodged any complaint to the police regarding his wife. He has also deposed that he had not seen Bulbul Khatoon fleeing away with Md. Tarikat. He has also deposed that he had attended the panchayat and put his signature the attendance on panchanama. Md. Shamshad has no landed property and he works as a laborer earning Rs. 150 to Rs. 200 per day. Md. Shamshad has not solemnized any second marriage. Md. Shamshad has never visited the maik of his wife. He does not pay any maintenance to Bulbul Khatoon. He is also not aware whether Md. Shamshad is paying any maintenance for his child.

11. OP.W-3, Md. Manir, has also supported the case of Md. Shamshad. In his **cross-examination**, he has deposed that he had attended the panchayat on 01.06.2017. Md. Shamshad earns Rs. 200 per day as a laborer and his father has no landed property.

12. OP.W-4, Md. Merajuddin, in his **examination-in-chief**, he has also supported the case of Md. Shamshad. In his **cross-examination**, he has deposed that Md. Shamshad has entered into second marriage with Kajal Perween about 1 and ¼ years ago. The house of Md. Shamshad is situated at the distance of 500 meter from his house. Information about love and relationship between Md. Tarikat and Bulbul Khatoon has



been informed to him by Md. Shamshad. He has also put his signature on panchanama dated 16.06.2017 as a witness. He is not aware where Bulbul Khatoon is living at present. He is also not aware that after desertion of Bulbul Khatoon by Md. Shamshad and when Md. Shamshad had gone to see her. He has also deposed that Md. Shamshad has not landed property but he takes care of his second wife. There is one child with second wife. He did not try to know from Md. Shamshad that who maintain Bulbul and her son.

13. OP.W.-6, Md. Manzoor Ali, who is also a co-villager and he is also attended the panchayat dated 16.06.2017 and he has put his signature on the panchayatnama as a witness. In his **cross-examination**, he has deposed that there is no signature of Bulbul Khatoon on the panchanama and in that panchayat, the brother of Bulbul Khatoon is present. Md. Shamshad had divorced Bulbul Khatoon in his presence by Triple Talaq in the absence of Bulbul Khatoon. He got information from the villagers that Bulbul Khatoon is a characterless lady and she has established physical relationship with men other than the husband. He is also one of the accused in criminal case filed by Bulbul Khatoon under Section 498A. Md. Shamshad has entered into second marriage.



14. OP.W-7, Sitabuddin, who is also a co-villager and he has also supported the case of Md. Shamshad in his **examination-in-chief**, filed by way of affidavit. In his **cross-examination**, he has deposed that he was informed that Bulbul Khatoon has illicit relationship with Md. Tarikat. As per the cross-examination, he is the hearsay witness in regard to claim of Md. Shamshad that Bulbul Khatoon has illicit relationship with Md. Tarikat.

Findings of the Trial Court

15. After trial, learned Family Court passed the impugned order rejecting the application of Bulbul Khatoon for her maintenance, however, maintenance @ Rs.4,000/- per month was directed to be paid to Danish Raza @ Rahul, son of Bulbul Khatoon.

16. Being aggrieved by the impugned order, the petitioners have preferred the present criminal revision petition.

Submissions of the Parties

17. I heard learned counsel for the petitioners, learned APP for the State and learned counsel for the Respondent No. 2.

18. Learned counsel for the petitioners submits that on account of perverse appreciation of evidence on record, learned Family Court has erroneously found that petitioner No. 1/Bulbul



Khatoon is not entitled to get any maintenance from O.P. No. 2/husband. He further submits that there is no evidence on record to prove that Bulbul Khatoon has been living in adultery.

19. He further submits that as a matter of fact, Bulbul Khatoon was ousted from her matrimonial home by her husband/Md. Shamshad and she has been living at her parental home having no source of income and her husband/Md. Shamshad is not providing any maintenance to her as well as her minor son, despite the fact that he is a man of means having source of income, earning Rs. 4 lac to 5 lac per annum.

20. He further submits that even the quantum of maintenance awarded by the Family Court in favour of minor son at the rate of Rs. 4,000/- per month is also on the lower side.

21. He further submits that by the impugned order, learned Family Court has directed Md. Shamshad/O.P. No.2 to pay the maintenance from the date of the order, whereas under Section 125 Cr.PC, the maintenance must be payable from the date of filing of the maintenance petition.

22. However, learned APP for the State and learned counsel for the O.P. No. 2 vehemently support the impugned order submitting that there is no illegality or infirmity in it.

23. He further submits that under Revisional



Jurisdiction, this Court has limited scope to interfere in the impugned order.

24. He also submits that there is no perversity in appreciation of the evidence. Learned Family Court has rightly dismissed the application of Bulbul Khatoon for maintenance, because she has been living in adultery with Md. Tarikat. Moreover, she has been divorced and she has also left the matrimonial home on her own and has been living separately without any rhyme and reason.

25. Learned counsel for the O.P. No. 2 also submits that there is no illegality or infirmity regarding the quantum of maintenance awarded by learned Family Court in favour of his son Danish Raza @ Rahul.

26. I considered the submissions advanced by the parties as well as perused the materials on record.

Extent and Scope of Revisional Jurisdiction of the High Court

27. Before I proceed to consider the rival submission of the parties, it is desirable to see the extent and scope of revisional jurisdiction of High Court. As per the statutory provisions and judicial precedents, it is settled principle of law that the revisional jurisdiction conferred upon the High Court is a kind of paternal or supervisory jurisdiction under Section 397



read with Section 401 Cr.PC in order to correct the miscarriage of justice arising out of judgment, order, sentence or finding of subordinate Courts by looking into correctness, legality or propriety of any finding, sentence or order as recorded or passed by subordinate Courts and as to the regularity of any proceeding of such inferior Courts.

28. However, the exercise of revisional jurisdiction by the High Court is discretionary in nature to be applied judiciously in the interest of justice.

29. Under revisional jurisdiction, the High Court is not entitled to re-appreciate the evidence for itself as if it is acting as a Court of appeal, because revisional power cannot be equated with the power of an Appellate Court, nor can it be treated even as a second appellate jurisdiction. Hence, ordinarily, it is not appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Trial and Appellate Court, unless there are exceptional situations like glaring error of law or procedure and perversity of finding, causing flagrant miscarriage of justice, brought to the notice of the High Court. Such exceptional situations have been enumerated by Hon'ble Apex Court on several occasions which



are as follows:-

(i) when it is found that the trial court has no jurisdiction to try the case or;

(ii) when it is found that the order under revision suffers from glaring illegality or;

(iii) where the trial court has illegally shut out the evidence which otherwise ought to have been considered or;

(iv) where the judgment/order is based on inadmissible evidence, or;

(v) where the material evidence which clinches the issue has been overlooked either by the Trial Court or the Appellate Court or;

(vi) where the finding recorded is based on no evidence or;

(vii) where there is perverse appreciation of evidence or;

(viii) where the judicial discretion is exercised arbitrarily or capriciously or;

(ix) where the acquittal is based on a compounding of the offence, which is invalid under the law.

30. However, it has been cautioned by Hon'ble Supreme Court that the aforesaid kinds of situations are illustrative and not exhaustive.

31. In regard to revisional jurisdiction, one may refer to the following judicial precedents:



- (i) Akalu Ahir and Ors. vs Ramdeo Ram
(1973) 2 SCC 583
- (ii) K. Chinnaswami Reddy vs State of A.P.
1962 SCC Online SC 32
- (iii) Duli Chand Vs Delhi Administration
(1975) 4 SCC 649
- (iv) Janta Dal Vs H.S. Chowdhary & Ors.
(1992) 4 SCC 305
- (v) Vimal Singh Vs Khuman Singh & Anr.
(1998) 7 SCC 323
- (vi) State of Kerala Vs. Puttumana I. J. Namboodiri
(1999) 2 SCC 452
- (vii) Thankappan Nada & Ors. Vs. Gopala Krishnan
(2002) 9 SCC 393
- (viii) Jagannath Chaudhary Vs. Ramayan Singh
(2002) 5 SCC 659
- (ix) Bindeshwari Prasad Singh @ B.P. Singh & Ors.
Vs. State of Bihar (Now Jharkhand) & Anr.
(2002) 6 SCC 650
- (x) Manju Ram Kalita v. State of Assam
(2009) 13 SCC 330
- (xi) Amit Kapoor v. Ramesh Chander
(2012) 9 SCC 460
- (xii) Ganesha Vs. Sharanappa & Anr.
(2014) 1 SCC 87
- (xiii) Shlok Bhardwaj v. Runika Bhardwaj & Ors.
(2015) 2 SCC 721
- (xiv) Sanjaysinh R. Chavan Vs. D. G. Phalke
(2015) 3 SCC 123
- (xv) Malkeet Singh Gill v. State of Chhattisgarh
(2022) 8 SCC 204

Present Case

32. Coming to the case on hand, I find that the petitioners have sought maintenance under Section 125 Cr.PC. Hence, it is imperative to discuss the statutory provisions of Section 125 Cr.PC and the relevant case laws.

Section 125 Cr.PC.



33. Section 125 Cr.PC, which deals with the order for maintenance of wife, children and parents, reads as follows:-

“125. Order for maintenance of wives, children and parents.- (1) If any person having sufficient means neglects or refuses to maintain -

- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- (d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation. - For the purposes of this Chapter, -

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority,

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

(2) Any such allowance for the maintenance or



interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, 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.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.”

(Emphasis supplied)

34. As such, as per Section 125 Cr.PC, wife is entitled to get maintenance from her husband, if she is living separately



from her husband with sufficient reason, but not living in adultery, and she has no means to maintain herself and the husband, who has sufficient means, neglects or refuses to maintain her.

35. As per the **Explanation 2 to Section 125(1) Cr.PC**, it also transpires that “wife” includes a woman who has been divorced by her husband, but has not remarried.

36. In **Mohd. Ahmed Khan Vs. Shah Bano Begum & Ors.**, popularly known as **Shah Bano Case** as reported in **(1985) 2 SCC 556**, Hon’ble Constitution Bench of Apex Court has held that Section 125 Cr.PC is secular in nature and it is not in conflict with any particular religion or personal law. There is also no conflict on the question of muslim husband’s obligation to provide maintenance to a divorced wife who is unable to maintain herself. The right of a divorced muslim woman to claim maintenance under Section 125 Cr.PC is not affected by personal law.

37. Subsequent to the pronouncement of the judgment in **Shah Bano Case** (supra), a controversy arose regarding obligation of a muslim husband to pay maintenance to his divorced wife, particularly beyond iddat period. Hence, Parliament as an attempt to clarify the position brought about



the Muslim Women (Protection of Rights on Divorce) Act, 1986. Hon'ble Supreme Court got occasion in **Danial Latifi Vs. Union of India** as reported in **(2001) 7 SCC 740** to decide the meaning and import of the Act, particularly with reference to obligation of husband to pay maintenance to the divorced wife,

38. In **Danial Latifi case** (supra), Hon'ble Constitution Bench of Supreme Court upheld the constitutionality of the Act. However, it held that liability of a muslim husband to pay maintenance to his divorced wife is not confined to iddat period, if he fails to make a reasonable and fair provision for future of a divorced wife during the iddat period and the divorced wife has not re-married and she is unable to maintain herself. Reasonable and fair provision may include provision for her residence, her food, her clothes and other articles. The relevant paragraphs of the judgment read as follows:-

“28. A careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. It was stated that Parliament seems to intend that the divorced woman gets sufficient means of livelihood after the divorce and, therefore, the word “provision” indicates that something is provided in advance for meeting some needs. In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her clothes, and other articles. The expression “within” should be read as



“during” or “for” and this cannot be done because words cannot be construed contrary to their meaning as the word “within” would mean “on or before”, “not beyond” and, therefore, it was held that the Act would mean that on or before the expiration of the iddat period, the husband is bound to make and pay maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in Section 3(3) but nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the iddat period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time.

36. While upholding the validity of the Act, we may sum up our conclusions:

(1) A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act.

(2) Liability of a Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to the iddat period.

(3) A divorced Muslim woman who has not remarried and who is not able to maintain herself after the iddat period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.

(4) The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India.”

(Emphasis supplied)

39. Danial Latifi Case (supra) has been still holding the field and being followed by all the Courts in India.

40. In the case on hand, I find that Respondent No. 2/Md Shamshad has also taken plea that he has divorced his



wife by pronouncing Triple Talaq. Hence, it becomes imperative to refer to **Shayara Bano Vs. Union of India** as reported in **(2017) 9 SCC 1**, wherein Hon'ble Constitution Bench of Apex Court has held that the practice of Triple Talaq is arbitrary and illegal, holding as follows:-

“**104.** Given the fact that Triple Talaq is instant and irrevocable, it is obvious that any attempt at reconciliation between the husband and wife by two arbiters from their families, which is essential to save the marital tie, cannot ever take place. Also, as understood by the Privy Council in *Rashid Ahmad v. Anisa Khatun*, 1931 SCC OnLine PC 78 : AIR 1932 PC 25, such Triple Talaq is valid even if it is not for any reasonable cause, which view of the law no longer holds good after *Shamim Ara v. State of U.P.*, (2002) 7 SCC 518. This being the case, it is clear that this form of talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. This form of talaq must, therefore, be held to be violative of the fundamental right contained under Article 14 of the Constitution of India. In our opinion, therefore, the 1937 Act, insofar as it seeks to recognise and enforce Triple Talaq, is within the meaning of the expression “laws in force” in Article 13(1) and must be struck down as being void to the extent that it recognises and enforces Triple Talaq. Since we have declared Section 2 of the 1937 Act to be void to the extent indicated above on the narrower ground of it being manifestly arbitrary, we do not find the need to go into the ground of discrimination in these cases, as was argued by the learned Attorney General and those supporting him.

395. In view of the different opinions recorded, by a majority of 3 : 2, the practice of “Talaq-e-Biddat” — Triple Talaq is set aside.”

(Emphasis supplied)

41. In the year, 2019, the **Muslim Women (Protection Of Rights On Marriage) Act, 2019** was also enacted by Parliament. By this Act, the Parliament has declared



pronouncement of Triple Talaq by a muslim husband upon his wife as void and illegal. Even punishment has been provided for such pronouncement and it has been further provided that despite such pronouncement of Triple Talaq, the muslim wife is entitled to receive subsistence allowance from her husband and for her dependent children.

42. Without reference to the recent judgment of **Mohd. Abdul Samad Vs. State of Telangana & Anr.** as reported in (2025) 2 SCC 49, the discussion on the law under Section 125 Cr.PC would be incomplete. In this judgment, Hon'ble Division Bench of Apex Court has elaborately discussed the law of maintenance as provided under Section 125 Cr.PC and other statutory provisions. In this case, Hon'ble Apex Court has also discussed the implications of the Muslim Women (Protection Of Rights On Marriage) Act, 2019 and concluded the law in the following words after scanning all the relevant judicial precedents:

“115. What emerges from our separate but concurring judgments are the following conclusions:

115.1. Section 125CrPC applies to all married women including Muslim married women.

115.2. Section 125CrPC applies to all non-Muslim divorced women.

115.3. Insofar as divorced Muslim women are concerned.

115.3.1. Section 125CrPC applies to all such Muslim women, married and divorced under the Special Marriage Act in addition to remedies available under the Special



Marriage Act.

115.3.2. If Muslim women are married and divorced under Muslim law then Section 125CrPC as well as the provisions of the 1986 Act are applicable. Option lies with the Muslim divorced women to seek remedy under either of the two laws or both laws. This is because the 1986 Act is not in derogation of Section 125CrPC but in addition to the said provision.

115.3.3. If Section 125CrPC is also resorted to by a divorced Muslim woman, as per the definition under the 1986 Act, then any order passed under the provisions of the 1986 Act shall be taken into consideration under Section 127(3)(b)CrPC.

115.4. The 1986 Act could be resorted to by a divorced Muslim woman, as defined under the said Act, by filing an application thereunder which could be disposed of in accordance with the said enactment.

115.5. In case of an illegal divorce as per the provisions of the 2019 Act then,

115.5.1. Relief under Section 5 of the said Act could be availed for seeking subsistence allowance or, at the option of such a Muslim woman, remedy under Section 125CrPC could also be availed

115.5.2. If during the pendency of a petition filed under Section 125 CrPC, a Muslim woman is “divorced” then she can take recourse under Section 125CrPC or file a petition under the 2019 Act.

115.5.3. The provisions of the 2019 Act provide remedy in addition to and not in derogation of Section 125CrPC”.

(Emphasis supplied)

43. Criteria for determining quantum of maintenance

have been elaborately discussed by the Hon’ble Division Bench

of Supreme Court, observing as follows:

“77. The objective of granting interim/permanent alimony is to ensure that the dependent 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.

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent 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. [Refer to *Jasbir Kaur Sehgal v. District Judge, Dehradun*, (1997) 7 SCC 7; Refer to *Vinny Parmvir Parmar v. Parmvir Parmar*, (2011) 13 SCC 112 : **79**. In *Manish Jain v. Akanksha Jain*, (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.

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent 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. [*Reema Salkan v. Sumer Singh Salkan*, (2019) 12 SCC 303]

81. 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. [*Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316] 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.

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

83. Section 20(2) of the DV 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.

84. The Delhi High Court in *Bharat Hegde v. Saroj Hegde*, 2007 SCC OnLine Del 622, laid down the following factors to be considered for determining maintenance : (SCC OnLine Del para 8)

“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 lifestyle 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 guesswork 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 CrPC is adjustable against the amount awarded under Section 24 of the Act.”

85. Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.”

44. In Rajnesh Case (supra), Hon’ble Supreme



Court has also held as follows:-

“90.4. 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 Parkash v. Shila Rani* 1968 SCC OnLine Del 52. 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.

90.5. This Court in *Shamima Farooqui v. Shahid Khan* (2015) 5 SCC 705 cited the judgment in *Chander Parkash v. Shila Rani*, 1968 SCC OnLine Del 52 : with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.”

(Emphasis supplied)

45. In view of rival submissions of the parties, it is also relevant to mention that Section 125(2) Cr.PC confers upon the Court discretion to award maintenance from the date of application or from the date of order. However, in the interest of justice and fair play, maintenance is required to be awarded from the date of application, because the period during which the Maintenance Proceeding remains pending is not within the control of the applicant. Hon’ble Apex Court in the case of **Rajnesh (supra)** has issued general direction to the Courts concerned to award maintenance from the date of application and not from the date of order.

46. In view of submission of the parties, it would be



also pertinent to see what is adultery. Adultery is an offence against one's spouse. If a married person establishes sexual relationship with someone other than his/her spouse, he/she commits adultery. Under Section 125 Cr.PC wife/petitioner is disqualified for getting maintenance from her husband if she is living in adultery.

47. Moreover, "living in adultery" is distinct from "committing adultery". "Living in adultery" denotes a continuous course of conduct and not isolated acts of immorality. One or two lapses from virtues would be acts of adultery but would be quite insufficient to show that the woman was "living in adultery". A mere lapse, whether it is one or two, and a return back to a normal life can not be said to be living in adultery. If the lapse is continued and followed up by a further adulterous life, the woman can be said to be "living in adultery". In this regard, one may refer to the following judicial precedents:

- (i) **Hitesh Deka Vs. Jinu Deka**
2025 SCC OnLine Gau 259
- (ii) **Sukhdev Pakharwal Vs. Rekha Okhale**
2018 SCC OnLine MP 1687
- (iii) **Ashok Vs. Anita**
2011 SCC OnLine MP 2249
- (iv) **Sandha Vs. Narayanan**
1999 SCC OnLine Ker 64
- (v) **Pandurang Barku Nathe Vs. Leela
Pandurang Nathe & Anr.**



1997 SCC OnLine Bom 264

Findings and Order of this Court in the Present Case

48. Coming back to the case on hand, I find that Respondent No. 2/Md. Shamshad has pleaded that he has divorced his wife/Bulbul Khatoon, who is petitioner No. 1 herein, by pronouncing Triple Talaq in the presence of one witness in one sitting. He has also adduced evidence in support of such pleadings. However, there is no claim that he has paid a single paisa to his wife during iddat period towards her maintenance, let alone making any provision for her life. It is also admitted that he has not paid even *Dainmehar* to his wife. In such situation, in view of the law discussed above, Triple Talaq is illegal and invalid in view of ruling of Hon'ble Apex Court in **Shayara Bano Case** (supra), wherein Triple Talaq has been held to be arbitrary and illegal. The **Muslim Women (Protection Of Rights On Marriage) Act, 2019** also declares Triple Talaq void and illegal. Hence, Bulbul Khatoon cannot be held to be a divorced wife. There is also no pleading or evidence on record to prove that Bulbul Khatoon has been divorced by Md. Shamshad by any other legal mode.

49. Even if, it is presumed for a moment that petitioner No. 1/Bulbul Khatoon is divorced, the liability of Md.



Shamshad to maintain his former wife is still there, because to escape from liability to pay monthly maintenance to his wife, he was required not only to pay maintenance to his wife not during iddat period, he was also required to make provision for life of his former wife during iddat period. But nothing of the sort has been done by Md. Shamshad in favour of his former wife. Admittedly, even *Dainmehar* has not been paid by him to his former wife.

50. Now, question is whether the petitioner No.1/Bulbul Khatoon fulfills other conditions to get maintenance under Section 125 Cr.PC.

51. From perusal of the pleadings and evidence on record, I find that Bulbul Khatoon has left her matrimonial home, but there are rival claims of both the parties regarding the reason behind leaving the matrimonial home by Bulbul Khatoon. Bulbul Khatoon in her evidence has deposed that on account of her failure to meet unlawful demand of additional dowry by her husband/Md. Shamshad, she was ousted from the matrimonial home by her husband on 17.07.2017 along with her newly born child and hence, she has been living at her parental home since then and she has also filed one criminal complaint in this regard against her husband which is still pending. Such



evidence could not be demolished by the Respondent No. 2 in cross-examination, nor is any evidence on the part of Respondent No. 2 to prove that Bulbul Khatoon had been living in adultery and she had left her matrimonial home to lead adulterous life with Md. Tarikat. Nobody has seen Bulbul Khatoon leaving the matrimonial home in the company of Md. Tarikat. There is also no evidence that she has run away from her parental home in the company of Md. Tarikat.

52. There is also nothing on record to show that any criminal complaint has been filed by Md. Shamshad against Md. Tarikat in regard to his alleged adulterous life with his wife/Bulbul Khatoon. As per the allegation of Md. Shamshad, his wife/Bulbul Khatoon has been living in adulterous life with Md. Tarikat since much prior to the year, 2018, when Section 497 IPC providing for punishment for adultery was declared unconstitutional in **Joseph Shine Vs. Union of India** as reported in **(2019) 3 SCC 39**.

53. There is also no cogent evidence on record to show that Bulbul Khatoon is living with Md. Tarikat, nor anybody is a direct witness to adulterous life of Bulbul Khatoon with Md. Tarikat. No witness, examined on behalf of Md. Shamshad, has given any date, time and place of such



adulterous relationship of Bulbul Khatoon with Md. Tarikat.

54. On the other hand, there is sufficient evidence on record on behalf of Bulbul Khatoon that she has been living at her parental home along with her minor son.

55. From the perusal of the evidence, it transpires that Md. Shamshad heavily relies upon the panchayat held in regard to leaving of Bulbul Khatoon from her matrimonial home. But this panchayat, at most, has dealt with the issue of leaving of matrimonial home by Bulbul Khatoon. It, however, does not prove that Bulbul Khatoon has been living in adultery with Md. Tarikat.

56. Hence, I find that Respondent No. 2/Md. Shamshad has failed to prove that Bulbul Khatoon has been living in adulterous life with Md. Tarikat.

57. It is also not a case of Md. Shamshad that he got any decree of restitution against his wife/Bulbul Khatoon, nor has he claimed that he has been acquitted in the criminal complaint filed by Bulbul Khatoon.

58. As such, I find that Bulbul Khatoon has left the matrimonial home on account of ill-treatment by Md. Shamshad due to her failure to meet his illegal demand of dowry and hence, she is constrained to live at her maike along with her



minor son.

59. As such, Bulbul Khatoon is entitled to get maintenance from her husband/Md. Shamshad, because Bulbul Khatoon has no means to maintain herself, whereas Md. Shamshad is an able-bodied person and doing the work of laborer.

60. However, I find that learned Family Court by the impugned judgment/order has denied maintenance to Bulbul Khatoon on account of his finding that she has been living in adultery with Md. Tarikat, whereas there is no such cogent evidence on record. As such, the findings of learned Family Court is based on no evidence or perverse appreciation of evidence. Accordingly, the impugned order is not sustainable in the eye of law and hence, it is set aside to this extent and it is held that the petitioner No. 1/Bulbul Khatoon is also entitled to get maintenance from her husband/Respondent No. 2 herein.

61. However, coming to the quantum of maintenance payable to Bulbul Khatoon and her minor son/Danish Raza @ Rahul, I find that as per the evidence on record, Md. Shamshad earns as a laborer. I also find that Md. Shamshad has entered into second marriage with one Kajal Perween and one minor daughter born out from the second marriage. As such, Md.



Shamshad has four dependents upon him viz., Bulbul Khatoon and her son/Danish Raza @ Rahul and second wife of Md. Shamshad viz., Kajal Perween and her minor daughter born out of the wedlock and learned Family Court has also directed Md. Shamshad to pay Rs. 4,000/- per month to Danish Raza @ Rahul towards his maintenance. In view of such facts and circumstances, payment of Rs. 2,000/- per month to his wife/Bulbul Khatoon by Md. Shamshad towards her maintenance from the date of filing of maintenance petition would meet the ends of justice. But, there is no scope to enhance the quantum of maintenance payable by Md. Shamshad to his son/Danish Raza @ Rahul.

62. However, Md. Shamshad is liable to pay maintenance to his son Danish Raza @ Rahul at the rate of Rs. 4,000/- per month from the date of filing of the maintenance petition i.e. 30.10.2017 in view of Section 125 Cr.PC.

63. The present petition is allowed, accordingly.

64. Interlocutory applications, if any, stand disposed of. LCR be sent back to the Court concerned along with a copy of this order forthwith.

65. Learned Registrar General is directed to circulate a copy of this judgment/order amongst all the Family Courts of



Bihar, besides sending a copy of it to Bihar Judicial Academy
for discussion in the training programmes for the Presiding
Officers of the Family Courts.

(Jitendra Kumar, J)

shoaib/ravi shankar
S. Ali

AFR/NAFR	A.F.R.
CAV DATE	26.06.2025.
Uploading Date	07.07.2025.
Transmission Date	07.07.2025.

