

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL REVISION APPLICATION (FOR MAINTENANCE) NO. 531 of
2023****With
R/CRIMINAL REVISION APPLICATION NO. 1239 of 2022**

=====

DHARAMBHAI HARKISHABHAI SONI
Versus
DIMPLE DHARAMBHAI SONI & ORS.

=====

Appearance:

BHAVIN B THAKAR(9371) for the Applicant(s) No. 1
for the Respondent(s) No. 1,2,3MR SOHAM JOSHI, ADDL. PUBLIC PROSECUTOR for the Respondent(s)
No. 4

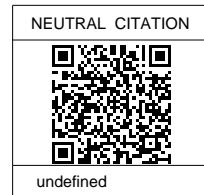
=====

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 23/04/2024**ORAL ORDER**

1. Criminal Revision Application No.531 of 2023 filed u/s 397 r/w section 401 of the Code of Criminal Procedure, 1973 challenges judgment and order dated 20.9.2022 passed by the learned Family Court, Junagadh in Criminal Misc. Application No.141 of 2021, whereas Criminal Revision Application No.1239 of 2022 is filed by wife Dimple Soni along with minor daughter, whereas, Criminal Revision Application No.531 of 2023 has been preferred by the husband. The wife is seeking for enhancement of maintenance, whereas the husband is seeking to grant him opportunity to defend his case.

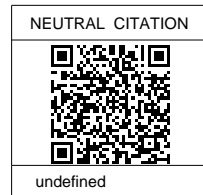
2. The brief facts of the case are under:-



2.1 It is submitted that as per the case of the complainant, the marriage of the complainant took place with respondent No.1 in 2001 with appellant, out of wedlock they are having two child one is aged about 19 years namely Dhairya and second one is Aashi aged about 14 years, at this stage with children the parents fighting which give bad message to child. It is submitted that marriage of parties solemnized in 2001, than respondent No.1 don't want to stay at matrimonial home and therefore they have separated and start living near about area in Mumbai in 2012 thereafter 2019 they shifted to Baroda and start living in rented house thereafter she used to grab money and sent to her parents, so dispute arose in April, 2020 when they are at Baroda in First Wave of Covid-19 and look-down situation was going on, in that situation dispute arose and applicant-husband tortured/ assaulted by respondent No.1 than he was thrown away from house with empty hand. Thereafter in October-2020 settlement arrived and she came to home and start living at Mumbai at that time mother-in-law was living together for few months, than again dispute arose because of she don't want to live with mother-in-law and left the home December-2020.

3. The above proceedings which culminated into final order dated 20.9.2022, whereby Criminal Misc. Application No.141 of 2021 was allowed and the wife was granted monthly maintenance of Rs.8000/- and minor daughter has been granted monthly maintenance of Rs.4000/-, in total Rs.12000/- has been granted towards the maintenance from the date of the petition.

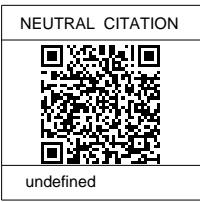
4. Learned advocate Mr.BB Thakkar for the petitioner would



submit that the proceedings before the learned Family Court was undertaken ex parte and the petitioner has not been given opportunity to defend his cause and in his absence as well as evidence from the husband, the learned Family Court has decided the maintenance amount and therefore, he submits to grant one more chance to the petitioner to appear before the learned Family Court and to defend his cause. He would further submit that the petitioner has deposited the arrears of maintenance and only 7 months' arrears i.e. Rs.84000/- is remained outstanding, which the petitioner undertakes to deposit before the learned Family Court within one month. Thus, he would submit to allow Criminal Revision Application No.531 of 2023.

5. On the other hand, learned advocate Mr. Ratanpara for the petitioner in Criminal Revision Application No.1239 of 2022 fairly admitted that the arrears of maintenance granted by the learned Family Court is already deposited. However, he submits that at the same time, proceedings u/s 125(3) of the Code is pending before the learned Family Court, whereby the petitioner wife has prayed for arrears of maintenance of Rs.73000/-. He would further submit that it is incorrect to say that the proceedings before the learned Family Court undertook ex parte. He would further submit that rather the petitioner did not chose to remain present before the learned Family Court to defend his cause and in that event, the learned Family Court was constrained to pass impugned order. After making this submission, he would submit to pass necessary orders.

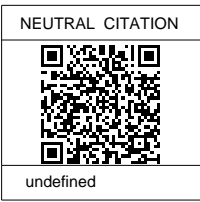
6. After hearing learned advocates for both the parties and



according to the impugned order, what appears that the petitioner husband was served with process and thereafter, the petitioner husband has appointed a lawyer, but then his learned advocate did not remain present before the learned Family Court to put the case of the petitioner husband. At the same time, the petitioner husband was not informed about the progress of the trial. Precisely, the order is not ex parte, but the fact remains that the petitioner husband did not get chance to defend his case or to cross-examine the witness or to put the evidence showing his income. The principle of natural justice demands that the petitioner husband may be granted opportunity. However, the amount of arrears, which is granted by the learned Family Court at Rs.12000/- per month i.e. Rs.8000/- per month to the wife and Rs.4000/- per month to the minor daughter has to be continued as interim maintenance. Since the petitioner husband has undertaken to deposit the arrears of maintenance in a proceedings u/s 125(3) of the Code, one more opportunity is required to be given to the petitioner husband.

7. For the foregoing reasons, I pass following order:-

(1) Criminal Revision Application No.531 of 2023 is partly allowed to the extent that final order of granting maintenance of Rs.8000/- per month to the wife and Rs.4000/- per month to the minor daughter by the learned Family Court, Junagadh in Criminal Misc. Application No.141 of 2021 is hereby set aside provided that the petitioner husband shall pay arrears of maintenance, which is demanded by the wife in a proceedings u/s 125(3) of the Code before the concerned learned Family Court within one month from today. In absence of compliance of



this condition, Criminal Revision Application No.531 of 2023 shall be treated as dismissed.

(2) The matter is remanded back to the concerned learned Family Court to decide afresh after giving opportunity to both the sides to lead evidence.

(3) The maintenance of Rs.8000/- per month to the wife and Rs.4000/- per month to the minor daughter in total Rs.12000/- shall be treated as interim maintenance till final disposal of Criminal Misc. Application No.141 of 2021. The petitioner husband would be under obligation to deposit the amount of maintenance and when it becomes outstanding.

(4) Needless to say that both the parties shall follow the guidelines imposed in the in case of Rajnesh Vs. Neha And Another, 2020 AIJEL_SC 66659.

(5) In view of above, Criminal Revision Application No.1239 of 2022 does not survive and stands disposed of accordingly. Liberty is granted to the petitioner wife to revive Criminal Revision Application No.1239 of 2022 in case of difficulty.

Needless to say that this Court has not observed anything on the merits of the case.

Direct service is permitted.

SHEKHAR P. BARVE

(J. C. DOSHI,J)