**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

Cr. Revision [FC] No.19 of 2024
Reserved on: 06.07.2026
Pronounced on: 10.08.2026

Surjeet
...Petitioner

Versus

Savitri Devi
...Respondent

Coram:
Hon'ble Mr. Justice Vivek Singh Thakur, Judge
Hon'ble Mr. Justice Ranjan Sharma, Judge

[1] *Whether approved for reporting? Yes.*

For the petitioner: Mr. Aasheesh Patial, Advocate.

For the respondent: Ms. Tim Saran, Advocate.

Ranjan Sharma, Judge

Petitioner-husband [Surjeet] herein, has come up before this Court, invoking the revisional jurisdiction, under Section 19 (4) of the Family Courts Act 1984, against the order passed by the Learned Additional Principal Judge, Family Court, Hamirpur ***[referred to as the 'Family Court']*** on 23.01.2024 ***[referred to as the Impugned Order]*** in Case Registration No. 109 of 2019, awarding maintenance of Rs 4000/- per month to respondent -wife [Savitri Devi], from the date of filing of

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

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the petition on 18.05.2019, in proceedings under Section 125 of the Code of Criminal Procedure ***[referred to as the 'Cr.P.C. herein'];*** with prayer to quash and set-aside the Impugned Order.

CASE OF RESPONDENT-WIFE [SAVITRI DEVI] IN SECTION 125 Cr PC PROCEEDINGS:

2. Respondent-wife [Savitri Devi] herein, filed a petition, bearing Case Registration No 109 of 2019 before the Learned Family Court, with the averments that she got married to the petitioner -husband [Surjeet] on 21.12.1997 and out of their wedlock, three children were born but petitioner started misbehaving, maltreating and abusing her and she was denied basic needs of food clothing etc., and during the year 2009 she was shunted out from the matrimonial home. Due to the physical and mental cruelty on the part of her husband she filed a petition, HMA Petition No 119 of 2019, seeking dissolution of marriage, under Section 13 (1) (ia) of the Hindu Marriage Act before Learned Family Court, Hamirpur.

2(i). It is averred that the petitioner-husband is a contractor earning Rs 30000/- [Rupees Thirty

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Thousand] per month and since she has no source of income and she may be granted maintenance at the rate of Rs 5000/- per month from the date of filing of the petition under Section 125 CrPC before Family Court concerned.

REPLY BY PETITIONER-HUSBAND IN 125 Cr PC PROCEEDINGS:

2(ii). Petitioner-husband [Surjeet] opposed the claim for maintenance on the ground that he is a casual labourer and is unable to maintain his wife. It was averred that the respondent-wife [Savitri Devi] is a tailor and she was earning handsomely. In this background, prayer was made to dismiss the claim of the respondent-wife for maintenance.

PROCEEDINGS UNDERTAKEN BEFORE FAMILY COURT:

2(iii). Upon completion of pleadings, Learned Family Court framed the Issues on 07.05.2022 and on the application filed by the wife and after considering the reply filed by the husband to the said application, Learned Family Court passed an order of Interim Maintenance on 13.09.2022. Thereafter, Respondent-wife examined herself as

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Sole-PW on 07.12.2022 and thereafter the husband examined three witnesses including himself on 28.08.2023 and on 29.11.2023 and in terms of the Notification issued by the State Government, the monthly income of the petitioner-husband, who claims to be a casual labourer, was determined to be Rs 11,250/- [Rupees Eleven Thousand Two Hundred Fifty], out of which, the maintenance of Rs 4000/-[Rupees Four Thousand] per month was awarded to the respondent-wife by Learned Additional Principal Judge, Family Court, Hamirpur on 23.01.2024 [referred to as the Impugned Order].

CHALLENGE TO THE IMPUGNED ORDER DATED 23.01.2024:

2(iv). In the instant proceedings, the petitioner -husband [Surjeet] has assailed the Impugned Order dated 23.01.2024 passed by Learned Family Court awarding maintenance of Rs. 4,000/ [Rupees Four Thousand] per month to the respondent-wife [Savitri Devi], on the ground that *firstly*, Impugned Order has been passed without proper appreciation of facts, evidence adduced and the law; and *secondly*, once respondent-wife [Savitri

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Devi] was able to maintain herself therefore, the Order awarding maintenance was unsustainable; and *thirdly*, the awarded amount of maintenance of Rs 4,000/- [Rupees Four Thousand] per month was on higher side and exorbitant and being a casual labourer at advanced age and health he was unable to work whereas the respondent -wife *[Savitri Devi]* earns handsomely and these facts were ignored while passing the Impugned Order; and *lastly*, *once* the respondent-wife had left the company of the petitioner-husband without any reasonable cause and she has also obtained divorce and therefore, the respondent-wife is not entitled for maintenance.

CONTENTION OF LEARNED COUNSEL FOR THE RESPONDENT-WIFE [SAVITRI DEVI]:

2(v). Per contra, Learned Counsel for respondent -wife [Savitri Devi] has supported the Impugned Order dated 23.01.2024, on the ground, that once factum of marriage between the parties and the fact that the said marriage stood dissolved by a decree of divorce on 22.11.2021, then also, petitioner-husband [Surjeet] cannot be absolved

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of his obligation to pay maintenance to respondent -wife [Savitri Devi], as the respondent-wife had not remarried and she does not fall in any of the exceptional categories under Section 125 (4) of Cr.P.C, so as to disentitle her for maintenance. In this backdrop, Impugned Order was supported and the claim of petitioner-husband was opposed in instant proceedings.

ADDITIONAL DOCUMENTS FILED IN INSTANT PROCEEDINGS:

2(vi). The Impugned Order passed by Learned Family Court on 23.01.2024, in case Registration No. 109 of 2019 was stayed by a Co-ordinate Bench of this Court on 17.07.2024 in Cr.MP (M) No 1464 of 2024 filed in present proceedings. Besides this, vide Orders dated 11.11.2025, this Court requisitioned the records of the proceedings pending before Learned Family Court, Hamirpur in Divorce Petition, i.e. HMA No. 119 of 2019 as well as proceedings under Section 125 Cr.P.C, in Case Registration No 109 of 2019. Notably in terms of the orders dated 24.06.2025, this Court directed the parties to file their respective affidavits

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of Assets and Liabilities and accordingly, necessary affidavits were filed, which are part of the records.

3. Heard, Mr. Aasheesh Patial, Learned Counsel for the petitioner and Ms. Tim Saran, Learned Counsel for the respondent.

4. Taking into account the entirety of facts and circumstances and the material on record and upon perusal of requisitioned records, this Court now proceeds to analyze the contentions of Learned Counsels for the respective parties here-in-under.

ANALYSIS OF CONTENTION OF LEARNED COUNSEL FOR PETITIONER-HUSBAND:

5. *First contention* of Learned Counsel for petitioner-husband [Surjeet] is that the Impugned Order dated 23.01.2024 passed by Learned Family Court without appreciating the facts, the evidence and the law and therefore the Impugned Order is liable to be set-aside.

The above contention of Learned Counsel for the petitioner-husband is misconceived, *for the reason,* that on 18.05.2019 the respondent-wife [Savitri Devi], instituted proceedings against the petitioner-husband under Section 125 of

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CrPC for maintenance before the Learned Family Court. Upon completion of pleadings, Learned Family Court framed Issues on 07.05.2022. Thereafter on an application filed by the wife and after considering the reply filed by the husband to the said application, Learned Family Court passed an order of Interim Maintenance on 13.09.2022. The wife examined herself as PW on 07.12.2022 whereas husband examined three witnesses including himself on 28.08.2023 and others on 29.11.2023 and in terms of the Notification issued by the State Government, the monthly income of the petitioner-husband, who claims to be a casual labourer, was determined to be Rs 11250/- out of which, an amount of Rs 4000/- per month was quantified and awarded as maintenance to the respondent-wife by Learned Family Court on 23.01.2024, after appreciating the pleadings, the evidence and applicable law and therefore, the contention of Learned Counsel for the petitioner is misplaced and is turned down.

6. *Second contention* of Learned Counsel

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for the petitioner is that the respondent-wife was able to maintain herself and therefore, the Impugned Order awarding maintenance is liable to be set aside.

The above contention, cannot sustain for the reason, that the petitioner-husband was bound to prove the income of the respondent -wife [Savitri Devi]. Petitioner-husband had failed to lead any evidence to establish that respondent -wife was earning and was able to maintain herself. Even Learned Family Court has recorded specific finding in Para 23 of the Impugned Order that the petitioner-husband has failed to prove the income of respondent-wife. Mere conjectures and surmises or the presumption that the wife was earning cannot form basis for accepting the plea of the husband. For want of proof of income of the wife, the contention of Learned Counsel for the petitioner that the wife was able to maintain herself cannot be accepted, and the contention is turned down.

7. *Third contention* of Learned Counsel for

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petitioner-husband is that awarded maintenance of Rs 4000 per month is exorbitant and on the higher side.

The above plea cannot sustain, for the reason, that the petitioner-husband has deposed before Learned Family Court that he is a casual labourer and doing labour work and based on this deposition, Learned Family Court has recorded findings in Para 23 of Impugned Order assessing the monthly income of the husband to be Rs 11250/- in terms of the Notification issued by State Government, whereby, a casual labourer is expected to earn the minimum wages of Rs 375 per day and based on the aforesaid monthly income, the amount of maintenance admissible to the respondent-wife was quantified at Rs 4000 per month. Conversely, even petitioner-husband has not been able to establish before the Family Court and even in the present proceedings that the Notification issued by State Government was either perverse or was illegal or was non-existent or was not applicable and therefore, in the

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absence of any challenge to aforesaid notification, the quantification of the maintenance admissible to the respondent-wife by resorting to a balanced assessment of earning capacity of the husband and reasonable needs of the respondent-wife was fair, just, reasonable and was commensurate with the status of parties, with the object of achieving social justice and to prevent destitution of the wife is in consonance with the mandate of Section 125 Cr PC and the principles outlined by the Honble Supreme Court in cases of **Chaturbhuj vs Sitabai, (2008) 2 SCC 316** and in the case of **Deepa Joshi vs Gaurav Joshi, 2026 SCC Online 597** [Paras 11 and 12], mandating that the liability of the husband to maintain his wife is paramount and this primary obligation cannot be permitted to be subordinated to the financial arrangements or financial commitments such as loan repayments towards the asset construction or business or by attempting to evade or defeat the absolute right of the wife for maintenance, as in instant case.

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PLEA OF EXORBITANT MAINTAINENCE UNTENABLE:

7(i). Plea of Learned Counsel for petitioner that he was a labourer and awarded maintenance was exorbitant and was on the higher side is negated, in view of the fact that in proceedings before Learned Family Court, the petitioner, while deposing as PW-1 has asserted himself to be a labourer whereas on the other hand, a perusal of the material on record i.e. the affidavit filed in instant proceedings reveals that the petitioner had raised a "business loan" of Rs 93000/- [Pg 62 of paper book], which is not admissible to a labourer and therefore, this affidavit belies and negates the stand of the petitioner-husband that he was a labourer and these facts support the case of the respondent-wife that her husband was in fact a contractor. In these circumstances, the Impugned Order awarding maintenance of Rs 4000 per month to the wife by carving out a balance between the competing considerations is neither exorbitant nor on higher side and the contention of Learned Counsel for the petitioner

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husband is turned down.

HUSBAND CANNOT WRIGGLE OUT OF LEGAL OBLIGATION IN ABSENCE OF DISABILITY OR BODILY INFIRMITY:

7(ii). Plea that the petitioner was a labourer at an advanced age and due to his health he cannot work and is unable to maintain his wife is devoid of any merit, *for the reason,* that the wife has an absolute right of maintenance under Section 125 Cr.P.C. Nothing has been placed on record by the husband that he was bodily infirm or was disabled. In the absence of any proof of disability or incapacitation, mere bald excuses cannot have acceptability in law. Once the husband -petitioner was healthy, able-bodied and was capable of earning, then, the husband cannot wriggle out of his legal obligation to maintain his wife. Even the plea of advanced age or health or financial constraints cannot be permitted to be an escape route for the husband to evade his liability towards the wife, in the light of the mandate of the Hon'ble Supreme Court in the case of ***Shamima Farooqui vs Shahid Khan, (2015) 5 SCC 705,*** *in following terms:*

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"14. Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was getting a monthly salary of Rs. 17,654/-. The High Court, without indicating any reason, has reduced the monthly maintenance allowance to Rs.2,000/-. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs. 2,000/- per month. It 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

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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 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 Cr PC unless disqualified, is an absolute right.**

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16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In ***Chaturbhuj v. Sita Bai,*** it has been ruled that:

> 6.....Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in ***Capt. Ramesh Chander Kaushal*** *vs Veena Kaushal* falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. **It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.** The aforesaid position was highlighted in *Savita ben Somabhai Bhatiya v. State of Gujarat*."

17. **This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.**

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18. In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in ***Chander Prakash Bodhraj*** *v. Shila Rani Chander Prakash* wherein it has been opined thus: (SCC OnLine Del para 7):-

> 7.....**An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say** that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodies person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him."

ABSOLUTE RIGHT OF MAINTENANCE SUBSISTS EVEN AFTER DIVORCE TILL SHE REMAINS UNMARRIED:

7(iii). The object of Section 125 Cr.P.C. is to entitle the wife, children and parents for maintenance in a speedy manner and to achieve social justice by providing adequate maintenance

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so that she can live with dignity and she is not compelled to become a destitute or a beggar. Husband cannot escape from this legal obligation towards the wife, even if, their marriage stands annulled by a decree of divorce. Even a divorced wife has an absolute right of maintenance till she is unmarried. The right of a divorced wife for maintenance from her husband shall cease and such a right will entail a disqualification upon remarriage, in terms of the Explanation to Section 125 (1) (b) of Cr PC which provides that "*wife*" includes a woman who has been divorced by or has obtained divorce from her husband and has not remarried.

In the instant case, even though the marriage between the petitioner and respondent was dissolved by decree of divorce on 22.11.2021, but nothing has been placed on record by the petitioner-husband to establish that the respondent -wife had remarried. Besides this, the Respondent-wife has deposed before Learned Family Court as PW-1, that she has not remarried and this

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fact remains uncontroverted. In these circumstances Learned Family Court has validly awarded the maintenance to respondent-wife, during subsistence of marriage but for her exit from the matrimonial home and even after dissolution of marriage on 22.11.2021, the respondent (divorced wife) had not remarried.

MANDATE OF LAW ENTITLING DIVORCED WIFE FOR MAINTAINENCE IF NOT REMARRIED:

7(iii-a). Right of a divorced wife for maintenance till remarriage has been outlined by the Honble Supreme Court in following judgments:-

7(iii-b). A divorced wife has an absolute right of maintenance till she remains unmarried and she is unable to maintain her but such the divorced wife entails ineligibility for maintenance on remarriage, in terms of the mandate of the Hon'ble Supreme Court in the case of **Gurmeet Kaur v. Surjit Singh alias Jet Singh, (1996) 1 SCC 39,** in following terms:

> 7. In view of the divorce agreement referred to hereinabove, the marital relations have come to a terminus. By virtue thereof, the respondent had already contracted the second marriage. In

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> other words, the first marriage has been put to an end. **The appellant thereby became entitled to claim maintenance and will continue to do so, so long as she remains unmarried and she is unable to maintain herself.**

7(iii-c). Right of divorcee wife for maintenance till remarriage has been spelt out by the Hon'ble Supreme Court in the case of **Rohtash Singh vs Ramendri (Smt) and others, (2000) 3 SCC 180,** as under:

> 11. Learned counsel for the petitioner then submitted that once a decree for divorce was passed against the respondent and marital relations between the petitioner and the respondent came to an end, the mutual rights, duties and obligations should also come to and end. He pleaded that in this situation, the obligation of the petitioner to maintain a woman with whom all relations came to an end should also be treated to have come to an end. This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. **As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125**

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> **(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was, once, her husband continues to be under a statutory duty and obligation to provide maintenance to her."**

7(iii-d). Right of a divorced wife for maintenance till she remarries has been reinforced by Three Judges of the Hon'ble Supreme Court in the case of **Manoj Kumar vs Champa Devi, (2018) 12 SCC 748,** in following terms:

> "1. We have heard the learned counsel for the rival parties at some length.
>
> 2. Having perused the impugned order, we are satisfied, that the same is based on the two decisions rendered by this Court, firstly, Vanamala vs H.M. Ranganatha Bhatta and secondly, Rohtash Singh v. Ramendri. Section 125 of the Criminal Procedure Code, 1973 including the Explanation under sub-section (1) thereof, has been consistently interpreted by this Court, for the last two decades. The aforesaid consistent view has been

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followed by the High Court while passing the impugned order."

7 (iii-e). Reiterating the right of a divorced wife for maintenance who had not remarried, the Hon'ble Supreme Court has held in case of **Dr. Swapan Kumar Banerjee vs State of West Bengal and another, (2020) 19 SCC 342,** in following terms:

> 7. No doubt, as urged by Mr. Debal Banerjee, explanation II to Section 125 of the Cr.P.C. by deeming fiction includes a **divorced woman to be a wife and, therefore, a woman who has been divorced by her husband can still claim maintenance under Section 125 of the** Cr.P.C. The question is how we should read the provisions of sub-section (4) in this regard, especially when we deal with those women, against whom a decree for divorce has been obtained on the ground that they have deserted their husband. Once the relationship of marriage comes to an end, the woman obviously is not under any obligation to live with her former husband. **The deeming fiction of the divorced wife being treated as a wife can only be read for the limited purpose for grant of maintenance** and the deeming fiction cannot be stretched to the illogical extent that

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the divorced wife is under a compulsion to live with the ex-husband. The husband cannot urge that he can divorce his wife on the ground that she has deserted him and then deny maintenance which should otherwise be payable to her on the ground that even after divorce she is not willing to live with him. Therefore, we find no merit in the contention of Mr. Debal Banerjee.

DISENTLEMENT FOR MAINTENANCE IN CASE EVENTUALITIES UNDER SECTION 125 (4) Cr PC [SECTION 144 (4) of BNSS] EXIST:

7(iv). Subject to the statutory compliances, the Foundational rule envisaged in Section 125 Cr PC is that wife has an absolute right of maintenance, in case, she is neglected or is refused to be maintained by her husband during subsistence of marriage under the second provisio to Section 125 (1) of Cr PC. Even, the divorced wife continues to be a wife 'for limited purpose of maintenance" by way of deemed fiction accruing from Explanation to Section 125 (1) (b) Cr PC till such a divorced wife remarries. This foundational rule is subject to exceptions carved out in Section 125 (4) Cr PC, which disentitles or renders the wife ineligible

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for maintenance from her husband, if the wife 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.

ABSENCE OF ADULTERY ENTITLES THE RESPONDENT-WIFE FOR MAINTENANCE:

7(iv-a). As per section 125 (4) of the Cr P C, a husband can deprive his wife of the benefit of maintenance, in case, the wife was living in adultery. It is not the case of petitioner-husband that the respondent-wife was living in adultery. Nothing has been placed on record to show that the wife was living in adultery. In the absence of any evidence ex-facie to establish adultery, the challenge to the Impugned Order granting monthly maintenance to the wife, needs no interference in instant petition.

PROVED ACTS OF CRUELTY CONSTIUTE SUFFICIENT REASONS FOR WIFE NOT TO STAY WITH HUSBAND:

7(iv-b). In the teeth of Section 125 (4) of Cr PC, once sufficient reasons exist, so as to reasonably conclude that the respondent-wife had refused to live with the petitioner-husband, then, the Impugned

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Order granting maintenance to the wife does not warrant interference.

In the instant case, marriage between the petitioner and the respondent was solemnized on 21.12.1997 and three children were born out of their wedlock. Impugned Order establishes that after marriage, the relations between the petitioner -husband [Surjeet] and the respondent-wife [Savitri Devi] became strained and the wife was shunted out of her matrimonial home in the year 2009. Impugned Order further goes on to establish that in view of persistent acts of cruelty, including abusing and the beatings given to the wife on many occasions and denial of food, clothing, maintenance and other basic necessities of life, the wife was forced to live in a single room in an old house separately from the petitioner-husband and other family members who resided in a newly constructed house and wife was not even allowed to enter. Due to mental and physical cruelty, the respondent-wife [Savitri Devi] filed a petition for dissolution of marriage under Section

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under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 [vide Case Registration No. 119 of 2019 on 14.05.2019], in which, a decree of divorce was passed on 22.11.2021, with specific findings that acts of cruelty had forced the respondent-wife to leave the matrimonial home. It has also come on record in divorce proceedings that the wife did not have any physical relations with the husband on account of said cruelty. In this backdrop, this Court is of the considered view, that once the petitioner-husband had shunted out the respondent-wife, from the matrimonial home due to established acts of cruelty and these acts constitute 'sufficient reasons" for the wife not to stay with the husband, therefore, Impugned order passed by Learned Family Court awarding monthly maintenance to the respondent-wife, does not warrant any interference by this Court.

ABSENCE OF MUTUAL CONSENT TO LIVE SEPARATELY ENTITLES RESPONDENT WIFE FOR MAINTENANCE:

7(iv-c). Section 125 (4) Cr PC mandates that a husband can deprive his wife of the benefit of maintenance, in case, husband and wife have

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mutually consented for living separately. It is not the case of the petitioner-husband that the respondent-wife had "mutually consented for living separately." Nothing has been placed on record to establish that husband and wife have consented to live separately. In the absence of any proof of "consensual mutual separation", the Impugned Order granting maintenance to the respondent-wife, so as to provide her social justice is legal and valid and challenge to the Impugned Order cannot sustain.

MANDATE OF LAW DISENTITLING WIFE FOR MAINTENANCE:

7(v). Section 125 Cr.P.C, imposes an obligation under law, on the husband, who despite having sufficient means neglects or refuses to maintain his wife and "for sufficient reasons," if the wife was compelled to leave matrimonial home so as to face destitution, agony, anguish and financial sufferings, then, such an adversarial situation was sought to be remedied by this provision. Though the wife has an absolute right of maintenance by her husband, but the provision of Section

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125 (4) Cr PC [now Section 144 BNSS] envisages situations which disqualify or disentitle or render the wife ineligible for maintenance, if the wife 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.

7 (v-a). Disqualification of wife for maintenance under Section 125 (4) Cr PC has been outlined by the Honble Supreme Court in case of **Vanamala (Smt) vs H.M. Ranganatha Bhatta, (1995) 5 SCC 299,** in following terms:

> 3. Section 125 of the Code makes provision for the grant of maintenance to wives, children *and* parents. Sub-section (1) of section 125 inter alia says that if any person having sufficient means neglects or refuses to maintain his wife unable to maintain 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 not exceeding Rs.500/- in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct. **Clause (b) of the explanation to the sub-section**

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defines the expression 'wife' to include a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. **In the instant case it is not contended by the respondent that the appellant has remarried after the decree of divorce was obtained under Section 13-B of the Hindu Marriage Act.** It is also not in dispute that the appellant was the legally wedded wife of the respondent prior to the passing of the decree of divorce. By virtue of the definition referred to above she would, therefore, be entitled to maintenance if she could show that the respondent has neglected or refused to maintain her. Counsel for the respondent, however, invited our attention to sub-**section (4) of Section 125**, which reads as under:-

> 125.(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.

On a plain reading of this Section it seems fairly clear that the expression 'wife' in the said sub-section does not have the extended meaning of including a woman who has been divorced. This is for the obvious reason

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> that unless there is a relationship of husband and wife there can be no question of a divorcee woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the women to live with her husband? Similarly there would be no question of the husband and wife living separately by mutual consent because after divorce there is no need for consent to live separately. **In the context, therefore, sub-section (4) of Section 125 does not apply to the case of a woman who has been divorced or who has obtained a decree for divorce.** In our view, therefore, this contention is not well founded."

7(v-b). The Honble Supreme Court has mandated in the case of **Himanshu Chordia vs State of Rajasthan, Criminal Appeal No 003599 of 2026**, decided on 31.07.2026, that a decree of divorce does not foreclose her right of maintenance by virtue of the Explanation to Section 125 (1) (b) Cr.P.C. Disqualifications spelt out under Section 125 (4) Cr PC, does not cover within its ambit a divorced woman, in following terms:

> 6.8 A decree of divorce does not foreclose

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> the relief under Section 125 CrPC Section 125(4), which is an exception to the general rule under **this section, does not include within its ambit a divorced woman.** [See: Vanamala v. H.M. Ranganatha Bhatta, Swapan Kumar Banerjee v. State of W.B.]

7(v-c). The Honble Supreme Court has mandated in the case of **Himanshu Chordia** (supra) that the object of Section 125 of CrPC is oriented towards social justice, is secular and is aimed at providing sustenance with dignity and given its beneficial nature, the application made under this section has to be interpreted liberally, in the following terms:

> 7. It cannot be gainsaid that the provision is oriented towards social justice ; it is secular; and is aimed at providing a sense of sustenance with dignity for those who are unable to provide for themselves. **Given its beneficent nature,** the principles that govern an **application made under this Section, culled out supra, have to be interpreted liberally,** keeping in view the desired goal.

7 (v-d). Section 125 of the Cr P C envisages

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proceedings at three stages. Filing of the petition for maintenance under Section 125 (1) of Cr P C is the first stage of proceedings towards grant of interim maintenance; **and** the second stage of proceedings commence on filing of an application under Section 125 (4) of the Cr P C, opposing the interim maintenance, by a person from whom maintenance is sought by invoking any of the disqualifications or disentitlements on ground of adultery or without any sufficient reason to live with her husband or is living separately by mutual consent ; **and** the final stage of the proceedings culminates on passing of final order of maintenance under section 125 (5) of Cr PC. Subject to statutory compliances, the grant of interim maintenance is the rule and same shall flow to the wife expeditiously but its curtailment or stoppage is an exception and that too on an application under Section 125 (4) of Cr PC. *In case of adultery,* interim maintenance awarded, can be discontinued-stopped, if direct evidence, on the face of it establishes the allegation. However,

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in case of circumstantial evidence, borne out from the photographs or other evidence, the Court must consider such evidence and pass an appropriate order after taking into account the objection or dispute raised by other party, regarding the legality or correctness of such evidence. Once the adduced evidence "establishes the charge ex-facie", then only, the bar to interim maintenance can operate. Plea of the husband for discontinuing the interim maintenance during the pendency of an application under Section 125 (4) Cr PC, cannot be accepted, and accepting such a plea, shall frustrate the object of social justice.

7(v-f). The denial of interim maintenance to the wife till the application filed under Section 125 (4) Cr PC was deprecated and the absolute right of the wife for maintenance was approved by the Honble Supreme Court in case of **Himanshu Chordia** (supra) in following terms:

> 10. Once a petition under Section 125 (1) is made before the concerned court, **and the person from whom maintenance is sought makes an application under Section 125 (4),**

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determination thereof, would depend upon the facts and circumstances of each case; as also the kind of evidence presented in reference to application filed under Section 125 (4); whether the interim maintenance so granted to the applicant under the proviso to sub-section (1) of Section 125, would continue to obtain or not.

11. The second proviso to Section 125 (1) makes provision for interim maintenance and expenses of proceedings. It is clear therefore **that the intent is for the maintenance allowance to reach the applicant expeditiously.** It cannot be said as such, that once an application under the latter Section 125 (4) has been made, even the payment of interim maintenance in the interregnum, till such application is decided, will be stopped. If it is concluded that the said application has merit, then the interim order would be vacated. If it is concluded otherwise, the interim order would be confirmed/modified. To put it plainly, **the pendency of a 125(4) application would not per se bar the applicant from receiving interim maintenance** on the ground that the said sub-section uses the word 'interim maintenance' also. If such

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a view is accepted, the payment of maintenance would be perpetually contingent on the decision in 125(4), which may, given the nature of the allegation, take considerable time in reaching its final conclusion.

12. Put clearly, it has to be observed that **an application for maintenance is stage one of the proceedings** wherein by virtue of the second proviso, the court may, circumstances permitting, award interim maintenance. The **application under Section 125 (4) is stage two** and it is the decision in *stage two* which will determine whether the application reaches the final stage i.e. order of maintenance under Section 125(1) or not. What is provided by Section 125 (5) accounts for a situation that is subsequent to **final order having been made in stage three**.

17. At this stage, a segue into how an **allegation of adultery** can be/is to be proved may be warranted. Evidence is of two types, **direct and circumstantial**. The former is the kind that establishes, on the face of it, an allegation.

18. It is obvious that when a case is sought to be proved by **circumstantial evidence**, it requires a detailed study of the circumstances presented. The evidence furnished in support thereof,

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including verification, particularly when the evidence in question is electronic, etc. These procedures are bound to take time. Since the stipulation in the Section 125 (4) is that if adultery is proved, the wife would neither be entitled to interim nor final maintenance, we are of the view that if a husband files an application under Section 125(4) and is, at the first instance, able to establish the charge through evidence ex facie, then only, there can be said to be a bar to interim maintenance.

19. The courts below clearly fell into error to hold that it was only at the stage of final adjudication that such a question could be decided. This view would **render otiose what has been provided in the statute**.

20. Applying this understanding to the record, in order to establish that the Respondent No. 2 was living in adultery, the **appellant has placed a number of photographs and other evidence**. This evidence is obviously electronic in nature. The question that the court must consider at the stage of interim maintenance is whether the evidence so presented establishes adultery. It is obviously open for the Respondent No. 2 to dispute the correctness and legality

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of the evidence presented, which would then have to be considered by the Court.

In that view of the matter, we are of the view that the Trial Court ought to have decided the appellant's application under Section 125 (4). It was incorrect for them to have observed that the appellant's application could not have been decided prior to the final adjudication of the application filed by the wife. **The second proviso to sub-section (1) of Section 125 provides for interim maintenance; and as such, the logical flow of proceedings would be that once the basic facts are established, an order is made for interim maintenance, and that would continue to operate till the application under Section 125 (4) is decided conclusively**. This is in view of the beneficent nature of the provision. This question is accordingly decided. Consequently, the matter stands remanded to the Trial Court to make a decision on the merits since they had in this instance dismissed the application on the threshold. However, the matter does not end there.

Based on above discussion, this Court is of the considered view, that inherent and

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fundamental principle behind Section 125 Cr.P.C, is to impose a legal obligation on any person, including husband, who despite having sufficient means, neglects or refuses to maintain his wife, by mandating the husband to part with a fair, just and reasonable amount, which is quantified after considering all competing aspects and by paying this as monthly maintenance so that the neglect, destitution, agony, anguish and financial sufferings of woman were remedied, so that she can live with dignity, as she would have lived in her matrimonial home. Explanation to Section 125 (1) (b) Cr PC, entitles a divorced wife for maintenance till she remarries. Section 125 (4) Cr PC, does not foreclose the right of divorced wife for maintenance. A wife is disqualified for maintenance on legally permissible grounds under Section 125 (4) CrPC [now Section 144 BNSS] if the wife 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. Maintenance proceedings are

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essentially civil in nature and the standard of proof is not beyond reasonable doubt as would be applicable in other criminal cases.

Plea of the husband that he does not have the means to pay, as he does not have the job or his business is not doing well or due to financial constraints or like reasons of repayment of outstanding loans raised for asset construction or business etc, cannot be permitted to be an escape route for the husband to avoid payability of maintenance to the wife, including divorced wife. The absolute right of the wife for maintenance cannot be sacrificed and subrogated for financial constraints, arising due to the asset construction or business etc [as in present case].

Plea of non-payability of maintenance by husband, due to ill health cannot be accepted, on bald assertions or conjectures and surmises. Such plea is required to be pleaded, established and proved on the basis of cogent, convincing and legally admissible material. In the absence of concrete material to establish bodily infirmity

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or incapacitation rendering him unable to earn, bald plea set up by the petitioner-husband that he was unable to earn due to advanced age or health cannot be accepted. Such plea cannot form the basis to be an escape route for the husband to evade his legal obligations to give maintenance to wife.

Three stages of proceedings envisaged under Section 125 Cr PC, as discussed in the fore-going paras of this judgment are mandatory. Subject to the statutory compliances, the grant of interim maintenance should be the rule but its discontinuance or stoppage thereof should be an exception, which is invocable by husband on filing of an application, on the permissible grounds as spelt out under Section 125 (4) Cr PC subject to ex-facie proof of disqualification, before disentitling the wife for interim maintenance. Mere pendency of an application under Section 125 (4) cannot be a ground to deny or curtail or stop the interim maintenance granted to the wife. Once the foundational facts are established and an

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order of interim maintenance is made then, such an order of interim maintenance would continue to operate till application under Section 125 (4) is decided. The interim order culminates into the final order under Section 125 (5) Cr PC.

In instant case, nothing has been placed on record to establish that after grant of divorce the respondent-wife had remarried therefore, the respondent-wife was validly granted the monthly maintenance by Learned Family Court. Moreover, it is not the case of the petitioner-husband that the respondent wife had entailed the permissible disqualifications envisaged under Section 125 (4) Cr PC coupled with the fact that the petitioner has not filed any such application under Section 125 (4), then, the order granting the interim maintenance and the final order of maintenance passed under Section 125 (5) by Learned Family Court so as to safeguard the absolute right of wife for maintenance, in facts of instant case, in terms of the Impugned Order dated 23.01.2024 does not suffer from any perversity or illegality.

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8. *Last contention* of Learned Counsel for the petitioner is that the respondent-wife had left the company of the petitioner-husband without any reasonable cause and has obtained divorce and *Impugned Order granting* maintenance was not tenable.

Above contention of Learned Counsel for the petitioner is devoid of any merit. Repetitive factual aspects go on to establish that marriage between the parties was solemnized on 21.12.1997 and three children were born out of their wedlock. Their relations turned sour and due to the persistent acts of cruelty, she was abused, beaten and was denied the basic needs of food, clothing, maintenance and other necessities of life. She was forced to live in single room in an old house, separately from the petitioner-husband whereas other family members resided in a newly constructed house and even the respondent-wife not allowed to enter. Due to mental and physical cruelty, the respondent-wife filed a petition for Dissolution of Marriage under Section 13 (1) (ia)

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of Hindu Marriage Act, 1955 [vide *Case Registration No.119 of 2019* on 14.05.2019], wherein, marriage was annulled by a decree of divorce passed on 22.11.2021, with the specific findings that acts of cruelty had forced respondent-wife to leave the matrimonial home and the wife did not have any physical relations with the petitioner -husband on account of said cruelty. Cumulative effect of above factors, establish that "sufficient reasons", existed, which compelled the respondent wife to leave the matrimonial home, entitling her for maintenance. Even after dissolution of marriage on 22.11.2021, petitioner-husband cannot escape his bounden legal obligation to pay maintenance to divorced wife, when, nothing has been placed on record or established that after divorce the respondent-wife had remarried. Respondent-wife has deposed as PW-1, that she has not remarried and this fact had remained uncontroverted. Besides this, the findings recorded in the decree of dissolution of marriage passed on 22.11.2021 had attained finality, further establishes mental

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and physical cruelty by the husband. Accordingly, in totality of circumstances, the Impugned Order dated 23.01.2024 passed by Learned Family Court does not suffer from any infirmity, perversity or illegality and said order does not warrant any interference in instant proceedings.

PRE-CONDITIONS OF EXERCISING REVISIONAL JURISDICTION IS NOT MADE OUT:

10. Impugned Order passed by Learned Family Court after appreciating the pleadings and evidence cannot be casually interfered with by this Court, when, the scope of interference in revision under Section 19 (4) of the Family Courts Act is limited, in case, an order suffers from illegality or impropriety or irregularity in the proceedings. Nothing has been pointed out by the Learned Counsel for the petitioner-husband that *Impugned Order dated 23.01.2024* suffers from any illegality or impropriety or irregularity in the proceedings. Merely because a different conclusion could have been drawn, is not a ground to show indulgence in revisional jurisdiction under Section 19 (4) of the Family Courts Act, in the light of the mandate of

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the Hon'ble Supreme Court in the case of ***Shamima Farooqui [supra],*** *in the following terms:-*

> "20. In the instant case, as is seen, the High Court has reduced the amount of maintenance from Rs. 4,000/- to Rs 2,000/-. As is manifest, the High Court has become oblivious of the fact that she has to stay on her own. **Needless to say, the order of the learned Family Judge is not manifestly perverse. There is nothing perceptible which would show that order is a sanctuary of errors. In fact, when the order is based on proper appreciation of evidence on record, no revisional court should have interfered with the reason on the base that it would have arrived at a different or another conclusion. When substantial justice has been done, there was no reason to interfere.** There may be a shelter over her head in the parental house, but other real expenses cannot be ignored. Solely because the husband had retired, there was no justification to reduce the maintenance by 50%. It is not a huge fortune that was showered on the wife that it deserved reduction. It only reflects the non-application of mind and, therefore, we are unable to sustain the said order."

Considering the factual matrix and the

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evidence on record, substantial justice was done by Learned Family Court concerned by awarding maintenance to the respondent-wife then, this Court, in exercise of its revisional jurisdiction, is not inclined to interfere with the *Impugned Order dated 23.01.2024,* merely because a different or another possible conclusion could have been arrived at. Moreover, in absence of any illegality or impropriety or irregularity in the conduct of proceedings by Learned Family Court, this Court is not inclined to interfere with the Impugned Order dated 23.01.2024. Invoking the revisional jurisdiction cannot be permitted to be an escape route or a modus operandi to delay the valuable and sacrosanct right of the wife for maintenance from her husband. Absolute right of the wife for maintenance cannot be permitted to be infringed or tinkered with or defeated, when, the wife does not entails any of the disqualifications, so as to disentitle her for maintenance. Moreover, the Impugned Order awarding a fair, just, reasonable and balanced amount of maintenance quantified

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after considering all competing aspects, so as to achieve social purpose in terms of the Statute and the mandate of law, declared by the Honble Supreme Court does not warrant any interference by this Court. Tendency on the part of husband to delay and/or to negate the right of maintenance to respondent-wife is deprecated, in fact-situation of instant case.

PLEA THAT MAINTENANCE AWARDED IN ABSENCE OF AFFIDAVITS UNTENABLE:

11. Learned Counsel for petitioner contends that Impugned Order dated 23.01.2024 granting maintenance to the respondent-wife under Section 125 Cr.P.C. proceedings, cannot sustain, when, the affidavits were not filed in terms of the judgment of the Hon'ble Supreme Court in ***Rajnesh v. Neha and Another, (2021) 2 SCC 324.***

The above contention of Learned Counsel for the petitioner-husband, cannot stand the test of judicial scrutiny, *for the reason,* that *firstly*, requirement of filing the Affidavit(s) of Disclosure of Assets and Liabilities in terms of the judgment in the case of ***Rajnesh v. Neha and Another***

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[supra], were to be filed by the respective parties for adjudicating the claim for interim maintenance [as per Paras 65, 72 and 129 of said judgment]; and *secondly*, the claim for final maintenance has to be adjudicated on the basis of the oral and documentary evidence adduced by the parties before Family Court concerned ; and *thirdly*, once the petitioner-husband has chosen not to file affidavit of his Assets and Liabilities before the Learned Family Court, therefore, petitioner-husband cannot be permitted to take advantage of his own wrongs; and *fourthly*, even the affidavits filed in terms of the order dated 26.08.2025 negates the foundational plea set up by the petitioner-husband to be an afterthought so as to escape the legal obligation to pay maintenance to the wife, when, the petitioner-husband is healthy, is able-bodied person of 49 years [as on day] and is capable of earning. In totality of circumstances, the Impugned Order is valid and conforms to law and such a statutory right available to the respondent-wife cannot be permitted to be either

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whittled down, tinkered with, curtailed or denied on the basis of mere bald allegation(s) or by carving out untenable pleas, as in the instant proceedings. Thus, the *Impugned Order* needs no interference.

ANALYSIS OF CONTENTION OF RESPONDENT-WIFE:

12. Learned Counsel for the respondent-wife supports the Impugned Order with submission that in absence of any illegality or impropriety or irregularity in the proceedings, maintenance awarded to the respondent-wife, who is divorcee, but has not remarried and having no source of income, coupled with the fact, that she does not fall in any of the exceptional categories, so as to disentitle or disqualify the divorced wife for maintenance under Section 125 (4) of Cr.P.C. Thus, Impugned Order dated 23.01.2024 passed by Learned Family Court, so as to balance the competing obligations of the petitioner-husband and corresponding right of maintenance of the wife, does not warrant any interference in instant proceedings.

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CONCLUSION:

13. The Impugned Order dated 23.01.2024 passed by Learned Additional Principal Judge, Family Court, Hamirpur, in Case Registration No. 109 of 2019, awarding maintenance to respondent -wife of Rs 4000/- per month, in consonance with the statutory intent as well as the mandate of law does not suffer from any infirmity, illegality or impropriety or irregularity in conducting such proceedings. Consequently, the instant petition is devoid of any merit and the same has to fail. Ordered accordingly ; and the Impugned Order is upheld.

14. No other point was argued/raised.

DIRECTIONS:

15. In view of above discussion and for the reasons recorded hereinabove, the instant Revision Petition, ***is dismissed,*** in following terms:

(i) Instant petition, Cr. Revision [FC] No 19 of 2024, is dismissed;

ii) Impugned Order dated 23.01.2024 passed by Learned Additional Principal Judge, Family Court Hamirpur (HP) in case Registration No. 109 of

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2019, titled as Savitri Devi v. Surjeet, ***is upheld ;***

(iii) Petitioner is directed to release the amount of maintenance awarded in terms of the Impugned Order dated 23.01.2024 to the respondent-wife [Savitri Devi] after adjusting/set-off, the amount of maintenance granted under other statutes during divorce proceedings or any other proceedings if any, within four weeks from today ; and

(iv) Parties to bear respective costs.

In view of the above, the instant petition and all pending miscellaneous application(s), if any, shall also stand disposed of.

(Vivek Singh Thakur)
Judge

(Ranjan Sharma)
Judge

August 10, 2026
(Bhardwaj)

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