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

**Cr. Revision No.354 of 2016**
**Reserved on: 17.03.2026**
**Date of Decision: 04.04.2026**

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**Tulsi Ram** **....Petitioner**

**Versus**

**Meena Kumari** **....Respondent**

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Coram

***Hon'ble Mr Justice Rakesh Kainthla, Judge.***

Whether approved for reporting?[1] Yes

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| For the petitioner | : | Ms B.S. Chauhan, Sr. Advocate, with Mr Sahil Sharma, Advocate. |
| For the Respondent/ State | : | Mr Atul Verma, Advocate, for the respondent |

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**Rakesh Kainthla, Judge**

The present revision is directed against the judgment dated 05.09.2016, passed by the learned Additional Sessions Judge (II), Mandi, Camp at Jogindernagar, District Mandi, H.P. (learned Appellate Court) vide which the order dated 15.01.2016 passed by the learned Judicial Magistrate,

[1]. Whether reporters of the local papers may be allowed to see the judgment? Yes

2026:HHC:14275

First Class, Jogindernagar, Mandi, District Mandi, H.P. (learned Trial Court) was upheld. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.*

2. Briefly stated, the facts giving rise to the present petition are that the applicant filed an application under Section 12 of the Protection of Women from Domestic Violence Act 2005 (D.V.Act). It was asserted that the applicant is the legally wedded wife of the respondent. The marriage between the applicant and respondent was solemnised about 30 years before filing the petition, according to Hindu rites and customs. The respondents started humiliating and harassing the applicant soon after the marriage. The respondent developed extramarital relations and ousted the applicant from her matrimonial home. He failed to provide any maintenance to the applicant. The applicant filed a petition under Section 125 of Cr.P.C., and another petition under Section 127 of Cr.P.C., and the Court granted maintenance to the applicant @ ₹2000/- per month. The applicant is residing in her parental home, which is not sufficient for her residence and she had to rent an

2026:HHC:14275

accommodation. The applicant is unemployed, and the respondent had retired as Naib Subedar from the Indian Army. He was getting more than ₹25,000/- per month as a pension. He has land in his name, and he is getting ₹5000/- per month from agricultural activities. He has installed a saw mill and a thresher machine, and is earning more than ₹4000/- per month. He is also running a shop and is earning more than ₹4000/-. The total income of the respondent is more than ₹38,000/- per month; hence, it was prayed that monetary relief, a residence order and a restraint order be passed in the applicant's favour.

3. The application is opposed by filing a reply taking preliminary objections regarding the lack of maintainability, the applicant having never resided in a shared household, and the application being barred by limitation. The relationship between the parties was admitted. The rest of the contents of the application were denied on the merits. It was asserted that the applicant never resided in a shared household with the respondent after 19.05.1999. She left her matrimonial home on 19 May 1999 with a promise to return after two days, but she failed to honour her promise. The respondent requested

2026:HHC:14275

the applicant to return to her matrimonial home, but in vain. He even went to the parental home of the applicant to bring her with him, but she refused to join his company. The respondent also filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The applicant is getting the maintenance of ₹2000/- per month. She is working as a tailor and is earning ₹10,000/- per month. She filed a false petition to harass the respondent. Hence, it was prayed that the present petition be dismissed.

4. A rejoinder denying the contents of the reply and affirming those of the application was filed.

5. The parties were called upon to produce the evidence, and the applicant examined herself (AW-1). The respondent examined himself (RW-1).

6. Learned trial Court held that the relationship between the parties was not disputed. The respondent admitted that he was residing with a woman. The applicant was getting maintenance at the rate of ₹2000/- per month under the provisions of the Code of Criminal Procedure. The respondent was a man of means and could easily pay ₹1000/- per month to the applicant. The applicant was also entitled to

2026:HHC:14275

a separate residence and a protection order. Hence, the learned Trial Court granted a protection order prohibiting the respondent from committing any act of domestic violence, residence order for providing suitable accommodation consisting of one room, kitchen and bathroom in his house or taking it on rent and monetary relief of ₹1000/- per month to the applicant from the date of the petition.

7. Being aggrieved from the order passed by the learned Trial Court, the respondent filed an appeal, which was decided by the learned Additional Session Judge-II, Mandi, District Mandi, H.P. Camp at Jogindernagar (learned Appellate Court). The Appellate Court concurred with the findings recorded by the learned Trial Court that the relationship between the parties was admitted. The respondent was residing with another woman, and the applicant had a reason to reside separately from her husband and claim maintenance. The acts of the respondent amounted to verbal, emotional, and economic abuse. The applicant was getting maintenance of ₹2000/- per month. The learned trial Court had rightly awarded the maintenance at the rate of ₹1000/- per month to the applicant. She was compelled to

2026:HHC:14275

reside separately from the respondent, and the respondent was duty-bound to provide residence to her. Therefore, the learned Trial Court had rightly passed an order for providing the residence. There was no infirmity in the order passed by the learned Trial Court; hence, the appeal was dismissed.

8. Being aggrieved by the judgment and order passed by the learned Courts below, the respondent has filed the present petition asserting that the learned Courts below erred in appreciating the material on record. There was no evidence that the respondent had insulted, ridiculed or humiliated the applicant. The applicant was residing separately on her own. The respondent had solemnised the marriage with another woman at the instance of the applicant. The applicant was already getting maintenance of ₹2000/-, and there was no justification for awarding separate maintenance. No domestic incident report was called by the learned Trial Court. Hence, it was prayed that the present petition be allowed and the judgment and order passed by the learned Courts below be set aside.

9. I have heard Mr B.S Chauhan, learned Senior Advocate, assisted by Mr Sahil Sharma, learned counsel for

2026:HHC:14275

the petitioner and Mr Atul Verma, learned counsel for the respondent.

10. Mr B.S. Chauhan, learned Senior Advocate for the petitioner, submitted that the applicant was already getting the maintenance at the rate of ₹2,000/- per month from the respondent, which was sufficient to maintain her. The respondent has to maintain his second wife and the children. The learned Courts below failed to appreciate this aspect. The applicant had left her matrimonial home without any justifiable reason, and the learned Courts below erred in awarding maintenance in her favour. Learned Trial Court had not called for a Domestic Incident Report, and the proceedings before the learned Trial Court were vitiated. Hence, he prayed that the present petition be allowed and the judgment and order passed by the learned Courts below be set aside.

11. Mr Atul Verma, learned counsel for the respondent, submitted that the respondent admitted the solemnisation of a second marriage. This is sufficient for the applicant to reside separately from the respondent and claim maintenance. The applicant had no residence, and the learned

2026:HHC:14275

Trial Court had rightly passed the residence order. This Court should not interfere with the concurrent finding of facts recorded by learned Courts below while exercising the revisional jurisdiction. Hence, he prayed that the present petition be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that a revisional court is not an appellate court and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed at page 207: -

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the

2026:HHC:14275

> regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error that is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

14. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688: 2023 SCC OnLine SC 1294,*** wherein it was observed at page 695:

> **"14.** The power and jurisdiction of the Higher Court under Section 397 CrPC, which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.
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> **15.** It would be apposite to refer to the judgment of this Court in ***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986***, where the scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)
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> > "*12.* Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with law. If one

2026:HHC:14275

> looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
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> *13.* Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing of the charge is a much-advanced stage in the proceedings under CrPC."

15. It was held in ***Kishan Rao v. Shankargouda*, (2018) 8 SCC 165:** ***(2018) 3 SCC (Cri) 544: (2018) 4 SCC (Civ) 37: 2018 SCC OnLine SC 651*** that it is impermissible for the High Court to re-appreciate the evidence and come to its conclusions in the absence of any perversity. It was observed at page 169:

> "**12.** This Court has time and again examined the scope of Sections 397/401 CrPC and the grounds for

2026:HHC:14275

exercising the revisional jurisdiction by the High Court. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275]***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following: (SCC pp. 454-55, para 5)

> *5.* ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court, nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise amount to a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in concluding that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

**13.** Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123: (2015) 2 SCC (Cri) 19]***. This Court held that the High Court, in the exercise of revisional jurisdiction, shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely

2026:HHC:14275

on the ground that another view is possible. The following has been laid down in para 14: (SCC p. 135)

> "*14.* ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of their revisional jurisdiction."

16. This position was reiterated in ***Bir Singh v. Mukesh Kumar*, *(2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 13,*** wherein it was observed at page 205:

> "**16.** It is well settled that in the exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.
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> **17.** As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC***

2026:HHC:14275

> ***457***, it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is, therefore, in the negative."

17. A similar view was taken in ***Sanjabij Tari v. Kishore S. Borcar, 2025 SCC OnLine SC 2069,*** wherein it was observed:

> "**27.** It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings [See: ***Bir Singh*** (supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.
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> **28.** Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.

18. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

19. It was submitted that the learned Trial Court had not called the Domestic Incident Report, and the proceedings were vitiated. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Prabha Tyagi v. Kamlesh Devi, (2022) 8 SCC 90: 2022 SCC OnLine SC 607*** that

2026:HHC:14275

calling the Domestic Incident Report is not mandatory. It was observed at page 138:

> **75.1.** "(*i*) Whether the consideration of the Domestic Incidence Report is mandatory before initiating the proceedings under the Domestic Violence Act, 2005, in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act?"
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> It is held that Section 12 does not make it mandatory for a Magistrate to consider a domestic incident report filed by a Protection Officer or service provider before passing any order under the DV Act. It is clarified that even in the absence of a domestic incident report, a Magistrate is empowered to pass both ex parte or interim as well as a final order under the provisions of the DV Act.

20. The respondent stated in para-4 (iii) of the Revision that he had solemnised the second marriage at the instance of the applicant. He stated on oath that the applicant suggested to him to perform a second marriage. The learned Appellate Court had rightly held that this action of the respondent will give sufficient cause to the applicant to reside separately from her husband and claim maintenance. It was laid down by this Court in ***Banti Devi versus Moti Ram, 1992 (2) Shim. L. C. 255*** that solemnising a second marriage during the subsistence of the first marriage will entitle the first wife to reside separately and claim maintenance. It was observed:

2026:HHC:14275

> 8. It is settled by now that a second marriage or keeping a mistress by the husband entitles his wife to live separately. Further, solemnising a second marriage when the first wife is living proves the neglect by the husband to maintain the first wife. (Please see ***Deochand v. State of Maharashtra and another, AIR 1974 SC 1488*** and ***Pellakuru Saymalamma @ Syamalamba v. Pellakuru Sambaiah and another, (1988) 2 Crimes, 768***). Therefore, I hold that Moti Ram has been neglecting to maintain Banti Devi, and she is entitled to maintenance allowance from him. As a result, Criminal Revision Petition No. 104 of 1990 filed by Moti Ram is rejected.

21. Similar is the judgment in ***Rajathi v. C. Ganesan, (1999) 6 SCC 326:1999 SCC OnLine SC 642,*** wherein it was observed at page 330:

> **7.** In the present case, the wife alleged that her husband had contracted a second marriage on 4-1-1990. She filed a complaint for an offence under Section 494 of the Penal Code, 1860. It is stated that the complaint was dismissed and the husband was acquitted. The High Court took this circumstance against the wife and adversely commented on her refusal to live with her husband. The High Court, it would appear, lost sight of the fact that it would be difficult for the wife to prove the second marriage. This Court has held that to prove the second marriage as a fact, essential ceremonies constituting it must be proved and if the second marriage is not proved to have been validly performed by observing essential ceremonies and customs in the community, conviction under Section 494 IPC ought not to be made. *The fact, however, remains in the present case that the husband is living with another woman. The proviso to sub-section (3) would squarely apply and justify the refusal of the wife to live with her husband.* There can be, however, other grounds for the wife to refuse to live with her husband, e.g., if she is subjected to cruelty by him. It was a case where the husband neglected or refused to maintain his wife. The High Court did not consider the question if the husband was having sufficient means. It rather unnecessarily put the burden on the wife to prove that

2026:HHC:14275

she was unable to maintain herself. The words "unable to maintain herself" would mean that the means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after the desertion to survive somehow. Section 125 is enacted on the premise that it is the obligation of the husband to maintain his wife, children and parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain them or any one of them. The High Court also observed that the wife did not plead as to since when she was living separately. This is not quite a relevant consideration. Even though the wife was unable to prove that the husband had remarried, yet the fact remained that the husband was living with another woman. That would entitle the wife to live separately and would amount to neglect or refusal by the husband to maintain her. The statement of the wife that she was unable to maintain herself would be enough, and it would be for the husband to prove otherwise.

**8.** We may also have a look at the provisions of the Hindu Adoptions and Maintenance Act, 1956, which provides for maintenance to a Hindu wife. Under Section 18 of this Act, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime. Under sub-section (2), she will be entitled to live separately from her husband without forfeiting her claim to maintenance,—

> "(*a*) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;
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> (*b*) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;
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> (*c*) if he is suffering from a virulent form of leprosy;
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> (*d*) if he has any other wife living;

2026:HHC:14275

> (*e*) if he keeps a concubine in the same house in which his wife is living, or habitually resides with a concubine elsewhere;
>
> (*f*) if he has ceased to be a Hindu by conversion to another religion;
>
> (*g*) if there is any other cause justifying her living separately."

Under sub-section (3), a Hindu wife is not entitled to a separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion. It will be apposite to keep these provisions in view while considering the petition under Section 125 of the Code.

22. It was submitted that the applicant was already getting maintenance from the respondent, and she was not entitled to any maintenance. This submission will not help the respondent. It was laid down by the Hon'ble Supreme Court in ***Rajnesh v. Neha, (2021) 2 SCC 324: 2020 SCC OnLine SC 903*** that a wife can claim maintenance under different provisions, but the Court has to consider the maintenance awarded under one Act before awarding maintenance under a different Act. It was observed at page 366:

> "**60.** It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the DV Act and Section 125 CrPC, or under HMA. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding

2026:HHC:14275

> for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/Family Court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.
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> **61.** To overcome the issue of overlapping jurisdiction and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding and the orders passed therein, so that the court would take into consideration the maintenance already awarded in the previous proceeding and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the court concerned in the previous proceeding."

23. Therefore, in view of the binding precedent of the Hon'ble Supreme Court, there is no bar in claiming maintenance under the different Acts, and the applicant was within her right to claim maintenance from the respondent under the DV Act.

24. The respondent asserted that the applicant was working as a tailor and was running a Karyana shop. She was getting ₹3000–₹4000. He has not produced any proof of this fact. Therefore, learned Courts below were justified in discarding this version.

25. In any case, it was laid down by the Hon'ble Supreme Court in ***Rajathi v. C. Ganesan, (1999) 6 SCC 326,*** that words unable to maintain herself would include the means available to the wife

2026:HHC:14275

when she was living with her husband and does not include the efforts made by her after desertion to survive. It was observed:

> "The words' unable to maintain herself' would mean that the means available to the deserted wife while she was living with her husband would not take within themselves the efforts made by the wife after the desertion to survive somehow. Section 125 is enacted on the premise that it is the obligation of the husband to maintain his wife, children and parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain them or any one of them."

26. This position was reiterated in ***Rajnesh v. Neha, (2021) 2 SCC 324: (2021) 2 SCC (Civ) 220: 2020 SCC OnLine SC 903,*** wherein it was observed:

> **90.** The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:
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> > **90.1.** In ***Shailja* v. *Khobbanna*** [***Shailja* v. *Khobbanna*, *(2018) 12 SCC 199: (2018) 5 SCC (Civ) 308***; See also the decision of the Karnataka High Court in ***P. Suresh v. S. Deepa, 2016 SCC OnLine Kar 8848: 2016 Cri LJ 4794 (Kar)***], this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. [***Chaturbhuj v. Sita Bai, (2008) 2 SCC 316: (2008) 1 SCC (Civ) 547: (2008) 1 SCC (Cri) 356***] Sustenance does not mean, and cannot be allowed to mean, mere survival. [***Vipul Lakhanpal v. Pooja Sharma, 2015 SCC OnLine HP 1252: 2015 Cri LJ 3451***]

2026:HHC:14275

**90.2.** In ***Sunita Kachwaha v. Anil Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715: (2015) 3 SCC (Civ) 753: (2015) 3 SCC (Cri) 589***] the wife had a postgraduate degree and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

**90.3.** The Bombay High Court in ***Sanjay Damodar Kale v. Kalyani Sanjay Kale [Sanjay Damodar Kale v. Kalyani Sanjay Kale, 2020 SCC OnLine Bom 694]*** while relying upon the judgment in ***Sunita Kachwaha [Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589]***, held that neither the mere potential to earn nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

**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 [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52: AIR 1968 Del 174]***. The onus is on the husband to establish with the 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 [Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705: (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785]*** cited the judgment in ***Chander Parkash [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52: AIR 1968 Del 174]*** with approval, and held that the obligation of the husband to

2026:HHC:14275

provide maintenance stands on a higher pedestal than the wife.

27. Therefore, the maintenance could not have been denied to the applicant because she was making some efforts to survive by doing some job.

28. The respondent admitted in his cross-examination that he had retired as Naib Subedar from the Army. The applicant claimed that the income of the respondent was ₹38,000/- per month. The respondent did not disclose his income in his examination –in-chief. He denied in his cross-examination that his income was more than ₹30,000/-. He even denied that he was getting any pension. Therefore, learned Courts below were justified in believing the version of the applicant and holding that the income of the respondent is more than ₹25000 per month.

29. The applicant was getting the maintenance at the rate of ₹2000/-per month, which is hardly sufficient to maintain a person, considering the minimum wages fixed by the State Government. Learned Trial Court awarded a maintenance of ₹1000/- per month, and the applicant would be getting total maintenance of ₹3000/- per month, which again is insufficient and cannot be said to be excessive. Therefore, no interference is required with the amount of maintenance awarded by learned Courts below.

2026:HHC:14275

30. The applicant asserted that she has no residence with her. This was not stated to be incorrect. The respondent did not prove that the applicant had any accommodation available with her. Therefore, in these circumstances, the learned Trial Court was justified in providing a residence order in favour of the applicant.

31. No other point was urged.

32. Therefore, there is no infirmity in the judgment and order passed by the learned Courts below.

33. In view of the above, the present petition fails, and it is dismissed, so also the pending applications, if any.

34. A copy of the judgment, along with records of the learned Courts below, be sent back forthwith.

**(Rakesh Kainthla)**
**Judge**

**04th April, 2026.**
***(ravinder)***