NEUTRAL CITATION

2026:GUJHC:68501

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (FOR MAINTENANCE) NO. 1066 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No
		No

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MANJUBEN D/O KHIMABHAI CHAVDA W/O JETHABHAI AMRABHAI MARU
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR JAY B AMBANI(13896) for the Applicant(s) No. 1
MR DHAIRYAWAN D BHATT(11817) for the Respondent(s) No. 2
MR HARDIK MEHTA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 28/10/2026

JUDGMENT

1. In this petition under Article 227 of the Constitution of India, the petitioner challenges judgment and order dated 03.12.2024 passed by learned Additional Sessions Judge, Rajkot in Criminal Revision Application No.228 of 2023, by which learned Sessions Judge has confirmed the judgment order passed by the Additional Chief Judicial Magistrate, Jasdan in Criminal Misc. Application No.40 of 2022, whereby, in application under section 125 of the Cr.P.C., the petitioner was awarded maintenance of Rs 12,500/- with cost of Rs 2,500/- from the date of the petition.

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2. Heard learned advocate Mr. Jay Ambani appearing for the petitioner, and learned advocate Mr.Dhairyawan Bhatt appearing for the respondent No.2. I have also heard learned APP for the respondent – State.

3. Referring to Annexure C, at page no.31, learned advocate Mr. Jay Ambani submitted the the total salary of husband in August, 2022 was Rs.77,414/- and it was placed before the learned Trial Court at Exh.15, however, the learned Court without considering the facts that deductions are personal assets of husband took up net amount payable to calculate 1/3rd of it towards the maintenance. He referred to judgment in case of ***Harpreet Sawhney v/s. Puneet Sharma [2026 INSC 822]*** and submitted that issue raised in this petition is covered by said judgment.

3.1. In view of above submissions, it is submitted to allow this petition and to pass necessary order.

4. Per contra, learned advocate Mr.Dhairyawan Bhatt appearing for the husband respondent No.2 relied upon the judgment in case of ***Pratibha Dinesh Kumar Vania v/s. State of Gujarat [2008 1 GCD 727]*** and submitted that Professional tax and income tax are to be deducted from the total pay and thereafter the Court to consider the pay slip as well as income of the husband to determine the maintenance amount. He supported impugned judgment and submitted to dismiss this petition.

5. Having heard learned advocate for both the sides and

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considering the impugned judgment at the outset, I may refer to judgment of Hon'ble Supreme Court in the case of Harpreet Sawhney (supra), in para 20, Hon'ble Supreme Court has held as under :-

> *"20. We have considered the submissions of the Appellant that the deductions are voluntary in nature. We find that deductions of Provident Fund and ESPPs are ultimately benefits that would be passed on to the Respondent-husband. Unlike Income Tax payment or professional taxes which are mandatory taxes, PFs and ESPPs are not permanent charges but rather will accrue into the account of the Respondent-husband which can be withdrawn by the depositor in the future."*

6. What appears that learned Revisionist Court, committed serious error in confirming the order which is suffering from palpable illegality. It was expected from the learned Revisionist Court to distinguish between mandatory statutory deduction and voluntary financial saving to consider total pay and to decide the issue of maintenance grantable to the petitioner. One must not lose sight that the voluntary financial savings are assets of the husband. At this stage, learned advocate Mr. Jay Ambani submits that subsequent to the judgment in Criminal Revision Application, salary of the husband is enhanced. As against this submission, learned advocate Mr. Mr.Dhairyawan Bhatt submits that the husband as of now is retired and getting pension.

7. Considering the overall facts and circumstances, I find that it is a fit case to remand the Revision Application to learned Sessions Court for fresh consideration and in accordance with law, permitting both the party to lead necessary admissible

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evidence if required and giving opportunity of hearing to both the parties as well.

8. For the reasons stated herein above, and in view of above observations, this petition is allowed. Impugned judgment and order dated 03.12.2024 passed by learned Additional Sessions Judge, Rajkot in Criminal Revision Application No.228 of 2023 is quashed and set aside. The matter is remanded and restored to the Court of learned Principal District Judge, Rajkot for fresh consideration. Both the parties are directed to remain present before the learned Principal District Judge, Rajkot on 01.12.2026. It is clarified that the matter shall be decided by learned Principal District Judge, Rajkot. All the contentions of both parties are kept.

(J. C. DOSHI,J)

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