

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.657 of 2022

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

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Md Murshid Alam, Son of Md. Kousar Ali, Resident of Village - Kamarganj,
P.S.- Sultanganj, Distt.- Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar
2. Nazia Shaheen, D/o Shahjad, Resident of Village - Topkhana Bazar, Munger
Sadar, P.S.- Kotwali, Distt.- Munger.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Ranjan Kumar Jha, Advocate Mr. Rana Pratap Singh, Advocate Mr. Vikas Kumar, Advocate
For the State	:	Mr. Anuj Kumar Srivastava, APP
For the O.P. No.2	:	Md. Najmul Hodda, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 30.08.2025

Introduction

The present Criminal Revisions Petition has been preferred by the Petitioner against the impugned Final Order dated 20.03.2021 passed by learned Principal Judge Family Court, Bhagalpur in Maintenance Case No. 15 of 2018, whereby learned Principal Judge has directed the Petitioner herein to pay Rs.7,000/- per month to his wife, who is the Opposite Party No.2 herein, towards her maintenance from the date of the order i.e 20.03.2021.

The case of Nazia Shaheen, (Petitioner before the
Family Court and O.P. No.2 herein)

2. Nazia Shaheen, who was the Petitioner in the maintenance case before the Family Court and is Opposite Party



No.2 herein, was married to Md. Murshid Alam on 01.12.2010 as per Muslim rites and customs and subsequent to the marriage, she joined the matrimonial home of her husband. However, just after few weeks, she was subjected to torturing by her husband and his family members, and hence, she left her *sasural* and started living at her *maike*. It was also claimed by Nazia Shaheen that she is a *pardanashi* lady and she has no source of income, but her husband Md. Murshid Alam is not paying any maintenance to her from the year 2011, whereas he is a man of wealth and income, working in a private company at Singapore and she has claimed maintenance @ Rs.15,000/- per month from her husband Md. Murshid Alam.

The case of Md. Murshid Alam, (Opposite Party before the Family Court and Petitioner herein)

3. Md. Murshid Alam, who was the Opposite Party before the Family Court and is the Petitioner herein, appeared before the Family Court on notice and filed his objection by way of written statement, in which he has admitted his marriage with Nazia Shaheen. However, he has denied that he ever subjected his wife to any cruelty. He has further claimed that just after three or four days of her stay at his matrimonial home, she left his matrimonial home and thereafter, she used to come to his



home off and on. It was also claimed by him that his wife, Nazia Shaheen is not a *pardanashi* lady and she moves everywhere including public places like Courts, markets. She also moves with unknown persons at different times, which casts cloud on her character and she wants to live some luxurious life as per her own accord. She is a lady of independent nature and she never lives in guardianship of her parents or husband, and hence, she had left the matrimonial home. She was also not satisfied with general life of a middle class family.

4. As per the further case of Md. Murshid Alam, he has filed one Matrimonial Case bearing No. 188 of 2013 for restitution of conjugal rights against his wife, Nazia Shaheen before Family Court, in which compromise was reached at between them, as per which his wife was to receive a sum of Rs.1,00,000/- towards her alimony/den *mohar* and expenses of *iddat* and thereafter, he was not required to pay anything to her in future. In pursuance to the compromise, he has also paid Rs.1,00,000/- to her, and hence, the matrimonial tie between them came to an end. Hence, she is not entitled to get any maintenance and the maintenance petition was misconceived. He has also stated that one false Criminal Complaint Case bearing No. 138 of 2015 was filed by her in the Court of learned



A.C.J.M.-IV, Bhagalpur, which is pending. He has claimed that he has other liabilities like old ailing mother and unemployed brother.

Dispute between the parties

5. As per the pleading of the parties, the marriage between the parties is admitted. However, there is no claim of the husband, Md. Murshid Alam that his wife is earning, nor has he claimed that he has no source of income, nor has he disputed his employment. However, he has claimed that he has other liabilities-ailing mother and unemployed brother.

6. However, there is dispute between them regarding reason of the wife to live separately. As per the wife, she left her matrimonial home because she was subjected to cruelty by her husband and his family members, whereas as per the husband/Md. Murshid Alam, his wife left his matrimonial home on her own without any reason.

7. There is also dispute regarding the subsistence of the marriage between them. As per the husband, Md. Murshid Alam, the marriage has come to an end as a consequence of compromise between them and payment of Rs.1,00,000/- to his wife, Nazia Shaheen towards her alimony, Den Mohar and maintenance for the *iddat* period, whereas as per his wife/ Nazia



Shaheen, the marriage is still subsisting.

**Evidence adduced by Nazia Shaheen
before the Family Court**

8. During the trial, Nazia Shaheen has examined four witnesses, including herself as P.W.-1. Naushad Alam has been examined as P.W.-2, Sanjeev Kumar Raj as P.W.-3 and Jahan Ara Bano as P.W.-4.

9. In her examination-in-chief, Nazia Shaheen, P.W.-1 has reiterated her statement as made in the maintenance petition. To Court question, she has deposed that her husband, Md. Murshid Alam, is working in Merchant Navy, having monthly salary of Rs.1,00,000/- up to 2015. A restitution petition was filed by her husband but the same has been compromised. The other witnesses have also supported the case of the wife/ Nazia Shaheen.

**Evidence of Md. Murshid Alam
adduced before the Family Court**

10. Md. Murshid Alam has however not examined any witness in support of his case. But, he has filed the certified copy of an affidavit of Nazia Shaheen and the compromise petition filed in the Matrimonial Case No.188 of 2013, but the same has not been brought on record by way of making them exhibits.



Findings of the Family Court

11. On the basis of the evidence and other materials on record and hearing submissions of the parties, learned Family Court did not accept the claim of the husband/ Md. Murshid Alam that marriage between him and his wife/Nazia Shaheen has been dissolved by mutual agreement. It found that the claim of the husband regarding dissolution of marriage between the parties was based on the compromise petition, but the same was disputed by his wife/Nazia Shaheen, claiming that her signature on the compromise petition was fraudulently taken by her husband. Learned Court also found that there was no evidence adduced on behalf of the husband to prove his claim.

12. Learned Family Court also found that the husband/Murshid Alam works in a company at Singapore earning Rs.1,00,000/- per month, whereas his wife/Nazia Shaheen has no source of income.

13. It was also found by learned Family Court that Md. Murshid Alam is neglecting his wife/Nazia Shaheen to maintain her without sufficient reason.

14. Hence, learned Family Court directed Md. Murshid Alam to pay Rs.7,000/- to his wife/Nazia Shaheen per month towards her maintenance from the date of the order i.e. on



20.03.2021.

**Submissions on behalf of the
Petitioner herein/Md. Murshid Alam**

15. Learned counsel for the Petitioner, Md. Murshid Alam submits that the impugned order is not sustainable in the eye of law on account of erroneous appreciation of law and facts, allowing the maintenance petition filed by his divorced wife, Nazia Shaheen and directing him to pay monthly maintenance to her @ Rs.7,000/-.

16. He further submits that the marriage between him and Nazia Shaheen stands dissolved by mutual agreement (*Mobarat*) and in pursuance of the mutual agreement regarding divorce, he has already paid Rs.1,00,000/- to his divorced wife towards her alimony, Den Mohar and maintenance for the *iddat* period. Thereafter, as per learned counsel for the Petitioner, the Petitioner Md. Murshid Alam has no legal liability towards his divorced wife for any maintenance.

**Submissions on behalf of the State and
Opposite Party No.2 Nazia Shaheen**

17. Learned APP for the State as well as learned counsel for the Opposite Party No.2/Nazia Shaheen defend the impugned order submitting that there is no error or illegality or impropriety in the impugned order, and, hence, there is no



requirement of any interference by this Court in it.

18. They further submit that the marriage between Md. Murshid Alam and Nazia Shaheen is still subsisting and Md. Murshid Alam is neglecting his wife to maintain his wife without any sufficient reason. Hence, learned Family Court has rightly directed Md. Murshid Alam to pay his wife maintenance @ Rs.7,000/ per month-

**Extent and Scope of Revision &
Jurisdiction of the High Court**

19. Before I proceed to consider the rival submission of the parties, it is desirable to see the extent and scope of revisional jurisdiction of High Court. As per the statutory provisions and judicial precedents, it is settled principle of law that the revisional jurisdiction conferred upon the High Court is a kind of paternal or supervisory jurisdiction under Section 397 read with Section 401 Cr.PC in order to correct the miscarriage of justice arising out of judgment, order, sentence or finding of subordinate Courts by looking into correctness, legality or propriety of any finding, sentence or order as recorded or passed by subordinate Courts and as to the regularity of any proceeding of such inferior Courts.

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



the interest of justice.

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

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

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

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

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

(v) where the material evidence which clinches the issue



has been overlooked either by the Trial Court or the Appellate Court or;

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

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

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

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

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

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

- (i) Akalu Ahir and Ors. vs Ramdeo Ram
(1973) 2 SCC 583
- (ii) K. Chinnaswami Reddy vs State of A.P.
1962 SCC Online SC 32
- (iii) Duli Chand Vs Delhi Administration
(1975) 4 SCC 649
- (iv) Janta Dal Vs H.S. Chowdhary & Ors.
(1992) 4 SCC 305
- (v) Vimal Singh Vs Khuman Singh & Anr.
(1998) 7 SCC 323
- (vi) State of Kerala Vs. Puttumana I. J. Namboodiri
(1999) 2 SCC 452
- (vii) Thankappan Nada & Ors. Vs. Gopala Krishnan
(2002) 9 SCC 393
- (viii) Jagannath Chaudhary Vs. Ramayan Singh
(2002) 5 SCC 659
- (ix) Bindeshwari Prasad Singh @ B.P. Singh & Ors.
Vs. State of Bihar (Now Jharkhand) & Anr.
(2002) 6 SCC 650



- (x) Manju Ram Kalita v. State of Assam
(2009) 13 SCC 330
- (xi) Amit Kapoor v. Ramesh Chander
(2012) 9 SCC 460
- (xii) Ganesha Vs. Sharanappa & Anr.
(2014) 1 SCC 87
- (xiii) Shlok Bhardwaj v. Runika Bhardwaj & Ors.
(2015) 2 SCC 721
- (xiv) Sanjaysinh R. Chavan Vs. D. G. Phalke
(2015) 3 SCC 123
- (xv) Malkeet Singh Gill v. State of Chhattisgarh
(2022) 8 SCC 204

Section 125 Cr.PC

24. Coming to the case on hand, I find that liability of Muslim husband to pay maintenance to his divorced wife under Section 125 Cr.PC is the question of law which is involved in the case. Hence, it is imperative to discuss the statutory provisions of Section 125 Cr.PC and the relevant case laws.

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

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

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

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



as the Magistrate may from time to time direct :

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

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

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

Explanation. - For the purposes of this Chapter, -

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

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

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

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

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

Provided further that if such person offers to maintain



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

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

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

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

(Emphasis supplied)

26. As such, as per Section 125 Cr.PC, wife is entitled to get maintenance from her husband, if she is living separately from her husband with sufficient reason, but not living in adultery, and she has no means to maintain herself and the husband, who has sufficient means, neglects or refuses to maintain her.

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

28. In **Mohd. Ahmed Khan Vs. Shah Bano Begum & Ors.**, popularly known as **Shah Bano Case** as reported in **(1985) 2 SCC 556**, Hon’ble Constitution Bench of Apex Court



has held that Section 125 Cr.PC is secular in nature and it is not in conflict with any particular religion or personal law. There is also no conflict on the question of muslim husband's obligation to provide maintenance to a divorced wife who is unable to maintain herself. The right of a divorced muslim woman to claim maintenance under Section 125 Cr.PC is not affected by personal law.

29. Subsequent to the pronouncement of the judgment in **Shah Bano Case** (supra), a controversy arose regarding obligation of a muslim husband to pay maintenance to his divorced wife, particularly beyond iddat period. Hence, Parliament as an attempt to clarify the position brought about the Muslim Women (Protection of Rights on Divorce) Act, 1986. Hon'ble Supreme Court got occasion in **Danial Latifi Vs. Union of India** as reported in **(2001) 7 SCC 740** to decide the meaning and import of the Act, particularly with reference to obligation of husband to pay maintenance to his divorced wife.

30. In **Danial Latifi case** (supra), Hon'ble Constitution Bench of Supreme Court upheld the constitutionality of the Act. However, it held that liability of a muslim husband to pay maintenance to his divorced wife is not confined to *iddat* period, if he fails to make a reasonable and fair provision for future of a



divorced wife during the *iddat* period and the divorced wife has not re-married and she is unable to maintain herself. Reasonable and fair provision may include provision for her residence, her food, her clothes and other articles. The relevant paragraphs of the judgment read as follows:-

“28. A careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. It was stated that Parliament seems to intend that the divorced woman gets sufficient means of livelihood after the divorce and, therefore, the word “provision” indicates that something is provided in advance for meeting some needs. In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her clothes, and other articles. The expression “within” should be read as “during” or “for” and this cannot be done because words cannot be construed contrary to their meaning as the word “within” would mean “on or before”, “not beyond” and, therefore, it was held that the Act would mean that on or before the expiration of the iddat period, the husband is bound to make and pay maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in Section 3(3) but nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the iddat period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time.

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

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

(2) Liability of a Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay



maintenance is not confined to the iddat period.

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

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

(Emphasis supplied)

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

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

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

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



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

115.3. Insofar as divorced Muslim women are concerned,

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

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

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

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

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

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

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

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

(Emphasis supplied)

33. Criteria for determining quantum of maintenance have been elaborately discussed by Hon’ble Apex Court in **Rajnesh Vs. Neha & Anr., (2021) 2 SCC 324**, observing as follows:

“77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to



destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

78. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. [Refer to *Jasbir Kaur Sehgal v. District Judge, Dehradun*, (1997) 7 SCC 7; Refer to *Vinny Parmvir Parmar v. Parmvir Parmar*, (2011) 13 SCC 112 :

79. In *Manish Jain v. Akanksha Jain*, (2017) 15 SCC 801 : this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [*Reema Salkan v. Sumer Singh Salkan*, (2019) 12 SCC 303]

81. A careful and just balance must be drawn between all



relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. [*Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316] The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

82. Section 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of the HAMA provides the following factors which may be taken into consideration : (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

83. Section 20(2) of the DV Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

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

“1. Status of the parties.

2. Reasonable wants of the claimant.

3. The independent income and property of the claimant.

4. The number of persons, the non-applicant has to maintain.

5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.

6. Non-applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.

8. Payment capacity of the non-applicant.

9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded under Section 125 Cr.PC is



adjustable against the amount awarded under Section 24 of the Act.”

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

34. In Rajnesh Case (supra), Hon’ble Supreme Court has also held as follows:-

“90.4. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in *Chander Parkash v. Shila Rani* 1968 SCC OnLine Del 52. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court.

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

(Emphasis supplied)

Findings and Orders of this Court in the Present Case

35. Coming back to the case on hand, I find that the Petitioner herein, Md. Murshid Alam is denying his liability to maintain his wife, Nazia Shaheen on the ground that the marriage between him and his wife has come to an end by way of Mobarat (divorce by mutual agreement). His claim is based on the compromise petition filed by the parties in the Matrimonial Suit bearing no. 188 of 2013 filed by husband/Md.



Murshid Alam for restitution of conjugal rights.

36. Here, it becomes imperative to find what is divorce by mutual agreement under Muslim Law. Khula and Mubarat are two modes of divorce by mutual agreement under Muslim Law. Here, it would be profitable to refer to **Mohd. Arif Ali v. Afsarunnisa, 2025 SCC OnLine TS 368**, where High Court of Telangana has observed as follows:

“11. ‘Khula’ literally translates to relinquishment in Arabic. It is a mode of dissolution of marriage when the wife does not want to continue with the marital tie and can settle the matter privately by consulting a Mufti (Jurist Consult) of her School. The Mufti gives an advisory decision (Fatwa) based on the Shariat of his School. In a Khula divorce, the wife proposes to her husband for dissolution of marriage which may or may not be accompanied by an offer on the part of the wife to give something in return. The wife may however offer to relinquish her claim to Mahr (Dower) as an option available to her but which is not a pre-requisite for a Khula divorce. When approached by the wife, the Mufti gives a Fatwa/advisory decision based on Shariat of his School. However, if the matter cannot be settled privately and is carried to litigation, the Judge (Qazi) is required to deliver a judgment (Qaza) based upon the Shariat : *Masroor Ahmed v. State (NCT of Delhi)* (2008) 103 DRJ 137.

12. The difference between a Khula divorce and a Mubaraat divorce is that the former is initiated by the wife whereas both spouses desire a separation in a Mubaraat divorce. In essence, a wife's right to Khula is parallel to a husband's right to Talaq and both forms of divorce are unconditional.”

37. Here, it would be also relevant to refer to **Hasina Bano v. Mohd. Ehsan, 2024 SCC OnLine All 5194**, wherein Allahabad High Court has held as follows:



“17. The extra-judicial divorce by way of *mubara'at* is complete, the moment spouses enter into a lawful mutual agreement to put an end to their matrimonial tie. In the case of *mubara'at*, if the Court is prima-facie satisfied that the parties have duly entered into a *mubara'at* agreement, it shall endorse the same and declare the status of the parties as divorced by passing an order to that effect as provided under Section 7 of the Family Courts Act, 1984. Needless to observe that it is always open to the parties to challenge the validity of the aforesaid divorce in accordance with law before the competent forum and in the event where the divorce itself is held legally unsustainable by competent authority the declaration endorsing the extra-judicial divorce made under Section 7 of the Family Courts Act, 1984 shall abide the said decision.”

38. Again it would be profitable to refer to **Asbi K.N.**

v. Hashim M.U., 2021 SCC OnLine Ker 3945, wherein Kerala

High Court has held as follows:

“5. The unilateral extrajudicial divorce under Muslim Personal law is complete when either of the spouse pronounce/declare talaq, talaq-e-tafweez or khula, as the case may be, in accordance with Muslim Personal Law. So also extrajudicial divorce by *mubaarat* mode is complete as and when both spouses enter into mutual agreement. The seal of the Court is not necessary to the validity of any of these modes of extra judicial divorce. The endorsement of extrajudicial divorce and consequential declaration of the status of the parties by the Family Court invoking S. 7(d) of the Act is contemplated only to have a public record of the extrajudicial divorce. Hence, detailed enquiry is neither essential nor desirable in a proceeding initiated by either of the parties to endorse an extrajudicial divorce and to declare the marital status. The Family Court has to simply ascertain whether a valid pronouncement/declaration of talaq or khula was made and it was preceded by effective attempt of conciliation. In the case of khula, it has to be further ascertained whether there was an offer by the wife to return the “dower”. It could be ascertained by perusal of the recitals in talaq



nama/khula nama or its communication (if it is in writing) or by recording the statement of the parties. No further enquiry as in the case of an adversarial litigation like chief examination and cross-examination of the parties are not at all contemplated in such a proceedings. If the Court is prima facie satisfied that there was valid pronouncement of talaq/khula/talaq-e-tafweez, it shall endorse the same and declare the status of the parties. In the case of mubaarat, if the Court is prima facie satisfied that mubaarat agreement has been executed and signed by both parties, it shall endorse the same and declare the status of the parties. The Court shall pass formal order declaring the marital status without any delay. If any of the parties want to challenge the extrajudicial divorce by talaq, khula, mubaarat or talaq-e-tafweez mode, he/she is free to challenge the same in accordance with law in appropriate forum. The declaration granted by the Family Court u/s 7(d) endorsing the extrajudicial divorce shall be subject to the final outcome of such proceedings, if any.....”

39. As such, it emerges that under Muslim Law, marriage may be dissolved by the parties by mutual agreement. However, if there is any dispute between the parties regarding mutual agreement for dissolution of their marriage, the marital status of the parties has to be decided by the Family Court which is competent court in this regard under Section 7 of the Family Courts Act, 1984. The disputed question of fact regarding marital status of the parties cannot be decided in a proceeding under Section 125 of the Cr.PC which is summary in nature and it is not a case of the petitioner/Md. Murshid Alam that he has got any decree of competent Court to the effect that



his marriage with Nazia Shaheen has been dissolved by Mubaraat on the basis of mutual agreement, whereas such decree was necessary in view of the stand of his wife/Nazia Shaheen who has claimed that her signature on the compromise petition was fraudulently obtained by her husband/Md. Murshid Alam.

40. Here it would be also pertinent to point out that except the copy of compromise petition filed by Md. Murshid Alam on record, there is no any other evidence to prove that marriage between Md. Murshid Alam and Nazia Shaheen has been dissolved by mutual agreement. Even the compromise petition has not been brought on record by way of exhibit. It was simply filed, and hence, his wife/Nazia Shaheen could not get any opportunity to cross-examine on the point of genuineness of the compromise petition. In such situation, the compromise petition has hardly any evidentiary value in the eye of law, and hence, it cannot be the basis for finding of the Court that marriage between Md. Murshid Alam and Naziya Shaheen has been dissolved by mutual agreement.

41. As such, I find that marriage between Md. Murshid Alam and Nazia Shaheen is subsisting as of now for want of any evidence to the contrary and any decree to the effect



of divorce between Md. Murshid Alam and Nazia Shaheen by mutual agreement.

42. I further find that even if it is presumed for the sake of argument for a moment that Md. Murshid Alam has divorced his wife, even then, Nazia Shaheen would be entitled to get maintenance from her ex-husband as a divorced wife, because it is not a case of Md. Murshid Alam that his divorced wife has remarried or he has made a reasonable and fair provision for future of his divorced wife during the *iddat* period. The only claim of Md. Murshid Alam is that subsequent to the mutual agreement for divorce between him and his wife, he paid Rs.1,00,000/- to his divorced wife towards permanent alimony, den mohar and expenses for the *iddat* period. A reasonable and fair provision includes provision for her residence, food, clothes and other articles. Here it would be also pertinent to point out that the amount of Rs.1,00,000/- paid by Md. Murshid Alam to his wife includes even *den mohar*, which is even otherwise entitlement of his wife to receive.

43. Considering the aforesaid facts and circumstances, I find that there is no illegality or perversity in appreciation of evidence committed by learned Court below while passing the impugned order.



44. Hence, the impugned order is upheld, dismissing the present criminal revision petition filed by the petitioner/Md. Murshid Alam for want of any substance.

45. LCR be sent to the court below forthwith, along with a copy of this Judgment.

(Jitendra Kumar, J.)

Chandan/
Ravishankar/-

AFR/NAFR	A.F.R
CAV DATE	29.07.2025
Uploading Date	30.08.2025
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