

# **Smt Nagma Chaudhary vs State Of U.P. And Another on 4 February, 2025**

**Author: Samit Gopal**

**Bench: Samit Gopal**

HIGH COURT OF JUDICATURE AT ALLAHABAD

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Neutral Citation No. - 2025:AHC:15339

Court No. - 78

Case :- APPLICATION U/S 483 No. - 1940 of 2024

Applicant :- Smt Nagma Chaudhary

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Hitesh Pachori

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal, J.

1. List revised.
2. Heard Sri Hitesh Pachori, learned counsel for the applicant, Sri Bade Lal Bind, learned counsel for the State and perused the record.
3. Sri S.P. Giri, Advocate today appears in the matter and submits that he has filed vakalatnama on behalf of opposite party no.2 in the office today i.e. 04.02.2025 and prays for ten days time to seek instructions and prepare the matter.

4. Office to trace out the vakalatnama of Sri S.P. Giri, Advocate and place it on record and make a note in the order sheet about it.

5. The records show that on 20.01.2025, Sri Manish Yadav, Advocate appeared for the opposite party no.2 and prayed for a week's time to file vakalatnama and seek fresh instructions in the matter. Further, the records show that vakalatnama of Sri Manish Yadav, Advocate has been filed in the office on 27.01.2025, thus the opposite party no.2 is well noticed and there is an appearance on his behalf. A subsequent engagement of another counsel and then seeking time for instructions and preparation cannot be permitted at all. It is about 15 days since the earlier learned counsel had appeared before the Court on behalf of the opposite party no.2 as for the first time Sri Manish Yadav had appeared on his behalf on 20.01.2025. Time is sufficient since then and even otherwise his prayer to seek fresh instructions in the matter was allowed on that date and the matter was directed to be listed today. This Court thus proceeds to hear the matter.

6. The present application under Section 483 Cr.P.C. has been filed by the applicant Smt. Nagma Chaudhary with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to direct the Court below to conclude the proceedings of Misc. Case No. 537/2023 (Smt. Nagma Vs. Chaudhary Basheer), under section 125(3) Cr.P.C., Police Station Mantola, District Agra, expeditiously within the stipulated period, pending in the Court of Ld. Additional Principal Judge, Family Court, Agra, during the pendency of the present application before this Hon'ble Court, otherwise the applicant shall suffer irreparable loss and injury, and/or pass such other and further order which this Hon'ble Court may deem fit and proper in the circumstances of the case."

7. Learned counsel for the applicant submits that the applicant was married to the opposite party no.2 on 11.11.2012 according to the Muslim Custom & Rites and from the wedlock two sons namely Afridi and Afzal were born on 17.08.2013 and 07.12.2014 respectively. It is submitted that due to some matrimonial discord, the applicant lodged a First Information Report against the opposite party no.2 and others as Case Crime No. 0080/2013, under Sections 498-A, 323, 377, 504, 506, 420 IPC and 3/4 D.P. Act, P.S. Mantola, District Agra. It is submitted that a case before the Family Court, Agra being Case No. 1023 of 2019 was filed by the applicant and her two children under Section 125 Cr.P.C. seeking maintenance. It is submitted that the said case before the Family Court concerned was decided by the judgment and order dated 13.02.2023 and maintenance of Rs. 5,000/- each to the applicant and her two children were awarded by the said judgment and order. It is submitted that a Criminal Revision No. 4371 of 2023 (Smt. Nagma and 2 others Vs. State of U.P. and another) was filed by the applicant and her children challenging the judgment and order dated 13.02.2023 before this Court which was partly allowed vide judgment and order dated 11.12.2023. The said order is quoted hereinbelow:

"1. This criminal revision has been filed by the revisionists against the judgement and order dated 13.02.2023 passed by Additional Principal Judge, Family court, Court No.-3, Agra in Maintenance Case No.- 1032 of 2019 for enhancement of maintenance.

2. Heard Sri Hitesh Pachori, learned counsel for the revisionists, learned A.G.A. for the State and perused the record. No one is present on behalf of opposite party no.2 despite service of notice.

3. It is submitted by learned counsel for the revisionist that maintenance awarded by the learned Family Court is too meager as per the status of parties. The learned Family Court has awarded only Rs. 5,000/- per month each in favour of revisionist nos. 1, 2 and 3, who are wife and minor sons of opposite party no.2. Opposite party no.2, who is husband of revisionist no.1 and father of revisionist nos. 2 and 3 is an Ex-M.L.A. and was Minister in the U.P. Government for sometime. The opposite party no.2 is having business of shoes in the name and style of "N.B. Shoes" having income of about Rs. 5-7 lacs per month. The opposite party no.2 apart from income from shoes business is also getting pension of Rs. 33,000/- per month being an Ex-M.L.A., but without considering the status and income of opposite party no.2, the learned Family Court has awarded a very less amount of maintenance in favour of revisionists. Lastly, it is submitted that the maintenance awarded by learned Family Court is dis-appropriate looking monthly income of opposite party no.2.

4. No one is present on behalf of opposite party no.2 to controvert the submissions of learned counsel for the revisionist.

5. Considered the rival submissions of learned counsel for the revisionist and perused the record.

6. Admittedly, the revisionist no.1 is legally married wife of opposite party no.2 and revisionist nos. 2 and 3 are minor sons of opposite party no.2. The opposite party no.2 is morally and legally bound to maintain his wife and children at any circumstances. The maintenance amount awarded to wife and children must be reasonable and realistic and looking the status and income of the husband, the maintenance awarded by the learned Family Court appears to be dis-appropriate.

7. The Hon'ble Apex Court in the case of Rajnesh Vs. Neha and Another reported in (2021) 2 SCC 324 has laid down certain guide line for awarding just and reasonable maintenance. Relevant paragraph (i) and (ii) of Part III is quoted herein below:-

"(i) 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.

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.

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.

On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant 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 spiraling 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.

(ii) 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.

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 meager 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."

8. Considering the financial status and monthly income of husband/opposite party no.2, the Court is of the view that maintenance @ 5,000/- per month each to wife and two minor children is dis-appropriate and is liable to be enhanced from Rs. 5,000/- to Rs. 15,000/- per month.

9. In view of above criminal revision filed by revisionists is partly allowed and judgement and order dated 13.02.2023 passed by Additional Principal Judge, Family Court, Court No.-3, Agra dated 13.02.2023 passed in maintenance Case No.- 1032 of 2019, is modified to the extent that each revisionists are entitled to receive maintenance @ Rs. 15,000/- per month from the opposite party no.2. The opposite party no.2 is directed to pay the maintenance @ 15,000/- each to revisionist nos. 1 to 3 regularly and shall also pay the entire arrears from the date of application i.e. 23.09.2019 to revisionist nos. 1 to 3 in six equal monthly installments."

8. It is submitted that a Misc. Case No. 537/2023, under Section 125(3) Cr.P.C. has been filed by the applicant and her two children on 14.03.2023, the said case is pending before the Court concerned. It is prayed that appropriate direction be issued for expeditious disposal of the same.

9. Learned counsel for the State has no objection to the said proposition.

10. Learned counsel appearing for the opposite party no.2 opposes the same vehemently and submits that a recall application has been filed before this Court in the said criminal revision which is pending and as such no order should be passed in the present matter for expediting the proceedings of the Court concerned. The present application/petition be dismissed.

11. After having heard learned counsels for the parties and looking to the facts and circumstances of the case, it is directed that the proceedings of Misc. Case No. 537/2023 (Smt. Nagma Vs. Chaudhary Basheer), under Section 125(3) Cr.P.C., pending in the court of Additional Principal Judge, Family Court, Agra be taken up and an effort be made by the court concerned to decide it, as expeditiously as possible, without granting any undue adjournments to either of the parties. The fact that a recall application in criminal revision is pending cannot be an impediment for the Court to proceed further inasmuch as the order of the revision is as old as one year and one month being decided on 11.12.2023 and merely filing a recall application and stating it to be pending, does not in any manner goes to show the bonafides of the opposite party no.2. The Principal Judge, Family Court concerned shall ensure that this order stands complied with.

12. The petition stands disposed of with the aforesaid directions.

Order Date :- 4.2.2025 M. ARIF (Samit Gopal, J.)