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**IN THE HIGH COURT OF ORISSA, CUTTACK**

**RPFAM No.260 of 2017**

Kakhashan Khan ..... Petitioner

-Versus-

Gayasuddin Khan ..... Opposite Party

**RPFAM No.293 of 2017**

Gyasuddin Khan @  
Gayasuddin Khan ..... Petitioner

-Versus-

Kakhashan Khan ..... Opposite Party

**Advocate for the parties**

For Petitioner : In Person  
(In RPFAM No.260 of 2017)

For Petitioner : Mr. S.K. Mohanty,  
(In RPFAM No.293 of 2017) Advocate

For Opposite Party : Mr. S.K. Mohanty,  
(In RPFAM No.260 of 2017) Advocate

For Opposite Party : In Person  
(In RPFAM No.293 of 2017)

**CORAM: JUSTICE SANJAY KUMAR MISHRA**

Date of Hearing: 28.10.2025

Date of Judgment: 20.01.2026



**S.K. Mishra, J.** The present common judgment arises out of two revision petitions i.e., RPFAM No.260 of 2017 preferred by the divorced Muslim woman (hereinafter referred as the Petitioner), and RPFAM No.293 of 2017 preferred by the ex-husband (hereinafter referred as the Opposite-Party), both challenging the order dated 07.10.2017 passed by the learned Judge, Family Court, Bhubaneswar, in Criminal Proceeding No.121 of 2016.

**2.** Vide the said order dated 07.10.2017, the amount of maintenance was enhanced by the learned Court below from Rs.3000/- to Rs. 8,100/- in an application filed by the Petitioner U/s 127 of CrPC. While the Petitioner seeks enhancement of the maintenance awarded to her as being inadequate and disproportionate to the Opposite Party's income, the Opposite Party assails the said order as excessive, unsustainable and without jurisdiction.

**3.** The undisputed facts, as borne out of the records, are that the marriage between the Opposite Party, who is the Petitioner in RPFAM No.293 of 2017, and the Petitioner, who is the Opposite Party in RPFAM No.293 of 2017, was solemnized on 11.04.1993 according to Muslim



rites and customs. After about six months of the marriage, the Petitioner joined the Opposite Party at his place of posting at Jajpur Road, where they resided together as husband and wife. Out of their wedlock, a son namely, Asad Khan was born on 29.09.1995. In the year 1999, the Opposite Party was transferred to Bhubaneswar, where the couple continued to live together with their son.

**3.1.** However, marital discord arose between them. On 27.10.2003 serious matrimonial disputes led to the Petitioner leaving the matrimonial home. Subsequently, on 03.11.2003, the Opposite Party pronounced talaq upon the Petitioner, thereby dissolving the marriage. Shortly thereafter, i.e., on 12.11.2003, the Opposite Party alleged that Petitioner and her son forcibly entered his house at Bhubaneswar and began residing there, thereby dispossessing him from the said house. On the same day he lodged an FIR alleging offences of criminal trespass and intimidation. G.R. Case No. 3953 of 2003, on which the Police submitted a charge-sheet, remains pending before the competent Court. Whereas the Petitioner lodged FIR No.90 of 2004 against the Opp. Party for the alleged



offences U/s 498(A), 506, 34 of I.P.C. so also C.S No.115/2008 before the learned Civil Judge (Senior Division), Bhubaneswar to restrain the Opposite Party by injunction not to evict her from the house At-Patia, P.S- Infocity, Bhubaneswar, with a Counter Claim by the Opposite Party to evict her from the said house.

**3.2.** Following the dissolution of marriage, the Petitioner filed C.M.C. No.61 of 2004 before the learned S.D.J.M., Bhubaneswar under Section 3(2) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, shortly, “the Act, 1986”, claiming monthly maintenance of ₹5,000/- for herself and ₹2,000/- for her son. By order dated 29.07.2006, the learned Magistrate directed payment of maintenance of ₹1,500/- per month to each of them. Being aggrieved thereby, the Opposite Party preferred Criminal Revision No.751 of 2006 before this Court. In the said Criminal Revision, the issue was scope of a Muslim husband’s liability post-divorce under the Act, 1986, so also maintainability of such application under Section 3(2) of the Act, 1986, vide which a prayer for maintenance of the minor child was also entertained by the learned Court



below. But, in absence of reasonable and fair provisions of maintenance in favour of Muslim minor children under the Act, 1986, the Opposite Party was directed to provide maintenance under section 125 Cr.P.C. in favour of his minor son. Vide judgment dated 03.02.2009, this Court dismissed the Revision Petition preferred by the Opposite Party and upheld the order passed by the learned S.D.J.M., Bhubaneswar. This Court held that a Muslim husband's liability extends beyond the iddat period and includes making of fair and reasonable provisions for his divorced wife's future. It was also reaffirmed that a father must maintain his minor children irrespective of his religion.

**3.3.** However, the Petitioner initiated an execution proceeding before the learned SDJM, Bhubaneswar for execution of order passed in CMC No. 61 of 2004. The Opposite Party, despite due notice, neither appeared in the said case nor paid any maintenance as ordered in the said case. Hence, in the execution proceeding the Learned S.D.J.M., Bhubaneswar directed to make salary attachment of Opposite Party and remittance of maintenance amount to



the Petitioner's bank account. Consequently, the Opposite Party preferred W.P.(Crl.) No.372 of 2009 before this Court against the order for the salary attachment passed by the learned S.D.J.M., Bhubaneswar vide Order dated 13.04.2009 and Order dated 14.05.2009 passed in CMC No.61 of 2004.

**3.4.** In W.P.(Crl.) No.372 of 2009, which was decided on 23.12.2009, the issue was mode of enforcement of maintenance orders to the Petitioner and her minor son. This Court upheld the validity of enforcing a finalized maintenance order under Section 125 Cr.P.C. through salary deduction, directly to be paid into the account of the Petitioner.

**3.5.** However, the Opposite Party, who was directed by the learned S.D.J.M., Bhubaneswar to pay Rs.3000/- per month to his divorced wife and son via salary attachment, expressed his willingness to make direct bank transfers instead. Considering such prayer, this Court allowed the Opposite Party to pay Rs.3000/- per month through standing instruction to his bank, effective from



03.02.2009, and directed the learned S.D.J.M. to determine arrears separately.

**3.6.** Subsequently, the Petitioner filed C.M.C. No.141 of 2009 to enhance her maintenance. The learned Judge Family Court, Bhubaneswar, exercising its powers under Section 127 Cr.P.C., enhanced the maintenance from ₹1,500/- to ₹3,000/- per month each for the Petitioner as well as her son on 25.02.2011. The Opposite-Party challenged the said order before this Court in RPFAM No.105 of 2011, wherein the issue was jurisdiction of the Family Court to enhance maintenance under the Act, 1986. Ultimately, RPFAM No.105 of 2011 was dismissed on 25.02.2015, affirming the said order passed in C.M.C. No.141 of 2009. This Court held that, under Sections 7(1)(f) and 20 of the Family Courts Act, 1984, the Family Court has jurisdiction to decide and enhance maintenance under Section 3(2) of the Act, 1986, which can be enhanced considering inflation and changed circumstances. The enhancement to Rs.3000/- to each was found justified. However, in view of the provisions under Section 125(1)(b)



Cr.P.C., this Court directed that the son's maintenance would continue till he attains majority.

**3.7.** Furthermore, the Petitioner once again approached the Family Court, Bhubaneswar by filing Criminal Proceeding No.121 of 2016 under Section 127 Cr.P.C, seeking enhancement of maintenance from ₹3,000/- to ₹35,000/- per month, citing escalation in living costs, her dependent condition and the considerable increase in the Opposite-Party's salary, following implementation of the Seventh Pay Commission. In Cr.P.No.121 of 2016 the issue was enhancement of maintenance on account of changed circumstances. The learned Judge, Family Court, Bhubaneswar, upon hearing both sides and after perusal of records, rejected the Opposite Party's objection regarding maintainability and jurisdiction, holding that the proceeding, being one under Section 127 Cr.P.C., is maintainable as maintenance is a continuing relief liable to variation upon change in circumstances.

**3.8.** Taking judicial notice of the substantial increase in the cost of living, inflation and the enhanced income of



the Opposite Party, who is serving in the Oriental Insurance Company drawing a basic salary of around ₹52,000/- per month, apart from DA, the learned Judge, Family Court, Bhubaneswar found the earlier maintenance of ₹3,000/- per month to be grossly inadequate. Even though it was noted that the Son, namely Asad khan, had become major and had completed his B.Tech degree years back, but the Court was of the view that still it cannot be presumed that he is getting very high salary with a meager experience, in absence of any conclusive evidence to prove his actual income. Accordingly, the learned Court below, vide the impugned order dated 07.10.2017, enhanced the maintenance payable to the Petitioner from ₹3,000/- to ₹8,100/- per month, effective from the date of filing the petition, i.e., 05.07.2016, with an observation/direction for adjustment of amount already paid and for clearance of arrears in four equal monthly installments. Hence, these Revision Petitions.

**3.9.** Furthermore, as is revealed from the records, Cr.P No.164 of 2013 was preferred by the Petitioner for recovery of study expenses of Rs.8,00,000/- (Eight lakhs



only) for her son from the Opposite Party before the learned Judge Family Court, Bhubaneswar. The learned Judge Family Court, Bhubaneswar directed for payment of ₹8,00,000/- towards the son's B.Tech educational expenses. The said order was challenged in RPFAM No.16 of 2018 by the Opposite Party. In RPFAM No.16 of 2018 the issue was whether a father is legally bound to bear the educational expenses of a son who attains majority during the continuance of his studies and has no independent source of income. This Court dismissed the petition of the Opposite Party vide judgment dated 08.04.2019. It was held that a strict interpretation of the date of majority as a cut-off date may force a child to abandon studies and face hardship; therefore, a father is duty-bound to provide maintenance until the completion of the son's or daughter's education. Emphasizing on the remedial and welfare oriented nature of maintenance, this Court upheld the said order and directed payment of the remaining ₹3,50,000/- in four quarterly installments.

**4.** The Petitioner, who was appearing in person before this Court, having no experience and exposer in



Court practice and procedure and no legal knowledge, this Court, vide order dated 25.09.2025, allowed her son Asad Khan, who is a B-Tech Engineer and accompanying her on each and every date of hearing, to assist her so also assist this Court during hearing of the cases.

**5.** Reiterating the grounds urged in the petition, it was submitted by Mr. Asad that the impugned order of the learned Judge, Family Court, Bhubaneswar, enhancing the maintenance to ₹8,100/- per month, though an improvement upon the meager amount of ₹3,000/- earlier granted, remains grossly insufficient to meet the Petitioner's basic needs as per the present cost of living, her age, and her medical condition. She is now about 56 years old, suffering from multiple ailments, and entirely dependent on the monthly maintenance as she has no source of independent income. Owing to persistent inflation, her advancing age, and rising living costs, the Petitioner had sought further enhancement of maintenance, invoking Section 127 Cr.P.C. Mr. Asad submitted, the Family Court, after due consideration, though enhanced the maintenance to ₹8,100/- per month,



such modest enhancement does not adequately reflect the Opposite Party's financial capacity, who is presently serving as the Divisional Manager in the Oriental Insurance Company Limited, drawing a monthly salary of over Rupees One Lakh.

**5.1.** It was further submitted by Mr. Asad that, he as well as his mother, i.e., the Petitioner, continue to reside in the residential premises situated at Plot No.516/1678/2869, Adarsh Vihar, Bhubaneswar, which was allegedly purchased and constructed with his mother's parental funds, but was fraudulently registered in his father's name. The said property is the subject matter of dispute in Civil Suit No.115 of 2008, pending before the competent Civil Court. It was denied that the Petitioner earns rental income or runs a profitable beauty parlour, holding that her fragile health and limited means prevent her from engaging in any gainful occupation.

**5.2.** It was also argued that the Act, 1986, read harmoniously with Sections 125, 126 and 127 Cr.P.C., ensures that a divorced woman is not rendered destitute, and that maintenance is a continuing relief, subject to



alteration with change in circumstances. The moral and legal duty of the divorced husband persists despite his remarriage, particularly when his financial position has improved substantially. In light of these facts, it was prayed for a further enhancement of maintenance to at least one-third of the Opposite-Party's monthly salary, or alternatively, for grant of a permanent alimony commensurate with Opposite Party's income and lifestyle, to be deposited directly into the Petitioner's bank account for her lifelong sustenance.

**5.3.** It was further argued that the Opposite Party, being a Deputy Manager, who is now allegedly promoted to the post of Divisional Manager in the Oriental Insurance Company Ltd., is earning over ₹1,00,000/- per month, apart from other benefits and having ancestral agricultural property in Village Oldhi, District Kendrapara and is fully capable of meeting the proposed settlement without hardship. Accordingly, it was prayed to pass a comprehensive order of settlement ensuring her financial security, dignity and independence for the remainder of her life.



**5.4.** It was argued by Mr. Asad that, in C.M.C. No.61 of 2004, relying on ***Daniel Latifi & Another V. U.O.I***, reported in (2001) 7 SCC 740, the learned Court below held that a Muslim husband's liability extends beyond the iddat period. Further, relying on the judgment in ***Noor Saba Khatun v. Mohd. Quasim***, reported in (1997) 6 SCC 233, Rs. 1,500/- each was awarded as monthly maintenance in favour of the Petitioner as well as himself, then he being a minor, under Section 125 CrPC. The Order was upheld by this Court in C.R.P. No.751 of 2006, despite taking a stand by the Opposite Party that the learned Court below was incompetent to pass such an order. Later, in C.M.C. No.141 of 2009, the Petitioner sought for enhancement of maintenance under Section 127 CrPC, which was renumbered as CrP No.36 of 2011, being transferred to the Court of learned Judge, Family Court, Bhubaneswar. The learned Judge, Family Court allowed such application, treating the earlier order as one under Section 125 CrPC. The order was again upheld by this Court in RPFAM No.105 of 2011 affirming the Court's power to enhance maintenance considering the rise in cost



of living and change in circumstances. Hence, it is no more open to the Opposite Party to take the selfsame ground to assail the impugned order.

**5.5.** Moreover, the Petitioner has relied upon a recent judgment of the Supreme Court in ***Mohd. Abdul Samad v. State of Telangana***, reported in (2025) 2 SCC 49, wherein it was held that a divorced Muslim woman has the option to seek relief under either the Act, 1986 or Section 125 of Cr.P.C., or both, as the 1986 Act is not in derogation, but in addition to Section 125 Cr.P.C. It was further clarified vide the said judgment that maintenance must be reasonable and sufficient, not minimal. Hence, it was argued that the Opposite Party, who is now serving as Regional Manager at Oriental Insurance Company, Bhubaneswar, has sufficient means to comply with the enhanced maintenance order.

**6.** Per contra, learned Counsel for the Opposite-Party submitted that the impugned order of enhancement is primarily on grounds of jurisdiction and proportionality vide RPFAM No. 293 of 2017. It was submitted that the original maintenance order was passed under Section 3(2)



of the Act, 1986 in C.M.C. No. 61 of 2004. Therefore, recourse to Section 127 Cr.P.C. for further enhancement is legally impermissible, since the provisions of Cr.P.C apply only where both parties have expressly opted for the same by filing a declaration, as required under Section 5 of the 1986 Act ,which, in this case, was never done.

**6.1.** It was further argued that, the 1986 Act provides a distinct and self-contained scheme governing the rights of a divorced Muslim woman. Under Section 4 of the said Act, 1986 post-divorce maintenance is chargeable not upon the former husband but upon her relatives or, failing them, upon the State Wakf Board. Accordingly, it was argued that the impugned enhancement, passed under Section 127 Cr.P.C., is without jurisdiction and liable to be set aside.

**6.2.** It was also argued that the Petitioner resides in the residential house of the Opposite-Party at Adarsh Vihar, Bhubaneswar, from which she allegedly earns rental income and operates a beauty parlour generating approximately around ₹20,000/- per month. The Opposite Party himself, following their separation, has been living in a rented accommodation at Bhubaneswar. The Opposite



Party has since remarried to one Ms. Ume Fazal on 08.05.2005 and, from this wedlock, has a daughter namely, Sabina Khan, born on 29.03.2006. He is also responsible for the care of his aged and ailing mother, besides being burdened with loan repayments pertaining to the said residential property at Bhubaneswar, which is mortgaged with the Oriental Insurance Co-operative Bank.

**6.3.** It was argued that the enhancement of maintenance from ₹3,000/- to ₹8,100/- per month is excessive, arbitrary, and disproportionate to the responsibilities of the Opposite-Party, particularly considering that their son Asad born in the year 1995, attained majority on 29.09.2013 and has been gainfully employed, as confirmed by a RTI response from KIIT University vide letter dated 20.07.2017, marked as Ext-S before the Court below, showing his campus selection and employment. It was further argued that, under Section 4 of the 1986 Act, the divorced wife must seek support from her son and other relatives, and not from her ex-husband beyond the iddat period.



**6.4.** The learned Counsel for the Opposite Party also referred to Cr. P No.164 of 2013, wherein the Family Court, Bhubaneswar had directed the Opposite Party to pay ₹8,00,000/- towards his son's educational expenses for his B.Tech course. He emphasized on Opposite Party's compliance with all previous maintenance orders, his financial constraints due to EMIs and family responsibilities, and his sincere efforts to bring an end to a long-standing matrimonial litigation spanning over last fifteen years.

**6.5.** Drawing attention of this Court to the Training and Placement Department Notice dated 19<sup>th</sup> January, 2017 of KIIT University, which indicates the name of successful candidates, including the name of Asad Khan at Serial No.1, which forms part of Exhibit-S, learned Counsel for Opposite Party ultimately stated that the Petitioner, being a divorced Muslim wife, should primarily seek maintenance from her son, who has now become self-sufficient and gainfully employed. Despite proving so, the learned Court below enhanced the maintenance. It was further submitted that there is no material demonstrating



any changed circumstances warranting enhancement of the maintenance earlier granted, and that the mere increase in the Opposite Party's salary post-divorce cannot, by itself, constitute a ground for enhancement.

**6.6.** Placing reliance on the Judgment of the Supreme Court in ***Daniel Latifi*** (supra), learned Counsel for Opposite Party submitted that the provisions of Sections 3, 4 and 5 of the Act, 1986 have an overriding effect by virtue of the non obstante clause "notwithstanding anything contained in any other law for the time being in force" and therefore excludes the applicability of the Family Courts Act to the present proceedings. It was thus submitted that the claims for enhancement of maintenance under Section 127 CrPC, so also Family Courts Act are legally untenable in view of the special statutory scheme governing divorced Muslim women.

**7.** From the pleadings and submissions of the parties, the following seminal issues emanate for consideration;



- A. *Since the Petitioner initially sought maintenance for herself so also for her son by filing CMC No. 61 of 2004 under Section 3(2) of the Act, 1986, is she precluded from invoking Section 127 Cr.P.C. for enhancement of such maintenance?*
- B. *Whether CrP. No.121 of 2016 preferred by the Petitioner for further enhancement of maintenance under Section 127 Cr.P.C. is maintainable?*
- C. *Whether the enhancement of maintenance made vide the impugned order passed in CrP No. 121 of 2016 needs any interference by enhancing it further, as prayed by the Petitioner in RPFAM No-260 of 2017, or needs to be set aside, as prayed by the Opposite Party in RPFAM No-293 of 2017?*

**8.** So far as Points No.A and B, the same being interlinked, are taken up together for the sake of brevity.

**8.1.** It emerges from the records that, on earlier occasions, the Opposite Party has consistently taken the stand before this Court that since the Petitioner initially sought maintenance by filing CMC No. 61 of 2004 under Section 3(2) of the 1986 Act, she is precluded from seeking enhancement of maintenance under Section 127 Cr.P.C.

**8.2.** It is noteworthy to mention here that, in C.M.C. No. 61 of 2004, filed under Section 3(2) of the Act, 1986,



the learned S.D.J.M., Bhubaneswar, by order dated 29.07.2006, directed payment of ₹1,500/- per month each to the Petitioner and her minor son. The Opposite Party challenged the said order in Criminal Revision No. 751 of 2006. However, by judgment dated 03.02.2009, this Court dismissed the Revision Petition and upheld the said order passed by the learned S.D.J.M., Bhubaneswar.

**8.3.** Paragraphs 7 and 9 of the said judgment passed in Crl. Revision No. 751 of 2006, being relevant, are reproduced herein below:-

*“7. It was strenuously contended that in an application filed under the Act, the learned Magistrate could not have awarded maintenance to opposite party no.2 for more than a period of two years. It was argued that while dealing with the application for maintenance under the Act, the Magistrate has no scope to exercise power under Section 125 Cr.P.C. **However, it is well settled that wrong nomenclature of a petition is not binding on the Court.** In **Raj Pal and others-vrs-State of U.P.: 2003 (2) CRJ 87**, it has been held by the Allahabad High Court that it is well settled that labeling a wrong will not oust the jurisdiction of the Court, it can be traced. In **Hazi Farzand Ali -vrs-Mst. Noorjahan: 1988 CRI. L.J. 1421**, joint application for maintenance filed by divorced Muslim woman on her behalf and on behalf of her children was treated by Rajasthan High Court as an application for maintenance by each of her minor children under Section 125 Cr. P.C. whereas her application was decided*



**in accordance with the Act.** It has been held by the Hon'ble Supreme Court in *Iqbal Bano-Vrs-State of U.P. : 2007 (6) S.C.C. 785* that proceedings under Section 125 Cr.P.C. are civil in nature and even if the Court noticed that there was a divorced Muslim woman who had made an application under Section 125 of the Cr. P.C., it was open to the Court to treat the same as a petition under the Act considering the beneficial nature of the legislation especially since proceedings under Section 125 of the Cr. P.C. and under the Act are tried by the same Court.

**9. In Mohammed Abdul Hai alias farooq Pasha Vrs. Saleha Khatoon & Ors:** 2007 C.R.I.L.J.1394, It has been held by the Bombay High Court that as far as children are concerned, it is clear that if the divorced Muslim woman claims maintenance for the minor children under Section 3(l)(b), the former husband is bound to provide maintenance for a period of two years from the respective dates of birth of such children. Right under Section 3(l)(b) is given to the divorced woman. **In fact, the Act itself is enacted for the protection of certain rights of Muslim Woman on their divorce; The Act has no relevance to the rights of the children to claim maintenance from their father. Their rights are covered by Section 125. Cr.P.C. and that right is not taken away by the provisions of Section 3(l)(b) of the Act.**

**(Emphasis Supplied)**

**8.4.** Subsequently, in C.M.C. No.141 of 2009, which was re-numbered as Cr. P No.36 of 2011, being transferred to the Court of learned Judge, Family Court, Bhubaneswar, the maintenance was enhanced to ₹3,000/- per month each under Section 127 Cr. P.C. by order dated 25.02.2011. Despite taking a similar stand, as taken in the



present RPFAM No.293 of 2017, the said enhancement was affirmed by this Court in RPFAM No.105 of 2011 vide judgment dated 25.02.2015. Paragraph Nos.9, 11, 12, 13 & 14 of the said judgment, being relevant, are reproduced herein below:-

**“9. Thus, as per Clause (f) Explanation to Sub-Section (1) of Section 7 of the Family Courts Act any suit or proceeding for maintenance can be taken up and dispose of by the Family Court. Since in essence an application to seek enhancement of maintenance, is a proceeding for maintenance and hence this Court is of the opinion that as per the ruling given in the case of SHABANA BANO V. IMRAN KHAN (supra) the Judge, Family Court has jurisdiction to decide cases under Section 3 of the Act.**

11. Thus, the constitution bench of the Supreme Court has held that it is the duty of the husband to make reasonable and fair provision for 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. **The Supreme Court further held that Liability of Muslim husband to his divorced wife arising under Section 3(l)(a) of the Act to pay maintenance is not confined to iddat period.**

12. Giving purposive interpretation to the provision, the Supreme Court in the case of **IQBAL BANO V. STATE OF U.P. AND ANOTHER**; (2007) 6 Supreme Court Cases 785 held that 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. Now, the question, therefore, remains whether the Court has also jurisdiction to enhance the said amount of maintenance.*

13. The Act was enacted to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husband and to provide for matters connected therewith or incidental thereto. Thus, it can be said that this is a progressive legislation aimed at protecting the rights of divorced Muslim women. It is apparent from the statement of objects and reasons of the Act that a divorced Muslim woman shall be entitled to a reasonable and fair provision and maintenance within the period of iddat by her former husband and in case she maintains the children born to her before or after her divorce, such reasonable provision and maintenance would be extended to a period of two years from the dates of birth of the children. **Thus, from the expression "such reasonable provision and maintenance" should be fixed taking into consideration the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman.**

14. Thus, it is clear that while awarding maintenance, the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband is to be taken into consideration. Now the time changes and in the meantime the need of the divorced woman becomes more because of rise in prices and other related factors as well as the education of her children and to maintain the standard of life she was enjoying before her marriage and the growth in the income of her former husband. **This Court is of the opinion that a purposive interpretation of the Act would also include the power of the Magistrate or Judge, Family Court to enhance**



***the maintenance granted to a divorced Muslim woman after lapse of sometime of passing of the final order under Section 3 of the Act. Accordingly, this issue is answered.”***

***(Emphasis Supplied)***

**8.5.** Law is well settled that, “wrong nomenclature of a petition is not binding on the Court” and in the present case also the coordinate Bench has taken note of such point. That apart, Crl. Revision No.751 of 2006 was decided by the coordinate Bench treating such joint application for maintenance filed by the Petitioner on her behalf so also on behalf of her son as an application for maintenance under Section 125 Cr. P.C.

**8.6.** From the consistent course of proceedings and orders passed by the learned Court below from time to time, as detailed above, so also the confirming judgment passed by this Court in Criminal Revision No. 751 of 2006, wherein it was held that wrong nomenclature of a Petition is not binding on the Court, it is quite evident that the initial maintenance in C.M.C. No.61 of 2004 was effectively granted under 125 Cr. P.C. Therefore, this Court is of the view that no separate declaration under Section 5 of the



Act, 1986 was required, as urged before this Court by the learned Counsel for the Opposite-Party, and it can safely be presumed that the Petitioner had conceded to be governed under the provisions of Section 125 Cr.P.C.

**9.** That apart, in ***Shabana Bano vs. Imran Khan***, reported in *(2010) 1 SCC 666*, the Supreme Court held as follows;

***“7. Under Section 125(1)(a), a person who, having sufficient means, neglects or refuses to maintain his wife who is unable to maintain herself, can be asked by the court to pay a monthly maintenance to her at a rate not exceeding five hundred rupees. By clause (b) of the Explanation to Section 125(1), “wife” includes a divorced woman who has not remarried.*** These provisions are too clear and precise to admit of any doubt or refinement. The religion professed by a spouse or by the spouses has no place in the scheme of these provisions. ***Whether the spouses are Hindus or Muslims, Christians or Parsis, pagans or heathens, is wholly irrelevant in the application of these provisions. The reason for this is axiomatic, in the sense that Section 125 is a part of the Code of Criminal Procedure, not of the civil laws which define and govern the rights and obligations of the parties belonging to particular religions, like the Hindu Adoptions and Maintenance Act, the Shariat, or the Parsi Matrimonial Act.*** Section 125 was enacted in order to provide a quick and summary remedy to a class of persons who are unable to maintain themselves. What difference would it then make as to what is the religion professed by the neglected wife, child or parent? Neglect by a person of



*sufficient means to maintain these and the inability of those persons to maintain themselves are the objective criteria which determine the applicability of Section 125. Such provisions, which are essentially of a prophylactic nature, cut across the barriers of religion. True, that they do not supplant the personal law of the parties but, equally, the religion professed by the parties or the state of the personal law by which they are governed, cannot have any repercussion on the applicability of such laws unless, within the framework of the Constitution, their application is restricted to a defined category of religious groups or classes. The liability imposed by Section 125 to maintain close relatives who are indigent is founded upon the individual's obligation to the society to prevent vagrancy and destitution. That is the moral edict of the law and morality cannot be clubbed with religion. Clause(b) of the Explanation to Section 125(1), which defines "wife" as including a divorced wife, contains no words of limitation to justify the exclusion of Muslim women from its scope. Section 125 is truly secular in character."*

*(Emphasis supplied)*

**9.1.** Similarly, paragraph Nos. 31 and 33 in **Danial Latifi** (supra), which judgment was referred to by both the parties during argument, being germane, are reproduced below for ready reference:

*"31. Even under the Act, the parties agreed that the provisions of Section 125 CrPC would still be attracted and even otherwise, the Magistrate has been conferred with the power to make appropriate provision for maintenance and, therefore, what could be earlier granted by a Magistrate under Section 125 CrPC would now be granted under the*



**very Act itself.** This being the position, the Act cannot be held to be unconstitutional.”

“33. In *Shah Bano case* [(1985) 2 SCC 556 : 1985 SCC (Cri) 245] this Court has clearly explained as to **the rationale behind Section 125 CrPC to make provision for maintenance to be paid to a divorced Muslim wife and this is clearly to avoid vagrancy or destitution on the part of a Muslim woman**. The contention put forth on behalf of the Muslim organisations who are interveners before us is that under the Act, vagrancy or destitution is sought to be avoided but not by punishing the erring husband, if at all, but by providing for maintenance through others. If for any reason the interpretation placed by us on the language of Sections 3(1)(a) and 4 of the Act is not acceptable, we will have to examine the effect of the provisions as they stand, that is, a Muslim woman will not be entitled to maintenance from her husband after the period of iddat once the talaq is pronounced and, if at all, thereafter maintenance could only be recovered from the various persons mentioned in Section 4 or from the Wakf Board.

**This Court in *Olga Tellis v. Bombay Municipal Corp*n. [(1985) 3 SCC 545] and *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] held that the concept of “right to life and personal liberty” guaranteed under Article 21 of the Constitution would include the “right to live with dignity”.** Before the Act, a Muslim woman who was divorced by her husband was granted a right to maintenance from her husband under the provisions of Section 125 CrPC until she may remarry and such a right, if deprived, would not be reasonable, just and fair. **Thus the provisions of the Act depriving the divorced Muslim women of such a right to maintenance from her husband and providing for her maintenance to be paid by the former husband only for the period of iddat and thereafter to make her run from pillar to post in search of her relatives one after the other and ultimately to knock at the doors of the Wakf Board does not appear to be reasonable and**



***fair substitute of the provisions of Section 125 CrPC.*** Such deprivation of the divorced Muslim women of their right to maintenance from their former husbands under the beneficial provisions of the Code of Criminal Procedure which are otherwise available to all other women in India cannot be stated to have been effected by a reasonable, right, just and fair law and, if these provisions are less beneficial than the provisions of Chapter IX of the Code of Criminal Procedure, a divorced Muslim woman has obviously been unreasonably discriminated and got out of the protection of the provisions of the general law as indicated under the Code which are available to Hindu, Buddhist, Jain, Parsi or Christian women or women belonging to any other community. ***The provisions prima facie, therefore, appear to be violative of Article 14 of the Constitution mandating equality and equal protection of law to all persons otherwise similarly circumstanced and also violative of Article 15 of the Constitution which prohibits any discrimination on the ground of religion as the Act would obviously apply to Muslim divorced women only and solely on the ground of their belonging to the Muslim religion. It is well settled that on a rule of construction, a given statute will become "ultra vires" or "unconstitutional" and, therefore, void, whereas on another construction which is permissible, the statute remains effective and operative the court will prefer the latter on the ground that the legislature does not intend to enact unconstitutional laws. We think, the latter interpretation should be accepted and, therefore, the interpretation placed by us results in upholding the validity of the Act.*** It is well settled that when by appropriate reading of an enactment the validity of the Act can be upheld, such interpretation is accepted by courts and not the other way round."

***(Emphasis Supplied)***



**9.2.** In ***Mohd. Abdul Samad*** (supra), which was passed after an exhaustive consideration of a catena of precedents on the subject and which has also been duly relied upon by the Petitioner, it was held as follows;

***“91. In my view, the rights created under the provisions of the 1986 Act are in addition to and not in derogation of the right created under Section 125CrPC, and the same is the basis for this Court's conclusion in *Danial Latifi v. Union of India*, reported in (2001) 7 SCC 740 : (2007) 3 SCC (Cri) 266] to save the 1986 Act from the vice of unconstitutionality. This is because nowhere in the judgment of this Court in the aforesaid case is there a reference to any bar under the provisions of the 1986 Act and neither has this Court created any such bar in the aforesaid judgment for a divorced Muslim woman to approach the court under Section 125CrPC for maintenance. Thus, the non obstante clause in sub-section (1) of Section 3 cannot result in Sections 3 and 4 of the 1986 Act whittling down the application of Section 125CrPC and other allied provisions of the CrPC to a divorced Muslim woman. Therefore, if a divorced Muslim woman approaches the Magistrate for enforcement of her rights under Section 125CrPC, she cannot be turned away to seek relief only under Sections 3 and 4 of the 1986 Act as is sought to be contended by the appellant herein. In other words, such a divorced Muslim woman is entitled to seek recourse to either or both the provisions. The option lies with such a woman. The court would have to ultimately balance between the amount awarded under the 1986 Act and the one to be awarded under Section 125CrPC.”***

***“94. I find that Section 5 provides for a situation where a Muslim woman and her former husband***



decide to voluntarily elect to pursue the remedies under Sections 125 to 128CrPC by way of a written application on the first date of hearing of an application under Section 3 of the 1986 Act. The provision seeks to provide an option that can be mutually exercised by the Muslim woman and her former husband. The deliberate use of the words "option" and "former husband" demonstrates that Section 5 does not statutorily confine the circumstances under which the claim of maintenance of a divorced Muslim woman can be governed under the secular law of maintenance. Similarly, Section 7, being a transitional provision, only determines that every pending application under Section 125CrPC for maintenance at the time of commencement of the 1986 Act would be disposed of in accordance with the provisions of the 1986 Act. The purpose of a transitional provision is to mitigate uncertainty from the minds of the litigants who were faced with the peculiar situation with respect to pending maintenance applications and the possibility of fresh applications being filed under the 1986 Act as per the option of the parties. The use of the expression in Section 7 of the 1986 Act "notwithstanding anything contained in that Code", with respect to the CrPC does not indicate the intent to abrogate the independent right of a Muslim woman, as a victim of neglect or destitution, to claim maintenance from her husband. Moreover, Section 7 is subject to Section 5 of the said Act. Also, a transitional provision is of a temporary nature. **On the strength of a transitional provision the main Act i.e. the 1986 Act cannot be interpreted in a manner so as to restrict the rights of a divorced Muslim woman to other available remedies such as under Section 125CrPC.**"

**"102.** The question of interpreting Section 3 of the 1986 Act should also be construed from the perspective of access to justice. Therefore, a technical or pedantic interpretation of the 1986 Act would stultify not merely gender justice but also the constitutional right of access to justice for the



*aggrieved Muslim divorced women who are in dire need of maintenance. This Court would not countenance unjust or Faustian bargains being imposed on women. The emphasis is on sufficient maintenance, not minimal amount. After all, maintenance is a facet of gender parity and enabler of equality, not charity. It follows that a destitute Muslim woman has the right to seek maintenance under Section 125CrPC despite the enactment of the 1986 Act. Thus, an application for maintenance under Section 125CrPC would not prejudice another application under Section 3 of the 1986 Act insofar as the latter is additional in nature and does not pertain to the same requirements sought to be provided for by Section 125CrPC. One cannot be a substitute for or supplant another; rather it is in addition to and not in derogation of the other.”*

**“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)CrPC.*

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 125CrPC, 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)***

**10.** Admittedly, the earlier application of the Petitioner for enhancement of maintenance under Section-127 Cr.P.C. in Cr.P. No.36 of 2011 was held to be maintainable and justified by this Court in RPFAM No.105 of 2011, despite taking a similar stand, as has been taken



in RPFAM No. 293 of 2017. The said judgment in RPFAM No.105 of 2011 has attained finality, not being challenged by the Opposite Party. Hence, this Court is of the view that it is no more open for the Opposite Party to take such a stand regarding maintainability so also locus standi of the Petitioner to move an application for further enhancement of maintenance under Section 127 Cr.P.C. and such application is maintainable. This Court is of further view that, in view of the settled position of law, since there is no such provision under the Act, 1986 for enhancement of maintenance awarded under Section 3(2) of the said Act, a divorced Muslim Woman can move application under Section 127 Cr.P.C./Section 146 BNS for enhancement of maintenance. Since Act, 1986 is not in derogation of the provisions enshrined under Section 125 to section 128 Cr.P.C., it was open for the Petitioner to take recourse under the said provisions, as well as the provisions under the Act, 1986. Accordingly, Points No.A and B are answered in favour of the Petitioner.

**11.** So far as Point No-C, the same relates to the claim of the Petitioner seeking further enhancement of



maintenance over and above the amount enhanced vide the impugned order, vis-a-vis the challenge made by the Opposite Party (Petitioner in RPFAM No.293 of 2017) against such enhancement of maintenance from ₹3,000/- to ₹8,100/- per month.

**12.** Law is well settled that determination as well as enhancement of maintenance depend upon several factors, including the status and position of the parties, the reasonable requirements of the Claimant towards food, clothing, shelter and medical expenses, the income and liabilities of the Respondent, the income, if any, of the claimant, the number of dependents the Respondent is obliged to maintain so also the changed circumstances, which may mandate enhancement or reduction of maintenance awarded in favour of the Claimant.

**12.1.** As is revealed from the Trial Court Record in Crl.P No.36 of 2011, it is evident that the learned Court below had earlier enhanced the maintenance from ₹1,500/- to ₹3,000/- per month in favour of the Petitioner as well as her minor son, totaling ₹6,000/- per month. The said order was affirmed by this Court in RPFAM No.105 of 2011.



**12.2.** Subsequently, the Petitioner filed Cr.P No.121 of 2016 seeking further enhancement of maintenance from ₹6,000/- to ₹35,000/- per month, primarily on the grounds of steep rise in the cost of living in the city of Bhubaneswar, inadequacy of the amount previously awarded to meet her basic needs, escalation in prices of essential commodities, and alleged promotion of the Opposite Party to the post of Divisional Manager drawing a salary of approximately ₹1,00,000/- per month after implementation of the 7th Pay Commission.

**12.3.** As is further revealed from the deposition of the Petitioner, who deposed as P.W.1 in Cr.P.No.121 of 2016, in her examination-in-chief, she only stated that her monthly maintenance be enhanced from Rs.3,000/- per month to Rs.35,000/- per month under changed circumstances. Though it was pleaded regarding rise in the cost of living in the city of Bhubaneswar so also increase in the salary of the Opposite Party, she failed to adduce any evidence to substantiate such pleadings. The Petitioner also did not produce any documentary evidence to substantiate her prayer. Relying on the judgment of this Court in RPFAM



No.105 of 2011, she only stated that after pronouncement of the said judgment there was an increase in the monthly emolument and the perquisite of the Opposite Party. Accordingly, a claim was made for enhanced maintenance. She could not prove what the monthly emolument and the perquisites of the Opposite Party are. Though, during her cross-examination, she admitted that her son has completed B. Tech Degree, but she denied the suggestion that her son Asad Khan has joined in M/s. J.M.C. Project India Ltd.

**12.4.** So far as the Opposite Party, who deposed as O.P.W.1 in Cr.P.No.121 of 2016, denied his promotion to the post of Divisional Manager and receiving a salary of Rs.1,00,000/- per month after introduction of 7<sup>th</sup> Pay Commission. In para-38 of his Affidavit Evidence, he stated that his salary is about Rs.50,872.54 per month after mandatory deductions. It was also stated that he is maintaining his family for food, clothing, medicine expenses for his mother, wife, daughter and himself, education expenses of daughter and fulfilling other social responsibilities with much difficulty. That apart, it was also



stated by O.P.W No.1 that he has the responsibility of the future of his daughter like her education and marriage. He also stated that he has no house to stay anywhere and he is staying in a rented house, as the house built by him at Patia, Bhubaneswar has been forcefully occupied by the Petitioner so also his son, for which he lodged an F.I.R. before the Chandrasekharpur Police Station vide P.S. Case No.275 of 2003, which is sub-judice now.

**12.5.** That apart, in his examination-in-chief, the O.P.W.1 stated that his son Asad Khan became major on 29.09.2013, for which payment of maintenance to his son has been stopped from the said date. As per the information received under the R.T.I. Act, Asad Khan completed his B.Tech Degree (Civil Engineering) course in May, 2017 and now must be working in M/s. JMC Projects India Ltd. He also exhibited the document issued by the KIIT University showing placement of his son Asad Khan, obtained under the R.T.I. Act, which was marked as Ext.S without objection. O.P.W.1 also stated in his examination-in-chief that as the Petitioner is staying in his house at Patia, Bhubaneswar, neither she is paying any house rent for her



stay at Bhubaneswar nor incurring any expenses towards the education of her son, as he has already passed B.Tech Degree in Civil Engineering.

**12.6.** It is further revealed from the deposition of O.P.W.1 that, his evidence regarding the Petitioner forcefully occupying his house at Patia, Bhubaneswar remained untouched and un-demolished during his cross-examination. Furthermore no suggestion was given to him during his cross-examination regarding placement of his son Asad Khan to be false. Ext.S in the said regard was also marked without any objection. That apart, on being asked by the learned Court below, the Opposite Party stated that he is posted as Deputy Manager in the Oriental Insurance Company at Udit Nagar Division Office at Rourkela and getting basic salary of Rs.52,000/- without any grade pay and Dearness Allowance as per the direction of the authorities concerned. It was also pleaded and proved that to build the said house at Patia, Bhubaneswar, he is repaying Rs.18,000/- per month to his friends and relatives towards hand loans, apart from E.M.I. of Rs.2709/- per month towards repayment of housing building loan.



**12.7.** Also, in paras-29 and 30 of his Affidavit Evidence, O.P.W.1 has detailed about his income and expenditure as on 26.08.2017, i.e., as on the date of filing of the Affidavit Evidence.

**12.8.** So far as income of the Petitioner, it was alleged that she is earning Rs.20,000/- per month towards house rent, from the house which she is forcefully occupying, by letting out a portion of the said house situated at Plot No.516/1678/2869 and also earning further amount of Rs.25,000/- per month from the beauty parlour run by her in the said house. But during his cross-examination, O.P.W.1 admitted that the said house consists of two bed rooms and one hall for dining and drawing purpose and he has not gone to the said house for the last 14 years. Though he stated in his affidavit evidence that house rent of Rs.20,000/- is being obtained by the Petitioner by extending construction of the said house, it was suggested to O.P.W.1 during his cross-examination that there is no extension of the said house by making additional construction. It was further suggested to him that no beauty parlour is functioning in the said house. The



O.P.W.1 also admitted during his cross-examination that he has not taken any step before the Court below for deputing a Court Commissioner to ascertain about beauty parlour allegedly run in the said house so also additional construction made in the said house. O.P.W.1 further agreed during his cross-examination that, in the year 2004, he took a different stand before the learned S.D.J.M., Bhubaneswar regarding alleged income of the Petitioner stating that she was earning Rs.4,000/- by working in Mayfair Hotel and Rs.5,000/- by making cakes. On being asked by the Court, O.P.W.1 further stated that he does not know if the Petitioner has undergone any course for running a beauty parlour. Hence, from such evidence on record, it is well revealed that the Opposite Party failed to prove the income of the Petitioner, though it was proved that his son Asad, who is a B.Tech Engineer, got an employment offer in M/s. JMC Projects India Ltd and both the Petitioner and their son have free shelter in the State Capital.

**12.9.** As is revealed from the impugned judgment, the learned Court below was of the view that, with passage of



time, since the monthly salary of the Opposite Party has increased to several times, it would be improper to continue with the said amount of maintenance of Rs.3,000/- awarded in favour of the Petitioner, which appears to be too meagre for normal life of a woman. Accordingly, it was enhanced to Rs.8,100/-.

**12.10.** The learned Court below was also of the view that with advancing age, both men and women become weak and they depend on others for their sustenance. It was further observed that, though it is stated by the Opposite Party that Asad Khan has already become major and is earning, there is no evidence with regard to his actual income. That apart, since Asad Khan has passed B.Tech in Civil Engineering two to three years back, still it cannot be presumed that he is getting very high salary with a meager experience, in absence of any conclusive evidence to prove his actual income.

**13.** It is noteworthy to state that, as per the 1<sup>st</sup> Proviso under sub-section-1 of Section 4 of the Act, 1986, if a divorced woman has children, the Magistrate shall order only such children to pay maintenance to her. In the event



of any such children, being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her. Furthermore, remedy under Section 144(1)(d) of BNSS is also there to seek monthly allowance for maintenance from the son, if he, having sufficient means, neglects or refuses to maintain his father or mother, who is unable to maintain himself or herself.

**14.** Admittedly, the Petitioner, who is staying with her major son, is having a shelter in the posh area of the State Capital. That apart, her son is a graduate engineer and must be around 30 years old as on date. No suggestion was given to O.P.W.1 during his cross-examination that he is stating falsehood and Asad is not gainfully employed. However, in absence of any concrete proof regarding Asad's exact income during the relevant period, prayer of the Petitioner for enhancement of maintenance could not have been denied by the learned Court below, as was argued before this Court.

**15.** There is no documentary evidence in the TCR regarding the net or gross salary of the Opposite Party



during the relevant period. Rather, apart from what the Opposite Party stated in his examination-in-chief regarding his expenses, in para-38 of his affidavit evidence he stated his salary to be Rs.50872.54 as on 26.08.2017, i.e., the date of filing affidavit evidence. However, on being asked by the Court, he stated that his basic salary is Rs.52,000/- without any grade pay. That apart, he admitted that he gets Dearness Allowance.

**16.** Admittedly, in the impugned order there is no such observation or finding of the learned Court below as to what was the basis to enhance the maintenance from Rs.3,000/- to Rs.8,100/- per month. The Supreme Court in ***Kulbhushan Kumar (Dr) Vrs. Raj Kumari***, reported in (1970) 3 SCC 129 and in ***Kalyan Dey Chowdhury Vrs. Rita Dey Chowdhury Nee Nandy***, reported in (2017) 14 SCC 200, held that awarding approximately 25% of the husband's net income as maintenance would be just and reasonable. In the present case, as per the admission of the Opposite Party, his basic salary was ₹52,000/- per month as on 26.08.2017. Twenty-five percent thereof comes to ₹13,000/- per month.



**17.** At this stage, it is noteworthy to mention here that, the Opposite Party , apart from paying the enhanced maintenance of Rs.3000/- to the Petitioner so also equal amount to her son , till he became major, being directed by the learned Judge, Family Court, Bhubaneswar, in Cr.P. No. 164 of 2013, which was subsequently confirmed by this Court in RPFAM No. 16 of 2018, has paid an amount of ₹8,00,000/- to his son Asad Khan towards completion of his professional education.

**18.** That apart, admittedly, Asad Khan is staying with the Petitioner (his mother) at Patia in the house built by the Opposite Party by incurring loans and Asad is a graduate engineer. They have no issue regarding shelter. The learned Court below was of the view that, even though the Son, namely Asad khan, had become major and had completed his B.Tech degree years back, still it cannot be presumed that he is getting very high salary with a meager experience, in absence of any conclusive evidence to prove his actual income. However, in between, further eight years have elapsed. It can be well presumed that Asad Khan must have been gainfully employed in the Company as per the



information received under the R.T.I., which was marked as Ext.S or in some other Company and must be getting a good salary. It is also admitted fact on record that after divorce, the Opposite Party has remarried and is having a daughter, who must be around 19 years old, as she was around 11 years old as on 26.08.2017. Apart from expenses towards her higher studies, marriage, the Opposite Party is having obligations towards his family so also his old ailing mother. That apart, he is repaying the house building loan, hand loan, so also paying maintenance to the Petitioner as per the previous orders passed by the learned Court below.

**19.** Taking into consideration the totality of circumstances, particularly the fact that the Petitioner is residing in the house at Patia registered in the name of the Opposite Party along with her major son, who is professionally qualified and is capable of maintaining her, and keeping in view the obligations and liabilities of the Opposite Party, as detailed above and his present status, this Court deems it just and proper to enhance the maintenance to ₹10,000/- per month, instead of Rs.8,100/-, payable with effect from 05.07.2016, i.e., the date of filing



of Criminal Proceeding No.121 of 2016. Point No.C is answered accordingly.

**20.** However, it is made clear that, both the parties will be at liberty to approach the learned Court below for further enhancement or reduction or stoppage of maintenance in the event of changed circumstances, such as increase in the salary of the Opposite Party, employment or improved earnings of the son Asad Khan, or gainful employment or earning of the Petitioner.

**21.** As is revealed from the record, this Court, in RPFAM No.293 of 2017, vide order dated 12.04.2018, stayed the operation of the impugned order subject to payment of maintenance at the pre-enhanced rate, i.e., @ Rs.3000/- per month. Hence, it is directed that, in addition to the enhanced maintenance of Rs.10,000/- per month, the Opposite Party shall also pay Rs.20,000/- to the Petitioner every month towards differential arrears w.e.f January,2026 till adjustment of the entire arrears. Such payments shall be made regularly as per the prevalent mode of payment, as directed by this Court in W.P.(Crl.) No. 372 of 2009, which was decided on 23.12.2009. It is made



clear that the payments already made to the Petitioner @Rs.3000/- per month till date shall be adjusted from the revised maintenance amount payable to the Petitioner.

**22.** It is made further clear that any observation made herein shall not influence the concerned Civil Court, while adjudicating Civil Suit No.115 of 2008 pending between the parties regarding right, title and interest over House No.516/1678/2869, situated at Patia, Bhubaneswar.

**23.** With the aforesaid observation and direction, the RPFAM No.260 of 2017 stands allowed to the effect indicated above and disposed of accordingly. Consequently, RPFAM No.293 of 2017 stands dismissed. No order as to costs.

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**S.K. MISHRA, J.**