

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 396 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.J. VAIDYA

1. Whether Reporters of Local Papers may be allowed to see the judgements ? YES

2. To be referred to the Reporter or not ? YES -

Except

Rest of the judgment to be fully reported

3. Whether Their Lordships wish to see the fair copy
h of the judgement ? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder

? Yes?

5. Whether it is to be circulated to the Civil Judge ? YES {Immediately}

KANTABEN MAFATLAL GAJABHAT

Versus

GOVINDBHAI MANUBHAI PATHI

Appearance:

MR SUNIL K SHAH for Petitioner

MR YN OZA for Respondent No. 1

SERVED for Respondent No. 3

CORAM : MR. JUSTICE K.J. VAIDYA

Date of decision: 31/03/97

ORAL JUDGEMENT

HERE IN THIS CRIMINAL REVISION APPLICATION, THERE

ARISES TWO IMPORTANT QUESTIONS for my consideration. They are Firstly - "Whether the husband who has been ordered to pay the maintenance under section 125 of the Criminal Procedure Code, 1973, to his wife and the child by the learned Magistrate and has infact by this time indisputably continuously paid the same and that too in all to the tune of Rs.35,000/-, but then incidentally enough as the misfortune would have been by sheer stroke of ill-luck he becoming the victim of the hostile circumstances beyond his control rendered unemployed, with no bank balance or any other property ahand to fall back- upon rather too poor, and accordingly, as a result was unable to pay and started committing default after default every month in paying regular maintenance amount, accumulating into arrears ultimately rising beyond reach amount of Rs. 17,000/-, can he under such no-fault bewitching circumstances be straightway fastened with the rough and ready allegation that he intentionally did not pay the maintenance ordered without there being any "just and sufficient-cause" and as an offshoot consequently necessitating the ultimate order of sending him to the prison ?"! Secondly, whether before sending any such unfortunate husbands to the jail, is there something like an unwritten code of the "social jusice" based upon the humanistic philosophy which unexceptionably impinging, warranting upon the judicial conscience of the Court to initiate of its own some honest, sincere efforts to resolve the economic stalemate between the husband and wife by finding out some job opportunities, if possible for both of them whereby further with the active help and assistance of the special legal aid committee {to be set-up in the matter of reconciliation and ultimately resolving the problems difference between the husband and wife), some reasonable way could be found out to save the situation in overall interest of justice? NOTE:- No doubt, there is indeed nothing in black and white any where in the Code calling upon the learned Magistrate conducting maintenance proceedings under section 125 of the Code to perform such an additional duty to explore some such possibilities by way of extra exerting itself and help, assist economically suffering and stranded husband and wife caught in an enervating struggle for their very survivals in the quite peculiar circumstances like the one at hand! But then, I am afraid, this is perhaps too peevish, ordinary and bookish approach to look at the human problem involved in the maintenance proceedings between the husband and wife begging justice from the Court. For doing true and substantial social justice many a time mere reading of the law and case law by itself is not enough firstly because the life is larger than the law and, Secondly because without beating

heart for the justice further activated by crusading judicial conscience and spirit, the Judge and the judicial system would always remain life less formality, only shadow and not the substance! In this view of the matter, I firmly believe that today where the law is silent but certainly does not necessarily expressly prohibit doing any just good act of overall substantial justice in favour of the needy party and as against that while not doing right thing at the right moment, passively watching the nightmare situation of hopeless, helpless husband, if the judicial conscience starts raising voice, alarm, revolting, urging itself to do some real and substantial justice to the parties before it and further still while not responding to its internal call, if it starts suffering the pangs of the scorpion-bite, unbearable injustice than it must definitely rise to the occasion and do the needful, and there is indeed nothing wrong in this judicial world if in some such given exceptional cases the court while on its way to the quest for truth and justice beats altogether new path by bringing about new chapter and span of fresh life to the problem involved to reach the ultimate destination of the substantial justice !! Eventually and ultimately the Courts, Judges and laws etc. etc. are but avenues and instruments of justice. The justice is the centre around which the entire system consisting of the rest of paraphernalia is expected to revolve and serve! In other words, there must be the sound philosophy of the substantial justice to becon the path which judicial conscience has got to walk unless reasonably prohibited. We all quite well know that many good social pieces of legislation which we find today were certainly not there in those old days of the British or any other previous regimes. But then good object and spirit underlying the social welfare Services ultimately did get the bodies tobe borne by gettting into enacted several special legislations, now buoyantly holding the field in country catering to the number of urgent needs of society today. When that is the truth and the ultimate destiny unquestionable, then, the line of justice-action which is actually taken and thereby proposed here to be set as a goal tobe followed by the concerned Magistrates in cases where an unemployed husband for no fault of him has been rendered unable to pay regular monthly maintenance and, therefore, efforts must be made leaving no stone unturned to give him some employment or opportunity of self-employment even and which this court in fact had done in the instant case. Here, at this stage, it will indeed not be out of place to state that in case of S.V. Doshi vs. State of Gujarat and Ors. reported in 1992(1) GLR 617 = 1992(2) GLH 81, this court had made the similar

efforts by requesting (1) The Director, Social Welfare Department, Gandhinagar; (2) Director, Social Welfare Department, Gandhinagar/Ahmedabad; (3) Institute of Deaf and Dumb Ahmedabad, to give the employment to handicapped husband and/or wife or both on humanitarian ground. This was a case wherein the husband who was deaf and unemployed was proceeded with for maintenance under section 125 of the Code by his wife who was dumb. This method of doing the substantial justice in its stricter sense may not be the 'law' in letter today. Infact, while enacting the law, many a times, despite best of care and intentions, many good things which ordinarily ought to have been incorporated may not find their due place there due to little haste, oversight or for the reasons the same could not be envisaged and fore-seen ! This is bound to happen, unless of course quite contrary to the proclaimed policy and the object of the Act, sometimes some vested interest through the subtle instrumentality of the drafts-man plays calculated mischief making the law weak and vulnerable, turtle and turtle not reaching the goal set-at ! But then, when the court is called upon to do the justice-real and substantial, it is always vested with the 'judicial discretion' when mixed with pragmatism and activism it serves the grand real purpose of delivering the justice aimed at. In this view of the matter, the court is supposed to be "justice-oriented" and where law sometimes quite inadvertently fails little short of its ordinary expectations, its pragmatism and activism should be culled-in-aid to stand by the justice. Further, there may not be a law available in the stricter sense, but nonetheless its noble object, spirit will surely find its way some day in future by way of some such much needed mandatory social; beneficial provision in the Act guiding the Courts on the ultimate path of justice! This special way of doing justice quenches, rather deeply satisfies the intense thirst for the Justice! Every Court must necessarily as a "Court of Justice", bear in mind that the family problem/dispute in Court in backdrop of the hostile socio-economic situation is always and invariably required to be handled like by loving-parents with the special and ultra-care where sympathy and persuasion with kind words narrowing the differences between the two making them see eye to eye and directly talk with each other may ultimately bring about the good result of at least narrowing if not entirely sinking the differences between the two ! In this particular manner only, I think the substantial justice could be better brought about between the parties serving the ultimate cause of justice. In fact, the cause of justice can never, never remain barren or indefinitely suppressed, suspended,

unidentified and unrecognized and accordingly ultimately it has got to and does find its way in some legislation being enacted sooner or the latter! In every age, for every injustice, at one stage there is always some cry for justice, and society with all its ingenuity and efforts ultimately finds out some ways and means to get justice. One such way and mean is enacting the law! This is how the law has developed and will continue to develop and progress tending to solve the past, existing or any other socio-politico economic problems that may arise in future to serve the society! The medicine, law, judicial pragmatism and activism and all sort of inventions and the social reformations on this earth always and invariably follow, and chase out the disease, injustice and satisfy all necessities of life and (eliminate) social taboos and backwardness, to be ultimately taken care of. In other words, "effects" has got to follow the "cause" as "echo" responds to the "sound". This is quite universal, inevitable, inveriable unwritten but unquestionable law of nature which manifests itself sooner or later anytime in course of its cycle ! 'Law' the collective wisdom by way of the quintessence of quite prolonged experience of the prudent people stands for the justice, and tends to guide and delivers the same. Accordingly, when the said law sometimes for whatever reason falls little short to bring-about the substantial justice, in such an hour of need and emergency, the judicial experience, wisdom and activism of the Court must necessarily rise to the occasion and prevail throwing itself wholeheartedly to be the connecting bridge between the seekers of substantial justice and the absence of the express provision of law! When such an opportunity when it arise is grabbed, it is indeed one of the noblest and unforgettable most cherished and priceless pride moment in the life of any Judge ! Rather say it is his [Judge's] life's historical moment of "Tryst with Justice" ! The thought- seed of the potential substantial justice that is being produced in this judgment to day shall be surely seeded in the legislature sprouting one day getting bearing the fruits of "substantial justice" enacted and recognized by way of provision in the law itself! But then till such an hour of rendezvous arrive and the the Parliament so acknowledges and embraces the views of this Court making it the "law of the land" and empowers and enlightens-up the Court by making some provision in help of the helpless husband, this emergency light in this judgment shall like pole-star or the "light house" guide the learned Magistrates in right direction to do the real and substantial justice to the parties in peculiar cases like the one at-hand! No doubt for the time-pressed and

over-burdened embarrassed learned Magistrates sometimes also with limited experience at their back this exercise of the substantial justice is little taxing! Not only that but in family dispute cases particularly between the husband and wife or brothers, brothers and sisters father and son and so on and so forth, parties many a times adopt such die-hard approach, and uncompromising postures that the learned Magistrate under some high-voltage disposal pressure getting unnerved and Jittery in a weaker moment readily succumbs to the thinking rather believes that any efforts of persuasion to bring about the compromise ultimately would be an exercise in futility and, accordingly, no honest, hard and sincere efforts are made by him to bring about the settlement between the parties. If at all, in a given case, sometimes, some efforts are made, then even the same are givenup midway finding some excuses ! It is here, where honesty, sincerity, hard work, persuasion capacity and perservance and the ultimate love for the cause of doing the substantial justice of the learned Magistrate is in focus and at total test which he must true to his conscience making good honest efforts get through." In such circumstances, the million pound question that the learned Magistrate should invariably ask his conscience is whether when the substantial justice demands of judicial conscience to walk the path charted above, should he abandon, surrender and stop there only at the thresh hold of literal justice only taking illusory satisfaction of doing justice or should he instead with further sense of the judicial unabdictable duty, undaunted spirit, firmness and will and the resourceful penetrating intelligence find out the ways and means ahead for the real and substantial justice on the lines suggested above? This obviously ought to be the self-introspectory question every learned Magistrate should ask himself when befaçed with some tricky, slippery problem making him little double mind "whether todo or not todo the substantial justice !!" In substance, any act of the social good for social justice undertaken or done by the court in good-faith as far as it is in not contrast or in conflict with any provision of the law or in any other manner bringing about injustice to any party can certainly be rather ought to be performed and undertaken, ofcourse ultimately depending upon the inherent strength, will, experience, and capacity of the concerned court to stand by to the cause of the substantial justice! It is indeed quite rightly said and believed that the real justice flows only from the kind pious sensitive heart caring for the suffering of the human-beings, society, committed to the letter and spirit of the Constitution of the country, led

by the scintillaing-humanitarian and overall social justice oriented intelligence. WITHOUT ANY SENSE OF COMMITMENT OR ORIENTATION TO THE PUBLIC INTEREST, TO THE SOCIAL AND SUBSTANTIAL JUSTICE-TO BE JUDGE SIMPLICITOR IS TOO DULL, ROBOT-LIKE IF NOT LIFE-LESS ENTITY!! FOR THIS ONE HAS GOT TO BE OPEN MINDED, SENSIBLE, SENSITIVE AND RESPONSIVE TO THE DEMANDS AND URGES OF THE SEEKERS OF JUSTICE ! Thus, the quality of justice ultimately depends upon the quality of the Judge! In other words, justice which the people ultimately get is nothing but the quality, character and fragrance or otherwise of the Judge. This is why while doing justice, the Judge has to be extremely careful !!

2. To state few relevant facts briefly necessary to dispose of this application, Kantaben, the present petitioner is the wife of the opponent-Govindbhai Manubhai and has a child of the said wedlock delivered on 20-8-1981. It also further appears that on the ground of being driven away and neglected, the petitioner filed maintenance application under section 125 of the Criminal Procedure Code, 1973, wherein in the year 1987, pursuant to compromise between the parties, the learned Magistrate by an order dated 18-7-1987 granted Rs. 100/- to the petitioner and Rs. 150/- for her minor child from the date of application. This amount of maintenance was subsequently enhanced to Rs. 250/- for the petitioner and Rs. 300/- for the child from 26-4-1989. It is further alleged that since the opponent has subsequently remarried with another woman without obtaining divorce from the petitioner, she had filed a Criminal Complaint No. 2016/87 against her husband for the alleged offences punishable under sections 498 and 114 of IPC before the learned Magistrate. It also further appears that since the opponent-husband had failed to deposit arrears of Rs. 23,500/- by way of maintenance upto 12-12-1995, on the application No. Misc. Criminal Application No. 204/95 made by the petitioner before the learned Metropolitan Magistrate Court No.2, Ahmedabad, an order dated 11-6-1996 came to be passed against him for simple imprisonment for 406 days. This came to be challenged by the opponent-husband before the learned City Sessions Judge, Ahmedabad, by way of Criminal Revision Application No. 164/96, which came to be partly allowed by the judgment and order dated 29-11-1996, ordering release of the respondent-husband from 11-12-1996. It is this judgment and order, which has been brought under challenge by the petitioner-wife before us by filing the present Criminal Revision Application.

3. When this Revision Application was placed for admission before us on 9-12-1996, we had passed the following order :

"Notice returnable tomorrow. Jail authorities are directed to keep Govindbhai Manubhai Patni present before this court at 11-00 a.m. sharp.

Office is directed to request the responsible officer of (1) Mahila & Bal Vikas Commission, Old Sachivalaya, Polytechnic, Ahmedabad; and (2) Mahila Arthik Vikas Nigam, Gandhinagar, to remain present before this court on 10-12-1996 at 11-00 a.m. sharp.

Notice be sent with special messenger of the High court by 2-00 p.m. today. "

3.1 On 10-12-1996, this court passed the following order :-

"Office is directed to request the responsible officer of (1) Jyotisangh, Ahmedabad; and (2) Self-Employment Womens' Association (SEWA) Ahmedabad, to remain present before this court on 12-12-1996 at 11-00 AM to enlighten the court on the point of assisting an unskilled woman who has been abandoned by her husband and struggling for existence. Office is also directed to request the General Manager, District Industries Centre, Bachat Bhavan, Ahmedabad, Ahmedabad to send a responsible officer to this court on 12-12-1996 at 11-00 AM.

The jail authorities are directed to keep the prisoner present before this court on 12-12-1996. Interim relief in terms of para 7 (C) till 13-12-1996 is granted.

Notices to be sent by special messenger (Bailiff) of the High court today itself "

4. In response to the above notice, all parties named therein have remained present before me. Heard all of them.

4.1. To start with the opponent husband Govindbhai, it

is his case that he intends to payup the arrears of outstanding maintenance amount and also the regular monthly allowance to his wife, petitioner-Kantaben, and minor child but unfortunately, since he has been rendered unemployed because of the sudden closing down of the Mill, it was financially impossible for him to regularly pay monthly maintenance as ordered by the learned Magistrate. It is his further case that if he is released on bail temporarily even, he would try to find out some employment and the earning therefrom, to discharge the monthly obligation to his wife and a child.

4.2. At this stage, I had also requested in particular the officer who appeared before me on behalf of the General Manager, District Industries Centre, Ahmedabad, if he could help assist both the petitioner wife and the opponent-husband in solving the economic crisis in which they are unfortunately caught if there are some such fruitful schemes whereby concerned parties could atleast self employ themselves with some financial loans. In this regards, the opponent husband did indicate his readiness and willingness if some suitable scheme is shown to him self-employ himself but the petitioner-wife was unfortunately not keen for any such self-employment except insisting upon immediately getting the maintenance allowance awarded to her and her child by the Court. Fortunately enough, the officer present responding to my above request was good enough to immediately place in my hands few small booklets containing material information on some schemes like (i) Manav Kalyan Yojna, (ii) Shikshit Berojgar Yuveno mate Ma. Vadda Pradhan Shrini Rojgar Yojna, (iii) Ahmedabad Jilani Augyogic Ruprekha, (iv) Ahmedabad Jillaman Audyogic Aeckamone Malvapatra Vividh Protsahno (1996-97) (v) Jilla Udyogkendra, Gujarat Rajya Kutir Ane Gramodyoga Yuvano mate Vade PRadhanshrini Rojgar Yojna niche Nankiya loan/sahay melvava matenun Arji form, (vi) 'Gujarat Mahila Aarthick Vikas Nigam' Gujarat Sarkarna Jaheer Sahas. All these booklets are published by Jila Udyog Kendra, First Floor, Bachat Bhavan, Relief Road, Ahmedabad and contains quite valuable information pertaining to the (i) number of some Small Scale Home/Cottage Industries (ii) on what terms and conditions from where, how to apply, to which authority; (iii) where are the training courses for the purpose etc. etc. where with some help assistance of the government one can self-employ him/herself and live honourably in the society. In these dark days of crisis of getting employment from the Government, Public or Private Sectors, such beneficial government schemes of self-employment is indeed a ray of hope, a boon rather a

life-jacket to the drowning man of the society for its many educated unemployed people. On going through the catalogue of the aforesaid self-employment schemes, one would simply wonder as to how can there be such a great rate of unemployment and nagging unemployment problem in the face of such par excellent self-employment schemes! It appears that perhaps the people have failed to take as much and the maximum advantage out of it for whatever reasons. May be, perhaps, if these self-employment schemes have failed to click the desired result giving the maximum benefits to the maximum educated unemployed in the society, it is possibly because of their lack of adequate publicity. In this view of the matter, in overall public interest it will certainly not be out of place if incidentally enough it is recommended to the government to continuously propagate these schemes of self employment through Door-Darshan, All India Radio, and other medias also so that hundreds and thousands of our your young people otherwise gossiping, rotting and ultimately frustrating because of the curse of unemployment, can usefully self-employed themselves serving the family and in turn society as useful component. Not only that, but the concerned authority must see to it that every year the the aforesaid schemes of self-employment increases further and further covering more and more people also recording the results derived therefrom. Moment the unemployed youth is engaged rather usefully self-employed, that will also help bringing about the end to unrest in the youth!!

5. Incidentally, bearing in mind the aforesaid discussion, it further appears to me that (1) the vocational guidance and (2) the government sponsored various schemes of self employment enlisted above should be added as additional main subjects in 10th, 11th and 12th standard. This will to very great extent help assist some of our unfortunate wandering directionless student community to think for themselves, and better apply and plan-out for further career courses and or also for their employment or self-employment as the case maybe and accordingly without desperately waiting for govt. or private job to find out something for himself from various Schemes to self employment for him. This Court earnestly hope and trust that in overall public interest in particular the interest of the youth of the State, this suggestion shall be immediately and anxiously taken into consideration by the State Government and accordingly, the Additional Chief Secretary, Education, Government of Gujarat shall immediately place the same before the Minister for Education and the Chief Minister, for information and necessary action.

6. Now turning back to the facts of the case, Opponent-Govindbhai indisputably is in jail since last about nine months for not paying up the arrears of maintenance to the petitioner-wife and minor child. Further still, as observed by the learned Sessions Judge, it was not disputed by wife before him that in all these years, the opponent-husband has paid Rs.35,000/- to her. This in turn speaks for his utter bonafides and punctuality in complying with the maintenance order, passed against him by the Court. Not only that, but as further observed by the learned Sessions Judge, because of the extreme poverty, he has not even been able to engage an advocate to defend his case. This also once again in term *prima-facie* certify that the opponent-husband has no money to engage an advocate even, where if not defended properly, was likely to be sent to the jail. Now ordinarily, a person having some amount at least will never love to go behind the prison-bars staking his liberty and prestige also in the society and that too for quite an indefinite period with a view only to harass his wife, as is alleged !!. This allegation sounds quite unnatural and absurd. In this view of the matter, *prima-facie*, it appears that it is the curse of the grinding poverty [like the opponent-husband herein suffering] which is indeed the root cause of misfortune of many in this country because of which only many crimes are generated, committed and ultimately perpetrated further and because of which only in the instant case the opponent-husband also has been rendered quite incapacitated, unable to pay the maintenance amount to be worthy only to be reconciled to jail!!!. Ordinarily, if the husband despite having sufficient means does not pay the maintenance amount as ordered by the Court to his wife, children etc.etc. the law on the subject rightly warrants that his place in the society can not be anywhere, but in jail. This unavoidable consequential punishment is quite impressive, irresistably motivating and in a way deterrent enough and the driving force factor making most of the recalcitrant hard nut to crack husbands making them pay the maintenance amount every month forcing them to discharge the matrimonial, parental obligations under the law. But then in this world, there are cases and cases where the prudence warrants and court can not shut its eyes to the hard realities, rather the naked bitter truths of life to take judicial notice of certain facts where a person sometimes becoming the victim of irretrievable hostile circumstances is rendered

totally incapacitated to do anything and in that view of the matter, before stamping-out any husband as a deliberate defaulter relegating him to be a permanent guest of the Government (in jail) thereby imposing an additional burden on the public exchequer, the court must-indeed, in my opinion, make some honest and sincere, just and humanistic in-depth efforts in the first instance to find out whether the husband has sufficient cause disabling him to comply with the order directing him to pay monthly maintenance amount, and in the second instance, in case if he has no such sufficient cause to plead in defence then also by way of abundant caution, some time-bound efforts should be made to find out the way whereby he can sufficiently earn and from that earning, discharge his legal obligations to his wife etc.etc. It is only after exhausting all possible ways, seeing enabling the husband to have an adequate opportunity (of course time bound) to prove his sincerity and bonafides to discharge his legal obligations more particularly when so decreed by the court, that the learned Magistrate, recording that despite sufficient means, husband was committing default in regularly paying maintenance amount running into arrears that he ought to pass an ultimate order where there is no alternative left but to send him to jail . One fact is very clear that by keeping a poor, unemployed husband in jail indefinitely it is not and can never going to resolve such maintenance deadlocks between the husband and wife, wife gaining nothing and husband in a given case like the present one unnecessarily punished as to be poor and unemployed was a crime against the society to be witch-hunted ! Maintenance provisions under section 125 of the Code are undoubtedly to help neglected economically disabled wife, child etc. but it is certainly not meant for the wife to take sadist delight of wrecking the personal vengeance upon the helpless husband punishing him to jail ! Lost hope, accordingly, exasperated and infuriated wife with no means to maintain herself and her child and struggling hard for existence may in a given case in her weakest moment losing mental equipoise wish her husband to be in jail, but then the court is not supposed to be that ready and willing tool available in her hands when the husband is ultimately found to be utterly helpless victim of circumstances beyond his control having no way out, no means to pay ! To send such person to jail is patent injustice! It is just like giving a dog bad name and hang it! In this view of the matter, responding to the innercall of conscience and ordinary prudence, it appears to this court that some reasonable time is required to be given to opponent-Govindbhai to prove his honesty and bonafides in the matter of paying the maintenance amount

to his wife by getting himself employed or self-employed and earn. Without doing this reasonable substantial justice oriented exercise, to keep opponent Govindbhai in jail would be patently imprudent defiling the concept of dispassionate, impartial substantial justice! Govindbhai, husband of the petitioner who is very much present before the court has assured this court that he will try his utmost to honour his obligations towards his wife and a child by paying the maintenance amount as ordered by the Court moment he starts earning sufficiently. On the basis of this assurance, pending final disposal, I have deemed it just and proper on trial and experimental basis to release him temporarily till further orders, keeping the matter on 13.1.97.

7. Thereafter, on 13-1-1997, this court passed the following order :-

" Govindbhai Manubhai Patani - respondent no.1 who is present before the court has paid in cash Rs.250/- to the petitioner-Kantaben Mafatlal in presence of the court. The respondent no.1 is further directed to deposit Rs.350/- on 27-1-1997. S.O. to 27-1-1997 at 2-45 PM. "

7.1. From the above, it could be seen that by releasing opponent husband temporarily the lost supply of the maintenance light has returned flashing, illuminating the vanishing hope of monthly income and has started paying the dividend Not only this but as it could be seen from the subsequent proceedings before this Court that the said monthly dividends have continued pouring in returning lost cheer and smile on the face of the neglected wife. No doubt, at this stage, accumulated arrears have remained where they were and said hurdle is yet to be crossed. But, then under any circumstances, it appears that over all best of the bargain has been struck between the parties putting the things in motion from face to face stalemate leaving rest of the things to 'hoping for the best in future.' The art of living comparatively happily successfully with comparative more peace of mind admist very many challenging problems, is to find out some common-ground of agreement between the two parties at some dispute which ultimately helps to sustain relations, keeps the bridge open for future negotiations and the ultimate hope of restoring some cordiality between parties of adopting practical and cheerful life-style of "Agree to Disagree" and yet living

peaceful co-existence on some agreeable points making best of the bargain out of the worst of situation ! This is indeed the only civilized, practical and prudent way of living life, be it between the individuals, communities, religions or or the Nations of the world !

8. Incidentally, I am further of the opinion that looking to the vexed problem of the case in its total background, and overall perspective the same is not only personal problem between the parties, but it has also the overshadow of the cancer of unemployment and consequential economic compulsion which has put opponent-husband to the acid test his image and credibility before the court of discharging the obligation to his wife and a child by complying with the maintenance order. This nagging problem is not confined to the husband and wife of this case only, infact in this poor country it has a wider remification as many such cases of the type like the present one recurring every year in other States also of the country. It is here that the court not merely confining itself to the icy-cold prints - legal provision pertaining to section 125 of the Code and the case law pursuant thereto has also to necessarily read and take into consideration the attending facts and circumstances of the case and eagerly look out if it is possible for the it to go and help out such helpless victim-husbands of the case who appear to be clearly a case of victim of conspiratorial circumstances". Sending a husband-apparently poor with no income whatsoever for not paying the maintenance to wife to jail is indeed not only too mechanical, harsh, prejudicial and an imprudent way of discharging judicial function, but then it is also further outright immature and downright unjust if the concerned court does not make a sincere and honest efforts in the first instance to see that before the charge of negligence to maintain his wife is legally sustained, it crosses the important hurdle in its way namely "whether the husband has sufficient means" to regularly pay monthly allowance as ordered by the Court and that despite the said fact he was not paying? and in the second instance, in case if the husband is poor and unable to pay, then what indeed the Court should further do to help and assist both the husband and wife? It is here that in such cases only the real question of social and substantial justice surfaces to be resolved with little more needed and permissible judicial activism. Rather it is here only in such cases where the Court is also put to the real test of doing the substantial justice! I mean if the court is *prima-facie* satisfied that both the husband and wife have become victim of the curse of the circumstances, some unspared

intense efforts are required to be made in a direction where the court can help assist to provide employment/self-employment to wife and husband both if not possible to husband alone. It was with this view only in my mind that I on 10-12-1996 passed the order requesting (1) the responsible officer from Jyoti Sangh, Ahmedabad, (2) Self Employment Women Association (SEWA), (3) General Manager, District Industries Centre, Bachat Bhavan, Ahmedabad, to appear before us to help, assist to resolve the problem involved in the matter.

8.1 The idea was, as there are various schemes of the Government with the help of which an unfortunate unemployed person if he so desires can be helped and made self-employed providing him with low-interest necessary loans and other necessary guidance from the department. In these hard days of economic crises around where there is indeed practically no scope for employment either from Government or the private employers, the best and honourable course is to get oneself self-employed and get economically rehabilitated in the society. Bearing in mind this, we had indeed a useful discussion on the point, from the parties named above who were kind and good enough to accept the request to the court help resolve the problem at hand. This court, as referred above, has been supplied with material where needy couple could be helped self-assembly. UNFORTUNATELY, it appears that many such such important Government schemes are only on papers. People for whom it is made are not made that fully aware. To spread provide awareness in the society, Government is under obligation to continuously publicize such schemes so that a person for whom it is meant and who wants to work hard, can self-employ himself and live in society with the dignity and honour. This aspect is duly considered in earlier paragraph of this judgment. This aspect is duly considered in earlier paragraph of this judgment.

9. In light of the above discussion, it appears that whenever such vexed problem like the one in the instant case arises in the Court where husband is unable to maintain his wife and children particularly because no fault of him in other words there being "sufficient cause preventing him from complying with the maintenance order" ***** bearing in mind relevant provisions as contained in section 125 (3) of the Code, the husband, in the first instance can never be sent to jail to serve imprisonment not only that but in the second instance as observed above some honest sincere efforts are required to be made to get him employed, self-employed if possible both the

husband and the wife. To conveniently and successfully further implement this suggestion, it appears to be quite advisable to have one permanent Special Legal Aid Committee in every criminal Court precisely dealing with the family problem of fallen-apart husband and wife consisting of (i) known experienced women social worker (ii) two senior advocates interested and dedicated to social cause of justice one of whom should be the lady advocate; (iii) Professor of Psychology; and (iv) Responsible officer from the office of General Manager, District Industries Centre, Ahmedabad. The Registrar shall place before the State Legal Aid Committee, if it could help, assist constituting such Committees, failing which the concerned courts shall have to do the needful in the matter.

10. Thus, with a view to enable Opponent-Govindbhai to prove his bonafides in the matter of discharging his marital and parental obligation towards his wife and the child, he is ordered to be temporarily released on his executing a personal bond in the sum of Rs.1000/- and a surety of the like amount, till further orders. After his release, as agreed and assured by opponent-Govindbhai, out of his earnings, he shall pay to his wife-Kantaben Rs.250/on 31-12-1996 and Rs.350/in the month of January 1997; Rs. 450/- in the month of February 1997; and Rs.500/- in the month of March 1997. It is further clarified that if Govindbhai commits any default in payment of the amount as stipulated above, despite his sufficient earnings, he shall have to thank himself and return to the jail custody. As regards the payment made by Govindbhai to his wife-Kantaben, he shall produce the receipts so issued by the petitioner Kantaben whenever demanded by the court. The police officer of the concerned area shall keep an eye on Govindbhai about the selling of the vegetables in the area and report back to this court when information so demanded. Any complaint of harassment by anybody to opponent-Govindbhai would be taken very seriously.

11. Thereafter, on 27-1-1997, it was submitted by the opponent-Govindbhai that some amount was still due from the M/s Continental Textile Mills, Ahmedabad, where has serving and further since as reported its Manager Mr. K.B.Trivedi was disbursing salary to other mill-employees etc. he had joined him also as a party to the present proceedings so that outstanding amount due to him can be recovered by him which he can usefully pay towards the arrears of maintenance to the petitioner-wife and the child. Accordingly, the following order was passed :

"As per the order dated 13th January 1997, Govindbhai Manubhai Patani, has given Rs.350/- to Kantaben - petitioner herein, who is present before the court.

At the request of the respondent, time is given to engage services of a lawyer and therefore, the matter is accordingly adjourned over to 29th January 1997 at 4-45 PM

According to the petitioner, Mr. K.B.Trivedi is Manager of M/s. Contenental Textila Mills, Chamunda, Naroda Road, Ahmedabad, and he is the person who is disbursing the salary etc. and in that view of the matter, he is ordered to be joined as a party. Office is accordingly directed to issue a notice against him directing him to remain present on 29-1-1997 at 4-45 PM. Direct service permitted ".

11.1 Thereafter, on 29-1-1997 this court passed the following order :

"On 27-1-1997 the office was directed to issue notice to K.B.Trivedi, Manager, M/s Contenental Textile Mills, Chamunda, Naroda Road, Ahmedabad, and petitioner was permitted direct service. Today, Kantaben reported that she had personally gone to serve the aforesaid notice, but she was not permitted to enter the mill premises. In this view of the matter, the office is directed to issue a fresh notice to K.B.Trivedi, Manager of M/s. Contenental Textila Mills, Channuda, Naroda Road, Ahmedabad, making it returnable on 4-2-1997. Direct service permitted. The petitioner shall handover the packet containing the aforesaid notice to PSI Naroda Police Station. The PSI Naroda Police Station is directed to immediately serve the notice of this court on the aforesaid K.B.Trivedi either at the aforesaid address or at his residence. After the notice is duly served, the same be immediately returned to this court with special messenger on or before the aforesaid returnable date. In case the notice is not served PSI is directed to file an appropriate affidavit giving reasons as to why and under what circumstances the notice could not be served. The said affidavit be filed before this court on or before the aforesaid returnable

date. S.O. to 4-2-1997 ".

IMPORTANT NOTE DIRECTION :

Many a time notices issued by the court are not duly executed, the process serving agency sometimes managed, dancing to the jingle of coins. In order to meet with some such irresponsible process serving agencies, court should issue notice to other side on the line and pattern [underlined] indicated above to meet with the situation.

11.2 Thereafter on 4-2-1997, this court passed the following order :-

"In pursuance to our order dated 29-1-1997 Shri K.B.Trivedi, Manager of M/s. Contenental Textile Mills is present in the court today. We are informed by Mr. B.A.Desai, the learned advocate for Mr. K.B.Trivedi that since Mr.Trivedi has heart problem, has not climbed the stairs and he is sitting at the down-stairs, and that in his place one Mr. Malek is present. According to Mr. Desai, the Mill has not disbursed any amount and it is closed since 1992. The Mill is directed to file an appropriate affidavit on or before 13-2-1997 stating therein all the relevant facts including what is the actual amount outstanding in the name of the respondent-husband. It is made clarified that no further time would be granted. S.O. to 13-2-1997 ".

11.3 Thereafter, on 14-2-1997, this court passed the following order :

"When the matter was called out, the learned advocates appearing for the respective parties i.e. Mr. S.K. Shah for the petitioner, Mr. Jagdish Yadav for Mr. Y.N Oza and Mr. S.A Desai are present before the court. PetitionerKantaben and respondent-Govindbhai are also present before the court. Today the respondent has come with Rs.400/- as a part of payment of the outstanding amount which he intends to handover to his wife. Accordingly, Kantaben is permitted to accept the

said amount of Rs.400/towards the outstanding dues. At this juncture, Kantaben submitted that her son is sick since last 15 days and today he is admitted in the hospital and for that purpose, she is in dire need of money. In this view of the matter, the respondent is directed to come with some amount on the next returnable date.

Mr. S.A.Desai, the learned advocate appearing for M/s. Continental Textile Mills tendered the affidavit, which is ordered to be taken on record. Mr. Yadav, the learned advocate is directed to go through said affidavit and make appropriate submissions on the basis of which Mr. S.K.Shah can make further submission before this court. S.O. to 21-2-1997".

11.4 Thereafter, on 21-2-1997, this court passed the following order :

"As per the order dated 14-2-1997, petitioner and the respondent along with their learned advocates are present before this court. Mr. J.S.Yadav, the learned advocate for the respondent has submitted that his client has come with Rs.500/to be paid towards the medical expenses of ailing son and that the same has been given to petitioner-Kantaben. On inquiring from Kantaben, she has informed that she had received sum of Rs.500/-. At this stage, both the learned advocates requested this court to adjourn this matter on 28th February 1997 with a view to find out if any compromise is possible. "

12. 'LOK ADALAT ' Though this matter before me was certainly not as before the "Lok Adalat" in the sense Lok Adalats are ordinarily understood these days, still however the date-wise proceedings referred and reflected on pages of this judgment would indicate that looking to the nature of case under this revision, it has been deliberately so conducted in the 'spirit of conciliatory tone' of the Lok Adalat. I firmly believe that in such type of the cases (family disputes) between the parties, parental persuasiveness, making both the parties gradually understand each other adjusting their wave-lengths, see eye to eye, conciliation and amicable settlement wherever legally permissible is the only better justice to be delivered whereby the big gap of differences could be reasonably narrowed down and on

proper wave-length being established in the course of time the cordiality between the parties could be possibly restored !! This special method of doing justice is absolutely necessary to deliver real and substantial justice particularly to the ill-fated quarrel-stricken family. To merely declare one party wins or loses may be legally quite convenient is certainly not difficult for any court, but then that way of doing justice may not deliver the justice in true ultimate sense in types of cases like the present one !! Further still if the court decided such cases mechanically on merits of course (sometimes quite justified also when party take die but not down attitude) it is always and invariably taken in the spirit of challenge by a party losing the case, desparately going-up in appeals, revisions etc. before the higher courts destroying the family peace !! It is here and in such other types of cases where we find Lok Adalats having given much needed soothing, healing touch has got lovingly epitomized as true Courts of the substantial justice ! But then here what is most important more than holding the formal special Lok Adalat is the true underlying spirit and culture of it which should never, never be forgotten rather the said Lok Adalat ought to be the ordinary climate and culture and way of living rather the guiding spirit of every court as natural and normal as breathing to the living beings ! To give an illustration, like an alarm-clock, once it jingles alarm to wake-up particular sleeping person, its aim and object for the time being comes to an end , moment when one aroused from the sleep gets awakened. Infact, after getting awakened, button is required to be pressed to silence the ringing alarm so as to enable the person waking up to follow the persuit for which he had set the alarm clock to wake him up. Thus, having been awakened by the alarm clock, what is important is 'AWAKENING' and RISING FROM THE BED TO DO THE WORK' for which one had set the alarm-clock and not to thereafter lie idle in the bed looking amused, focussed at the alarm-clock forgetting altogether why awakened and then once again slip into sleep !! Further still, the Lok Adalat proceedings, culture ought not to be reduced to the artificial, impersonal formalality and or to some sort of rituals to be reduced into some high-eye brow stiff-chin functions !! Infact, every court unless prohibited by some express provisions of law has got to acclamatize and imbibe the dynamic spirit of Lok Adalat culture and discharge the paramount social duty of delivering the real and substantial justice,between parties every day, every week whenever such an occasion arises without waiting marking for some time to come for inauguaral-function and dignitaries to come for lighting

the lamp to glorify the same, unless of course when once a while when the Lok Adalat movement has reached some mile-stone needing celebration not for the mere purpose of function, but to further resolve to go ahead vigorously, or as against that where indeed the movement gets slowed down and gets stuck up requiring immediate boosting of spirit and movement. Thus, the underlying culture and the spirit of the Lok Adalat is essentially the real call of duty for every court. Accordingly, I think that since by this time, the message underlying the spirit of "Lok Adalat" having quite reached home every nook and corner of the State now what is required to be done and concentrate is that alongwith the report of the monthly disposal of cases by the court sent to High court, every court must also further furnish figures of cases indicating therein efforts made by it to settle dispute between parties giving particulars as to how many cases settled, in how many efforts and negotiations were going on, how many failed, etc. etc. to monitor the situation and find out whether the lamp of awakening lighted by Lok Adalat brightly burns and enlighten the path of the court or is just gradually dimming out verging on to be extinguished soon needing more fuel or change and/or adjustment of the wick to raise and brighten up the light !! Further still, in order to relentlessly carry ahead this healthy movement for amicable settlement between the parties the underlying spirit of Lok Adalat, that can successfully done provided the same is regularly monitored and directed.

12.1 Whether the Lok Adalat can be held during daily regular court proceedings ? Certainly yes. In this regards, there is no difficulty at all. The only question is will to do the substantial justice and little application of mind in matter of the court hours and board management. The conciliatory and settlement efforts could be undertaken without disturbing the daily board. Such matters can be adjusted before 11-00 AM or during the recess hours or half an hour before the court work is over. If this is just done, then without any need for organizing special Lok Adalat functions its purpose could be fully served and realized. This can be done and should be done provided the Judge or the Magistrate commands himself to this type of the real and substantial justice. This is not to comment or suggest that "Lok Adalat" functions should not be held. Not the least. Infact, for this purpose, the best authority to judge and decide the necessity of holding "Lok Adalat" is the authority in charge. If it feels, it is needed, very well, functionalized 'Lok Adalat' may be held. Infact, what ultimately I say here is to emphasize that what is

important is the spirit of any culture for that and other purpose "Lok Adalat" should transcend the forms functions and formalities as far as possible more particularly because as the right or wrong report goes certain courts go on collecting and cornering cases only for the Lok Adalat day to come !! For this cornered cases what actually happens to them is that while waiting for 'Lok Adalat' the regular courts turns out to be "Lock Adalat". This is not in good taste.

12.2. This matter was kept pending and on every date some efforts were made if on the basis of some workable solution the problem could be once and for all permanently sorted out and settled between the petitioner wife and the opponent husband . The reason is once a while every person has to come across some such rough and tough passes in life "where without trifling with one's honour and dignity, the Peace of Mind . the basic necessity to live whole-some life and at the same time ABSOLUTE LUXURY also, if it can be so purchased should be purchased", {and for that purpose no cost would be comparatively higher} as the human life is nothing but the 'constant -moment to moment adjustment' where, in its absence for want of understanding, flexibility and the resourcefulness, there is constant conflict, friction, turmoil, burning and the resultant bitterness and restlessness of mind shattering the life making it painfully meaningless ! For any amicable settlements between the parties, it is certainly not necessary for any court to anxiously look into almanac and wait for so called 'Shubh-Muhurat' for 'Lok-Adalat' to be arranged. Infact, moment of good-pious thoughts, thereafter good pious resolve to do perform good act, followed by good pious implementation in action itself turns into auspicious moment viz. "Shubh Muhurtas". Lok Adalat were needed for some good social purpose. It has by now quite seeded the much developed needed culture for the courts and disputing parties to bury the hatchet, arrive at some reasonable settlement, restore cordiality in between and enjoy the life with comparative peace without more tension making, arriving at the best of the situation by making best of the bargain out of the worst situations, carefully avoiding extreme die-hard approach, where the peace of mind remain clouded with the court atmosphere, with the result as uncertain as anything. Now to do this simple thing do we necesarily require functions and celebrations sometimes quite costly also for all times to come !! Every court of the country must out of necessity and the call of duty should invariably and religiously follow the culture of "Lok Adalat" for

which Lok Adalat stands without specially arranging Lok Adalats !! The courts, the parties involved who knows this truth, this art, (of course, without sacrificing the principles) is always successful in living in "Peace And in Harmony", the other name of the paradise gained. This sort of bargain is easily the best and intelligent if the God has given necessary understanding for the same.

12.3 Turning to the facts of the present case, unfortunately, it appears that on the one hand husbands' incapacity to pay exorbitant amount to settle problem and on the other hand rightly or wrongly revengeful, die-hard attitude of wife, despite the best of efforts with the assistance of the learned advocates appearing for the respective parties, reconciliation, and permanent adjustment between them appears to be not possible, at this stage. Still however, to the extent blocked flow of regular monthly maintenance amount from husband to wife has started regularly flowing it is indeed a matter of some satisfaction for this Court which became ultimately possible only because and by the manner in which this proceedings came to be conducted between the parties with the able assistance of the learned advocates appearing for the respective sides. Thank God !!

13. In above view of the matter and the aforesaid arrangement, the opponent-Govindbhai appears to be regularly paying the amount of maintenance to his wife-Kantaben and her minor child as directed by this court. This arrangement for the present has atleast worked well to quite great satisfaction of both the parties so far. Not only that but this court has indeed hope that it would work well further also more particularly when the opponent-Govindbhai has also assured this court that he will regularly pay the maintenance amount to his wife as directed by this court. In this view of the matter, at this stage nothing further requires to be done by this court.

14. In the result, this Criminal Revision Application stands disposed of with the above observations, with a permission to the petitioner to revive the same in the event of any difficulty. The opponent-Govindbhai Manubhai Patani shall continue pay the maintenance amount of Rs.550/- (Rs. 250/- to the petitioner-Kantaben and Rs.300/- to his minor son Sanjay) every month. He shall deposit the aforesaid amount of Rs. 550/= in this court in the first week of every calendar month and on his

depositing the said amount, he shall inform the petitioner about the said deposit. Thereafter the petitioner would be at liberty to withdraw the said amount every month. In the event of consecutive three defaults, the petitioner would be at liberty to revive this petition for further appropriate orders against her opponent husband Govindbhai. It is clarified that though this petition is disposed of, it has certainly not written off the arrears of out standing dues, in favour of the petitioner-wife which the opponent shall have to pay in future, whatever remaining. Rule made absolute to the aforesaid extent.

15. The Registrar is directed to forward a copy of this judgment and order immediately to (i) The Chairperson, State Legal Aid Committee, Gandhinagar/Ahmedabad to do the needful in the matter to help resolve socio-economic problem involved in between the husband and wife by constituting Special Legal Aid Committee made of the Members as suggested above in para-9 of the judgment (ii) Director, Judicial Academy, Ahmedabd - for impressing upon the Judicial Officers of the State to make justice substantive and humanisam-oriented (iii) Secretary, Industries & Mines Department, inviting his attention to above paragraph 4.2 of this judgment, (iv) Secretary, Education Department inviting his attention to para 5 of this judgment and (v) Secretary, Legal Department, Gandhinagar, requesting him to co-ordinate development of the recommendation to the above authorities and report back result of the same to the High Court on or before 31-12-1997. In this regard, I hereby also request Hon'ble the Chief Justice to kindly direct the Registrar to also further forward a copy of the said report to me as and when so received as by that time I would be no more sitting Judge of the High Court

JOSHI

