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Adultery as a Bar to Maintenance: Unpacking the Evidentiary Threshold Post-Himanshu Chordia Judgment

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Law Trend

A husband alleging that his wife is 'living in adultery' can now rightly demand that the court decide that plea before ordering him to pay interim maintenance. In Himanshu Chordia v State of Rajasthan (2026), the apex court sets out a three-stage process and an 'ex facie' test of proof to resolve this predicament. This article argues that while the court got the principle right, the design remains unfinished. Concepts like 'living in adultery' remain undefined; the judgment ignores the decriminalization of adultery and invites private detectives into family matters with limited guidance on evidence accumulation.

1. Introduction

Himanshu Chordia and Arushi Jain married in July 2014. In May 2020, she left her matrimonial house along with their minor son and applied for maintenance under Section 125 of the Code of Criminal Procedure (CrPC). In 2024, the magistrate in Udaipur awarded interim maintenance of Rs. 25,000 a month each to the wife and the son. The husband challenged this order and alleged that his wife has been 'living in adultery'. He invoked Section 125(4) of CrPC.[1] The husband produced numerous images and videos of the wife with another man. The trial court and the Rajasthan High Court refused to hear the plea until the final hearing. They called adultery a disputed question of fact.[2]



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In 2026, the division bench of Justice Sanjay Karol and Justice Pancholi set aside the interim maintenance order and ruled that the maintenance case moves through three stages:

(i) The wife's application for maintenance is heard; interim maintenance may be granted at this stage.

(ii) The husband's objections under Section 125(4) CrPC is heard as the next stage.

(iii) Only after completing (i) and (ii), the court issues the final order for maintenance.[3]

'If the husband can prove adultery 'ex facie ', i.e., on the face of evidence, interim maintenance may be refused.'[4] The court further flagged that private investigators in such 'adultery' issues operate without any formal guidelines.[5]

This article is contentious on three things: First, the court did not decide the standard of this 'ex facie' test. Second, the court did not answer the most substantive question- 'what is meant by living in adultery '-and last, the court did not advise on the working standards of a private investigator.

2. Background

In Mohd Ahmed Khan v Shah Bano Begum (1985), the apex court described maintenance under Section 125 CrPC as a measure of social justice, necessary to prevent destitution.[6] Section 125(4) CrPC carves out an exception; it is read as follows:

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

(NOTE: Section 125 of CrPC corresponds directly to Section 144 BNSS; the text is produced verbatim)

Section 125(5) allows the magistrate to cancel any maintenance orders issued on the same grounds as 125(4).[7] Since 2001, the second proviso to Section 125(1) has allowed interim maintenance while the case is pending. Such applications are to be decided as fast as possible, preferably within 60 days. In Rajnesh v Neha (2021), the court stressed that maintenance proceedings should be summary in nature. It requires both parties to file affidavits disclosing their assets and income at the outset.[8] The design aims to keep the dependent spouse financially sound quickly, not after years of trial.

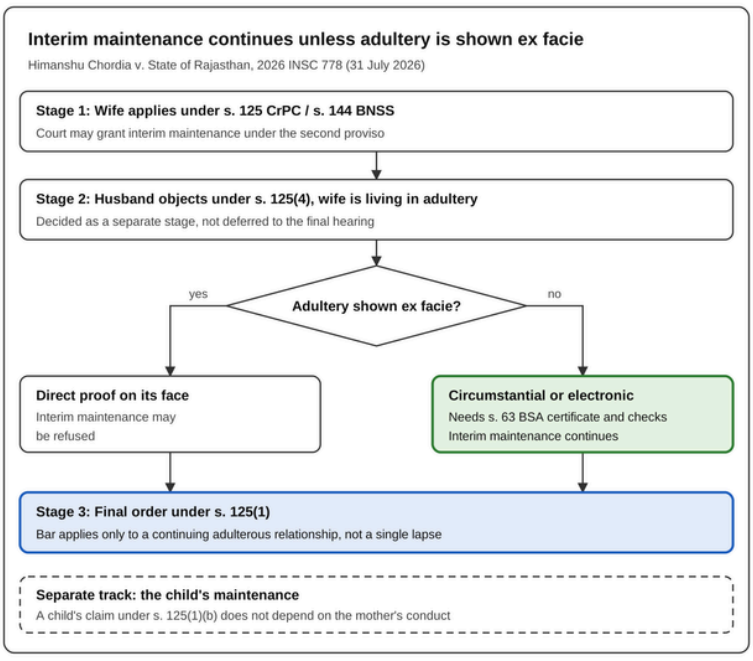
'Living in adultery '-this phrase has not been defined in the statute. High courts have attempted to fill this gap consistently. Although no rigid checklist has been laid out, the courts unanimously agree that a single occasion or occasional lapses cannot be termed as 'adultery'. To prove adultery, the wife must be in a continuing adulterous relationship with the other man at or around the time of the maintenance claim.[9] The most

important development came in 2018 when the Supreme Court's Constitution Bench struck down Section 497 IPC and decriminalized adultery.[10] The judgment primarily upheld a woman's autonomy over her body and ruled out the 'patriarchal' language of the provision. However, adultery still survives as a civil ground, such as for divorce and in provisions like Section 125(4).[11] Simply put, a woman 'living in adultery' cannot be penalized for her actions and betrayal towards her husband (which Section 497 IPC allowed earlier), but she can be denied any or all maintenance amount under Section 125(4) CrPC. Introducing private photographs of someone as evidence in court technically violates the Puttaswamy judgment; however, their admissibility is permissible provided the certificate under Section 63 of Bharatiya Sakshya Adhiniyam 2023 is obtained beforehand.[12]

3. Analysis

The Himanshu Chordia judgment answers a procedural question but leaves a substantive one open. It tells courts when to hear an adultery plea and how strong the evidence should be but does not say how the husband is meant to prove his claim.

Both the trial court and the High Court treated the plea of adultery as a matter for final hearing. The apex court ruled this out and held that such pleas should not be reserved for the end.[13] Section 125(4) is a statutory disentitlement; if it is heard only at the end, the husband may pay interim maintenance for years, and if he succeeds on his plea of adultery later, there would be little to no way for him to recover the already spent interim maintenance amount from the wife. Therefore, the court put the Section 125(4) plea as the second stage of the trial. Moreover, the outcome of the Section 125(4) plea would be substantially helpful in reaching the final order under Section 125(1) ultimately.[14]



The apex court further held that interim maintenance can be refused only if the husband establishes adultery ex facie, through evidence that proves the allegation 'on the face of it'.[15] The court distinguished direct evidence from circumstantial evidence. Since cases like adultery can rarely be proved through direct evidence, circumstantial evidence is often used by the husbands. Clearly, circumstantial evidence would require greater study, scrutiny, and verification if it is electronic in nature.[16] Most commonly used evidence is in the form of pictures, videos, hotel records, private chats, audios, etc. – all of which fall under the category of 'personal data' or 'private data'. Without going into the complications of processing personal data under the DPDPA, 2023, electronic evidence is only admissible in courts with a certificate under Section 63 of the BSA (Section 65B of the Evidence Act), as held in Arjun Panditrao Khotkar (2020).[17] The BSA 2023 makes the hurdle higher. Section 63 now requires a certificate in a prescribed form, signed both by the person in charge of the device and by an expert.[18] The court also applied the three-part test from R.M. Malkani (1973)- the recording must be relevant to the issue, the people in it must be identified, and its accuracy must be proved; i.e., it should be devoid of any editing or doctored. Measured against these requirements, a pile of surveillance images will rarely be "ex facie" proof. In Himanshu Chordia judgment, the husband produced about 237 photos and 92 videos, but the volume does not cure the underlying weakness. In such cases, photographs and videos are often unable to prove adultery 'ex facie'. For instance, photos and videos usually show the wife in the company of another man, usually captured in a public setting and without any explicit display of affection; an adulterous relationship between them has to be inferred. Such interference is exactly what takes the evidence out of the meaning of 'ex facie'. Nowadays, the risk of AI-generated images and deepfakes can further dismantle a husband's evidence from being 'ex facie'.

These questions cannot be answered at the interim stage. Answering them needs certificates, expert testimony on authenticity, cross-examination of the person who took the images and the wife's own explanation. That is a trial, and interim maintenance exists precisely so that a dependent spouse is not left without support while a trial runs. In most cases, therefore, interim maintenance will continue, and the adultery plea will be tested at the final hearing on full evidence.

The practical effect of the judgment is therefore protective of the dependent wife even though it is framed as a win for the husband.

Moreover, the judgment never defines what 'living in adultery' constitutes. The statute is in the present tense; it asks whether the wife is living in adultery when she claims maintenance, not

whether she once had an adulterous relationship. Such undefined practice can create loopholes and discrepancies in precedents. Depending on one's judicial prudence, the trial courts and high courts may/may not deny support on proof of a past or isolated act.

4. Counter Arguments and Limitations

(i) Maintenance proceedings are meant to be quick summary trials. Thus, introducing a three-stage test can potentially cause delays in the trial's conclusion. However, it should be noted that merely filing the application under Section 125(4) CrPC itself does not extinguish the order of interim maintenance automatically. Payment continues unless adultery is shown ex facie.[19] Courts also decide such objections within the same 60-day window, on affidavits and documents, without full oral evidence.

(ii) Some will argue that covertly gathered evidence should simply be excluded. Indian law has traditionally admitted relevant evidence even if it was improperly obtained, as R.M. Malkani (1973) itself holds.[20] Puttaswamy has not yet displaced that rule in matrimonial cases. Exclusion is therefore unlikely to come from the courts. Regulation of who may collect such evidence, and how, is the realistic safeguard.

5. Implications

- (i) Courts must religiously follow the three-stage test. For all the reasons recorded in this article, it would not be judicious to reserve the hearing of Section 125(4) CrPC till the end of the hearing. The application should be heard in the initial stages by applying both the procedural test and substantive test together. The procedural test is whether the evidence proves adultery ex facie without a detailed weighing of the circumstantial evidence, and the substantive test must show a continuing adulterous relationship while the claim exists.

(ii) Parliament and the lawmakers should get on their drawing boards to lay down the formal guidelines and limitations for the operation of private investigators. A licensing law should require registration of agencies and prohibit covert recording inside homes and other private spaces. It should also set rules on storing, sharing, and deleting footage and impose penalties for misuse. The parliament must draft these guidelines with the Digital Personal Data Protection Act 2023 in mind. Further, the legislation can also attempt to define the phrase 'living in adultery' under Section 144 BNSS.

6. Conclusion

Himanshu Chordia judgment brings order to a part of maintenance law that had been left to drift. A husband's statutory objection now has a defined place in the proceedings and a defined standard of proof. That standard, 'ex facie' evidence, is demanding. Read properly, it protects the summary character of Section 125 because surveillance images and videos rarely prove adultery on their face.

But procedure is only half the answer. The court had told trial courts when to ask the adultery question and how

much proof to require, without saying what adultery under Section 125(4) CrPC actually means. Until that gap is filled with the continuing-relationship rule and until private investigators are brought under law, the evidentiary threshold will rest on uncertain ground. Maintenance exists to keep a dependent spouse from destitution. The bar to it should be as narrow as the words of the statute and the evidence for it as lawful as the remedy it defeats.

References:

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[13] Himanshu Chordia, 2026 INSC 778, para 19.
[14] Himanshu Chordia, 2026 INSC 778, para 12.
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[16] Himanshu Chordia, 2026 INSC 778, para 18.
[17] Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1; R.M. Malkani v. State of Maharashtra, (1973) 1 SCC 471; Himanshu Chordia, 2026 INSC 778, paras 18 and 22.
[18] Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s. 63(4) and Schedule.
[19] Himanshu Chordia, 2026 INSC 778, paras 17–19; "Supreme Court: Wife Can Be Denied Interim Maintenance if Husband Ex Facie Establishes Her Adulterous Relationship under Section 125(4) CrPC," The Indian Lawyer, 2026, https://theindianlawyer.in/supreme-court-wife-can-be-denied-interim-maintenance-if-husband-ex-facie-establishes-her-adulterous-relationship-under-section-1254-crpc/.
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