

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**SPECIAL CRIMINAL APPLICATION No. 2080 of 2010**

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**HEMLATABEN MAHESHBHAI CHAUHAN - Applicant(s)**  
**Versus**  
**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**

MR HEMANT B RAVAL for Applicant(s) : 1,  
 MR KARTIK PANDYA ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,  
 None for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 21/10/2010**

**ORAL ORDER**

Petitioner is wife of the respondent No.2. She has challenged the order dated 25<sup>th</sup> August 2010 passed by the learned Additional Sessions Judge, Ahmedabad allowing the appeal of the respondent No.2.

Wife had prayed for interim maintenance before the learned Magistrate in proceedings arising out of the Protection of Women from Domestic Violence Act. Such prayer was granted. Husband challenged the said order dated 19.12.2009. Learned Additional Sessions Judge allowed the said appeal and set aside the order of the learned Magistrate.

Upon hearing the learned advocate for the petitioner and perusing the documents on record, it emerges that the wife had already instituted

proceedings for maintenance under Section 125 of Code of Criminal Procedure wherein the competent Court has granted maintenance to the tune of Rs.750/- in favour of son, whereas no maintenance was granted to the wife since it was found that she was serving in a factory earning Rs.2500/- every month, she was able to maintain herself.

When initial order under Section 125 of the Cr.P.C. was already passed by the competent court which has also attended finality by way of interim arrangement, unless and until strong reasons, learned Magistrate could not have granted maintenance to the wife. In the event of change in the circumstances, it is always open to the wife to seek modification of the maintenance order under Section 127 of the Cr.P.C.. Learned Additional Sessions Judge has, therefore, committed no error in passing the impugned order.

Learned Magistrate shall, however, dispose of the pending proceedings under the Domestic Violence Act unmindful of this order since I am concerned only with the interim stage in this matter.

Petition is, therefore, dismissed.

( AKIL KURESHI, J. )

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