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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2474/2012

MANSI VOHRA

Through

..... Petitioner

Mr. Prem Prakash, Advocate

versus

RAMESH VOHRA

Through

..... Respondent

Mr. S.K. Aggarwal and Mr. Sanjay
Kumar Joshi, Advs.

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Date of Decision: 22nd November, 2012

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J. (Oral)

1. Present petition has been filed under Section 482 Cr. P.C. challenging the order dated 17th March, 2012 passed by the Additional Sessions Judge ('ASJ') in Criminal Revision Petition No. 147 of 2011 wherein it was held that the petition filed by a major unmarried daughter for maintenance was not maintainable under Section 125 Cr.P.C. The ASJ in the impugned order dated 17th March, 2012 has held as under:-

"8. I have bestowed my careful consideration to the rival submissions made by learned counsel for revisionist as well as learned counsel for respondent in the light of the relevant provisions of law as well as the cases relied upon in support of their respective submissions and I have come to the conclusion that u/s 125 Cr.P.C. a major unmarried daughter cannot claim

maintenance from her father unless her case is covered u/s 125(1)(c) Cr.P.C. Admittedly, Mansi Vohra is major daughter of the revisionist Ramesh Vohra and she is not physically or mentally abnormal and as such her petition u/s 125 Cr. P.C. for claiming maintenance is not legally maintainable. I also agree with the submissions made by learned counsel for revisionist that a major daughter unable to maintain herself can claim maintenance from her father only u/s 20 of Hindu Adoptions and Maintenance Act, 1956. Keeping in view this well settled legal proposition of law, I am of the view that the impugned order passed by learned MM is not in accordance with law and accordingly it is set aside by holding that the maintenance petition filed by Mansi Vohra, the present respondent, for claiming maintenance from her father Ramesh Vohra, the present revisionist u/s 125 Cr. P.C. is not legally maintainable. With these observations, this revision petition stands disposed of.”

(emphasis supplied)

2. Learned counsel for the petitioner submits that even if the petition under Section 125 Cr.P.C. was not maintainable, the petitioner still had a statutory right to get maintenance from the respondent under Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956. In this connection, he relies upon a judgment of the Supreme Court in **Jagdish Jugtawat v. Manju Lata, (2002) 5 SCC 422** wherein it has been held as under:-

“4. Applying the principle to the facts and circumstances of the case in hand, it is manifest that the right of a minor girl for maintenance from parents after attaining majority till her marriage is recognized in Section 20(3) of the Hindu Adoptions and Maintenance Act. Therefore, no exception can be taken to the judgment/order passed by the learned Single Judge for maintaining the order passed by the Family Court which is based on a combined reading of Section 125 CrPC and Section 20(3) of the Hindu Adoptions and Maintenance Act. For the

reasons aforestated we are of the view that on facts and in the circumstances of the case no interference with the impugned judgment/order of the High Court is called for.”

(emphasis supplied)

3. On the other hand, learned counsel for the respondent submits that since the petitioner is an unmarried major daughter, she is not entitled to maintenance under Section 125 Cr.P.C. as she does not fall in the exceptions of sub-clause (c) of sub-section (1).

4. Since the issue pertains to interpretation of Section 125 Cr.P.C. and Section 20(3) of Hindu Adoptions and Maintenance Act, 1956, this Court is of the view that it is essential to reproduce the relevant portion of the said Sections. The relevant portion of the aforesaid Sections are reproduced hereinbelow:-

A) Code of Criminal Procedure, 1973

“125. Order for maintenance of wives, children and parents.

(1) If any person leaving sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or.....”

B) Hindu Adoptions And Maintenance Act, 1956

“20 Maintenance of children and aged parents-

xxxx xxxx xxxx xxxx

(3) *The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends insofar as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.”*

5. Undoubtedly, the petitioner who is a major, does not fall in one of the categories stipulated in Section 125(1)(c) Cr. P.C. However, this Court is of the opinion that in view of the combined reading of Section 20(3) of Hindu Adoptions and Maintenance Act, 1956 and Section 125 Cr. P.C., the petitioner has the right to claim maintenance. This has been so held by another learned Single Judge of this Court in ***Shyam Sunder Malik vs. Ms. Geetika Malik and Anr., 124 (2005) DLT 491***. The relevant portion of the said judgment is reproduced hereinbelow:-

“1. This petition under Section 482 of the Code of Criminal Procedure (for short, 'the Code') is directed against the order dated 7.5.2005 passed by the Court of Addl. Sessions Judge, Delhi dismissing petitioner's revision petition against the order dated 2.11.2004 passed by the Metropolitan Magistrate, Delhi awarding maintenance @ Rs. 3,500/- and Rs. 2,000/- respectively to the respondent Nos. 1 and 2 from the date of the application.

2. Facts in brief are as follows: Respondents are the daughters of petitioner and are living with their mother. They filed an application under Section 125 of the Code, praying for maintenance, pleading that petitioner was married to Smt. Neeraj Malik, and out of the wedlock they were born on 15.1.1983 and 30.8.1987 respectively. Petitioner did not look after them and their mother and stopped paying any maintenance. The respondent No. 1 is 1st year student of

Engineering College, Bhatinda, (Punjab), living in the hostel; her admission expenses of Rs. 55,000/- and other fee charges were arranged by her mother. She has to pay besides fee, monthly hostel charges and for the books, etc. The respondent No. 2 is studying in XI Class in a public school and her expenses for education are also being borne by her mother. The respondents have no means for their maintenance, education and their mother is unable to bear the expenses, which are increasing day-by-day. Petitioner was employed as a Manager in the Bank of Baroda, Delhi and was getting Rs. 20,000/- p.m. He took retirement and received a lumpsum amount of Rs. 15.0 lacs, towards arrears of salary, GPF, bonus, retirement benefits etc.; he is now working in a Banquet Hall, and has income also from the bank deposits, FDRs and other investments. The respondents claimed Rs. 10,000/- and Rs. 5,000/- respectively, towards maintenance. Petitioner filed a reply stating that respondents' mother was employed as a teacher in a public school and they are not entitled to claim maintenance. Learned Trial Court vide order dated 2.11.2004 awarded Rs. 3,500/- to the first respondent and Rs. 2,000/- to the second respondent with effect from the date of application till the disposal of the main petition. Learned Trial Court assessed the income of the petitioner at Rs. 10,000/- per month. Petitioner filed a revision petitioner before the Court of Session, which was dismissed on 7.5.2005. These orders are under challenge. Learned Counsel for the petitioner argued that a female unmarried child, who attained the age of majority is not entitled to claim maintenance from her father. The issue raised being purely legal, notice was issued only to the State.

3. Learned Counsel for the petitioner argued that under Section 125 of the Code the child cannot be granted maintenance after he/she has attained the age of majority in the absence of any physical or mental infirmity, even if he or she is unable to maintain herself, in terms of Clause (c) of Sub-section (1) of Section 125 of the Code.....

5. The law laid down by the Supreme Court while dealing with entitlement of the children to claim maintenance from the

Muslim parents under Section 125 of the Code till they attain majority or in case of females till they get married, is fully applicable to the facts at hand. It may be noted here that under Sub-section (3) of Section 20 of the Hindu Adoptions and Maintenance Act, 1956, obligation of a Hindu father includes the obligation to maintain his unmarried daughter not only for the purposes of her day-to-day expenses, but also in respect of the reasonable expenses of her marriage. It arises from the very existence of relationship.

*6. The above view finds support from the observations made by the Calcutta High Court in *Bankim Ch. Banerjee v. Chinmoyee Banerjee*, 2003 (1) Crimes 215. The ratio of the two decisions cited by the learned Counsel for the petitioner are not applicable to the facts at hand in view of the law laid down by the Supreme Court in *Noor Saba Khatoon* (supra).*

7. For the foregoing reasons, I find no illegality or impropriety in the impugned order to warrant interference. Any observation made herein would not affect merits of the case during the trial. Petition is dismissed.”

(emphasis supplied)

6. This Court is also of the opinion that even in *Jagdish Jugtawat* (supra), the Supreme Court has held that maintenance petition filed by the major daughter even if she does not fall in one of the exceptions mentioned in Section 125(1)(c) Cr. P.C., would be still maintainable on a combined reading of both Sections 125 Cr.P.C. and Section 20(3) of Hindu Adoptions and Maintenance Act, 1956.

7. Moreover, to ask the petitioner to now file an independent petition before the Family Court under Section 20(3) of Hindu Adoptions and Maintenance Act, 1956 would not only cause her inconvenience but would also defeat her right to claim maintenance for the period Section 125 Cr.P.C.

proceeding was pending before the Metropolitan Magistrate. Such an interpretation would, in certain cases where both Sections clearly overlap, create multiplicity of litigation.

8. In any event, it has been held in a catena of cases that nomenclature of a petition is irrelevant so long as a party is entitled to relief under any other section. Consequently, this Court is of the view that the impugned order passed by the ASJ is untenable in law. Accordingly, the same is set aside.

9. Parties are directed to appear before the CMM on 5th December, 2012 for marking of the maintenance petition filed by the petitioner before the concerned Metropolitan Magistrate. It is however, clarified that the matter shall be adjudicated upon on merits by the Metropolitan Magistrate without being influenced by any observation made by this Court. All rights, pleas and defences on merit of both the parties are left open.

10. With the aforesaid observations, the present petition stands allowed.

MANMOHAN, J

NOVEMBER 22, 2012

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