

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 92 OF 2003

Vasant s/o Arjun Pawar,
Age: 52 years, Occ: Nil,
R/o. Shree Bungalow, Shila vihar,
vasant Tekdi, Ahmednagar,
Tq. & Dist. Ahmednagar.

...Petitioner

versus

1. Sanyogita Vasant Pawar,
Age: 21 years, Occ: Nil (Education),
2. Sarvajit Vasant Pawar,
Age: 19 years, Occ: Nil (Education),

Both R/o. Dadasaheb Sahadu Rokade,
Bhim Fule Niwas, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

3. The State of Maharashtra.

...Respondents

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Mr. Mobin Shaikh, Advocate for applicant

Mr. S.G. Kawade, Advocate for respondent Nos. 1 and 2
(appointed)

Ms. M.S. Patni, A.P.P. for respondent No. 3

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CORAM : N.W. SAMBRE, J.

DATE : 2nd SEPTEMBER, 2015

ORAL JUDGMENT :

Under Section 125 of the Code of Criminal Procedure,
the respondents – children of the petitioner were granted
maintenance of Rs.200/- per month each, by an order passed in the

Criminal Application No. 630 of 1993, of which the enhancement was sought by the respondents-children by filing another application under Section 127 of the Code of Criminal Procedure, which came to be allowed on 16/04/2001, whereby the present petitioner was directed to pay maintenance of Rs.700/- per month to present Nos. 2 and 3 from 07/09/1999 in stead of Rs.200/- per month. In Revision before the Sessions Court, by an order dated 24/12/2002 learned Sessions Judge upheld the order passed by learned Magistrate referred supra, as such present writ petition.

2. Learned Counsel for the petitioner made two-fold contentions; (a) that entitlement under Section 125 of the Code of Criminal Procedure is only to the extent pertaining to the age of majority of the son and according to him, in the present case, applicant No.1 Sandesh on the date of application under Section 127 of the Code of Criminal Code was of the age of 21 years and another son Sarvajit was of the age of 17 years, (b) daughter Sanyogita is also governed by the same principle i.e. availability of protection under Section 127 of the Code of Criminal Procedure on the date of attaining majority. Learned Counsel for the petitioner further submits that under Section 20 of the Hindu Adoptions and Maintenance Act, 1956, daughter is entitled to the maintenance up to the date of her marriage. So as to substantiate his contentions, he has relied upon

the judgment of this Court in the matter of **Sau. Kamla w/o Samlaprasad Pal & Ors. vs. Samlaprasad s/o Charanlal Pal** reported in in **2005 ALL MR (Cri) 1958**. He has invited attention of this Court to paragraphs 5 and 15 of the said judgment which reads thus :

“5. The learned counsel for the wife further contended that Sec. 125 of the Criminal Procedure Code does not fix the liability of parents to maintain children beyond attainment of majority, but right of a minor girl for maintenance from parents after attaining majority till her marriage is recognised under S. 20(3) of Hindu Adoptions and Maintenance Act, 1956. The learned Additional Sessions Judge did not consider this law position and has committed an error of law in refusing to award maintenance even to the daughters who are minors and unmarried. In support of these contentions he relied on the decision of the Supreme Court in the case of **Jagdish Jugtawat Vs. Maju Lata (2002) 5 SCC 422**.

15. The learned counsel for the wife rightly relied on the decision of Supreme Court in **Jagdish Jugtawat's case – (2002) 5 SCC 422**, cited supra, wherein ratio has been laid down that though Sec. 125 does not fix liability of parents to maintain children beyond attainment of majority, but right of a minor girl for maintenance from parents after attaining majority till her marriage is recognized under S. 20(3)

of Hindu Adoptions and Maintenance Act, 1956. Therefore, on combined reading of the two provisions, it was held that the High Court was justified in upholding the order of the Family Court by which it granted maintenance under Section 125 to the daughter even after her attaining majority but till her marriage taking the view that it would avoid multiplicity of proceedings as otherwise the party would be forced to file another petition under Section 20(3) for further maintenance.”

3. He has also relied upon the observations of the Apex Court in the matter of **Jagdish Jugtawat vs. Manju Lata** reported in **2002(5) SCC 422** so as to submit that the provisions of Section 125 of Code of Criminal Procedure and benefit thereunder cannot be made available on attaining majority by the claimant. Learned Counsel for the petitioner, in addition to above, also placed on record the judgment of the Apex Court in the matter of **Amrendra Kumar Paul vs. Maya Paul and others** reported in **AIR 2009 SC (Supp) 2869** so as to substantiate the above referred contentions. According to him, the moment children attain majority, the provisions of Section 125 of the Code of Criminal Procedure shall cease to apply to their case and has sought support from paragraph-11 of the said judgment, which reads thus:

“11. An application for grant of maintenance,

therefore, is maintainable, so far as the children are concerned, till they had not attained majority. As a cause of action for grant of maintenance would arise only in the event a person having sufficient means, neglects or refuses to maintain his legitimate or illegitimate minor child unable to maintain itself. Once, therefore, the children attained majority, the said provision would cease to apply to their cases."

4. Mr. Kawade, learned Counsel for respondent Nos. 1 and 2, appointed by this Court through High Court Legal Services Sub Committee, Aurangabad, has urged that the law cited above depicts the correct position, however, according to him, daughter will be entitled to maintenance till date of her marriage and in the present case, there is no need to apply afresh under Section 20 of the Hindu Adoptions and Maintenance Act, 1956, as the order passed under Sections 125/127 of the Code of Criminal Procedure can be extended till date of her marriage. He places reliance upon judgment of the Apex Court in the matter of **Jagdish Jugtawat Vs. Maju Lata** reported in **(2002) 5 SCC 422**.

5. Upon considering the rival contentions of the parties, it is required to be noted that learned Counsel for the petitioner was right in inviting attention of this Court to the legal position as is depicted in above referred judgments. In view of above, in my opinion, applicant

No.1 Sandesh to the application before the Court below, was shown to be of 21 years of age and has not established independently that though he has attained majority, he is entitled for maintenance under Section 125 of the Code of Criminal Procedure, his claim was rightly not granted by the Courts below.

6. So far as the claim of daughter Sanyogita, who on the date of filing of the application under Section 127 of the Code of Criminal Procedure was shown to be of age of 19 is concerned, in view of the provisions of Section 20 of the Hindu Adoptions and Maintenance Act, 1956, she is entitled for maintenance till date of her marriage. In view thereof, entitlement of maintenance as ordered @ Rs.700/- per month till date of her marriage is required to be granted/paid by the present petitioner and she has every right to claim such maintenance by extending the order passed under Section 125/127 of the Code of Criminal Procedure, in the light of view taken by the Apex Court in the matter of Jagdish Jugtawat, cited *supra*.

7. So far as the claim of third son namely Sarvajit is concerned, on the date of filing of the application under Section 127 of the Code of Criminal Procedure, he was of the age of 17 years. In my opinion, he will be entitled for the maintenance @ Rs.700/- per

month till date of attaining majority and thereafter, the said applicant will cease to have any right under Section 125 of the Code of Criminal Procedure for claiming maintenance in view of the law cited herein above.

8. In the back ground of above referred observations, in my opinion, writ petition partly succeeds. Respondent No.1 Sanyogita will be entitled for maintenance till the date of her marriage @ Rs.700/- (Rs. Seven hundred) per month, whereas respondent No.3 Sarvajit will be entitled for maintenance till attains majority @ Rs.700/- (Rs. Seven hundred) per month.

8. Rule made absolute in above terms. The writ petition stands disposed of.

9. Professional fees payable to Mr. S.G. Kawade, learned Counsel, appointed by this Court, through High Court Legal Services Sub Committee, Aurangabad, is quantified at Rs.2500/- (Rs.Two thousand five hundred).

[N.W. SAMBRE, J.]