

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc. No.M-22009 of 2015

Date of Decision: July 9, 2015

Punita Rani wife of Sh.Vinod Kumar ChughPetitioner

Versus

Ameesha Chugh daughter of Vinod ChughRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Manu Loona, Advocate for the petitioner.

<><><>

TEJINDER SINGH DHINDSA, J.

An application seeking interim maintenance filed on behalf of minor Ameesha through her uncle against her mother, namely, Punita Rani was allowed vide order dated 1.10.2013 by the Judicial Magistrate Ist Class, Fazilka and in terms thereof, the mother was directed to pay ₹2,500/- to the daughter as interim maintenance from the date of filing of the application. Revision petition preferred by the mother against the order dated 1.10.2013 has been dismissed by the learned Additional Sessions Judge, Fazilka by order dated 13.3.2015.

2. Resultantly, the present petition has been filed under Section 482 of the Code of Criminal Procedure by mother Punita Rani seeking the quashing and setting aside of the afore-noticed two orders granting interim maintenance of ₹2,500/- per month in favour of the daughter.

3. Learned counsel appearing for the petitioner has raised a two-fold submission. It has been contended that minor Ameesha Chugh is residing with her father who is doing the job of a Lecturer and as such, the needs of the child are being fulfilled by the father and as such, the liability of maintenance cannot be fastened upon the mother. Learned counsel has laid much stress on the pronoun 'his' in clause (b) of Section 125(1) of the Code of Criminal Procedure and would contend that it is only the father who can be burdened with the obligation to maintain the child. It is submitted that if the legislature had intended that the maintenance can also be claimed from the mother, then it would not have used the pronoun 'his'. The second submission raised by the learned counsel is with regard to the maintainability of the application itself. It was contended that the application had been moved seeking interim maintenance by the minor child not through the natural guardian and father, but had been filed through Surinder Kumar i.e. uncle of Ameesha. It has been submitted that the application ought to have been dismissed on such short ground alone.

4. Having heard learned counsel for the petitioner at length and having perused the case paper book, I am of the considered view that the present petition merits dismissal.

5. The minor child, namely, Ameesha, respondent herein being a student in School has not been disputed. The relationship of the present petitioner being mother of respondent is also not in dispute. The fact of mother Punita Rani, petitioner herein, serving as a Lecturer and drawing a handsome salary has also been

conceded during the course of arguments before this Court.

6. Sub Section (1) of Section 125 of the Code of Criminal Procedure provides as under:

"If any person having 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

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means."

7. The learned Judicial Magistrate Ist Class, Fazilka while

passing the impugned order dated 1.10.2013 has taken the view that the word 'his' as appearing in Section 125(1)(b) of the Code of Criminal Procedure would encompass both, male and female. In other words, it is both the parents, be it father or mother, who would be liable to pay maintenance to the minor child, provided other conditions are fulfilled. No fault can be found in such view having been taken.

8. In **Dr.Vijaya Manohar Arbat v. Kashirao Rajaram Sawai**, 1987(1) RCR (Criminal) 354, an issue came up for consideration before Hon'ble the Supreme Court with regard to a married daughter being liable to pay maintenance to her father under Section 125(1)(d) of the Code of Criminal Procedure. Similar contention had been raised before the Apex Court by contending that on account of use of the pronoun 'his' in clause (d) it was only the son who could be burdened with the obligation to maintain the parents and such burden could not be fastened upon the daughter. Such contention was negated by the Apex Court in the light of the following observations:

"We are unable to accept this contention. It is true that clause (d) has used the expression "his father or mother" but, in our opinion, the use of the word 'his' does not exclude the parents claiming maintenance from their daughter. Section 2(y) Cr.P.C. provides that words and expressions used herein and not defined but defined in the Indian Penal Code have the meanings respectively assigned to them in that Code. Section 8 of the Indian Penal Code lays down

that the pronoun 'he' and its derivatives are used for any person whether male or female. Thus, in view of section 8 IPC read with section 2(y) Cr.P.C., the pronoun 'his' in clause (d) of Section 125(1) Cr.P.C. also indicates a female. Section 13(1) of the General Clauses Act lays down that in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females. Therefore, the pronoun 'his' as used in clause (d) of Section 125 (1) Cr.P.C. includes both a male and a female. In other words, the parents will be entitled to claim maintenance against their daughter provided, however, the other conditions as mentioned in the Section are fulfilled. Before ordering maintenance in favour of a father or a mother against their married daughter, the Court must be satisfied that the daughter has sufficient means of her own independently of the means or income of her husband, and that the father or the mother, as the case may be, is unable to maintain himself or herself."

9. It is by now well settled that Section 125 of the Code of Criminal Procedure is in the nature of a beneficial provision with the prime object of saving women and children from destitution and vagrancy. In such view of the matter, it cannot be said that an application filed by a minor claiming interim maintenance from her mother even though filed through her real uncle would not be

maintainable and the minor is to be non-suited on such technical ground.

10. The petitioner herein is, concededly, the mother of the respondent. Petitioner is serving as a Lecturer and drawing a handsome salary. Award of interim maintenance of an amount of ₹2500/- per month only in these days and times can under no circumstance be termed as unreasonable or arbitrary.

11. Even otherwise, the petitioner had preferred a revision petition against the order dated 1.10.2013 passed by the learned Judicial Magistrate Ist Class, Fazilka against the award of interim maintenance in favour of the respondent and the same had been dismissed vide impugned order dated 13.3.2015 passed by the learned Additional Sessions Judge, Fazilka. The Hon'ble Supreme Court in the case of **Deepti @ Arti Rai v. Akhil Rai and others, 1995 (3) Recent Criminal Reports 638** had held that a second revision petition after dismissal of the first one was not maintainable and the inherent power under Section 482 of the Code of Criminal Procedure cannot be utilized in such regard.

12. For the reasons recorded above, this Court does not find any basis that would warrant interference in an order granting interim maintenance of ₹2,500/- per month in favour of the minor daughter.

13. Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

JULY 9, 2015
SRM

Note: Whether to be referred to Reporter? (Yes/No)