

\$~19

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

DECIDED ON : FEBRUARY 24, 2016

+ **CRL.REV.P. 419/2014 & Crl. M A Nos. 11038/2014 & 14556/2014**

SARITA JAIN Petitioner

Through : Mr. Ishan Jain, Advocate

versus

MASTER RISHABH JAIN & ANR Respondents

Through : Mr.Sudhir Twatia, Advocate.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Present Revision Petition has been preferred by the petitioner-Sarita Jain to challenge the legality and correctness of a judgment dated 26.02.2014 of learned Additional Principal Judge, Family Courts, Dwarka, whereby she was ordered to pay maintenance under Section 125 Cr.P.C. @ ₹1,000/- each to both the respondents from the date of filing of the petition till the age of majority. The revision petition is contested by the respondents.

2. Learned counsel for the petitioner urged that the impugned order passed by the learned Trial Court is unsustainable as the petitioner, being 'mother', is not liable to pay 'maintenance' under Section 125 Cr.P.C. to her 'children'. Section 125 Cr.P.C. fastens the liability to maintain children only upon the 'father'. It is submitted that in Section 125 Cr.P.C. the word 'his' has been used by the legislature and Clause (b) of Section 125 Cr.P.C. specifically mentions 'his' legitimate or illegitimate minor child and first proviso to Section 125 Cr.P.C. makes it amply clear that in clause (b) of Section 125 Cr.P.C. 'his' means only 'father' as the proviso specifically states that 'father of the minor female child referred to in clause (b). It was further urged that in Section 125 Cr.P.C. legislature in its own wisdom used the phrase 'wife or such child' meaning thereby that it was only 'father' who was liable to maintain the minor child as word 'wife' has been used in conjunction with 'such child'. On merits, it was further urged that the petitioner having meager income is unable to maintain herself and is not in a position to shoulder the expenses of her children living with their father. Learned counsel for the respondents urged that the petitioner has sufficient income of ₹10,000/- owing to her employment as Data Entry Operator with Prasar Bharti, Directorate of Doordarshan, New Delhi.

3. Admitted position is that the petitioner and Amit Jain (father of the respondents), were married on 25.07.1996. Out of this wedlock, two children, Respondent No.1-Rishabh Jain and Respondent No.2-Sarthak Jain were born on 25.05.1997 and 26.05.1998 respectively. Both the children are studying in St.Francis School, Janakpuri, New Delhi and are in the custody of their father-Amit Jain. Both the petitioner and Amit Jain are living separate and various civil/criminal proceedings are pending between the two in the courts. Amit Jain has also filed divorce proceedings.

4. The Trial Court in the impugned judgment after discussing provisions of Section 125 Cr.P.C. and relying on *Vijay Manohar Arbat vs.Kashi Ram Raja Ram Sawai* AIR 1987 SC 1100 gave positive findings that the petition filed by the ‘children’ against their ‘mother’ to claim maintenance was maintainable. It reads as under:-

24. “The cursory look at this Section poses a question whether a mother can be asked to pay for the maintenance for the children as the term used in Clause (b) is “his”.

25. The first impression that emerges is that only a father is liable to pay for the maintenance for the children and the mother is not liable, and the children cannot file a claim for maintenance against their mother under Section 125 Cr.P.C. But such interpretation would create a anomalous situation, when the mother is equally bound

morally and socially to maintain her children. In the context of Section 125 (1) (d) Cr.P.C., which is similarly worded in regard to the parents, while interpreting the said clause in Vijaya Manohar Arbat vs.Kashi Ram Raja Ram Sawai, AIR 1987, SC 1100, it was observed by the Apex Court as under:

“Although the word ‘his’ has been used in clause (d) of Section 125 (1) but the use of this word does not exclude the liability of a daughter to maintain her parents. Section 2(y) of the Code provides, that the words and expressions used herein and not defined but defined in the Indian Penal Code have the meaning 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 of the Indian Penal Code, read with Section 2(y) of the Code of Criminal Procedure the pronoun “his” in clause (d) of Section 125(1) also indicates a female. Section 13(1) of the General Clauses Act lays that in all Central Acts and Regulations Act, 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) of the Code includes both a male and a female. In other words, the parents will be entitled to claim maintenance against their daughter if the other conditions of the section are met with.

26. In the said case, it was concluded that a petition under Section 125 (d) can be filed by the parents against the daughter, to claim maintenance.

27. In the present case as well, applying the same logic, it cannot be said that the mother is not liable to pay for the maintenance of her own children or that a petition under Section 125 Cr.P.C. cannot be maintained against her, by her own children. Section 125 Cr.P.C. was enacted in the times when traditionally the man of the

family was considered to be the provider for the family. It was the male who was the provider and the bread-earner of the family. Traditionally, the women were the non working members of the family who remained generally at the home to discharge all the house-hold work including taking care of the children and the elders of the family. This Section was enacted in those times but with the change in time, the interpretation has to be expansive in keeping that changing times. The recent times have seen the women become independent financially and in such a situation an age old concept of man being the sole provider, cannot be adhered especially, when the terminology of the section gives ample scope to expand the meaning of the words to include women as responsible for the maintenance of the children, in case where she is independently working. Thus, it is held that the present petition by the children against their mother for claiming maintenance, is maintainable.

5. I find no valid reasons to deviate from the said conclusion.

This Court is of the view that the word ‘his’ appearing in Section 125 (1)

(b) Cr.P.C. 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. It is well-settled that Section 125 Cr.P.C. 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 maintenance from her mother would not be maintainable. If for certain reasons, the father who

is alive and is unable to maintain the minor child due to his financial constraints, the mother who has means to maintain the child cannot escape from her responsibilities to maintain the children and leave them in lurch.

6. In *Manjulaben Prakshbhai Sarvaiya vs. State of Gujarat and*

Ors. 2016 CriLJ259, the High Court of Gujarat observed as under:-

“Let me first test the argument of the learned advocate appearing for the petitioner that the Legislature has specifically mentioned the words "his legitimate or illegitimate minor child". The question, therefore, raised by the petitioner is whether the word "his" would include "her". According to the learned advocate, having regard to the word "his" even a biological mother does not seem to have been included within Section 125 of the Code.

38. Clause (a) deals with the right of the wife who is unable to maintain herself, to claim maintenance from her husband. Clause (b) deals with the right of the children, who are minor, to get maintenance from their parents. Within the import of clause (b) even a married daughter is included. Clause (c) deals with a disabled child who has attained majority. The bracketed portion "not being a married daughter" covers only clause (c) and not the other sub-clauses of Section 125 (1) of the Code. This is obvious from the use of specific expression "whether married or not" in sub-clause (b) of Section 125(1). Then comes sub-clause (d) which confers a right upon a father or mother unable to maintain himself or herself to claim maintenance. The word "person" is not defined in the Code, nor the expression "his" is defined. However, by Section 2(y) of the Code it is laid down that the words and expressions used therein and not defined but defined in the Penal Code have the meanings respectively assigned to them in that Code. Section 8 of the Penal Code reads as under:--

"Gender. The pronoun 'he' and its derivatives are used of any person, whether male or female."

38.1 Section 11 defines the word "person", which includes any Company or Association, or body of persons, whether incorporated or not. The definition of the word "person" is inclusive and, therefore, obviously not exhaustive. 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. The word "person" is defined in Section 3(42) of the General Clauses Act and the definition is akin to the definition in Section 11 of the Penal Code. Further, by Section 2(y) of the Cr. P.C. it is provided that the words and expressions used in the Code are to be understood as defined by the Penal Code. Therefore, it is quite clear that the pronoun "he" and its derivatives as used in Section 125 of the Cr. P.C. would include in its import, both a male or a female."

7. Similar are the findings of High Court of Kerala in *Achuthankutty Nair vs. Seethakutty Amma* 2014 (4) KLT354. The Court held as under:

8. *"..... 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. S. 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. S. 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 S. 8 I.P.C. read with S. 2(y) Cr.P.C. the pronoun 'his' in clause (d) of S. 125(1) Cr.P.C. also indicates a female. S. 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 S. 125(1) Cr.P.C. includes both a male and a female. In other words, parents will be entitled to claim 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.

8. In *Madhuri Bai vs. Minor Surendra Kumar and Anr.* 2000 (1)

MPJR332, the Madhya Pradesh High Court (Jabalpur Branch) held that-

“mother would be liable to pay maintenance under Section 125 (1) (b) of the Code of Criminal Procedure. She cannot escape liability to pay maintenance simply because in Clause (b) of Section 125 Cr.P.C., the word ‘his’ has been used.

9. Similar view has been taken by Karnataka High Court at Bangalore in *Smt.S.K.Chandrika vs.Smt.Byamma and Others I* (2000)

DMC 185. The court held:-

“....But, no doubt, as regards child, legitimate or illegitimate child, male or female, unable to maintain itself has got the right to be maintained by his parents male and female, and expression "his" has to be read as "her" also. In the same way, under clause (c) expression used is legitimate or illegitimate child, exception has no doubt been made to it clearly, by expressions not being a married daughter which is clearly indicative of the fact that the person who has sufficient means if he has got legitimate or illegitimate child, male or female, who has

attained majority who has physical or mental abnormality and is unable to maintain himself or herself, liability is of the person concerned to maintain with exception to the case of a married daughter who has attained majority. But, in case of minor children, no exception has been provided. In view of Section 8, when "he" or "his" is used, it has to be read including in itself "she" or "her". If we look to sub-section (3) as well, the Legislature has used the word, "if any person so ordered" means where a person having sufficient means be a father or mother neglects to maintain his or her children, legitimate or illegitimate, minor or major, with exception to clause (c) and he has been ordered to maintain them without any sufficient cause, fails to comply with the order, the Magistrate has been given power to issue warrant. When Legislature has not used the expression of "man" but used "person", it includes "male" and "female" and it cannot be read to be referring to "man" only. The provisions of Section 125 are social welfare legislation. The object of such a provision has been considered to be that such persons who are not able to maintain themselves, they should not be left to the agony of starvation, frustration or of destitution and in case of female destitution, which may lead to prostitution. To avoid such a situation, the legislature has enacted this provision. A social welfare legislation has to be interpreted keeping in view the object of the provision. If a female person is earning and she has got minor children to maintain and she refuses to maintain the minor children, be it be male or female, then definitely she is liable to maintain them as the legislature has not used the expression "man" or "woman", but "person", it has to be taken that person includes both male and female, "his" may also be interpreted as "her" in view of the above provisions of the General Clauses Act as well as provisions of the IPC referred to above. In sub-section, again the legislature has used the expression "any person". So, in my opinion, the petition for maintenance under Section 125, no doubt, is

maintainable against the mother irrespective of the fact that mother belongs to feminine gender.....”

10. The next aspect is whether the petitioner-mother can be directed to pay maintenance to the respondents and if so, to what extent? Earlier the petitioner was without any job or work and was dependent upon her husband for maintenance. She has already instituted proceedings under Section 125 Cr.P.C. which are pending. In the divorce proceedings under Section 24 Hindu Marriage Act, Amit Jain had agreed to pay ₹2,000/- p.m. to the petitioner besides ₹5,500/- as litigation expenses w.e.f. 14.07.2011. Admittedly, at present the petitioner's gross salary is around ₹10,000/- p.m. due to her employment with Prasar Bharti, Directorate of Doordarshan, New Delhi since 01.07.2010 and for this reason, she equally has the responsibility to maintain her children though in the custody of her husband. In the cross-examination, she admitted that she had taken up a job in July, 2010 and her gross salary is ₹10,000/- p.m. She further admitted that she did not know as to what job the respondents' father was doing and what was his income. She was unaware as to how much fee of the children is being paid by him. She was unable to disclose if her income was not more than that of the respondents' father. She

admitted that till date she did not contribute a single penny for the maintenance of her children.

11. Since the income of both the petitioner and respondents' father is almost equal, the petitioner can be asked to contribute a reasonable amount towards the welfare and maintenance of her children, ₹1,000/- each granted by the Trial Court seems to be on the higher side considering the total income of the petitioner who is to pay substantial amount as rent. It appears that the respondents' father has not disclosed his actual income as with the income of ₹10,000/- p.m. as claimed by him, he cannot possibly pay the school fee and other expenses of the children besides paying rent.

12. Considering the facts and circumstances of the case, the petitioner is ordered to pay ₹500/-p.m. each to both the respondents as her contribution towards their maintenance.

13. The revision petition is allowed in the above terms. Instead of ₹1,000/- p.m each, the petitioner shall pay ₹500/- p.m each to both the children. Other terms and condition of the impugned order are left undisturbed.

14. Trial Court record along with the copy of the order be sent back forthwith.

15. Observations made in the above order shall have no impact on merits of the petitions under Section 125 Cr.P.C., D.V.Act or the Hindu Marriage Act pending between the parties.

(S.P.GARG)
JUDGE

FEBRUARY 24, 2016
sa