

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2529 of 2017

ORDER:

This Criminal Revision Case under Sections 397 and 401 Cr.P.C. is filed challenging order, dated 01.08.2013 passed in M.C.No.32 of 2012 whereby Judge, Family Court, Warangal, declined to grant maintenance to petitioner herein, who is second petitioner therein.

Petitioner's mother, S. Kavitha, along with petitioner and S. Karthik, who is petitioner's brother, filed M.C.No.32 of 2012 before Judge, Family Court, Warangal, contending that respondent No.1 herein, who is the father of petitioner herein and petitioner No.3 therein, refused and neglected to maintain them though he is having sufficient means. But, the Court below after full-fledged enquiry dismissed M.C.No.32 of 2012 so far as petitioner is concerned on the ground that she is a major.

Petitioner filed the present Criminal Revision Case on the ground that though she attained majority, she is entitled to maintenance as she is not married and is prosecuting studies.

During hearing, counsel for petitioner reiterated the contentions urged before the Court below and requested the Court to award maintenance to petitioner under Section 125 Cr.P.C.

In view of specific contention raised before this Court about entitlement of petitioner claiming maintenance even after attaining majority, it is apposite to extract Section 125(1) Cr.P.C. hereunder.

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

(1) 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.

Explanation.- For the purposes of this Chapter,-

(a) " minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) " wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

According to Section 125(1)(b) Cr.P.C., as extracted above, the legitimate or illegitimate minor child whether married or not unable to maintain it is entitled to claim maintenance and as per explanation (a) to Section 125 Cr.P.C., 'minor' is defined as a person who under the provisions of the Indian Majority Act, 1985 is deemed not to have attained his majority.

Petitioner is admittedly a major as on the date of filing M.C.No.32 of 2012 before the Court below claiming maintenance under Section 125 Cr.P.C. and she is not entitled to claim maintenance after attaining majority in view of Section 125(1)(b) Cr.P.C.

Though Sri P. Prabhakar Reddy, learned counsel for petitioner, made an honest attempt to convince this Court by drawing its attention to the proviso to Section 125 Cr.P.C. which permits the Court to grant maintenance under Section 125 Cr.P.C. to the major children who are suffering from mental or physical disease or suffering from any injury unable to maintain themselves. But, in the present case, it is not the case of petitioner that she is suffering from any disability referred under Section 125 Cr.P.C. enabling her to claim maintenance. In fact, no such plea was raised before the Court below enabling the Court to grant maintenance invoking the proviso to Section 125 Cr.P.C.

Therefore, the Court below rightly declined to award maintenance on the ground that petitioner was a major by the date of filing M.C.No.32 of 2012. Contention of counsel for petitioner cannot be accepted while deciding an application under Section 125 Cr.P.C. but this argument can be accepted if any petition is filed under the Hindu Adoptions and Maintenance Act, 1956, which permits grant of maintenance to children even after attaining majority subject to fulfillment of certain conditions contained thereunder i.e., Section 20 of the Hindu Adoptions and Maintenance Act, 1956.

In view of above discussion, I find no ground to reverse the view taken by the Court below and award maintenance to petitioner under Section 125 Cr.P.C. Hence, Criminal Revision Case is liable to be dismissed as it is devoid of merit.

In the result, Criminal Revision Case is dismissed at the stage of admission itself.

Consequently, pending Miscellaneous Petitions, if any, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

5th SEPTEMBER, 2017.

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