

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-16328-2014(O&M)

Date of decision:-16.8.2018

Raj Rani and others

...Petitioners

Versus

Parkash

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.M.D. Singh, Advocate for
Mr.Rajinder Goyal, Advocate
for the petitioners.

Mr.Abhinav Gupta, Advocate
for the respondent.

H.S. MADAAN, J.

Petitioners Raj Rani (wife), Vijay, Vikas (minor sons) and Abhilasha (minor daughter) of Parkash - respondent had filed a petition under Section 125 Cr.P.C. for grant of maintenance allowance before Judicial Magistrate Ist Class, Rewari, who vide order dated 16.2.2011 allowed the petition partly inasmuch as dismissing it qua petitioners No.1 to 3, whereas allowing it qua petitioner No.4 Abhilasha, directing the respondent to pay maintenance allowance to her @ Rs.3,000/- per

month from the date of filing of petition till she attained majority. In the judgment, the reasoning given for such verdict is contained in para No.29, which for ready reference is reproduced as under:

29. In the present case petitioners No.1 to 3 are unable to maintain themselves is not pleaded and proved by them. It is also not pleaded and proved that they have no sufficient means and unable to maintain themselves. It is proved on the case file by the respondent that petitioner No.1 is practicing doctor and she is running hospital in the same hospital of the respondent and petitioner No.1 is serving in private company and his wife is also getting Rs.14,000/- per month from private company. Petitioner No.3 also doing job in a private company at Faridabad. Therefore, petitioner no.1 to 3 having sufficient means to maintain themselves. Petitioner No.4 Abhilasha is the daughter of petitioner No.1 and respondent admittedly she was minor at the time of filing of the present petition, therefore, as per Section 125 Cr.P.C. she is entitled for maintenance from her father till attaining of majority. Admittedly, the date of birth of Abhilasha is 26.4.1987 and she attained majority on 7.2.2005. The present petition was filed on 17.10.02, therefore, she is entitled to get maintenance from the respondent from 17.10.02 till 7.2.05 @ Rs.3,000/- per month.

The petitioners felt aggrieved by the said order and filed the revision petition in the Court of Sessions, which was however dismissed

by learned Additional Sessions Judge, Rewari vide order dated 17.2.2014 with slight modification. The operative part of the judgment runs as follows:

Having gone through the arguments advanced by the learned counsel for the revisionists, it is held that in the present case certain facts are not disputed. It is admitted that revisionist no.1 and respondent are doctors and running their Nursing Homes. It is also admitted that the revisionist/petitioner no.1 as well as the respondent are not having cordial relations with each other. Admittedly, revisionists/petitioners no.2 to 4 are the children of respondent, who are living with revisionist/petitioner no.1. It is further admitted that petitioner no.1 is practicing as doctor and she is running as hospital in the same hospital of the respondent. The revisionist/petitioner no.2 is married and he is doing a job in a private company and as per the evidence led on record, his wife is also getting salary of Rs.14,000/- per month from private company. Meaning thereby that revisionist no.1 & 2 are having sufficient means to maintain themselves. Therefore, there is no gain saying that petition under Section 125 Cr.P.C. was rightly disallowed by the learned trial Court qua them. However, as regards to the claim of maintenance regarding revisionists no.3 & 4 is concerned, it is argued by learned counsel for the revisionist that revisionist no.3 was also minor when the petition for maintenance was filed and he

attained majority on 7.2.2004, therefore, he was entitled to maintenance till he attained majority. I have duly gone through the aforesaid contention of learned counsel for the revisionist, but suffice it to say that to prove the date of birth of Vikas Saini, no cogent evidence have been led on record by the revisionist i.e. his date of birth was 7.2.1986, though, the revisionist no.1 has placed on record the date of birth certificates of Vishav Saini, Vijay Parkash and Abhilasha and the aforesaid documents are not exhibited but the Court can take judicial notice of the fact that date of birth certificate of Vikas Saini was withheld by the revisionist for the reasons best known to her. Therefore, it is held that the petition for maintenance qua respondent no.3 was also rightly dismissed by the Learned trial Court. There is no gain saying that the learned trial Court awarded maintenance to the tune of Rs.3,000/- to revisionist no.4 as she was minor at the time of filing the petition and she attained majority on 26.4.2005, though, inadvertently, written as date of attaining majority on 7.2.2005. It is, thus, held that the date of attaining majority of revisionist no.4 be read as 26.4.2005 and not as 7.2.2005. It has been argued by learned counsel for the revisionists that being the unmarried daughter she is entitled to maintenance from her father i.e. respondent till her marriage, but suffice it to say that as per the provisions of Section 125(1)(c) of Cr.P.C. the children who had

attained majority are entitled to maintenance, if by reason of any physical or mental abnormality or injury unable to maintain itself, then, in these circumstances, the major children are entitled to maintenance, but in the present case, the revisionist no.4 attained majority on 26.4.2005 and she is not suffering from any physical, mental abnormality or injury, therefore, she is entitled to maintenance till 26.4.2005 i.e. till she attained majority.

Still feeling dissatisfied, the petitioners have approached this Court by way of filing the present petition under Section 482 Cr.P.C. praying for setting aside of impugned judgment passed by learned Judicial Magistrate Ist Class, Rewari as well as judgment passed by learned Additional Sessions Judge, Rewari craving for issuance of a direction to respondent to pay maintenance @ Rs.4,000/- per month to petitioners from the date of filing of petition under Section 125 Cr.P.C. besides paying Rs.25,000/- as litigation expenses.

Notice of the petition was issued to the respondent, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I do not find any merit in the petition.

Both the Courts are consistent with regard to declining maintenance to petitioners No.1 to 3. As regards grant of maintenance to Abhilasha by the trial Court, the order regarding it was modified by learned Additional Sessions Judge, Rewari observing that she was entitled to get maintenance till attaining majority and not thereafter since

she is not suffering from any physical or mental abnormality or injury, in those eventualities a child, who though has attained majority but is unable to maintain itself is entitled to get maintenance.

I do not find any illegality or infirmity in the judgment passed by learned Additional Sessions Judge, Rewari, which might have called for interference by this Court while exercising jurisdiction under Section 482 Cr.P.C.

Therefore, the petition stands dismissed.

16.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No