

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.15336 of 2019

R.Kiruba Kanmani

...Petitioner

-Vs-

L.Rajan

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set aside the order dated 02.04.2019 passed in MC SR.No.185 of 2019 on the file of Principal Judge, Family Court, Chennai.

For Petitioner : Mr.Sharath Chandran

ORDER

This petition has been filed challenging the order of the Court below rejecting the petition filed by the petitioner under Section 125 of Cr.PC seeking for monthly maintenance from the respondent, who is the father of the petitioner.

2. The petitioner who is aged about 18 years is the unmarried daughter of the respondent and she has sought for maintenance from the respondent father on the ground that she is not in a position to take care of the expenses incurred by her towards her education.

3. The Court below has rejected the petition mainly on the ground that the petitioner is a major and that in terms of Section 125 (1) (b) and (c) of Cr.PC, the petitioner is not entitled for any maintenance and that she does not suffer from any physical or mental disablement.

4. Mr.Sharath Chandran, learned counsel for the petitioner submitted that the Court below has completely misdirected itself in rejecting the petition and that the order of the Court below is opposed to settled principles of law. The learned counsel for the petitioner further submitted that a combined reading of Section 125 of Cr.PC and Section 20(3) of

the Hindu Adoption and Maintenance Act makes it very clear that a father is under an obligation to maintain his unmarried daughter even if she has attained majority.

5. The learned counsel for the petitioner in order to substantiate his arguments cited the following judgments and the relevant portions of the judgments are also extracted hereunder :-

i. [Noor Saba Khatoon Vs. Mohammed. Quasim] reported in 1997 6 SCC 323.

1. A short but interesting question involved in this appeal, by special leave, is whether the children of Muslim parents are entitled to grant of maintenance under Section 125 CrPC for the period till they attain majority or are able to maintain themselves whichever date is earlier or in the case of female children till they get married or is their right restricted to the grant of maintenance only for a period of two years prescribed under Section 3(1)(b) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 notwithstanding Section 125 CrPC.

10. Thus, both under the personal law and the statutory law (Section 125 CrPC) the obligation of a Muslim father, having sufficient means, to maintain his minor children, unable to maintain themselves, till they attain majority and in case of females till they get married, is absolute, notwithstanding the fact that the minor children are living with the divorced wife.

11. Thus, our answer to the question posed in the earlier part of the opinion is that the children of Muslim parents are entitled to claim maintenance under Section 125 CrPC for the period till they attain majority or are able to maintain themselves, whichever is earlier and in case of females, till they get married, and this right is not restricted, affected or controlled by the divorcee wife's right to claim maintenance for maintaining the infant child/children in her custody for a period of two years from the date of birth of the child concerned under Section 3(1)(b) of the 1986 Act. In other words Section 3(1)(b) of the 1986 Act does not in any way affect the rights of the minor children of divorced Muslim parents to claim maintenance from their father under Section 125 CrPC till they attain majority or are able to maintain themselves, or in the case of females, till they are married.

12. It, therefore, follows that the learned trial court was perfectly right in directing the payment of amount of maintenance to each of the three children as per the order dated 19-1-1993 and the learned 2nd Additional Sessions Judge also committed no error in dismissing the revision petition filed by the respondent. The High Court, on the other hand, fell in complete error in holding that the right to claim maintenance of the children under Section 125 CrPC was taken away and superseded by Section 3(1)(b) of the 1986 Act and that maintenance was payable to the minor children of Muslim parents only for a period of two years from the date of the birth of the child concerned notwithstanding the provisions of Section 125 CrPC. The order of the High Court cannot, therefore, be sustained. It is accordingly set aside. The order of the trial court and the revisional court is restored. This appeal succeeds and is allowed but without any orders as to cost.

ii. [Jagdish Jugtawat Vs. Manju Lata and others] reported in 2002 5 SCC 422

2.....The learned Single Judge was persuaded to maintain the order of the Family Court with a view to avoid multiplicity of proceedings. The relevant portion of the judgment of the High Court is quoted here:

"Thus, in view of the above, though it cannot be said that the order impugned runs counter to the law laid down by the Hon'ble Supreme Court, the provisions of Section 125 CrPC are applicable irrespective of the personal law and it does not make any distinction whether the daughter claiming maintenance is a Hindu or a Muslim. However, taking an overall view of the matter, I, with all respect to the Hon'ble Court, am of the candid view that the provisions require literal interpretation and a daughter would cease to have the benefit of the provisions under Section 125 CrPC on attaining majority, though she would be entitled to claim the benefits further under the statute/personal law. But the Court is not inclined to interfere, as the order does not result in miscarriage of justice, rather interfering with the order would create great inconvenience to Respondent 3 as she would be forced to file another petition under sub-section (3) of Section 20 of the Act of 1956 for further maintenance etc. Thus, in order to avoid multiplicity of litigations, the order impugned does not warrant interference."

3. In view of the finding recorded and the observations made by the learned Single Judge of the

High Court, the only question that arises for consideration is whether the order calls for interference. A similar question came up for consideration by this Court in the case of Noor Saba Khatoon v. Mohd. Quasim [(1997) 6 SCC 233 : 1997 SCC (Cri) 924 : AIR 1997 SC 3280] relating to the claim of a Muslim divorced woman for maintenance from her husband for herself and her minor children. This Court while accepting the position that Section 125 CrPC does not fix liability of parents to maintain children beyond attainment of majority, read the said provision and Section 3(1)(b) of the Muslim Women (Protection of Rights on Divorce) Act together and held that under the latter statutory provision liability of providing maintenance extends beyond attainment of majority of a dependent girl.

4. Applying the principle to the facts and circumstances of the case in hand, it is manifest that the right of a minor girl for maintenance from parents after attaining majority till her marriage is recognized in Section 20(3) of the Hindu Adoptions and Maintenance Act. Therefore, no exception can be taken to the judgment/order passed by the learned Single Judge for maintaining the order passed by the Family Court which is based on a combined reading of Section 125 CrPC and Section 20(3) of the Hindu Adoptions and Maintenance Act. For the reasons aforesaid we are of the view that on facts and in the circumstances of the case no interference with the impugned judgment/order of the High Court is called for.

iii. [Mansi Vohra Vs. Ramesh Vohra] reported in 2012 SCC online Del 5835

1. Present petition has been filed under Section 482 Cr. P.C. challenging the order dated 17th March, 2012 passed by the Additional Sessions Judge ('ASJ') in Criminal Revision Petition No. 147 of 2011 wherein it was held that the petition filed by a major unmarried daughter for maintenance was not maintainable under Section 125 Cr.P.C. The ASJ in the impugned order dated 17th March, 2012 has held as under:-

"8. I have bestowed my careful consideration to the rival submissions made by learned counsel for revisionist as well as learned counsel for respondent in the light of the relevant provisions of law as well as the cases relied upon in support of their respective submissions and I have come to the

conclusion that u/s 125 Cr.P.C. a major unmarried daughter cannot claim maintenance from her father unless her case is covered u/s 125(1)(c) Cr.P.C. Admittedly, Mansi Vohra is major daughter of the revisionist Ramesh Vohra and she is not physically or mentally abnormal and as such her petition u/s 125 Cr. P.C. for claiming maintenance is not legally maintainable. I also agree with the submissions made by learned counsel for revisionist that a major daughter unable to maintain herself can claim maintenance from her father only u/s 20 of Hindu Adoptions and Maintenance Act, 1956. Keeping in view this well settled legal proposition of law, I am of the view that the impugned order passed by learned MM is not in accordance with law and accordingly it is set aside by holding that the maintenance petition filed by Mansi Vohra, the present respondent, for claiming maintenance from her father Ramesh Vohra, the present revisionist u/s 125 Cr. P.C. is not legally maintainable. With these observations, this revision petition stands disposed of." (emphasis supplied)

3. Learned Counsel for the petitioner argued that under Section 125 of the Code the child cannot be granted maintenance after he/she has attained the age of majority in the absence of any physical or mental infirmity, even if he or she is unable to maintain herself, in terms of Clause (c) of Sub-section (1) of Section 125 of the Code.....

5. The law laid down by the Supreme Court while dealing with entitlement of the children to claim maintenance from the Muslim parents under Section 125 of the Code till they attain majority or in case of females till they get married, is fully applicable to the facts at hand. It may be noted here that under Sub-section (3) of Section 20 of the Hindu Adoptions and Maintenance Act, 1956, obligation of a Hindu father includes the obligation to maintain his unmarried daughter not only for the purposes of her day-to-day expenses, but also in respect of the reasonable expenses of her marriage. It arises from the very existence of relationship.

6. The above view finds support from the observations made by the Calcutta High Court in Bankim Ch. Banerjee v. Chinmoyee Banerjee, 2003 (1) Crimes 215. The ratio of the two decisions cited by the learned Counsel for the petitioner are not applicable to the facts at hand in view of the law laid down by the Supreme Court in Noor Saba Khatoon (supra).

7. For the foregoing reasons, I find no illegality or impropriety in the impugned order to warrant interference.

6. This Court is also of the opinion that even in Jagdish Jugtawat (supra), the Supreme Court has held that maintenance petition filed by the major daughter even if she does not fall in one of the exceptions mentioned in Section 125(1)(c) Cr. P.C., would be still maintainable on a combined reading of both Sections 125 Cr.P.C. and Section 20(3) of Hindu Adoptions and Maintenance Act, 1956.

7. Moreover, to ask the petitioner to now file an independent petition before the Family Court under Section 20(3) of Hindu Adoptions and Maintenance Act, 1956 would not only cause her inconvenience but would also defeat her right to claim maintenance for the period Section 125 Cr.P.C. proceeding was pending before the Metropolitan Magistrate. Such an interpretation would, in certain cases where both sections clearly overlap, create multiplicity of litigation.

iv. [T.Vimala and others Vs. S.Ramakrishnan] reported in 2016 SCC Online Mad 12324

10. No doubt, Section 125 Cr.P.C. is not happily worded, since it has prescribed certain riders for a daughter or son who has attained majority to claim maintenance from their father. They must establish that they are under physical disability or they are suffering out of injury. There may be cases, where a daughter or a son, even after having attained majority, may not have sufficient financial capacity to maintain themselves and they continue to need the support of their father. This is a reality of the situation. But, the Court cannot simply put the blame on the draftsman. Court must interpret the law. It should advance the cause of justice. That will be march of law.

11. In Jagdish Jugtawat v. Manju Lata [(2002) 5 SCC 422] exactly, as in our case, it was argued before the Hon'ble Supreme Court that the daughter having attained majority and as it has not been established that she is suffering out of any physical disability or injury, she is not entitled to maintenance from her father. The Hon'ble Supreme Court noticing the phraseology employed in Section 125 Cr.P.C. encountered a difficult situation. However, in its zeal to advance the scheme of social justice incorporated in Section 125 Cr.P.C. and to protect a daughter, who has attained majority, but who does not

suffer any physical disability, the Hon'ble Supreme Court called in aid Section 20 of the Hindu Adoption and Maintenance Act and held that although in view of the rider attached to a daughter, who attained majority, she may not be eligible for maintenance under Section 125 Cr.P.C., yet she is eligible for maintenance under Section 20 of the Hindu Adoption and Maintenance Act from her father and thus maintained the maintenance order passed in her favour under Section 125 Cr.P.C.

12. Exactly, similar is the situation before us. The said Apex decision was not brought to the notice of the learned Principal Sessions Judge, Dindigul. Had it was produced, the thinking of the learned Principal Sessions Judge, Dindigul would have been different. So, in such view of the matter, scraping of maintenance granted to the second daughter on account of her attaining majority and her inability to establish physical disability is to be set aside.

v. [Agnes Lily Irudaya Vs. Irudaya Kani Arasan] reported in 2018 SCC Online Bom 617

The present petition is filed by the petitioner-mother claiming maintenance for her major daughter under section 125 of the Code of Criminal Procedure and the legal issue involved is whether a major daughter is entitled for maintenance under section 125 of the Code of Criminal Procedure ("the Cr.P.C." for short) and another issue which arises out of the present proceedings, whether a mother is competent to file proceedings claiming maintenance on behalf of her major daughter.

10. Under Section 125 of the Cr.P.C. it is only the minor child who is entitled to claim maintenance if such child is not able to maintain itself. A child who has attained majority is held entitled for claiming maintenance, on account of physical or mental abnormality or injury he is unable to maintain himself. There is no any specific provision contained in Section 125 for grant of maintenance to a daughter who is major. However, perusal of the judgment of the Hon'ble Apex Court in the case of Noor Saba Khatoon v. Mohd. Quasim (supra) where the Hon'ble Apex Court had an opportunity to deal with the issue as to whether children of Muslim parents are entitled to grant maintenance under Section 125 of the Cr.P.C. after they attain majority, the Hon'ble Apex Court by making a reference to Section 3(1)(b) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 observed thus:-

10. Thus, both under the personal law and the statutory law (Sec. 125, Cr.P.C.) the obligation of a Muslim father, having sufficient means, to maintain his minor children, unable to maintain themselves, till they attain majority and in case of females till they get married, is absolute, notwithstanding the fact that the minor children are living with the divorced wife.

11. Thus, our answer to the question posed in the earlier part of the opinion is that the children of Muslim parents are entitled to claim maintenance under Section 125, Cr.P.C. for the period till they attain majority or are able to maintain themselves, whichever is earlier, and in case of females, till they get married, and this right is not restricted, affected or controlled by divorcee wife's right to claim maintenance for maintaining the infant child/children in her custody for a period of two years from the date of birth of the child concerned under Section 3(1)(b) of the 1986 Act. In other words Section 3(1)(b) of the 1986 Act does not in any way affect the rights of the minor children of divorced Muslim parents to claim maintenance from their father under Section 125, Cr.P.C. till they attain majority or are able to maintain themselves, or in the case of females, till they are married.

11. Further, the Division Bench of this Court in case of Vijaykumar Jagdishrai Chawla v. Reeta Vijaykumar Chawla reported in III (2011) DMC 687 while dealing with similar issue as to whether unmarried daughter is entitled to receive amount of maintenance from her father or mother so long she is unable to maintain herself out of her own earnings. By referring to the provisions of Section 20 of the Hindu Adoption and Maintenance Act, 1956 the Division Bench of this Court was pleased to hold that the father cannot be extricated from his liability to maintain his unmarried daughter who is staying with his wife and he would be bound not only to maintain his unmarried daughter but also responsible to maintain until her marriage while dealing with the objection of the respondent as to whether a wife can seek relief of maintenance on behalf of her major daughter, the Division Bench held that the unmarried daughter is entitled to receive maintenance from her father and the mother is competent to pursue relief of maintenance for the daughters even if they have become major if the daughters are staying with her and if she was taking responsibility of their maintenance and

education. At this stage, it is also relevant to refer to the judgment of the Apex Court in the case of Jagdish Jugtawat v. Manju Lata reported in (2002) 5 SCC 422, where the Apex Court held as follows:-

"Applying the principle to the facts and circumstances of the case in hand, it is manifest that the right of a minor girl for maintenance from parents after attaining majority till her marriage is recognized in Section 20(3) of the Hindu Adoptions and Maintenance Act. Therefore, no exception can be taken to the judgment/order passed by the learned Single Judge for maintaining the order passed by the Family Court which is based on a combined reading of Section 125, Code of Criminal Procedure and Section 20(3) of the Hindu Adoptions and Maintenance Act. For the reasons aforesated, we are of the view that on facts and in the circumstances of the case no interference with the impugned judgment order of the High Court is called for."

12. From the aforesated position, it is clear that the unmarried daughter though attained majority is entitled to claim maintenance from the father.

6. It is very clear from the above judgments that even though Section 125 restricts the payment of maintenance to the children till they attain majority, when it comes to the daughter, Courts have taken a consistent stand that even though the daughter has attained majority, she will be entitled for maintenance till she remains unmarried by virtue of Section 20 (3) of the Hindu Adoption and Maintenance Act, 1956. In order to avoid multiplicity of proceedings, the Courts have taken a consistent stand that the petition under Section 125 of Cr.PC can be entertained without pushing her to file an independent petition seeking for maintenance under Section 20(3) of the Hindu Adoption and Maintenance Act, 1956.

7. That apart, the Hon'ble Supreme Court has also held that mental injury is nothing but malice in law which can be gathered on the basis of violation of a legal right to claim maintenance vested under any law for the time being in force including Section 125 of Cr.PC. If the right to claim maintenance of the daughter is infringed, definitely it can be called as a injury which can very well be fit into the definition of mental injury.

8. The Court below has not taken into consideration the march of law that has taken place by virtue of the above judgments and had committed an error by rejecting the petition at the threshold on the ground of maintainability and the same

requires interference by this Court in exercise of its jurisdiction under Section 482 of Cr.Pc.

9. This Criminal Original Petition is allowed and the order passed by the Court below dated 02.04.2019 is hereby set aside. The petitioner is directed to re-present the petition before the Court below and the Court below shall proceed to number the petition and thereafter deal with the same in accordance with law. The Registry is directed to handover the original maintenance petition filed before this Court to the learned counsel for the petitioner by retaining the copy of the same in order to enable the petitioner to re-present the petition before the Court below.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

rka

To

1. The Principal Judge,
Family Court, Chennai
2. The Public Prosecutor,
High Court, Madras
3. The Section Officer,
Criminal Section (Records),
High Court, Madras.

+1cc to Mr.Sharath Chandran, Advocate SR.No.49272

Cr1.O.P.No.15336 of 2019

PMS (CO)
GMY (20/06/2019)

WEB COPY