

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

CRM-M-14116 of 2018.
Decided on:- March 01, 2019.

Malkit Kaur and others

.....Petitioners.

Versus

State of Haryana and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Arjun Kundra, Advocate
for the petitioners.

Ms. Mahima Yashpal, A.A.G., Haryana.

Mr. Rahul Vats, Advocate
for respondent No.2.

HARI PAL VERMA, J. (Oral)

The petitioners have filed present petition under Section 482 Cr.P.C. for setting aside the judgment dated 06.01.2018 passed by learned Sessions Judge, Yamuna Nagar at Jagadhri, whereby the revision petition filed by respondent No.2 Ravinder Singh against the judgment dated 08.01.2016 passed by learned Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri, was partly accepted. The order of learned Magistrate was modified to the extent that petitioner No.1 Malkit Kaur shall be entitled maintenance @ Rs.7,000/- per month from the date of filing of the petition, but petitioners No.2 and 3, namely, Kamal Kaur and Ramanjeet Singh shall not be entitled to any maintenance after the respective dates when they attained the age of

majority. The amount of Rs.4,000/- per month each granted to petitioners No.2 and 3 shall be payable from the date of filing of the petition till 19.10.2011 and 10.10.2013 respectively.

Briefly stated, the petitioners have filed a petition under Section 125 Cr.PC for grant of maintenance allowance to them. The marriage of petitioner No.1 and respondent No.2 was solemnised on 30.10.1992. Before this marriage, petitioner No.1 was a divorcee, whereas the respondent No.2 was a widower. Out of this wedlock, a daughter and a son (petitioners No.2 and 3 herein) were born. Respondent No.2 was serving in the Indian Army.

While considering the earning of respondent No.2 as Rs.45,000/- per month from his monthly pension as well as other sources and the fact that he is residing with old aged parents, who were also being looked after by him, vide judgment dated 08.01.2016, learned Magistrate allowed the petition under Section 125 Cr.P.C. and directed the respondent-husband to pay Rs.7,000/- per month to petitioner No.1 and Rs.4,000/- per month to petitioners No.2 and 3 each as maintenance allowance from the date of petition. The relevant paragraph No.28 of the said judgment dated 08.01.2016 is reproduced as under:

“28. Accordingly, from the discussion and observations made above, the petition succeeds. Considering the age of the petitioners, their dependency upon respondent, medical, day to day expenses of petitioners, financial condition of petitioners as well as respondent, day by day hiking of prices, age and capacity of respondent to earn, other responsibilities on the respondent and the standard of life in which the petitioners and respondent have been living, this court is of the considered opinion that ends

of justice would be met if the respondent is directed to pay Rs.7000/- p.m. to the petitioner no.1 and Rs.4000/- p.m. to the petitioner no.2 and 3 each as maintenance allowance from the date of petition. The amount of interim-maintenance if any received shall be set off. It is further made clear that the maintenance amount/allowance shall be subject to any adjustment/set off to any other amount which if she/they are getting or she/they have already received under any other provisions of law. Petition is allowed in the above-said terms. In the light of aforesaid discussion, the petition succeeds and same is hereby allowed. After needful, file be consigned to the record room.”

Against the aforesaid judgment dated 08.01.2016 passed by learned Magistrate, respondent No.2 Ravinder Singh filed a revision petition before the Court of Session. Vide impugned judgment dated 06.01.2018, the said revision petition was partly accepted and the present petitioner (respondent No.1 in the revision filed before learned Sessions Judge, Yamuna Nagar) was held entitled to maintenance @ Rs.7,000/- per month from the date of filing of the petition, however respondents No.2 and 3 were denied the maintenance after the respective dates when they attained the age of majority. In the case of petitioner No.2 (daughter), she attained majority on 19.10.2011, whereas petitioner No.3 (son) attained majority on 10.10.2013.

Aggrieved by the aforesaid judgment dated 06.01.2018 passed by the revisionary Court, the petitioners (wife, daughter and son) have approached this Court by way of present petition.

Learned counsel for the petitioners has argued that the impugned judgment dated 06.01.2018 passed by the revisionary Court restricting therein

that petitioners No.2 and 3 (being daughter and son of respondent No.2) are not entitled to any maintenance after attaining the age of majority, is not sustainable. The unmarried daughter cannot be denied the right of maintenance even if she has attained majority unless she is married. Similarly, a major son, who is living separately from his father and is pursuing education, is still entitled to claim maintenance from his father under Section 125(1)(c) Cr.P.C., but the revisionary Court has misread the aforesaid provision of law.

He has further argued that respondent No.2 is drawing pension of Rs.46,256/- per month and his total earning is more than Rs.70,000/- per month from all sources. Since petitioners No.2 and 3 (daughter and son) are still pursuing their studies, they are unable to maintain themselves and, therefore, are dependent upon the financial aid from their father i.e. respondent No.2. Petitioner No.2-daughter has completed her B.Sc. from Kurukshetra University, Kurukshetra and is preparing for further entrance examination from the institute like I.I.T etc., whereas petitioner No.2 (son) has completed his B.Sc. three years degree course from Kurukshetra University, Kurukshetra, completed M.A. (English) degree course and is presently pursuing his LL.B. degree from Chaudhary Charan Singh University. Petitioner No.1 being a single lady has no source of income. Even the awarded maintenance of Rs.7,000/- per month for petitioner No.1 is too meagre and, therefore, needs to be enhanced.

He has relied upon *Jagir Singh Versus Jasbir Kaur and others* 2004(4) RCR (Criminal) 371; *Sudhir Kumar Rehani Versus Indu Bala and*

others 2011(2) RCR (Criminal) 389; Jagdish Jugtawat Versus Manju Lata and others 2002(5) SCC 422; Satish Kumar Versus State of Punjab 2005(1) RCR (Criminal) 256 and Gurcharanvir Singh Versus Ravneet Kaur 2014(42) RCR (Criminal) 868 to contend that an unmarried daughter is legally entitled to be maintained by her father till she is married, even though she may be a major. Similarly, a major son who is living separately from his father and pursuing higher education is also entitled to claim maintenance from his father under Section 125(1)(c) Cr.P.C.

On the other hand, learned counsel for respondent No.2 has argued that the respondent has already given a house to live to the petitioners, and, therefore, the petitioner No.1 has already been granted adequate maintenance. Petitioners No.2 and 3 are not entitled for any maintenance after attaining the age of majority. The income of respondent No.2 is very limited and he is required to take care of his old aged parents as well. A plot was purchased by respondent No.2 in the joint name of petitioner No.1, whereupon a three-storey building was constructed in which the petitioners are living. The behaviour of petitioner No.1 had throughout been quarrelsome and the respondent No.2 was assaulted and kicked out of the house. Since then, he is living with his parents in the village and is solely dependent upon his pension.

He has further argued that after attaining the age of majority, petitioners No.2 and 3 are no more entitled for any maintenance. He has referred to Section 125 (1) (b) and (c) Cr.PC to contend that it is only minor child, whether married or not, who is entitled to maintenance and a major

child is entitled to maintenance only when such child is, by reason of any physical or mental abnormality or injury, unable to maintain itself. There is nothing on record to suggest that petitioners No.2 and 3 are unable to maintain themselves by reason of any physical or mental abnormality or injury. On attaining majority, they are not entitled to any maintenance irrespective of the fact that whether they are earning or not. Pursuing education is of no relevance and the moment, they attained majority, they ceased to claim any maintenance from respondent No.2.

I have heard learned counsel for the parties.

There is no dispute that the marriage between petitioner No.1 and respondent No.2 was solemnised on 30.10.1992 and out of this wedlock, two children, namely, Kamal Kaur (daughter) and Ramanjeet Singh (son), petitioners No.2 and 3 respectively, are born. There is no challenge to the orders passed by the Courts below so far as the maintenance awarded to petitioner No.1 @ Rs.7,000/- per month is concerned.

Section 125 Cr.P.C. deals with maintenance, which reads as under:

“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.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any port of each month's allowance

remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

A bare perusal of the provision reproduced above does reflect that what is required to be considered by the Court for grant of maintenance under Section 125 Cr.PC is the “inability to maintain”. The primary object of

Section 125 Cr.PC is the survival of human being, who is unable to maintain himself in a 'survival of fittest society'. In the present case, petitioner No.2 is unmarried daughter, though she has attained majority. The fact that she is unmarried is not in dispute. Thus, so long as she is not married, she is legally entitled to be maintained by her father even if she has attained majority, as is clear from the bare perusal of the language of clause (c) of sub-section 1 of Section 125 Cr.P.C.

This Court in *Satish Kumar's case (supra)* has held that even an unmarried daughter, who has attained majority, who is unable to maintain herself because of her illiteracy, unemployment or being a student is entitled to get maintenance from her father. She cannot be denied the maintenance by her father on the ground that the reason to maintain herself is not related to the physical or mental abnormality.

Thus, an unmarried daughter, who attains majority and is unable to maintain herself because of her illiteracy, unemployment or being a student, cannot be denied maintenance by her father merely because the reason to maintain herself is not related to the physical or mental abnormality. In *Satish Kumar's case (supra)*, this Court further held that if a major unmarried daughter is unable to maintain herself because of her illiteracy, unemployment or being a student, that reason is deemed to be her physical or mental abnormality and, therefore, she is entitled for maintenance.

Having considered the rival contentions of both the parties and the findings recorded by the Courts below as well as the judgment passed by Hon'ble Supreme Court in *Noor Saba Khatoon Versus Mohd. Quasim*

1997(3) RCR (Criminal) 756 (SC) and analysing the provisions of Section 125 Cr.P.C., this Court finds that the unmarried daughter is entitled to claim maintenance till she is married even though she may have attained majority. Similarly, a major son, who is living separately from his father and is pursuing his education is also entitled to claim maintenance from his father under the provisions of Section 125 Cr.P.C.

Perusing the statement of account so produced by learned counsel for the petitioners showing the pension of respondent No.2, this Court finds that respondent No.2 is drawing pension of Rs.46,256/- per month and as such, the amount of maintenance awarded to the petitioners by learned Magistrate vide judgment dated 08.01.2016 is certainly not on higher side.

Therefore, while upholding the awarded maintenance to the petitioners vide judgment dated 08.01.2016 passed by learned Magistrate, this Court holds that petitioners No.2 and 3, though have attained the age of majority, but as petitioner No.2 (daughter) is unmarried and petitioner No.3 (son) is pursuing his studies, are entitled for maintenance as awarded by learned Magistrate, till the petitioner No.2 is married and petitioner No.3 is pursuing his studies.

The present petition, accordingly, stands allowed.

March 01, 2019

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No