

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

CRR (F) No.213 of 2019.
Decided on:- April 09, 2019.

Jagmohan Singh.

.....Petitioner.

Versus

Lovepreet Kaur.

.....Respondent.

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

Present:- Mr. Simranjeet Singh, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

The petitioner has filed present criminal revision against the judgment dated 20.03.2019 passed by learned Principal Judge, Family Court, Sirsa, whereby in a petition under Section 127 Cr.P.C. filed by the respondent-daughter for enhancement of the amount of maintenance, the family Court has partly allowed the petition and directed the petitioner-father to pay maintenance @ Rs.2,500/- per month w.e.f. 01.08.2014 to 31.05.2018 i.e. till her passing 10+2 examination and Rs.5,000/- per month w.e.f. 01.06.2018 onwards for her higher education and to meet out basic amenities.

Briefly stated, the respondent, who is daughter of the petitioner filed a petition under Section 127 Cr.PC for enhancement of maintenance. Before filing this petition, the respondent-daughter had filed a petition under Section 125 Cr.PC in the year 2004 which was allowed vide order dated

13.04.2010 by the trial Court and the respondent-daughter was granted monthly maintenance @ Rs.1,000/- from the date of institution of the petition i.e. 05.07.2004 till 31.12.2009 and for the subsequent period @ Rs.1,500/- per month w.e.f. 01.01.2010 onwards. The petition under Section 125 Cr.PC was filed on 05.07.2004 and on that day, the respondent was 6 years of age, whereas on the date of decision of the petition under Section 125 Cr.PC, she was about 12 years of age.

At the time of filing the petition under Section 127 Cr.PC for enhancement of maintenance in the year 2014, she was studying in 9th class in St. Joseph School, Mandi Dabwali. The respondent-daughter pleaded that there was change of circumstances and for her higher education, she required at least Rs.10,000/- per month for her maintenance. The petitioner is working as TG-I in office of Mech Aux, Gurunanak Dev Thermal Plant, Bathinda and his gross salary in July, 2010 was Rs.22,806/- per month, whereas as per the pay slip of March, 2014, his gross salary was Rs.52,381/- per month.

Vide impugned judgment dated 20.03.2019, the family Court has partly allowed the petition under Section 127 Cr.PC filed by the respondent-daughter and enhanced the amount of maintenance in the manner as mentioned hereinabove.

Aggrieved against the aforesaid judgment dated 20.03.2019, the petitioner-father has filed present criminal revision.

Learned counsel for the petitioner has argued that respondent Lovepreet Kaur was born on 21.08.1998 and now, she has attained the age of

majority. Therefore, the petitioner-father is not liable to maintain her. The family Court has ignored the provisions of Section 125(1) Cr.P.C. and the impugned judgment dated 20.03.2019 passed by the family Court is liable to be set aside on this ground alone.

He has further argued that the respondent-daughter is residing with her maternal grandmother, who is not taking her proper care. The petitioner is apprehensive that the money will be misused by the maternal grandmother of the respondent. The petitioner himself offered that he wants to take care of the respondent and is ready to provide education to her in a reputed institution in Chandigarh or Patiala or any other institution of her choice, but the family Court has ignored these facts and, therefore, the impugned judgment dated 20.03.2019 passed by the family Court is liable to be set aside.

I have heard learned counsel for the petitioner.

There is no dispute with the earlier maintenance granted to the respondent-daughter in a petition filed under Section 125 Cr.P.C. The petition under Section 127 Cr.PC seeking enhancement of maintenance was filed by the respondent-daughter after more than 4 years of the decision of petition under Section 125 Cr.P.C. The circumstances have completely been changed. Now, she is pursuing higher study as she has passed 10+2 examination on 23.05.2018. The salary of the petitioner is Rs.57,592/- per month after deduction of tax. He has solemnized/contracted second marriage and he has not filed any petition for taking custody of the respondent-daughter.

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.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a

monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

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, the respondent 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 Versus State of Punjab 2005(1) RCR (Criminal) 256* 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.

The argument of the petitioner that he has an apprehension that the amount of maintenance can be misused by the maternal grandmother of the respondent is not sustainable, as he has not been able to prove this fact either before the family Court or in this Court.

Therefore, taking into consideration the salary of the petitioner and increase in the prices of domestic articles as well as study material of higher education which includes coaching so as to seek admission in preferential colleges, this Court finds that there is no illegality in the impugned judgment dated 20.03.2019 passed by the family Court, whereby the petitioner-father has been directed to pay maintenance @ Rs.2,500/- per month w.e.f. 01.08.2014 to 31.05.2018 i.e. till his passing 10+2 examination and Rs.5,000/- per month w.e.f. 01.06.2018 onwards for her higher education and to meet out basic amenities.

Accordingly, affirming the impugned order dated 20.03.2019 passed by learned Principal Judge, Family Court, Sirsa, present criminal revision, being devoid of any merit, is dismissed.

April 09, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No