

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 5 OF 2021

SMITA MAHENDRA HALARNKAR &
ANOTHER APPLICANTS
Versus
MAHENDRA TUKARAM HALARNKAR RESPONDENT

Mr. S.M. Singbal, Advocate for the Applicants.

Mr. Terrence Sequeira, Advocate for the Respondent.

Coram:- M. S. JAWALKAR, J.

Reserved on:- 14th JULY 2021.

Pronounced on:- 2nd AUGUST 2021.

ORDER:

The present Criminal Revision Application is filed under Section 397 of the Code of Criminal Procedure, 1973 (Cr.P.C., for short) against the impugned order dated 04.05.2021 passed by the learned Additional Sessions Judge, Mapusa in Criminal Revision Application No. 13 of 2021. By the impugned judgment, the learned Additional Sessions Judge has set aside the order dated 14.01.2020, passed by the Judicial Magistrate First Class, Bicholim in Case No. MTA/1/2019/A, granting interim maintenance of ₹10,000/- to respondent no. 1 (applicant no. 1 herein) towards educational expenses.

2. The brief facts necessary for disposal of the present Criminal Revision Application may be stated thus:-

The applicant no. 1 is the daughter of applicant no. 2 and the respondent. It is stated by applicant no. 1 that since her birth, she is staying with her mother i.e. applicant no. 2. It is stated that through applicant no. 2, applicant no. 1 had filed Maintenance Case No. 04/1999 before the Chief Judicial Magistrate, Panaji against the respondent, which was allowed and the respondent was directed to pay to the applicant no. 1 through applicant no. 2, an amount of Rs.500/- per month till she attained the age of majority. It is stated that the respondent has stopped paying the said maintenance of Rs.500/- from March 2017 on the ground that the applicant no. 1 has attained majority. It is stated that the applicant no. 1 has attained majority in May 2017 and presently, she is 22 years of age.

3. It is further stated that the applicant no. 1 since the academic year 2018 till date is studying in the Institute College of Non Conventional and Vocational Courses for women at Kolhapur and as such, she is residing in the hostel/rented premises at Kolhapur for which, the monthly expenditure is about ₹7,000/- per month.

4. It is stated that all these years, the entire expenses of education of applicant no. 1 was borne by applicant no. 2. It is stated that applicant no. 1 is legally entitled for maintenance as she has no other source of income. Therefore, the applicant no. 1 preferred an application for maintenance under Section 125 of Cr.P.C along with Maintenance Application No. 1/2019/A for interim maintenance before the Judicial Magistrate First Class at Bicholim, which was allowed by order dated 14.01.2020, whereby the respondent was directed to pay an amount of Rs.10,000/- per month to the applicant no. 1 towards her educational expenses.

5. The respondent challenged the said order dated 14.01.2020 passed by the Judicial Magistrate First Class, Bicholim before the learned Additional Sessions Judge at Mapusa in Criminal Revision Application No. 13/2021.

The learned Additional Sessions Judge observed that the applicant no. 1 is a major daughter of the respondent and there is nothing placed on record to show that the applicant no. 1 is having mental or physical abnormality or injury so as to be unable to maintain herself and set aside the order dated 14.01.2020 passed by the learned Judicial Magistrate vide

order dated 04.05.2021. Aggrieved by the said order dated 04.05.2021 passed by the learned Additional Sessions Judge at Mapusa, the applicants are before this Court in the present Criminal Revision Application.

6. Heard Mr. Singbal, the learned Counsel for the applicants and Mr. Sequeira, the learned Counsel for the respondent at length.

7. It is submitted by Mr. Singbal, the learned Counsel for the applicants that the applicant no. 1 is entitled for maintenance as per the Portuguese Civil Code prevalent in Goa. It is submitted that it is not specified in Article 179 of Portuguese Civil Code that the maintenance ceases upon the child attaining majority. It is submitted that majority is defined in Article 311 of Portuguese Civil Code as is conferred on attaining 21 years of age without distinction of sex. It is submitted that provisions of Section 125 of Cr.P.C have to be interpreted harmoniously and in consonance with the entitlement as per the Family Laws prevalent and in force in the State of Goa. It is submitted that the legal duty under the Family Laws in Goa continues till the applicant is legally married or till the applicant is not in need of it as per the law.

It is submitted that even though Section 125 of Cr.P.C restricts the payment of maintenance to the children till they attain majority, when it comes to the daughter, the Courts have taken a consistent stand that even after the daughter has attained majority, she will be entitled for maintenance till she remains unmarried by virtue of the provisions of the Hindu Adoption and Maintenance Act, 1956 or the Muslim Women (Protection of Rights on Divorce) Act, 1986. It is submitted that if the personal law prevalent in Goa is applied then apart from equity, the applicant no. 1 is entitled to education expenses till she is married. It is submitted that personal law has to be read in harmony and correct interpretation of Section 125 of Cr.P.C.

8. It is submitted by the learned Counsel for the applicants that the applicant no. 1 could not leave the education half way as she is pursuing basic need of graduation degree, which could make her stand on her feet. It is submitted that the impugned order does not consider the need of the applicant no. 1 and the obligation of the respondent as father as per the personal law in force in Goa. It is submitted that to that extent the impugned order is unreasonable, unjust, arbitrary and is liable to be quashed and set aside.

9. In support of his contentions, the learned Counsel for the applicants relied on the following decisions of the Hon'ble Apex Court:

- (i) *Chitra Majumder Vs. Arun Majumder*, (2018) ALLMR(Cri) 2677;
- (ii) *Jagdish Jugtawat Vs. Manju Lata & Others*, (2002) 5 SCC 422;
- (iii) *Abhilasha Vs. Parkash & Others*, AIR 2020 SC 4355 and
- (iv) *Chandrashekar Vs. Swapnil & Another* (order dated 04.03.2021 passed in Criminal Appeal Nos. 265-266 of 2021).

He also placed reliance on the decision of this Court in the case of **Agnes Lily Irudaya Vs. Irudaya Kani Arsan**, **2018 SCC Online Bom 617**; the decision of Delhi High Court in **Urvashi Aggarwal & Ors. Vs. Inderpaul Aggarwal** (Crl. Rev. P. 549/2018 & Crl. M.A. 11791/2018 (stay) dated 14.06.2021) and the decision of Madras High Court in the case of **R. Kiruna Kanmani Vs. L. Rajan** (Crl.O.P. No. 15336/2019 dated 17.06.2019).

10. Mr. Sequeira, the learned Counsel for the respondent, at the outset, has taken a preliminary objection as to the maintainability of this Criminal Revision Application.

11. The learned Counsel for the respondent relied on the following decisions of the Hon'ble Apex Court:

- (i) *Madhu Limaye Vs. The State of Maharashtra, AIR 1978 SC 47* and
- (ii) *Abhilasha Vs. Parkash & Others, AIR 2020 SC 4355.*

The learned Counsel for the respondent also relied on the decision of this Court in **Sanjay J. Phagnekar Vs. The State of Maharashtra & Others** (Criminal Application No. 50/2020 and Interim Application No. 1322/2020 decided on 23.11.2020).

12. Now the question before me is whether the learned JMFC was right in awarding maintenance under Section 125 of Cr.P.C., specifically when the applicant was major at the time of filing of the application. The relevant provisions for deciding this issue is Section 125 of Cr.P.C., which read as under:

125. Order for maintenance of wives, children and parents.—(1) *If any person having sufficient means neglects or refuses to maintain—*

(a) ...

(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) *...*

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.*

13. Apart from this, the provisions of Personal Law i.e. Portuguese Civil Code, 1867, which are relevant are as under:

Article 311 - Age for attaining majority and its effect - *A person reaches the age of majority, regardless of gender, having completed twenty one full years. The person who has reached the age of majority is empowered to freely govern his person and assets.*

Article 171 - Meaning of maintenance - *Maintenance means all that is indispensable for subsistence, lodging and clothing.*

§ Sole paragraph - Maintenance also includes the education and instruction of the beneficiary of maintenance, if the same is a minor.

Article 178 - Criteria for fixation of maintenance - Maintenance shall be proportionate to the means of the person obliged to provide it and to the necessity of the person entitled to receive it.

Article 179 - Termination of duty to provide maintenance - The obligation to provide maintenance ceases:

1. When the person who provides it is no longer capable of doing so, or when the person receiving it no longer needs it;
2. In the cases in which disinheritance is permitted.

14. **Section 20 of the Goa Civil Courts Act, 1965**

read as under:

20. Classes of Civil Judges and their jurisdiction.— (1) The Civil Judges shall be of two classes, namely Senior Civil Judges and Junior Civil Judges.

(2) The jurisdiction of a Senior Civil Judge extends to all original suits and proceedings of a Civil nature.

(3) The jurisdiction of a Junior Civil Judge extends to all original suits and proceedings of a civil nature wherein the subject matter does not

exceed in amount or value [twenty Lakhs rupees].

15. The learned Counsel for the petitioner relied on the case of **Chitra Majumder** (supra) wherein the Hon'ble Apex Court exercised its powers under Article 142 of the Constitution of India. The same cannot be exercised by this Court.

16. The Hon'ble Apex Court (Full Bench consisting of three Judges) in **Jagdish Jugtawat** (supra) applying the principles laid down in **Noor Saba Khatoon Vs. Mohd. Quasim, AIR 1997 SC 3280** held that right of a minor girl for maintenance from her 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 of Code of Criminal Procedure and Section 20(3) of the Hindu Adoptions and Maintenance Act. The learned Single Judge was persuaded to maintain the order of the Family Court with a view to avoid multiplicity of proceedings.

17. In **Noor Saba Khatoon** (supra), the Hon'ble Apex Court accepted the position that Section 125 of Code of Criminal Procedure does not fix the liability of parents to maintain children beyond attainment of majority, read the said provision and Section 3(i)(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.

18. Both the learned Counsel for the parties relied on **Abhilasha** (supra) wherein the Hon'ble Apex Court held that the judgment in the case of **Jagdish Jugtawat** (supra) cannot be read cannot to laying down the ratio that in proceedings under Section 125 Cr.P.C. filed by the daughter against her father, she is entitled to maintenance relying on the liability of the father to maintain her unmarried daughter as contained in Section 20(3) of the Act, 1956. The High Court in exercise of Criminal Revisional jurisdiction can very well refuse to interfere with the judgment of Courts below by which maintenance was granted to unmarried daughter. This Court while hearing criminal appeal against the above judgment of High Court was exercising jurisdiction under Article 136 of the Constitution of India, and in the facts of that case, this Court

refused to interfere with the judgment of High Court but in refusal to interfere by this Court, no ratio can be read in the judgment of **Jagdish Jugtawat** (supra) as contended by learned Counsel for the appellant. However, in para 33 it is held thus:

*33. There may be a case where the Family Court has jurisdiction to decide a case under Section 125 Cr.P.C. as well as the suit under Section 20 of Act, 1956, in such eventuality, Family Court can exercise jurisdiction under both the Acts and in an appropriate case can grant maintenance to unmarried daughter even though she has become major enforcing her right under Section 20 of Act, 1956 so as to avoid multiplicity of proceedings as observed by this Court in the case of **Jagdish Jugtawat** (supra). However the Magistrate in exercise of powers under Section 125 Cr.P.C. cannot pass such order.*

19. In the case before the Hon'ble Apex Court in **Abhilasha** (supra), the application was filed under Section 125 Cr.P.C., before Judicial Magistrate First Class, Rewari. It is held that the learned JMFC while hearing the proceedings under Section 125 Cr.P.C. could not have heard the proceedings under Section 20(3) of the Hindu Adoptions and Maintenance Act and therefore, it was held that there is no infirmity in the order of

the learned JMFC as well as the learned Additional Magistrate in not granting maintenance to the appellant, who had become major. Apart from this, the Hon'ble Apex Court gave other reasons due to which the High Court was not required to interfere in exercise of jurisdiction under Section 482 of Cr.P.C.

20. In the State of Goa, Portuguese Civil Code is applicable governing Personal Law. In view of Goa Civil Courts Act, 1965, the learned Junior Civil Judge is having jurisdiction to decide the application of maintenance or any claim valued below ₹20 lakhs. It has also jurisdiction to entertain application under Section 125 of Cr.P.C. as JMFC. As observed in **Abhilasha** (supra) as well as **Jagdish Jugtawat** (supra), where the Family Courts are set up and Courts are having both jurisdiction i.e. to grant maintenance under Section 125 so also to grant maintenance under Section 20(3) of the Hindu Maintenance and Adoptions Act or under any Personal Law to avoid multiplicity of proceedings, the Family Court is empowered to exercise power under both these provisions. It is submitted that the Family Court can exercise jurisdiction under both the Acts and in an appropriate case, can grant maintenance to an unmarried daughter, even though she has become major enforcing the right under Section 20 of the

Hindu Maintenance and Adoptions Act or under any Personal Law.

21. None of the parties brought any notification assigning special jurisdiction to any Court covering the matters relating to maintenance under the Personal Law. The learned Counsel for the respondent submitted that the paternity itself was under challenge, therefore, that issue will have to be decided while deciding the maintenance application. In reply to this, the learned Counsel for the applicants submitted that this issue has already been decided, which was referred up to the High Court. He also placed on record copy of judgment in the case of **Miss Smita Halarnkar Vs. Mr. Mahendra Halarnkar** (Criminal Revision Application No. 68 of 2007 dated 13.08.2008). In view of this judgment, the respondent is not entitled, at this stage, to raise such issue about legitimacy or illegitimacy of the child.

22. Now the question before me is in view of the peculiar position of law that the Personal Law is governed by Portuguese Civil Code. In view of this Portuguese Civil Code, age of majority is held to be as 21 years. In view of the Goa Civil Courts Act, the classes of Civil Judges and their

jurisdiction is defined under Section 20. In view thereof, the jurisdiction of Junior Civil Judge extends to all original suits and proceedings of a civil nature wherein the subject matter does not exceed in amount or value of ₹20 lakhs.

23. As per Articles 66 and 67 of the Civil Procedure Code in Goa, the cases, cognizance of which has not been assigned, by the law to any special jurisdiction, are of the competence of the regular Court. The regular Courts are the Civil Courts. Thus, in view of Section 20 of the Goa Civil Courts Act, the learned Junior Civil Judge has jurisdiction of all original suits and proceedings of civil nature not exceeding ₹20 lakhs. If that would be the case, by applying similar analogy in **Abhilasha** (supra) as well as **Jagdish Jugtawat** (supra), the applicant no. 1 is very much entitled to claim maintenance under the Portuguese Civil Code till her age of 21 years. It is not the case that in Goa there is no jurisdiction vested with Junior Civil Judge to deal with the maintenance matters under the Portuguese Civil Code. Thus, the learned JMFC exercising powers under Section 125 of Cr.P.C., is also having jurisdiction to entertain application for maintenance under the Portuguese Civil Code. In such eventuality, the Judge can exercise jurisdiction under both, i.e. Goa Civil Courts Act as well as

Criminal Procedure Code and in an appropriate case, can grant maintenance to the daughter, even if she has become major so as to avoid multiplicity of proceedings. Thus, in my considered opinion the order passed by the learned JMFC/Junior Civil Judge is very much maintainable and the order of the Court of Sessions, is erroneous and is liable to be quashed and set aside.

24. The Revisional Court has not considered this aspect. The order passed by the learned Additional Sessions Judge in Criminal Revision Application No. 13/2021 is liable to be set aside. It is made clear that there are no findings or observations made on the merits i.e. quantum of compensation. The learned Additional Sessions Judge to hear the parties afresh on the quantum of compensation.

25. Accordingly, I proceed to pass the following order:

ORDER

- (a) The Criminal Revision Application is allowed.
- (b) The impugned order dated 04.05.2021 passed by the learned Additional Sessions Judge, Mapusa in Criminal Revision Application No. 13/2021 is quashed and set aside.

- (c) Criminal Revision Application No. 13/2021 is restored to the file of the learned Additional Sessions Judge, Mapusa for deciding it afresh, in view of the observations made in the order.
- (d) It is made clear that there are no findings or observations made on the merits of the matter i.e. quantum of compensation.
- (e) Parties to appear before the learned Additional Sessions Judge, Mapusa on 23.08.2021 at 10:00 a.m.
- (f) The Criminal Revision Application is disposed of in the aforesaid terms.

26. All concerned to act on an authenticated copy of this Order.

M.S. JAWALKAR, J.

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