

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM NO. 12 OF 2009

Reshma Lakra

.... ***Petitioner***

Mr. A.K. Mallick, Advocate

-versus-

William Lakra

.... ***Opp. Party***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

04.07.2022

Order No.

7. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the judgment and order dated 3rd October, 2008 passed in Criminal Proceeding No. 61 of 2007, whereby learned Judge, Family Court, Rourkela rejected an application filed by her under Section 125 Cr.P.C. for maintenance.
3. Brief facts of the case is that the Petitioner claiming to be the daughter of Opposite Party, namely, William Lakra, filed an application under Section 125 Cr.P.C. before learned Judge, Family Court, Rourkela for maintenance at the rate of Rs.3,000/- per month and further amount of Rs.5,00,000/- towards her marriage expenses. The Petitioner is the daughter of first legally married wife of Opposite Party, who was an employee of Orissa Cement Limited, Rajgangpur. When the petition under Section 125 Cr.P.C. was filed, the Petitioner was aged about 32 years. The Opposite Party was superannuated from service and after retirement, he received all retiral benefits, which is kept in fixed deposit. The Opposite Party has also some landed properties. Therefore, he has sufficient means

to provide maintenance to his daughter. On the other hand, the Petitioner has no source of income. Thus, the Petitioner filed the petition under Section 125 Cr.P.C. for the aforesaid relief.

4. The Opposite Party contested the case and filed written statement denying the allegations made in the petition filed under Section 125 Cr.P.C. It was further asserted in the written statement that the Opposite Party had married one Helena Ekka at Catholic Church, Keshramal on 24th December, 1981. They were blessed with one daughter and three sons, namely, Anima, Saroj, Don Joseph and Manoj respectively. Said Helena is his legally married wife. Prior to that, he had not married any other woman. It has been further averred in the written statement that the allegation of the Petitioner that she being the daughter of his first wife is entitled to get maintenance and marriage expenses is denied.

5. Learned Judge, Family Court, Rourkela considering the evidence adduced by the witnesses, more particularly oral testimony of P.Ws.1 and 5 being supported by Exts.1 to 4 came to a finding that the Petitioner was the legitimate daughter of Opposite Party and her mother was Sebastiana. However, learned Judge, Family Court, refused the prayer for maintenance in view of provision under Section 125 (1)(c) Cr.P.C. as the Petitioner was aged about 32 years at the time of filing application under Section 125 Cr.P.C.

6. Learned counsel for the Petitioner submits that the Petitioner has no independent source of income to maintain herself. Law is well settled that the father is under a legal obligation to maintain his unmarried daughter till she gets married. The Opposite Party failed to adduce any oral or documentary evidence to show that the Petitioner has any income to maintain herself or that she was married. Thus, learned Judge, Family Court, Rourkela has

committed an error of law in coming to the conclusion that merely because the Petitioner does not suffer from any physical or mental abnormality or injury, she is not entitled to get any maintenance. He relied upon the decision in the case of *Narayan Rath –v- Sakuntala Rath*, reported in **2005 (I) OLR 654**, wherein it has been held that a major unmarried daughter would be entitled to maintenance from her father, if she has no income to maintain herself. Even after attaining majority she would be entitled to maintenance from the father till she is married. In support of his contention, he also relied upon the decision in the case of *Jagdish Jugtawat –v- Manjulata and others*, reported in (2002) 23 OCR (SC) 434, wherein the Hon'ble Supreme Court has held that though Section 125 Cr.P.C does not fix the liability of the parents to maintain major children, but the right of a female child for maintenance from parents after attaining majority till her marriage is recognized under Section 20 (3) of the Hindu Adoptions and Maintenance Act and therefore, on a combined reading of both the provisions, the Court would be justified in granting maintenance to the daughter under Section 125 Cr.P.C even after her attaining majority, but only till the date of her marriage. He, therefore, submits that the impugned judgment is not sustainable in the eyes of law and the same is liable to be set aside so far as the finding with regard to entitlement of maintenance to the Petitioner.

7. Although the Opposite Party had initially entered appearance through a set of learned counsel, but subsequently their appearance was ignored vide order dated 29th September, 2019 on the basis of a memorandum filed by the learned counsel.

8. Section 125 (1) (c) Cr.P.C. clearly stipulate that a 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, is entitled to maintenance under Section 125 Cr.P.C. Thus, an unmarried daughter on attaining majority may not be entitled to maintenance under Section 125 Cr.P.C., unless she falls under the category of person mentioned in Clause (c) of Section 125(1) Cr.P.C.

8.1. In the case of *Narayan Rath* (supra), this Court relying upon the case of *Jagdish Jugtawat* (supra) held as under;

“4.The issue as to whether an unmarried daughter having no income to maintain herself can claim maintenance from her father after attaining majority was closely analysed in the case of Jitendra Nath Sarkar v. Dalia Sarkar (supra) by this Court and in the case of Jagdish Jugtawal v. Manjulata (supra) by the Apex Court. In the former case analysing the meaning of the word ‘injury’ appearing in Section 125(1)(c) of the Cr.P.C. it was held that major unmarried daughter ipso facto may not be entitled to maintenance in view of the provision of Section 125(1)(c) of the Code if it is proved that she has a source of income to maintain herself, but when she claims lack of income to maintain herself, then unless contrary is pleaded and proved, she is bound to be maintained by her father or mother, as the case may be. It was reasoned that at that time, the definition of term ‘injury’ comes to her aid to protect her from the harm to body and mind. In the case of Jagdish Jugtawal a three-Judge Bench of the Apex Court held that though Section 125, Cr.P.C. does not fix liability of parents to maintain major children, but right of a female child for maintenance from parents after attaining majority till her marriage is recognized under Section 20(3) of Hindu Adoptions and Maintenance Act and, therefore, on a combined reading of both the provisions the Court would be justified in granting maintenance to the daughter under Section 125, Cr.P.C. even after her attaining majority, but only till the date of her marriage. The Apex Court gave this ruling taking a view that it would avoid multiplicity of proceeding as otherwise the parties would be forced to file another petition under Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956.”

However, in recent past the Hon’ble Supreme Court in the case of *Abhilasha vs. Parkash and Others*, reported in 2020 SCC Online SC 736 held as under;

“ 12. The Act, 1956 was enacted to amend and codify the law relating to adoptions and maintenance among Hindus. A bare perusal of Section 125(1) Crpc. as well as Section 20 of Act, 1956 indicates that whereas Section 125 Crpc. limits the claim of maintenance of a child until he or she attains majority. By virtue of Section 125(1) (c), an unmarried daughter even

though she has attained majority is entitled for maintenance, where such unmarried daughter is by reason of any physical or mental abnormality or injury is unable to maintain itself. The Scheme under Section 125(1) Crpc. thus, contemplate that claim of maintenance by a daughter, who has attained majority is admissible only when by reason of any physical or mental abnormality or injury, she is unable to maintain herself."

8.2. It is further held therein that

"28. Section 20 of Hindu Adoptions and Maintenance Act, 1956 cast a statutory obligation on a Hindu to maintain his daughter who is unmarried and unable to maintain herself out of her own earnings or other property. As noted above, Hindu Law prior to the enactment of Act, 1956 always obliged a Hindu to maintain an unmarried daughter, who is unable to maintain herself. The obligation, which is cast on the father to maintain his unmarried daughter, can be enforced by her against her father if she is unable to maintain herself by enforcing her right under Section 20."

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"36. The purpose and object of Section 125 Crpc. as noted above is to provide immediate relief to an applicant in a summary proceeding, whereas right under Section 20 read with Section 3(b) of Act, 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under Section 20, the proceedings need to be initiated under Section 20 of the Act and the legislature never contemplated to burden the Magistrate while exercising jurisdiction under Section 125 Crpc. to determine the claims contemplated by Act, 1956."

In view of the ratio in ***Abhilasha*** (supra), there remains no controversy that a major unmarried daughter, if falls within the category of persons mentioned in Clause (c) of Section 125 Cr.P.C. can only claim maintenance under Section 125 Cr.P.C.

9. In the instant case, the Petitioner does not satisfy the requirements of Section 125(1)(c) Cr.P.C. to claim maintenance under Section 125 Cr.P.C. Thus, learned Judge, Family Court has committed no illegality in refusing maintenance to the Petitioner under Section 125 Cr.P.C. The refusal of maintenance to the Petitioner under Section 125 Cr.P.C., however, shall not impair

her right to claim maintenance from her father under any other law, if she is so entitled.

10. The RPFAM is, accordingly, disposed of.

Urgent certified copy of this order be granted on proper application.

bks

(K.R. Mohapatra)
Judge

