

CRM-M-41719-2017 (O&M)

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CRM-M-50071-2017 & CRM-M-43767-2019

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115 (3 Cases)

CRM-M-41719-2017 (O&M)

Date of Decision: 05.05.2023

Jaswinder Kaur

...Petitioner

Versus

Rupinder Kaur

...Respondent

With

CRM-M-50071-2017

Jaswinder Kaur

...Petitioner

Versus

Rupinder Kaur

...Respondent

And

CRM-M-43767-2019

Rupinder Kaur

...Petitioner

Versus

Jaswinder Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Rohit Kapoor, Advocate with
Mr. Ashutosh Mishra, Advocate for the petitioner
in CRM-M-41719-2017 & CRM-M-50071-2017 and
for the respondent in CRM-M-43767-2019

Mr. Gagan Oberoi, Advocate for the respondent
in CRM-M-41719-2017 & CRM-M-50071-2017 and
for the petitioner in CRM-M-43767-2019

JAGMOHAN BANSAL, J. (ORAL)

1. By this common order, three petitions bearing Nos. *CRM-M-41719-2017*, *CRM-M-50071-2017* and *CRM-M-43767-2019* are disposed

of as all are arising out of same impugned order. For the sake of convenience, facts are borrowed from *CRM-M-41719-2017*.

2. The petitioner, through instant petition under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking setting aside of order dated 13.10.2017 (Annexure P-6) whereby Additional Sessions Judge, Ludhiana has set aside order dated 09.09.2016 whereby Judicial Magistrate 1st Class, Ludhiana had dismissed application of the respondent seeking maintenance under Section 125 Cr.P.C.

3. The brief facts of the case are that respondent is daughter of petitioner. Husband of the petitioner passed away in the year 2008. Litigation commenced between the parties on the pretext of cause of death of husband of the petitioner. The respondent preferred a petition under Section 125 Cr.P.C seeking maintenance from her mother. The matter came up for consideration before Judicial Magistrate 1st Class, Ludhiana, who vide order dated 09.09.2016 dismissed application of the respondent on the ground that respondent herein is major. The Court further found that respondent herein is unable to establish that she is physically or mentally abnormal and she cannot earn sufficient income. The respondent herein preferred revision before Sessions Court which came up for consideration before Additional Sessions Judge, Ludhiana who vide impugned order dated 13.10.2017 allowed the revision and

directed the present petitioner to pay a sum of Rs.3,000/- per month as maintenance allowance to the respondent. The Trial Court on account of non-payment of maintenance allowance issued conditional warrants against the present petitioner.

4. The petitioner has preferred *CRM-M-41719-2017* and *CRM-M-50071-2017* assailing order passed by Additional Sessions Judge as well as conditional warrants. The respondent has preferred *CRM-M-43767-2019* seeking enhancement of maintenance granted by Sessions Court.

5. The conceded position emerging from the record is that the respondent at the time of filing application under Section 125 Cr.P.C. was major and there is nothing on record to show that she was physically or mentally challenged at that point of time.

As per Section 125 Cr.P.C., wife, children, parents who are unable to maintain themselves may claim maintenance. For the sake of convenience, Section 125 Cr.P.C. is reproduced below:-

“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 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 subsection, 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 for 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) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(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 part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] 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 for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] 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.”

6. From the perusal of above quoted section, it is quite evident that legitimate or illegitimate minor child, whether married or not, can claim maintenance. A legitimate or illegitimate child who has attained majority can also claim maintenance if by reason mental or physical abnormality or injury, he or she is unable to maintain.

7. In the case in hand, respondent is admittedly major and there is nothing on record disclosing that she is physically or mentally abnormal or on account of injury she is unable to maintain herself. The respondent had filed application seeking maintenance under Section 125 Cr.P.C which is a summary proceeding. A three judge bench of the Hon'ble Supreme Court in ***Abhilasha vs. Parkash and Others; 2020 SCC OnLine SC 736*** while dealing with question of maintainability of petition under Section 125 Cr.P.C. by a major daughter has held that petition under Section 125 Cr.P.C is not maintainable and a major daughter can claim maintenance under Section 20 of Hindu Adoption & Maintenance Act, 1956.

8. Learned counsel for the respondent submits that facts of the present case are entirely different from the facts of judgment in *Abhilasha's case (supra)*.

9. In view of judgment of Hon'ble Supreme Court in *Abhilasha's case (supra)* and considering the fact that respondent at the time of filing the application under Section 125 Cr.P.C was major and there is nothing on record disclosing that she at that point of time was

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suffering from physical and mental abnormality, the present petition deserves to be allowed and accordingly allowed. Order dated 13.10.2017 passed by Additional Sessions Judge, Ludhiana is hereby set aside.

Consequently, order dated 18.12.2017 passed by Judicial Magistrate 1st Class, Ludhiana, which is impugned in CRM-50071-2017 is also set aside.

The petition (CRM-M-43767-2019) filed by the respondent is liable to be dismissed and accordingly dismissed.

The respondent is at liberty to avail remedies as permissible by law including under Section 20 of Hindu Adoption & Maintenance Act, 1956.

Pending applications also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

05.05.2023

*Mohit Kumar**Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*