

12.02.2024
Sl.No. 5
Ct. 32
P.A.

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

CRR 2237 of 2016
With
CRAN 1/2016 (Old CRAN 3350/2016)

Samsunnehar Bibi and Anr.

Vs.

Md. Kabirul Islam and Anr.

Petitioner no. 1 and petitioner no. 2 being the wife and daughter of opposite party no. 1 filed this revisional application under Section 401 read with Section 482 of the Criminal Procedure Code, 1973 assailing the impugned order dated 31st May, 2016 passed by the learned Judicial Magistrate, 2nd Court, Suri in Misc. Case No. 99/2014 under Section 127 of the Cr.PC seeking enhancement of maintenance amount arising out of Misc. Case No. 55/2000 filed under Section 125 of the Criminal Procedure Code, 1973, thereby the learned Magistrate rejected the prayer of enhancement of maintenance in favour of the daughter on the ground that she attained majority prior to the date of filing application.

The brief fact of the case is relevant for the purpose of disposal of this case as follows:

The petitioner no. 1 being the mother and as a natural guardian filed initially an application under Section 125 of the Cr.PC praying for maintenance on behalf of her minor daughter from the opposite party no. 1. The said case was registered as Criminal Misc. Case No. 55 of 2000.

After hearing, the learned Magistrate, Fast Track 2nd Court, Suri was pleased to grant a maintenance to the tune of Rs. 800/- per month in favour of the minor daughter, Nargis Mamuni on 11th April, 2002.

It is the contention of the petitioners that on 07.07.2014 petitioner no. 1 filed an application before the Learned Judicial Magistrate, 2nd Court, Suri, Birbhum under Section 127 of the Cr.PC being Misc. Case No. 99/2014 praying for enhancement of maintenance amount to the tune of Rs. 5,000/- from Rs. 800/- keeping in view of her education, food and miscellaneous expenses has been increased. But the said application was remaining pending near about 2 years. The petitioner no. 2 was born on 11.04.1996 and she became major and student of BA, 1st Year at Suri Vidyasagar College under University of Burdwan and her monthly expenses is near about Rs. 8,000/- but the learned Magistrate has rejected her prayer made in the

petition under Section 127 of the Code of Criminal Procedure on 31.05.2016 holding that the minor daughter attained majority. She is guided by Muslim Personal Law and not entitled to maintenance from her father under Section 125 of the Criminal Procedure Code. As such, the impugned order of rejection is liable to be set aside.

In view of the above facts, the instant criminal revisional application came up before this Court for disposal.

The sole issue is here whether maintenance can be allowed to a daughter, who attained majority and unmarried from her father under Section 125 of the Cr.PC though she is not suffering from any physical or mental abnormality/injury?

For better understanding and for the sake of ready reference, I would like to quote the Section 125 of the Cr.PC as follows: -

“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,

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Upon perusal of the aforesaid provision, it appears the provision contemplates that if any person having sufficient means neglects or refuses to maintain 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, a Magistrate upon proof of such neglect or refusal, order for monthly maintenance as Magistrate thinks fit and proper.

Here, it is admitted facts that the daughter attained majority though she was unmarried and she was residing with her mother. Even if there is statutory embargo as created under Section 125 (1) (c) that by itself cannot mean that a major daughter would not be entitled of receiving payment of maintenance till she gets married. Father has legally and moral obligation to maintain her. Daughter though become major having no physical or mental abnormality, is entitled to maintenance from her father till

her marriage even after attainment of majority under Personal Law i.e. Mohammedan Law as the Petitioner No. 2/daughter belongs to Muslim.

Even Section 20 (3) of the Hindu Adoptions and Maintenance Act, the liability of the father of providing maintenance to an unmarried dependent girl extends beyond the majority of daughter to Hindu daughter guided by Hindu Law. But the Magistrate in exercise of powers under Section 125 Cr.P.C. cannot pass maintenance to the major daughter who admittedly not suffering from any physical or mental abnormality/injury as there is specific embargo.

This Court places reliance a judgment passed by three Judges Bench in **Abhilasha -versus- Parkash & Ors.**¹ Wherein Hon'ble Supreme Court held in Paragraph 34 as under:

“34. In the case before us, the application was filed under Section 125 Cr.P.C. before Judicial Magistrate First Class, Rewari who passed the order dated 16.02.2011. The Magistrate while deciding proceedings under Section 125 Cr.P.C. could not have exercised the jurisdiction under Section 20(3) of Act, 1956 and the submission of the appellant cannot be accepted that the Court below should have allowed the application for maintenance even though she has become

¹

AIR 2020 Supreme Court 4355, AIRONLINE 2020 SC 727.

major. We do not find any infirmity in the order of the Judicial Magistrate First Class as well as learned Additional Magistrate in not granting maintenance to appellant who had become major”.

Accordingly, the impugned order of rejection dated 31.05.2016 passed by Learned Judicial Magistrate, 2nd Court, Suri, Birbhum under Section 127 of the CrPC being Misc. Case No. 99/2014 is hereby affirmed.

Consequently, **CRR No. 2237 of 2016** is dismissed without order as to costs. Pending application being **CRAN 1/2016 (Old CRAN 3350/2016)** is also, thus, disposed of.

Department is directed to communicate this order to the learned trial Court immediately for information.

All parties are to act in terms of the copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties as expeditiously as possible taking all legal formalities.

(Ajay Kumar Gupta, J.)