



Judgment

revn 280.22

1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL REVISION APPLICATION (REVN) NO. 280/2022

Murlidhar Krushnarao Virulkar,
aged about 66 yrs., Occ. Nil,
R/o. Vivekanand Colony, behind
Bus Stand, Morshi, Dist. Amravati.

... **APPLICANT**

VERSUS

Ku. Neha d/o Krushnarao Virulkar,
aged about 32 yrs., Occ. Service,
R/o. c/o. Smt. Shubhangi Tambewar,
Baba Farid Nagar, Kharbi, Nagpur.

... **NON-PPLICANT**

Mr. Akshay Joshi, Advocate and Mr. Dhiraj, Advocate for applicant.
None appeared for non-applicant.

CORAM : SANDIPKUMAR C. MORE, J.

JUDGMENT RESERVED ON : 27.11.2024
JUDGMENT PRONOUNCED ON: 03.12.2024

JUDGMENT

The present dispute is between father and daughter in
respect of grant of maintenance amount. Heard learned counsel

2

appearing for the applicant/father whereas learned counsel for the non-applicant/daughter despite appearance, remained absent.

2. The applicant/father is challenging the judgment and order passed by learned Family Court No. 2, Nagpur (hereinafter referred to as “learned Family Court”) on 03.03.2022 in Petition No. E-299 of 2016 filed by the present non-applicant/daughter.

3. Under the impugned order, learned Family Court has granted maintenance @ Rs. 3500/- per month to the non-applicant/daughter from the date of filing of petition i.e. from 05.07.2016 till she gets married or starts earning, whichever occurs earlier. It is also ordered that the maintenance amount if any paid by the present applicant/father i.e. respondent therein at interim stage, should be adjusted in the total maintenance amount.

4. Background facts leading to this revision application are as under:-

5. The non-applicant/daughter filed the aforesaid petition for claiming maintenance under Section 125 of Code of Criminal

3

Procedure (in short “Cr.P.C.”) against her father i.e. present applicant on 05.07.2016 with allegations that she was harassed by the applicant/father and therefore, constrained to live with her sister at Nagpur. She had also claimed that she is entitled for maintenance from the applicant as even after attaining the majority. She is not having any source of income and therefore, unable to maintain herself. Though the applicant/father had resisted said application before the learned Family Court, but since he could not pay the interim maintenance amount, his defence was struck off. Thereafter, the learned Family Court proceeded further and after conducting trial, granted the maintenance amount under impugned order as mentioned above. Hence, this revision application.

6. Learned counsel for the applicant/father heavily relied on the judgment of the Hon’ble Apex Court in the case of ***Abhilasha Vs. Parkash and others, (2021) 13 SCC 99***. He also placed reliance on the recent judgment of the High Court of Kerala in the case of ***Gireesh Kumar N. Vs. Rajani K.V., 2023 LiveLaw (Ker) 46***. He submitted that the Hon’ble Apex Court has clearly held that the unmarried

4

daughter unable to maintain herself is not at all entitled to claim maintenance from her father under Section 125 of Cr.P.C. unless she is suffering from any physical or mental abnormality/injury. He further pointed out that the High Court of Kerala in the case of Gireesh Kumar (*supra*) has also followed the aforesaid observations of the Hon'ble Apex Court in the case of Abhilasha (*supra*). It is significant to note that learned counsel for the applicant/father by relying only upon the aforesaid proposition of law laid down by the Hon'ble Apex Court as mentioned above, submitted his arguments to discard the impugned order. He did not raise any objection about the quantum of maintenance and also did not dispute the contention of the non-applicant/daughter that she is unable to maintain herself.

7. However, the learned counsel for the applicant/father conceded for granting liberty to the non-applicant/daughter to take recourse to Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956 (for short "HAMA, 1956") for claiming maintenance from the applicant/father. Thus, from the submissions made on behalf of the applicant/father, it is evident that he is not having any objection

5

for filing application by the non-applicant/daughter under Section 20(3) of HAMA, 1956. He is challenging the impugned order merely because under Section 125 of Cr.P.C., the non-applicant/daughter unable to maintain herself, cannot claim maintenance after attaining majority, unless suffering from physical or mental abnormality. Therefore, the present revision application is only limited to the aforesaid proposition of law laid down by the Hon'ble Apex Court in the case of Abhilasha (*supra*).

8. The Hon'ble Apex Court in the case of Abhilasha (*supra*) has discussed the scope of maintenance to be granted to unmarried daughter unable to maintain herself under Section 125 of the Cr.P.C. Therefore, the scheme of Section 125 of Cr.P.C. was considered. It was ultimately held that the Magistrate exercising jurisdiction under Section 125 of the Cr.P.C. can award maintenance even to the unmarried daughter, but she must be suffering from certain physical or mental abnormality/injury. Thus, it is held that an unmarried daughter merely unable to maintain herself is not entitled for maintenance under Section 125 of Cr.P.C. The Hon'ble Apex Court

6

in clear terms held that such unmarried daughter unable to maintain herself without any disability as mentioned above can claim maintenance from her father under Section 20 of HAMA, 1956, even after attaining majority till she marries.

9. It is extremely important to note that the Hon'ble Apex Court while laying down such proposition of law, was dealing with order passed by learned Magistrate under Section 125 of Cr.P.C. and not by the order of the Family Court. It is specifically observed that learned Magistrate while deciding proceedings under Section 125 of Cr.P.C. could not have exercised the jurisdiction under Section 20(3) of HAMA, 1956 and therefore, considering the scope of Section 125 of Cr.P.C., he was not empowered to grant maintenance to the unmarried daughter unable to maintain herself without there being any physical or mental abnormality. However, it is not a case with learned Family Court. Since after enactment of the Family Court's Act, 1984, a Family Court shall also have jurisdiction exercisable by a Magistrate of First Class under Chapter IX of Cr.P.C. relating to order for maintenance of wife, children and parents. It is further observed in

7

the said judgment that in an area where the Family Court is not established, a suit or proceedings for maintenance including the proceedings under Section 20 of the HAMA, 1956 shall only be before that the District Court or any Sub-ordinate Civil Court. That means the Family Court is definitely having jurisdiction to entertain claim of maintenance by unmarried daughter unable to maintain herself, under Section 20 of HAMA, 1956.

10. It is extremely important to note that the Hon'ble Apex Court in para 34 of the judgment in the case of Abhilasha (*supra*) has observed in the light of its earlier observation in the case of ***Jagdish Jugtawat Vs. Manju Lata, (2002) 5 SCC 422*** as under:-

“34. 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 the 1956 Act, in such eventuality, the 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 the 1956 Act so as to avoid multiplicity of proceedings as observed by this Court in the case of Jagdish Jugtawat (supra).

8

However the Magistrate in exercise of powers under Section 125 Cr.P.C. cannot pass such order.”

However, the Kerala High Court though made reference to the judgment in the case of Jagdish Jugtawat (*supra*), but by relying upon the other observations of Hon’ble Apex Court in the case of Abhilasha (*supra*) has made following observations and reached to the conclusion as mentioned herein:-

“9. While answering the said queries, the Apex Court held as under: “The right of unmarried daughter under S.20 to claim maintenance from her father when she is unable to maintain herself is absolute and the right given to unmarried daughter under S.20 is right granted under personal law, which can very well be enforced by her against her father. The judgment of this Court in Jagdish Jugtawat (supra) laid down that S.20(3) of the Act,1956 recognised the right of a minor girl to claim maintenance after she attains majority till her marriage from her father. Unmarried daughter is clearly entitled for maintenance from her father till she is married even though she has become major, which is a statutory right

recognised by S.20(3) and can be enforced by unmarried daughter in accordance with law. The purpose and object of S.125 Cr.P.C as noted above is to provide immediate relief to applicant in a summary proceedings, whereas right under S.20 read with S.3(b) of Act, 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under S.20, the proceedings need to be initiated under S.20 of the Act and the Legislature never contemplated to burden the Magistrate while exercising jurisdiction under S.125 Cr.P.C to determine the claims contemplated by Act, 1956. We, thus, accept the submission of the learned counsel for the appellant that as a proposition of law, an unmarried Hindu daughter can claim maintenance from her father till she is married relying on S.20(3) of the Act, 1956, provided she pleads and proves that she is unable to maintain herself, for enforcement of which right her application/suit has to be under S.20 of Act, 1956.”

10. It was further held that:

“The Act, 1956 was enacted to amend and codify

the law relating to adoptions and maintenance among Hindus. A bare perusal of S.125(1) Cr.P.C. as well as S.20 of Act, 1956 indicates that whereas S.125 Cr.P.C limits the claim of maintenance of a child until he or she attains majority. By virtue of S.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 S.125(1) Cr.P.C, 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.”

11. It is submitted by the learned counsel for the revision petitioner further that in this particular case, no evidence let in to substantiate that the 2nd respondent suffers from any physical or mental abnormality or injury and she could not maintain herself.

12. Per contra, it is submitted by the learned counsel for the respondents that an unmarried

daughter, who attained majority, also would get maintenance if she cannot maintain herself.

13. While answering the queries (i) and (ii), the legal position emerges is that by virtue of Section 125(1) of Cr.P.C, an unmarried daughter, who attained majority, could not claim maintenance in the ordinary circumstance, viz. merely on the ground that she does not have means for her sustenance. At the same time, even though the unmarried daughter, who 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 herself, for which, pleadings and evidence in this regard are mandatory. Otherwise, the legal proposition is that an unmarried Hindu daughter can claim maintenance from her father till she is married resorting to S.20(3) of Hindu Adoptions and Maintenance Act, 1956, provided, she pleads and proves that she is unable to maintain herself, for enforcement of which right her application/suit has to be under S.20 of Act, 1956. On evaluation of the evidence available in this matter, no evidence let in to show that the 2nd

12

respondent has any physical or mental abnormality, or she has any injury so that she could not maintain herself and, therefore, grant of maintenance to the 2nd respondent, (who is now aged above 18 years) from the date of attaining majority, is found to be erroneous and thereby the order impugned stands set aside to that extent, limiting entitlement of maintenance by the 2nd respondent till the date she attained majority.”

11. Thus, it appears that the Kerala High Court did not take into consideration the observation of Hon’ble Apex Court in the case of Abhilasha (*supra*) made in para 34 as mentioned above.

12. In the case of Jagdish Jugtawat (*supra*), the Hon’ble Apex Court was also considering the order passed by learned Family Court under Section 125 of Cr.P.C. and not by any Magistrate under that Section. The Hon’ble Apex Court, in that case, had upheld the order of the learned Single Judge of the concerned High Court, wherein following observation was made:-

“Thus, in view of the above, though it cannot be said that the order impugned runs counter to the law laid down by

13

the Hon'ble Supreme Court. The provisions of Section 125, CrPC are applicable irrespective of the Personal Law and it does not make any distinction whether the daughter claiming maintenance is Hindu or Muslim. However, taking an over-all view of the matter, I, with all respect to the Hon'ble Court, am of the candid view that the provisions require literal interpretation and daughter would cease to have the benefit of the provisions under Section 125, CrPC on attaining majority, though she would be entitled to claim the benefits further under the Statute/Personal Law. But the Court is not inclined to interfere, as the order does not result in miscarriage of justice, rather interfering with the order would create great inconvenience to respondent No. 3 as she would be forced to file another petition under Sub-section (3) of Section 20 of the Act of 1956 for further maintenance, etc. Thus, in order to avoid multiplicity of litigations, the order impugned does not warrant interference.”

13. On the basis of the aforesaid observation of concerned High Court, the Hon'ble Apex Court concluded as follows:-

“4. Applying the principle to the facts and circumstances of the case in hand, it is manifest that the right of a minor girl for maintenance from 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

14

the learned Single Judge for maintaining the order passed by the Family Court which is based on a combined reading of Section 125 CrPC and Section 20(3) of the Hindu Adoptions and Maintenance Act. For the reasons aforestated we are of the view that on facts and in the circumstances of the case no interference with the impugned judgment/order of the High Court is called for.”

14. It is to be noted that the High Court of Kerala did not consider the main aspect that the learned Family Court was having jurisdiction to decide the claims of maintenance under both the Sections namely Section 125 of Cr.P.C. and Section 20 of HAMA, 1956. It is important to note that the Hon’ble Apex Court must have observed in para 34 of the judgment in the case of Abhilasha (*supra*) that in view of its earlier observation in the case of Jagdish Jugtawat (*supra*), the learned Family Court could exercise jurisdiction under both the Acts and in appropriate case, grant maintenance to the unmarried daughter even though she has become major, by enforcing her right under Section 20 of HAMA, 1956 mainly to avoid multiplicity of proceedings.

15

15. Thus, considering the aforesaid aspects and the observation of the Hon'ble Apex Court in the above referred cases, it is to be seen as to who has passed the impugned order, whether the Judicial Magistrate First Class who is not having power to grant maintenance under Section 20(3) of the HAMA, 1956 or the learned Family Court Court who is having jurisdiction to grant maintenance either under Section 125 of the Cr.P.C. or under Section 20(3) of the HAMA, 1956. In the instant case, had the impugned order was passed by the learned Magistrate under Section 125 of the Cr.P.C. then as per the observations of the Hon'ble Apex Court in case of Abhilasha (*supra*), it would have been set aside in absence of any physical or mental abnormality to the present non-applicant/daughter. However, the impugned order is passed by the learned Family Court which is definitely having jurisdiction to grant maintenance under Section 20(3) of HAMA, 1956 in addition to Section 125 of Cr.P.C. The Hon'ble Apex Court in case of Abhilasha (*supra*) has definitely made such distinction between the order under Section 125 of Cr.P.C. of granting maintenance to the unmarried daughter unable to maintain

16

herself passed by learned Magistrate and learned Family Court. The Magistrate in exercise of power under Section 125 of Cr.P.C. cannot pass order granting maintenance to the unmarried major daughter unable to maintain herself in absence of mental or physical injury but it would be different case, if learned Family Court passes such order by taking clue from Section 20(3) of the HAMA, 1956. It is also held that in an appropriate cases, the Family Court can grant maintenance to adult unmarried daughter without any disability who is unable to maintain herself under Section 125 of Cr.P.C. by invoking its jurisdiction under Section 20(3) of the HAMA, 1956. Thus, in the instant case, the learned Family Court was not without jurisdiction to grant maintenance to the non-applicant/daughter, even after attaining majority, but without having any mental or physical abnormality.

16. Thus, the outcome of the aforesaid discussion is that the order of learned Magistrate granting maintenance to unmarried major daughter unable to maintain herself but not having any mental or physical abnormality or injury, while exercising jurisdiction under Section 125 of Cr. P. C. is not sustainable in the eye of law, but if such

17

order is passed by learned Family Court, then it is certainly sustainable, since learned Family Court is having jurisdiction to deal with the cases of granting maintenance under Section 125 of Cr. P. C. as well as under Section 20(3) of HAMA, 1956. Admittedly, this point in respect of jurisdiction of the Magistrate vis-a-vis jurisdiction of the Family Court is not discussed in the impugned judgment, but it would be rather harsh, if the non-applicant/daughter is again asked to go for filing maintenance application under Section 20(3) of HAMA, 1956 afresh and that too after about 9 years. Therefore, the impugned order passed by the learned Family Court appears perfectly right as it was definitely possessing jurisdiction i.e. under Section 125 of Cr.P.C. as well as under Section 20(3) of the HAMA, 1956 simultaneously. Therefore, in the light of observation of the Hon'ble Apex Court in para 34 of the judgment in the case of Abhilasha (*supra*), no interference is required in the impugned judgment and the revision application therefore, stands dismissed and disposed of.

(SANDIPKUMAR C. MORE, J.)