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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.7679 of 2016
Date of decision: 15.05.2024

Joginder Kaur and another ... Petitioners

Vs.

Surinder Singh ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Surinder Sharma, Advocate,
for the petitioners.

Mr. C.L. Sharma, Advocate,
for the respondent.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioners under Section 482 of Cr.P.C. for seeking modification in the order dated 27.01.2015 passed by the Court of Judicial Magistrate, 1st Class, Jalandhar in Maintenance Petition No.29654 of 2010/2013 titled as Joginder Kaur and another v. Surinder Singh and seeking quashing of order dated 07.01.2016 passed by the Court of learned Additional Sessions Judge, Jalandhar in Criminal Revision Petition No.139 of 2015.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the present petitioners had previously filed a petition under Section 125 of Cr.P.C. in the year 2005 as against the respondent making prayer for grant of maintenance and an application for grant of

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interim maintenance had also been filed along with the said petition, which was dismissed vide order dated 08.10.2005. The petitioners preferred a revision against the said order and during the pendency thereof, the respondent who is husband of the petitioner No.1 and father of petitioner No.2 suffered a statement on 06.07.2006 thereby agreeing to pay lumpsum maintenance to the tune of Rs.1,50,000/- to the petitioner No.1 and to deposit an amount of Rs.1 lac in the name of the minor petitioner No.2 within two months in the shape of FDR and also agreed that he would try to send something after six months to take care of daily needs of her minor petitioner. The revisional Court vide order dated 06.07.2006 (Annexure P-2) disposed of the revision petition in terms of the said statement thereby allowing it. The respondent deposited the aforementioned amount of Rs.1,50,000/- in favour of the petitioner No.1 and Rs.1,00,000/- in favour of the petitioner No.2 after a gap of long time and only after filing of execution application by the petitioners.

3. As per the further pleas as taken in the present petition and as revealed from the record, the petitioners subsequently filed a petition bearing No.125 MNT 29654/2010/2013 under Section 125 of Cr.P.C. seeking maintenance from the respondent and also filed an application for grant of interim maintenance along with the said petition. The prayer so made by the petitioners for grant of **interim maintenance** had been declined by the learned Magistrate vide order dated 28.05.2012 (Annexure P-3). The said order was challenged by filing revision petition

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No.16372 of 2012 before the Court of Additional Sessions Judge, Jalandhar which too was dismissed vide order dated 20.04.2013 (Annexure P-4). However, the main petition bearing No.125 MNT No.29654 of 2013 filed in the year 2010, was decided on 27.01.2015 (Annexure P-5) and though the prayer made by the **petitioner No.1** for grant of maintenance had been declined and petition qua her was ordered to be dismissed but direction was given to the respondent to pay an amount of Rs.1500/- per month to the **petitioner No.2**. The petitioners again filed a revision petition bearing No.139 of 2015 against the order dated 27.01.2015 before the Court of learned Additional Sessions Judge, Jalandhar who dismissed the claim of the petitioner No.1 but modified the trial Court order to the extent to which the petitioner No.2 was held entitled to maintenance @Rs.1500/- per month thereby enhancing the amount of maintenance payable to her @Rs.2500/- per month from Rs.1500/- per month.

4. Still dissatisfied, the petitioners have challenged the orders Annexures P-5 and P-6 by filing the present petition.

5. It is argued by learned counsel for the petitioners that the impugned orders dated 27.01.2015 passed by learned Magistrate and order dated 07.01.2016 passed by learned Additional Sessions Judge thereby dismissing the prayer made by the petitioner No.1 for grant of maintenance are liable to be set aside to that extent because while passing the same, the Courts below ignored the fact that the amount of

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Rs.1,50,000/- which was paid to the petitioner No.1 was quite meager. With the passage of time and due to ever rising index of prices, the petitioner No.1 is unable to maintain herself with the abovesaid meager amount. The petitioner No.2 has now become major and is studying in higher classes. Big amount of money is required to be paid for her college fees but this fact had not been taken into consideration. Therefore, it is argued that the impugned orders are liable to be set aside to the extent to which the relief claimed by the petitioner No.1 was declined, the instant petition deserves to be allowed and the petitioner No.1 deserves to be held entitled for receiving maintenance from the respondent.

6. Another limb of argument as raised by learned counsel for the petitioners is that the petitioner No.2 was minor at the time when the amount of Rs.1 lac was settled to be deposited in her name as lumpsum amount for her maintenance. Not being a party to the agreement arrived at between the petitioner No.1 and the respondent, she was not bound by the said settlement. Further the amount so deposited was quite meager and was not sufficient for meeting with her basic necessities and requirements of education, food and lodging etc. of the petitioner No.2 who is unmarried daughter of the respondent. Therefore, it is argued that the orders passed by the Courts below are liable to be modified further, and she deserves to be paid at least an amount of Rs.10,000/- per month by the respondent.

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7. Per contra, learned counsel for the respondent argued that he has retired in the year 2015. As on 06.07.2006, the petitioner No.1 who is mother and natural guardian of the petitioner No.2 had agreed to withdraw her claim not only for herself but also qua the petitioner No.2 as well. She had received the amount of Rs.2,50,000/- as past, present and future maintenance and had specifically agreed that she would not make any claim for maintenance in future. It is argued that the learned Courts below committed no error in declining the prayer as made by the petitioner No.1 for grant of maintenance.

8. It is further argued by learned counsel for the respondent that the petitioner No.2 has now turned major. She might be unmarried till date but after attaining the age of majority, she could not raise any claim of maintenance as against the respondent. It is further argued that even otherwise, the petitioner No.2 too had no right to claim any maintenance from the respondent as her claim with regard to the same also stood extinguished in view of statement recorded by petitioner No.1 on 06.07.2006, when she had received lumpsum amount of Rs.1 lac towards present, past and future maintenance of the petitioner No.2 as well. With these broad submissions, it is argued that the petition is devoid of any merit and is liable to be dismissed.

9. I have heard learned counsel for both the parties at considerable length and have gone through the record carefully.

10. It is undisputed case of both the parties that the petitioners who

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are wife and daughter respectively of the respondent had filed a petition in the year 2005 under Section 125 of Cr.P.C. claiming maintenance and on 06.07.2006, the petitioner No.1 for herself and also in the capacity of mother and natural guardian of the petitioner No.2 who was minor at that time had agreed to accept the amount of Rs.1,50,000/- for herself and Rs.1,00,000/- for the petitioner No.2 thereby relinquishing all her claims for grant of maintenance for her daughter as well as herself. It is also not in dispute that the aforementioned amount had been given by the respondent to the petitioners. The question that **firstly** arises for consideration in this case is as to whether the petitioner No.1 was entitled to claim any maintenance for herself when she had given up her claim to receive any past, present and future maintenance in lieu of a receipt of a sum of Rs.1,50,000/- from the respondent on 06.07.2006. In my considered opinion, the answer should be in the negative. The petitioner No.1 had accepted the offer made by the respondent to receive the amount of Rs.1,50,000/- in shape of lumpsum maintenance subject to not to claim any maintenance in future. No doubt, the well settled proposition of law is that an agreement relinquishing right of maintenance by the wife is against public policy and is not enforceable but such proposition of law is applicable in the case when no maintenance at all has been received by a wife which is not the situation in the present case where the petitioner No.1 had received an amount of Rs.1,50,000/- from the respondent relinquishing her future claim. The Court of learned

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Magistrate as well as the revisional Court had, therefore, rightly held that the petitioner No.1 was not entitled to claim maintenance from the respondent by filing a petition for maintenance under Section 125 of Cr.P.C.

11. Now coming to the petitioner No.2. As on 06.07.2006, admittedly she was a minor being born on 08.08.1992. As already discussed, an amount of Rs.1,00,000/- was received by the petitioner No.1 on her behalf for her sustenance and in lieu thereof, she had agreed to relinquish the claim of maintenance of the petitioner No.2 also with the condition that the respondent shall take care of food, clothing and other basic requirements of the petitioner No.2 by trying to send her some money every six months. Though, he deposited the amount of Rs.1,00,000/- in favour of petitioner No.2, but the condition of some money to take care of her food etc. is obviously not proved to have been adhered to by the respondent and that is why the learned trial Magistrate had directed to pay a sum of Rs.1500/- per month by the respondent to the petitioner No.2 and the learned Revisional Court had enhanced this amount to Rs.2500/- per month.

12. The plea as taken by the respondent is that since he had paid an amount of Rs.1,00,000/- in lumpsum for the petitioner No.2 as well therefore, he is not liable to pay any amount of money by way of maintenance to her as well. It will not be out of place to mention here that the respondent has not challenged the order passed by the Magistrate on

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27.01.2015 thereby directing him to pay maintenance to the tune of Rs.15,00/- per month nor the order dated 07.01.2016 thereby enhancing the amount of maintenance to be paid to petitioner No.2, has been challenged by him. So far as his argument that he is not liable to pay any maintenance to the petitioner No.2 as well is concerned, it may be mentioned that even though the petitioner No.1 had accepted the amount of Rs.1,00,000/- as permanent maintenance for the petitioner No.2 as well who was minor at that time but the well settled proposition of law is that the rights of the children qua maintenance are independent of the proceedings initiated by or against the wife and minor child cannot be barred from claiming maintenance on the basis of compromise being arrived between his parents. Reference in this regard can be made to **Nirmal Singh v. Gurvinder Kaur and others**, 2008 (1) R.C.R. (Criminal) 970, whereby a Coordinate Bench of this Court had observed that the father cannot be allowed to shrug off his responsibility to maintain his children citing the compromise. Reliance can also be placed upon **Devender Sharma v. Yash**, 2024 NCPHHC 57621, wherein a Coordinate Bench of this Court recently observed that mere fact of mother accepting any alimony or permanent settlement does not absolve the father from his duty to maintain him and any permanent alimony being granted to the mother, would not preclude the child from claiming maintenance under Section 125 Cr.P.C. Therefore, the plea so taken by the respondent cannot be accepted.

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13. However, the next question that arises for consideration is as to whether the petitioner No.2 is entitled to seek any further enhancement in the amount of maintenance as directed to be paid to her by the respondent vide order dated 07.01.2016 and this order deserves any modification or not? On going through the entire record and considering the contentions of both the sides, I am of the considered opinion that the answer to this question should also be in the negative because of the fact that the petitioner No.2 had become major by the date when the impugned order had been passed. The well settled proposition of law is also that an unmarried major daughter can claim maintenance from her father but it is only in case where she takes recourse to Section 20 (3) of the Hindu Adoptions and Maintenance Act, 1956 (For short “Act, 1956”) for claiming maintenance against her father and not in a case under Section 125 of Cr.P.C. and a Magistrate while exercising jurisdiction under Section 125 Cr.P.C. cannot exercise jurisdiction under Section 20 (3) of the Act, 1956. Reliance in this regard can be placed upon the observations made by the Hon’ble Supreme Court in **Abhilasha v. Parkash and others**, AIR 2020 SC 4355 and by High Court of Kerala in **Gireesh Kumar.N v. Rajani K.V. and others**, 2023 (1) ILR (Kerala) 622. However, at the same time, the fact that cannot be ignored is that the respondent did not choose to challenge either the order dated 27.01.2015 as passed by the Court of Judicial Magistrate whereby maintenance was directed to be paid to petitioner No.2 or the order dated 07.01.2016

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whereby the amount of maintenance payable to her was enhanced to Rs.2500/- per month. As such, irrespective of the fact that after attaining the age of majority, the petitioner No.2 had no indefeasible right to claim maintenance from her father, still, to advance the interest of justice and also the fact that the respondent himself who is father of the petitioner No.2 did not challenge the order passed by the Courts below thereby directing payment of maintenance @Rs.1500/- per month and further enhanced to Rs.2500/-, it will be proper that she is held entitled to receive payment of arrears of maintenance @Rs.2500/- per month till 07.01.2016 i.e. the date of passing of the impugned order by the revisional Court, if not beyond that. It is also further clarified that the petitioner No.2 shall also be at liberty to take recourse to Section 20 (3) of the Act, 1956 for claiming maintenance against her father and subject to the liberty as given above, the petition is dismissed.

15.05.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No