



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION NO.72 OF 2024

Prakash Devidas Ambekar,
Aged about 59 years,
Occupation – Pvt. Service,
C/o Ambekar Jewellers, Sarafa Galli,
Behind Kativesh Rajasthan Stores,
Washim, Tq. And District Washim

...APPLICANT

VERSUS

1. Mrs. Seema Prakash Ambekar,
Aged about 53 years,
Occupation – Household
2. Ku. Nikita d/o Prakash Ambekar,
Aged about 26 years,
Occupation – Education

Both R/o. Wankhede Nagar,
Dabki Road, Akola,
Tq. and District Akola

...NON-APPLICANTS

Mr. R.S. Kurekar, Advocate for the applicant.

Mr. A. Bhuihar, Advocate h/f Mr. A.M. Tirukh, Advocate (appointed)
for the non-applicants.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : FEBRUARY 13, 2025.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. The revision application is filed by the applicant who is the father of non-applicant No.2 challenging the judgment and order passed by the Family Court, Akola dated 24/01/2024 in E-Petition No.8/2023 below Exhibit 27 directing the applicant to pay maintenance to non-applicant No.2 @ Rs.5000/- per month from 01/11/2023 towards her education expenses.

3. The facts which are necessary for disposal of the appeal are as under:-

A] The marriage between the applicant and non-applicant no.1 was solemnised on 23/04/1995. From the said wedlock, non-applicant no.2 was born. As per the allegation, non-applicant No.1 was ill-treated by the present applicant, and therefore, she constrained to leave the matrimonial house and started residing along with her parents. Thereafter she preferred a petition for grant of maintenance bearing E-Petition No.8/2023. The same was disposed of granting maintenance @ Rs.6000/- per month. Non-applicant No.2 filed an application below Exhibit-27 contending that she is studying law at Mumbai and no maintenance is provided to her as she has attained the age of majority. In fact, she is not earning and the applicant is under obligation to maintain her till she marries or she becomes independent but while granting the maintenance, the Family Court has not considered the same and

therefore, she prayed for grant of maintenance towards her education charges.

4. Said application is strongly opposed by the applicant on the ground that now the non-applicant No.2 has attained the age of majority, and therefore, she is not entitled for any maintenance.

5. Learned Counsel for the applicant submitted that by this time now non-applicant No.2 became independent and able to maintain herself, therefore, the order passed by the Family Court directing the applicant to provide education charges @ Rs.5000/- per month itself is illegal and liable to be quashed and set aside. He submitted that in view of provisions under Section 125 of the Code of Criminal Procedure, the applicant is under obligation to maintain the daughter till she attains the age of majority. Now, she has already attained the age of majority, and therefore, she is not entitled for any maintenance.

6. *Per contra*, learned Counsel for the non-applicants submitted that it is not disputed that non-applicant No.2 is the daughter born from the said wedlock. Though she has attained the age of majority but she has not having any source of income, and therefore, she is unable to maintain herself. He further submitted that merely because she has attained the age of majority, she can't be deprived of getting the maintenance. In fact, as non-applicant No.2 is taking education and she

is in requirement of the financial assistance from the father and father is under obligation to incur the expenses towards her education. In support of his contention, he placed reliance on the decision of this Court in *Criminal Revision Application No.280 of 2022 (Murlidhar Krushnarao Virulkar Vs. Ku. Neha d/o Krushnarao Virulkar)* decided on 03/12/2024 wherein this Court has considered the decision of the Hon'ble Apex Court in the case of *Abhilasha Vs. Parkash and others, [(2021) 13 SCC 99]* and 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*.

7. On perusal of the entire record and the evidence which is brought on record it reveals that non-applicant No.2 is the daughter and taking education and pursuing her studies in law. As far as the decision given by the Family Court is concerned, the Family Court has considered that she has attained the age of majority and pursuing her education and not entitled for maintenance. Subsequently, on her application, the education charges are granted by the Family Court to non-applicant No.2 and the said order is under challenge.

8. The Hon'ble Apex Court in the case of *Abhilasha* (supra) has discussed the scope of maintenance to be granted to unmarried daughter who is unable to maintain herself under Section 125 of the Cr.P.C. 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 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 Hindu Adoptions and Maintenance Act, 1956 (for short "HAMA, 1956") even after attaining majority till she marries.

9. It is pertinent to note that the object behind Section 125 of Cr.P.C. which is social legislation. 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, as far as the jurisdiction of the Family Court is concerned, 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. 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. The judgment of the Hon'ble Apex Court in the case of Abhilasha (supra) has considered its earlier decision in the case of ***Jagdish Jugtawat Vs. Manju Lata [(2002) 5 SCC 422]*** wherein it is observed 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.”

11. This Court while dealing with this issue in Criminal Revision Application No.280 of 2022 (supra) also considered the judgment of the Hon'ble Apex Court in the case of Abhilasha (supra) wherein the Hon'ble Apex Court has observed 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.PC 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.PC 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.”

12. Thus, considering the aspects and the observation in two judgments it is to be seen as 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, the Family Court has passed an order by invoking the jurisdiction under Section 125 of Cr.P.C. as well as under Section 20(3) of the HAMA, 1956, and therefore, the observation of the Family Court granting maintenance to the unmarried daughter suffers from no illegality, and therefore, there is no merits in the present revision application. In view of that, the revision application deserves to be dismissed.

13. Accordingly, the revision application stands dismissed.

(URMILA JOSHI-PHALKE, J.)

**Divya*