



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

120

CRR(F)-192-2026 (O&M)
Date of Decision: 28.04.2026

Kamaljit Singh

.....Petitioner

Versus

Gurkirat Kaur

.....Respondent

CORAM: HON'BLE MS. JUSTICE NEERJA K. KALSON

Present : Mr. H.K. Brinda, Advocate
for the petitioner.

Mr. Gaurav Vir Singh Behl, Legal Aid Counsel,
Mr. Jugraj Singh Chouhan, Advocate and
Mr. Sagar Bansal, Advocate
for the respondent.

NEERJA K. KALSON, J.

***“The law does not merely adjudicate disputes; it intervenes to
protect those who cannot Protect themselves.”***

1. The present case raises, on the surface, a narrow objection as to maintainability; however, beneath that technical objection lies a far more fundamental concern-whether the statutory right of a minor child to claim maintenance can be frustrated merely because the person who has approached the Court is the maternal grandmother and not the mother.

2. The law relating to maintenance, particularly under Section 125 Cr.P.C. is not a conventional adversarial remedy to be examined through the narrow lens of procedural formalism. It is a measure of social justice,



enacted with the avowed object of preventing destitution, vagrancy and neglect. It is intended to ensure that those who are incapable of maintaining themselves are not abandoned to circumstances, and among all such categories, a minor child stands on the highest footing of protection. The provision is, therefore, required to be interpreted in a manner that advances its beneficent purpose and not in a manner that permits the object of the statute to be defeated through technical pleas.

3. The expression “maintenance” in such a statutory setting is of broad amplitude. It does not signify mere subsistence but a dignified standard of living. It takes within its fold food, clothing, shelter, education, medical needs, and all such essentials as are necessary to secure to a child a life consistent with dignity. A child is not expected merely to survive; the law contemplates that she must be enabled to grow, develop and live in conditions that preserve her physical, emotional and social well-being. Maintenance, therefore, is not a bounty but a rightful entitlement of an individual. It is not charity but the legal recognition of a continuing obligation owed by one who is bound to maintain, to one who is entitled to be maintained. The Hon'ble Supreme Court in ***Captain Ramesh Chander Kaushal Vs. Veena Kaushal, (1978) 4 SCC 70*** underscored that Section 125 Cr.P.C. falls within the constitutional sweep of Articles 15(3) and 39 and must receive a liberal interpretation so as to fulfill its remedial purpose, which reads as under :

“9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling



for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause — the cause of the derelicts.”

The same principle has been reiterated in ***Rajnesh vs. Neha and another (2021) 2 SCC 324*** wherein it has been observed that maintenance laws are enacted as a tool of social justice to provide recourse to dependent spouses and children and to prevent them from falling into vagrancy and destitution. The Court further emphasized that such provisions must be interpreted in a manner that advances their object and not in a manner that defeats it by adopting a hyper-technical approach, which reads as under :

“13. Maintenance laws have been enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy. Article 15(3)

of the Constitution of India provides that:

*"15. (3) Nothing in this article shall prevent the State from making any special provision for women and children.**

Article 15(3) reinforced by Article 39 of the Constitution of India, which envisages a positive role for the State in fostering change towards the empowerment of women, led to the enactment of various legislations from time to time.”

4. In the present matter, the factual background, broadly stated, is that the minor child, Gurkirat Kaur-respondent, was born from the wedlock of the petitioner-father and Smt. Rajwant Kaur. The marriage between the parties was solemnized on 12.07.2011. Due to marital discord and



temperamental differences, the spouses separated, and their dispute eventually culminated in a decree of divorce by mutual consent under Section 13-B of the Hindu Marriage Act. It is the case of the petitioner that, at the time of settlement, a sum of Rs.5,50,000/- was paid, out of which Rs.2,50,000/- was earmarked for the minor child and Rs.3,00,000/- towards permanent alimony to the wife. It is further his stand that the sum of Rs.2,50,000/- was invested in a FDR in the name of the child.

5. It has also come on record that subsequent to the dissolution of the marriage, the mother contracted a second marriage, which, according to the pleadings noticed during the course of hearing, did not eventually endure, and she is stated to have returned. During this entire phase of instability and transition, the child has been under the care, custody and protection of her maternal grandmother. It is in these circumstances that the petition under Section 125 Cr.P.C. came to be instituted by the maternal grandmother on behalf of the minor child, seeking maintenance from the father. The principal objection raised by the petitioner-father is that the maternal grandmother (nani) has no locus standi to maintain such proceedings. According to him, since the mother is alive, she alone, being the natural guardian, could have instituted the proceedings on behalf of child, and the grandmother, not being either the natural guardian or a court-appointed guardian, is incompetent to do so. It is also suggested that the proceedings are tainted by concealment and collusion, and further that in view of the earlier settlement between the spouses, no fresh claim is maintainable.

6. This Court is unable to accept the aforementioned objections in



the manner they have been presented.

7. At the outset, it must be remembered that the right which is sought to be enforced in the present proceedings is not the right of the grandmother. Nor, for that matter, is it the right of the mother but it is the right of the minor child. The child is the real claimant. The person approaching the Court only represents that right. Once this foundational principle is kept in view, the controversy becomes far less complex than the petitioner seeks to portray.

8. The right of a minor child to seek maintenance from her father is independent, continuing and incapable of being extinguished by any private arrangement between the parents. The Hon'ble Supreme Court in ***Chaturbhuj vs. Sita Bai (2008) SCC 316*** has reiterated as under :

“6. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made a by the wife after desertion to survive somehow. Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a



man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat”

9. A settlement between husband and wife may resolve their *inter se* matrimonial disputes. It may settle questions of alimony or claims personal to them. But the statutory entitlement of a minor child to be maintained cannot be bartered away, diluted or foreclosed by such settlement. The child is not to be treated as an appendage to the matrimonial litigation of the parents. Her rights do not ebb and flow with the marital fortunes of the adults around her. The law views her as a distinct beneficiary, and the father's obligation towards her remains alive so long as the conditions of the statute are satisfied. The Hon'ble Supreme Court in ***Badshah vs. Urmila Badshah Godse and another (2014) 1 SCC 188*** has observed as under:

“13.3. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice.

Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving



interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.

17. *Cardozo acknowledges in his classic® "... no system of jus scriptum has been able to escape the need of it." and he elaborates:*

"It is true that codes and statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. ...

There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had nonetheless a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a Judge's troubles in ascribing meaning to a statute. ...

Says Gray in his lectures®:

"The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the Judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present."

18. *The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision - libre recherche scientifique i.e. "free scientific research". We are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 Cr.P.C., to fulfil its constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed*



while deciding the issues relating to gender justice. We arady have examples of exemplary efforts in this regard. Journey from Shah to Shabana Banoll guaranteeing maintenance rights to Muslim women is a classical example.”

10. The petitioner's contention that a one-time payment made at the time of divorce completely absolves him of any future liability towards the child also cannot be accepted as an absolute proposition. The needs of a growing child are neither static nor capable of final quantification at a single point of time. Childhood is dynamic with educational requirements increasing, medical needs arising, social circumstances evolving and inflation continually affecting the cost of living. What may have appeared adequate at one stage may become wholly insufficiently at another. A father cannot, therefore, seek a blanket discharge from his continuing statutory obligation solely on the basis of a prior payment made in a settlement. The effect of such payment may certainly be examined by the Court while determining quantum or while assessing equities, but it cannot be treated as destroying the very maintainability of the petition.

11. That brings the Court to the more substantial objection concerning locus standi of the maternal grandmother.

12. The petitioner seeks to import the strict and formal notions of guardianship into proceedings under Section 125 Cr.P.C. that may arise in other branches of law. Such an approach, however, is fundamentally erroneous. Proceedings under Section 125 Cr.P.C. are summary in character and welfare-oriented in purpose. They are not designed to become entangled in the technicalities of title to guardianship unless such questions are inescapably central. The provision is directed to the prevention of neglect



and to secure basic maintenance for dependents. It is concerned with the practical reality of who is maintaining the child, caring for her, meeting her daily needs, and whether the person legally bound to provide support is doing so.

13. In this context, the Court cannot be oblivious to the social realities of Indian family life. A maternal grandmother is not a stranger to the child. She is not an outsider attempting to intrude into a private arrangement. In many households, and particularly in times of familial breakdown, it is the grandmother who becomes the immediate source of security, continuity and nurtures the child. When marriages disintegrate, when the mother is overtaken by adverse circumstances, when the home of origin collapses into uncertainty, it is often the grandmother who quietly steps into the breach. She does not merely provide temporary shelter. She gives routine to the child's life, stability to the emotions, food to the body, and assurance to the future. In lived reality, she frequently becomes the person most closely and consistently identified with the child's care. The welfare of the child remains of the paramount consideration and it must override all technical objections as the Hon'ble Supreme Court in **Gaurav Nagpal Vs. Sumidha Nagpal (2009) 1 SCC 42** observed as under :

“50. When the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in Mausami Moitra Ganguli case', the court has to give due weightage to



the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than the others.”

14. The law, especially a law of maintenance, cannot shut its eyes to such realities. It cannot insist that only a person bearing a formal legal designation may knock at the doors of justice on behalf of a child, even when another person has in fact assumed the burden of caring for that child. To do so would be to subordinate substance to form, welfare to technicality, and justice to nomenclature.

15. Where the maternal grandmother is in actual care and custody of the minor child, and is discharging the responsibilities ordinarily associated with parental care, she acquires, for the purposes of such proceedings, a sufficient and legitimate representative capacity to seek enforcement of the child's right to maintenance. The claim continues to be that of the child. The grandmother merely becomes the medium through which the child's legal entitlement is articulated. If the law were to deny her that capacity, the consequence would not be to punish the grandmother; it would be to prejudice the child. Such an interpretation would run directly contrary to the spirit and object of the provision.

16. The objection that the mother is alive and therefore the grandmother is excluded, also does not carry the matter any further. The existence of the mother does not, by itself, nullify the practical reality that the grandmother may have been the *de facto* caregiver. The law cannot operate on abstractions alone. It must take account of actual custody, care and expenditure. There may be cases where the mother is living separately,



is unable for a period to effectively care for the child, or where the child is in fact being raised by the grandmother. In such situations, to insist that the grandmother must first establish a formal legal transfer of guardianship before seeking maintenance would be to impose a burden which the welfare provision never contemplated.

17. It is true that, ordinarily, the mother being the natural guardian and parent would be the appropriate person to represent the child. It is equally true that proceedings may, where necessary, be regularised in an appropriate manner so that representation is procedurally clear. But an irregularity in the channel through which the child's claim is brought cannot be permitted to defeat the claim itself at the threshold. A distinction must always be maintained between an irregularity in representation and absence of entitlement. Here, the entitlement belongs to a child & remains unimpaired. This Court also finds no merit in the submission that because matrimonial proceedings between the parents ended in compromise, the claim of the minor must be treated as close. A child's claim to maintenance is not a derivative claim dependent wholly on the mother's status. It is a direct statutory claim. Neither parent can contract out of the child's welfare. No compromise can override the continuing duty of a father to maintain his minor child. In **Ganesh v Sudhir Kumar Shrivastava (2020) 20 SCC 787** the Hon'ble Supreme Court reiterated that no compromise between the parties can override the child's independent right to claim maintenance. The welfare of the child cannot be subordinate to contractual agreement between the parties. It reads as under :

“Before we part with, we must also express our reservation



insofar as Para 6 is concerned, which was incorporated in the order on 8-11-2017 by the Principal Judge, Family Court, Aurangabad. It was certainly open to the wife to give up any claim so far as maintenance or permanent alimony or stridhan is concerned but she could not have given up the rights which vest in the daughter insofar as maintenance and other issues are concerned.

18. So far as the allegations of concealment, collusion or pendency of proceedings under Section 340 Cr.P.C. are concerned, those are matters of evidence and adjudication. They may be relevant to the factual assessment or bear upon the credibility of ancillary issues. But they cannot constitute a ground to non-suit the child at the very threshold on the pure question of maintainability. The Court dealing with the maintenance petition would be at liberty to examine those aspects in accordance with law. This Court, however, is presently concerned with the narrow legal objection whether the petition is maintainable when instituted by the maternal grandmother on behalf of the child. To that question, the answer must be in the affirmative.

19. There is another dimension of the matter which deserves to be noticed. The law of maintenance is not exclusively about money; it is about responsibility. When the father disputes maintainability on the ground that the grandmother has approached the Court, he, in effect, attempts to shift focus from the child's need to the caregiver's label. Such an approach does not commend itself to the conscience of the Court. The obligation of a father to maintain his minor child does not vary depending upon who presents the child's case. The liability remains the same whether the claim is voiced by

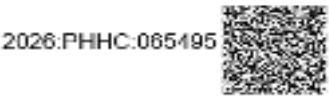


child's welfare. What matters is the child's need and the father's duty.

20. The maternal grandmother, especially in a case such as the present, cannot be seen merely as an elderly relative. She represents continuity where the parental home has been fractured. She represents caregiving where legal relationships have become contested. She represents practical motherhood when circumstances have disabled ordinary arrangements. If she has fed the child, sent her to school, attended to her daily needs, given her shelter and stability, then in the eyes of a welfare-oriented law, she is not a meddlesome stranger. She is the guardian of the child's immediate welfare in fact, and the law must accord due recognition to that reality.

21. This Court is, therefore, of the considered opinion that a maternal grandmother who is in actual care and custody of her granddaughter, and who is bearing the burden of her upbringing in circumstances where the parental relationship has broken down, has sufficient eligibility and entitlement to maintain proceedings under Section 125 Cr.P.C. on behalf of the minor child. The foundation of such entitlement does not lie in an abstract claim of personal right, but in the child's own statutory right and in the grandmother's *de facto* role as the person safeguarding that right.

22. For all the reasons recorded above, this Court holds that the petition under Section 125 Cr.P.C., instituted by the maternal grandmother on behalf of the minor child, is maintainable in law. The earlier settlement between the parents does not extinguish the child's continuing right to claim maintenance. The objection based on the existence of the mother as natural



guardian is insufficient to defeat the proceedings at the threshold. The impugned order, therefore, does not suffer from any illegality.

23. Accordingly, the present petition is dismissed. The Court below shall proceed to adjudicate the matter on merits, uninfluenced by the objection as to maintainability, and shall determine the entitlement and quantum of maintenance in accordance with law, after taking into account all relevant facts and circumstances, including the previous settlement, if so required, only for the limited purpose permissible in law.

24. Pending application(s), if any, shall also stand disposed of.

28.04.2026
Satyawar

(NEERJA K. KALSON)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>