

(2004) 10 P&H CK 0043

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 45221-M of 2004

Satish Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Oct. 29, 2004

Citation: (2005) 1 RCR(Criminal) 256

Hon'ble Judges: Satish Kumar Mittal, J

Advocate: Mr. B.D. Sharma, Advocate., Advocates for appearing Parties

Judgement

Satish Kumar Mital, J.

1. In this case, the question for consideration is as to whether an unmarried major daughter, who is unable to maintain herself, can claim maintenance from her father under Section 125 of the Code of Criminal Procedure (hereinafter referred to as the Code) and as to whether to claim such maintenance, she is further required to establish that she cannot maintain herself only on account of her physical or mental abnormality or injury.

2. The petitioner (father) has filed the instant petition under Section 482 of the Code impugning the order dated 10.1.2001 passed by Judicial Magistrate Ist Class, Jalandhar, dismissing his application filed under Section 127 of the Code for cancelling the earlier order of interim maintenance on the ground that the respondent (daughter) has now attained majority and now she is not entitled to maintenance under Section 125 of the Code. The respondent was awarded an interim maintenance of Rs. 400/ per month under Section 125 of the Code, vide order dated 1.6.2001, passed by Judicial Magistrate Ist Class, when she was minor. The respondent attained the date of majority on 21.2.2002. On 25.3.2002, the petitioner filed an application for cancellation of the aforesaid interim maintenance on the ground that after attaining the age of majority, respondent No. 2, being unmarried daughter, is not entitled for any maintenance under clause (c) of Section 125 of the Code. Under this clause a major unmarried daughter is entitled for grant of maintenance only where she is, by reason of her any physical or mental

abnormality or injury, unable to maintain herself.

3. The aforesaid application of the petitioner has been dismissed by the trial Court vide the impugned order dated 10.1.2004, while holding that respondent No. 2 is a student and has no sufficient source of income to maintain herself. Therefore, the petitioner, being her father, is legally obliged to maintain his unmarried daughter, even though major, till the date of her marriage. It has also been found that the petitioner is in Government servant and is earning Rs. 5,300/ per month, therefore, he can easily pay the interim maintenance of Rs. 400/ per month to his daughter, who is studying in college. For coming to the said conclusion, the trial Court relied upon decision of the Hon"ble Apex Court in Jagdish Jugtawar v. Manju Lata, 2003(3) RCR(Crl.) 472 (SC) : 2003(2) Apex Court Judgments 137, wherein it has been held that unmarried major girl has right to claim maintenance from her father. This right flows from Section 125 of the Code and Section 20(3) of the Hindu Adoption and Maintenance Act.

4. Counsel for the petitioner submitted that the impugned order dated 10.1.2004, passed by the trial Court, is totally contrary to the provisions of clause (c) of Section 125 of the Code and its intents and purposes. He submitted that the respondent being a major unmarried daughter, is not entitled for maintenance from her father because there is no finding that she is unable to maintain herself due to her physical or mental abnormality or injury. He submitted that until and unless, respondent establishes that she is unable to maintain herself on account of her physical or mental abnormality or injury she cannot claim maintenance under Section 125 of the Code from her father, even though she is a major unmarried daughter. In support of his contention, he relied upon a decision of the Kerala High Court in Muhammed v. Kumhayisha, 2003(4) RCR(Criminal) 397, wherein it has been held as under :

"Even hard cases cannot lay down bad law and the Court has to be very conscious of that. The language of Section 125, according to me, does not at all permit a construed that the status of major daughter as an unmarried person can by itself be constructed as "physical or mental abnormality or injury" sufficient to bring her case within the sweep of Section 125(c). Whatever be the religion of the parties, the language of the Statute does not permit an unmarried major daughter to be brought within the purview of Section 125(c) on the sole reason/ground of her being an unmarried daughter. She has to prove further that she is unable to maintain herself and such inability to maintain herself is attributable to physical or mental abnormality or injury, if any, which she is afflicted with. If the intention of the Legislature were to grant maintenance to unmarried female children, solely on the ground that they are unmarried female children, nothing prevented the Legislature from making express provisions imposing liability on the parents to provide maintenance to their female children till they are married. Their disability if that be one, of remaining unmarried alone was definitely not reckoned by the Legislature as

sufficient to entitle them to claim maintenance under Section 125 Criminal Procedure Code. That evidently is the reason why the Parliament which must be presumed to have been conscious of the rights of the unmarried daughters under the Hindu and Mohammedan Personal Law (Statutory and Customary) to claim maintenance from their parents till they are married, did not choose to confer such right on them under Section 125 Criminal Procedure Code."

5. After hearing counsel for the petitioner, I am not agreeing with the contention raised by the learned counsel.

6. Under the Hindu Law, a Hindu is under an obligation to maintain his wife, minor sons, unmarried daughters and aged and infirm parents. Said obligation is personal, legal and absolute in character and arises from the very existence of the relationship between the parties. A Hindu is also under obligation to bear the marriage expenses of his unmarried daughter. Under Section 20 of the Hindu Adoption and Maintenance Act, it is obligatory for a Hindu to maintain his unmarried daughter, if she is unable to maintain herself, till her marriage.

7. Section 125 was added in the Code with a specific object i.e. to provide a swift and cheap remedy to wife, minor children, legitimate or illegitimate and parents, who have been neglected or refused to be maintained and who are unable to maintain themselves. It is a measure of social justice falling within the constitutional sweep of Articles 15(3) and 39 enacted to protect the weaker Sections like women and children (Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal, AIR 1978 SC 1807). The object is to compel a man, who is under a legal and moral obligation, to perform his obligation which he owes to society in respect of his wife, children and parents so that they are not left beggared and destituted and thereby driven to a life of vagrancy, immorality and crime for their subsistence. The proceedings under Section 125 of the Code are of summary in nature. The findings recorded therein are not final and parties can agitate those rights in a Civil Court. It is a distinct right independent of a right which the wife, children and unmarried daughter may have in their personal or customary law.

8. Section 125 of the Code is reproduced below for ready reference :

"125. JUDGMENT 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,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means :

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due :

Provided further that if such person offers to maintain his wife on condition of her living within him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this Section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this Section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

9. On the close reading of the above provisions, it is clear that emphasis has been laid in all cases on the "inability to maintain" because the primary object of the Section is the survival of the human being who is unable to maintain himself in a 'survival of fittest society'.

10. In this light, clause (c) of Section 125 of the Code is to be interpreted. No restricted meaning can be given to the words "where such child by reason of any physical or mental abnormality or injury to maintain itself" used in Section 125 of the Code. The emphasis has been given by the legislation on the ability of the child to maintain himself or herself. The object of this Section is to provide maintenance to those minor children, whether legitimate or illegitimate, who are unable to maintain themselves. Only married daughter, who has attained majority, is not entitled for maintenance under this clause because in such a case, it is the responsibility of the husband of such daughter to maintain her, but in case of unmarried major daughter, the obligation of father still exists to maintain her till her marriage. This legal obligation of a father cannot be water-towered by giving the restricted interpretation to the words "physical or mental abnormality or injury". For many reasons, an unmarried daughter may be unable to maintain herself. She may be unable to maintain herself because she is illiterate, a student and not in a position to get employment. Can a father be absolved of his legal obligation to maintain such a daughter till her marriage? In my opinion, she cannot be denied the interim maintenance only because she is not having any physical or mental abnormality or injury. The non-grant of maintenance to such an unmarried daughter by her father will not only totally frustrate the main object of the provisions but such unfortunate daughter may adopt the bad path. Under the Hindu Adoption and Maintenance Act, an unmarried daughter, who is unable to maintain herself, has a legal right to claim maintenance from her father and correspondently, the father is under a legal obligation to maintain his unmarried daughter till her marriage. In the instant case, the respondent daughter is a student and since she is unemployed, therefore, she is unable to maintain herself. It is only the enforcement of the legal right which has been sought by respondent No. 2 under Section 125 of the Code in a summary proceedings. The provision for interim maintenance has been made because the question of survival of a person is involved. In my opinion, the capacity

not to earn and not to maintain herself may be for any reason. That itself is physical or mental abnormality or injury of an unmarried daughter, when she is unable to earn and maintain herself either because of illiteracy or because of unemployment. For achieving the substantial justice and the object to the statute, it is necessary to give a liberal interpretation to the words "physical or mental abnormality or injury". In my view, if an unmarried daughter is unable to maintain herself due to her illiteracy or unemployment, then such situation is covered by the physical or mental abnormality. The Hon"ble Apex Court in Noor Saba Khatoon v. Mohd. Quasim, 1997(3) RCR(Crl.) 756 (SC) : AIR 1997 Supreme Court 3280, has categorically held that the effect of a beneficial legislation like Section 125 of the Code cannot be allowed to be defeated except through clear provisions of a statute. Under Section 125 of the Code, the maintenance of the children is obligatory on the father (irrespective of his religion) and as long as he is in a position to do so and the children have no independent means of their own. It remains his absolute obligation to provide maintenance for them. While interpreting Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1996, the Hon"ble Apex Court held that obligation of the father to maintain a female child is till her marriage.

11. In view of the above, I am of the opinion that a major unmarried daughter, who is unable to maintain herself because of her illiteracy, unemployment or being a student, cannot be denied maintenance by her father on the ground that the reason to maintain herself is not related to the physical or mental abnormality. With respect, I do not agree with the view taken by the Kerala High Court in Muhammed"s case (supra), relied upon by counsel for the petitioner. In my view, if a major unmarried daughter is unable to maintain herself because of her illiteracy, unemployment or being a student, that reason is deemed to be her physical or mental abnormality.

In view of the aforesaid discussion, I do not find any merit in this petition.

Dismissed.