

(2014) 06 GUJ CK 0020

Gujarat High Court

Case No: Criminal Revision Application No. 423 of 2011

Haribhai
Shambhubhai Bhuva

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision: June 21, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 125(1)(c)
- Hindu Adoptions and Maintenance Act, 1956 - Section 20, 20(3)

Citation: (2015) ALLMR(Cri) 424 : (2015) CriLJ 1774 : (2015) 3 DMC 377 : (2014) 3 GLR 2159 :
(2015) 3 RCR(Criminal) 326

Hon'ble Judges: S.G. Shah, J

Bench: Single Bench

Advocate: P.P. Majmudar, Advocate for the Appellant; J.D. Jhaveri, A.P.P., Bhavika H.
Kotecha and K.J. Dwivedi, Advocate for the Respondent

Judgement

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S.G. Shah, J.

The sole issue is pertaining to the eligibility of a married daughter to get maintenance from his father, since applicant-father has challenged the order of maintenance in favour of his daughter who now attained the age of majority. By impugned judgment and order dated 14-9-2011, passed in Misc. Criminal Application No. 1263 of 2010, the Family Court, Junagadh has awarded an amount of Rs. 5,000/- (Rupees five thousand only) to respondent No. 2-wife and Rs. 6,000/- (Rupees six thousand only) to respondent No. 3-daughter of the present petitioner. So far as quantum of maintenance is concerned, on perusal of entire record, it becomes certain and clear that the Family Court, Junagadh has taken care of each

and every aspect of the matter while considering the quantum of maintenance. It cannot be ignored that petitioner herein is a salaried person and getting approximately Rs. 24,000/- (Rupees twenty four thousand only) per month as salary, certificate to that effect has been produced at Exh. 17 before the trial Court.

2. In addition to such fix salary, petitioner is also holding agricultural land of his own house. The income from agricultural land is considered as Rs. 2,00,000/- (Rupees two lacs only) p.a.

3. Therefore, so far as respondent No. 2-wife is concerned, there is no substance in the impugned order when the amount of Rs. 5,000/- (Rupees five thousand only) is awarded in her favour considering the overall facts and circumstances emerging from record.

4. Whereas, so far as amount of maintenance awarded to respondent No. 3, daughter of the petitioner is concerned, it is submitted by the petitioner that now she is major and therefore not entitled to maintenance. For the purpose, petitioner is relying upon the provisions of Sec. 125 of the Code of Criminal Procedure and judgment in the case of [Rama Chandra Sahu Vs. Tapaswini Sahu and Another, ,](#) wherein, Hon"ble Supreme Court has held that order of granting maintenance to major unmarried daughter is not proper if she is not disable and able to maintain herself. However, as against one such judgment, wherein, all the reported cases are probably not brought to the notice of the Court and since they are not referred, when there are more than one judgment of the Hon"ble Supreme Court itself that even major daughter is entitled to maintenance till she gets married and more particularly, when such judgments are not overruled in the case of Rama Chandra Sahu (supra), it cannot be considered as a binding precedent and therefore, it cannot be held that major unmarried daughter is not entitled to claim maintenance.

5. It would be relevant to consider the following discussion in the case of [Union of India \(UOI\) and Others Vs. Vasavi Co-op. Housing Society Ltd. and Others, :](#)

"9. The petitioners have relied upon the decision of the Apex Court in case of [Jagdish Jugtawat Vs. Manju Lata and Others, .](#) In the said judgment, the Bench of three Judges of the Apex Court has relied upon the previous judgment in case of [Noor Saba Khatoon Vs. Mohd. Quasim, ,](#) deciding not to interfere with the order of the Family Court granting maintenance to the daughter even after she becomes major considering that the order passed by the Family Court was based on combined reading of Sec. 125 of Code of Criminal Procedure and Sec. 20(3) of the Hindu Adoptions and Maintenance Act. Thereby, it is argued that the benefit of personal law or maintenance can be given to the applicant but it is otherwise ineligible under Sec. 125 to avoid multiplicity of the proceedings. Thereby, it is further submitted that on combined reading of the provisions of two Sections i.e. Sec. 125 of the Code of Criminal Procedure and Sec. 20(3) of the Hindu Adoptions and Maintenance Act, since both the Sections are related to award maintenance to wife and children,

maintenance can be awarded to the daughter even after her attaining the age of majority but till her marriage, considering the fact that otherwise also, she would be forced to file another petition under Sec. 20(3) for maintenance.

10. The petitioners have also relied upon the decision of the Apex Court in case of *S. Jayalaxmi v. T. Prakash Rao* reported in 1996 (8) SCC 501, wherein the amount of maintenance was enhanced from Rs. 50/- to Rs. 1,000/- per month where two daughters were studying in Engineering and 12th Class, with further direction to pay Rs. 1 lac to be paid on marriage of each of them and to deposit Rs. 30,000/- in the name of each daughter in fixed deposit for two years.

11. All such orders were under the provisions of Hindu Adoptions and Maintenance Act as well as Sec. 125 of the Code of Criminal Procedure in matrimonial proceedings for divorce between parents. However, there is no confirmation or clarity about application of daughter in whose favour, order of maintenance, as aforesaid, was passed and more particularly in the proceedings under Hindu Marriage Act regarding dissolution of marriage i.e. divorce. Though in head note, reference of Sec. 125 is made, practically, in the text of judgment, there is neither reference nor consideration of the provisions of Sec. 125 of the Code of Criminal Procedure.

12. Whereas, the Single Judge of Patna High Court in case of [Subhash Roy Choudhary Vs. State of Bihar and Others,](#), relying upon the cases of Jagdish Jagtawat (supra) and Noor Suba Khatoon (supra), and after reproducing Sec. 125 of Code of Criminal Procedure and Sec. 20(3) of the Hindu Adoptions and Maintenance Act as also relying upon the decision in case of [Yugeshwar Nath Mishra Vs. Arpana Kumari and Another](#), held that the principle and the precedent recognize the right of a major unmarried daughter to get maintenance and the same cannot be denied only on the ground that the daughter had attained majority and ultimately, held that the major unmarried daughter is entitled to claim maintenance. As against that, respondent No. 1 has relied upon mainly the provisions of Sec. 125 of the Code of Criminal Procedure by producing affidavit-in-reply, where relevant portion specifically reads to the effect that if any person leaving sufficient means neglects or refuses to maintain his legitimate or illegitimate child (not being a married daughter) who has attained majority where such child is, by reason or any physical or mental abnormality or injury unable to maintain itself, the Magistrate, upon proof of such neglect or refusal, may order such person to make 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. Whereas, so far as normal child is concerned, such responsibility is absolute since it is provided that maintenance is possible to legitimate or illegitimate minor child, whether married or unable to maintain itself. Therefore, on combined reading of sub-sec. (1) of Sec. 125, it becomes clear that all children whether married or not are entitled to maintenance and/or are entitled to

be maintained by their father or mother who is having sufficient means and neglects or refuses to maintain such children. Whereas major child is concerned, the contention is to the effect that he is entitled to maintenance only by reason of any physical or mental abnormality or injury, so as to enable him to maintain himself. Therefore, the plain reading of such Sections would give an expression that except the persons enumerated in clauses (a) to (d) in sub-sec. (1) of Sec. 125, other persons are not entitled to maintenance.

13. The learned trial Judge relied upon the cases referred by the respondent No. 1 i.e. *Amrendrakumar Paul v. Maya Paul*, reported in AIR 2009 (Supp.) SC 2869, and [Deb Narayan Halder Vs. Smt. Anushree Halder](#), . The learned Judge, relying upon the date of birth of petitioner Nos. 2 and 3 herein being 5-4-1992 and 1-6-1994 respectively and the provisions of Sec. 125 of the Code of Criminal Procedure, held that since petitioner No. 2 herein is major on the date of such order, she is not entitled to maintenance and for petitioner No. 3, it was directed that the order of maintenance would be in force till she becomes major. Whereas, before this Court, respondent No. 1 has relied upon the judgment of the Single Judge, Orissa High Court in case of *Satyanarayan Chandra Deo v. Kumari Rajamani Deo*, (supra) wherein it was held that according to the provisions of Section 125 of the Code of Criminal Procedure, a daughter is not entitled to be maintained by her father after her marriage, whereas in case of [Dr \(Mrs\) Vijaya Manohar Arbat Vs. Kashirao Rajaram Sawai and Another](#), , the Supreme Court has held that the daughter either married or unmarried is liable to be maintained by her parents, however, but other conditions as mentioned in Sec. 125 are satisfied. It is, therefore, submitted that major daughters are not entitled to claim maintenance. However, at present, we are not concerned with the entitlement of parents and liability of daughter and therefore, this judgment is not relevant at all. Whereas in case of [Kirtikant D. Vadodaria Vs. State of Gujarat and Another](#), , the issue was regarding maintenance of mother and therefore, though there is a reference of obligation under Sec. 20 of Hindu Adoptions and Maintenance Act, at present, this judgment has no relevance to the present case. In such reported cases, ultimately, application for maintenance by step mother which was allowed by three Courts (Magistrate, Sessions Court and High Court), was set aside by the Apex Court after referring all relevant enactments and as many as 7 judgments. However, since the issue before the Apex Court was with reference to entitlement to maintenance by step mother, the judgment cited by the petitioners has not been referred.

15. Though it can be argued that the judgment by the equivalent Bench is not binding to every Bench, it would be necessary to recollect here the following cases where different High Courts have taken a similar view which is taken by the Apex Court in the case of *Jagdish Jagtawat* (supra). These cases are as under:

15.1. [Bahadur Ali Babubhai Charania Vs. State of Gujarat](#), , where this Court held that the daughter is entitled to maintenance if she is unable to maintain herself till

she marries and even after her attaining majority. For arriving at such conclusion, the Court has relied upon the decision of the Apex Court reported in [Noor Saba Khatoon Vs. Mohd. Quasim,](#) wherein while interpreting the provisions of Sec. 125 of the Code of Criminal Procedure, the Apex Court has said that the obligation of father, having sufficient means to maintain his minor children, unable to maintain themselves, till they attain majority and in case of female, till they get married, is absolute, notwithstanding the fact that the minor children are living with the divorced wife.

15.2. In Misc. Criminal Petition No. 242 of 2007 in case of Smt. Sushila Bavi v. Bisauharam decided on 1-9-2009, the Single Judge of the Chhattisgarh High Court also, relying upon the cases of Jagdish Jagtawat (supra) and Noor Suba Khatoon (supra), held that the provisions of Sec. 125 of the Code of Criminal Procedure are beneficial legislation to protect the dependent from vagrancy and destitution and to provide reasonable amount of maintenance for their livelihood. If a minor daughter is unable to maintain herself till the age of her majority and after attainment of majority she does not able to maintain herself, then her inability to maintain herself does not cease automatically and such inability to maintain herself makes her entitle for maintenance from her parents even after the attainment of her age of majority. At the most, she is required to prove her inability to maintain herself and in spite of having sufficient means, her father is not maintaining her.

15.3. Whereas in case of Smt. Raj Kumari Awasthi v. State of U.P., in the order dated 31-1-2008, the Allahabad High Court, again relying upon the judgment of Jagdish Jagtawat (supra), inclined to interfere with the order of maintenance to the major daughter, stating that 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-sec. (3) of Sec. 20 of the Act of 1956 for further maintenance, and therefore, in order to avoid multiplicity of litigation, the order impugned does not warrant interference. For arriving at such decision, the Single Judge has taken care of several other aspects on the subject including reference to the recourse by Law Commission of India and also referred the case of [Nanak Chand Vs. Chandra Kishore Aggarwal and Others,](#) wherein the Apex Court has reiterated that there should not be limitation of age in the definition of the word "child" and that a child of any age should be entitled to maintenance if it is unable to maintain itself and when parent possesses sufficient means. The Court has further observed with reference to the provisions of Sec. 125 of the Code that but to except that an unmarried daughter who is still going to college or staying at home awaiting her marriage, and has no source of independent income to maintain herself can be denied maintenance from her father, who possesses sufficient means only because her inability to maintain herself is not due to any physical or mental abnormality as required in Sec. 125(1)(c) of the Code would be extremely harsh and oppressive and in all likelihood violative of Arts. 14 and 21 of the Constitution of India.

15.4. Whereas in the judgment dated 21-4-2009 in C.R.R. No. 4115 of 2008 in case of Shri Krishna Kanta Bhattacharya v. Smt. Shyamali Bhattacharya, the Single Judge of Koklata High Court considered the said issue and relying upon the case of Jagdish Jagtawat (supra) and Noor Suba Khatoon (supra), held that father is under an obligation to maintain her daughter even after her attaining majority but till her marriage."

6. In view of such legal position, I have no hesitation to hold that respondent No. 3 herein is also entitled to maintenance till she get married or start earning activity so as to maintain herself. Thereby, it is held that the respondent Nos. 2 and 3 are entitled to maintenance as awarded by such impugned judgment. Under the above circumstances, there is no substance in the present Revision Application, and hence, the same stands dismissed. Rule is discharged.