

Ms. Kaberi Niyoji and Another Vs State of West Bengal and Another

Court: Calcutta High Court

Date of Decision: Sept. 23, 2009

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 125

Hon'ble Judges: Ashim Kumar Roy, J

Bench: Single Bench

Advocate: Salil Kumar Sarkar and Mr. Swapan Kumar Sarkar, for the Appellant; Sandipan Ganguly, for the State, Mr. Joymalya Bagchi and Ms. Rupa Bandopadhyya, for the Respondent No. 2, for the Respondent

Judgement

Ashim Kumar Roy, J.

The petitioners, who are daughters of the opposite party No.2 in the instant criminal revision challenged an order

passed in connection with a proceeding u/s 125 of the Code of Criminal Procedure, whereby their prayer for maintenance has been refused on the

ground of attainment of majority.

2. Heard the learned Advocates appearing on behalf of the parties. Perused the impugned order and other materials on record.

3. Having gone through the impugned order I find that the learned Court below rejected the petitioners' prayer for maintenance solely on the

ground that they have already attained their majority and both of them, who are college going girls, do not suffer from any physical and mental

infirmity or injury.

4. It is true according to the provisions of Section 125 of the Code of Criminal Procedure no female child after attainment of majority is entitled to

maintenance from his father, unless she is unable to maintain herself by reason of any physical or mental abnormality or injury.

5. In the case at hand it is an admitted position both the petitioners have attained their majority. While petitioner No. 1 is aged about 23 years, the

petitioner No.2 is aged about 21 years. Both of them pursuing their study at colleges. None of them suffers from any physical or mental

abnormality or Injury and thus unable to maintain themselves.

6. However, in the case of Jagdish Jugtawat v. Manjulata & Ors., 2003 ACJ 137(S.C.): 2003 CCC 565 (S.C.): 2002 SCC 1147 the Hon'ble

Apex Court held otherwise and concluded on a combined reading of Section 125 of the Code of Criminal Procedure and Section 20(3) of the

Hindu Adoption and Maintenance Act, a female child that is a girl even after attainment of majority is very much entitled to maintenance from her

father till her marriage.

7. In view of the aforesaid legal position the order impugned cannot be sustained and accordingly is set aside.

8. This matter is remanded back to the Court below and the learned Magistrate is directed to dispose of the said maintenance proceeding on merit

and in accordance with law and after giving reasonable opportunity of hearing to both the parties. The learned Magistrate is further directed to

make all endeavours to dispose of the said proceedings as expeditiously as possible preferably within six months from the date of communication of

this order.