IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

ON THE 13th OF OCTOBER, 2026

CRIMINAL REVISION No. 4086 of 2022

CNR No.: MPHC010562122022

Versus

Appearance:

Shri Avinash Dubey - Advocate for the petitioner.
Shri Sanjay Jharia – Advocate for the respondent.

ORDER

This criminal revision has been preferred by the petitioner/minor daughter challenging the order dated 05.09.2022 passed by First Additional Principal Judge, Family Court, Jabalpur in MJCR No.74/2019, whereby the Family Court has, in the main application/proceeding under Section 125 of the CrPC, dismissed an application for interim maintenance pendente lite, filed by the petitioner/minor daughter through her next friend (maternal grandmother), on the premise that she is not legal guardian of the petitioner.

2. Learned counsel for the petitioner submits that the petitioner was born on 26.09.2015 and due to illness, her mother had died on 19.05.2018 leaving behind her the petitioner, aged about 3 years only. He submits that due to strained relations between the husband and wife, the respondent/father deserted his wife (i.e. mother of the petitioner), hence she was living separately. He submits that the respondent was not accepting the petitioner as his daughter and alleging that the

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petitioner was not born out of wedlock of the respondent and his wife. He submits that since maternal grandmother was not in a position to maintain the petitioner properly, therefore, an application under Section 125 of the CrPC was filed by the petitioner on 24.01.2019 through her next friend/maternal grandmother (Nani) and at the same time another application for awarding interim maintenance pendente lite was also filed, which has been dismissed by the impugned order, on the premise that since the maternal grandmother is not a legal guardian of the petitioner duly appointed under the law, therefore, unless the maternal grandmother files appropriate application for taking legal custody of the petitioner, she has no right to file any proceeding on behalf of the petitioner and as such no interim maintenance pendente lite can be granted.

3. Learned counsel for the petitioner/minor daughter submits that since the respondent has admitted the petitioner to be his daughter and that the petitioner is continuously living/residing with her maternal grandmother (Nani) since 19.05.2018 i.e. after death of her mother, therefore, even without following any procedure prescribed under Order XXXII of the CPC, she is entitled to interim maintenance. In support of his submissions, learned counsel for the petitioner placed reliance on the decision of Hon'ble Supreme Court in the case of Nagaiah vs. Chowdamma (Dead) by LRs., **AIR 2018 SC 459 (**para 9 & 16). With these submissions he prays for setting aside the impugned order and for allowing the instant criminal revision.

4. In turn learned counsel for the respondent/father supports the impugned order and prays for dismissal of the criminal revision. He submits that since the petitioner has not moved any application under Order XXXII Rule 4 of the CPC for appointment of legal guardian, therefore, the Family Court has not committed any illegality in passing the impugned order and in dismissing the application under Section 125 of the CrPC.

5. Heard learned counsel for the parties and perused the record.

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6. As has been observed hereinabove, there is no dispute to the fact that the petitioner is legitimate daughter of the respondent. In paragraph 5 of the application under Section 125 of the CrPC, the petitioner has clearly mentioned that after death of her mother i.e. after 19.05.2018, she is in the care and custody of her maternal grandmother and perusal of the reply to the application shows that this fact has not been denied by the respondent. As such it is clear that the petitioner is daughter of the respondent and is living with her maternal grandmother (Nani).

7. In the case of Nagaiah vs. Chowdamma (Dead) by LRs., **AIR 2018 SC 459**, the Hon'ble Supreme Court has held as under :

> "9.****
> **7.** ***Agreement or compromise by next friend or guardian for the suit***.—(1) No next friend or guardian for the suit shall, without the leave of the court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.
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> (2) Where an application is made to the court for leave to enter into an agreement or compromise or for withdrawal of a suit in pursuance of a compromise or for taking any other similar action on behalf of a minor or other person under disability, the affidavit in support of the application shall set out the manner in which the proposed compromise, agreement or other action is likely to effect the interests of the minor or other person under the disability and the reason why such compromise, agreement or other action is expected to be for the benefit of the minor or other person under disability, where in such a case the minor or the other person under disability is represented by counsel or pleader, the said counsel or pleader shall also file into court along with the application a certificate to the effect that the agreement or compromise or action proposed is in his opinion for the benefit of the minor or other person under disability. If the court grants leave under sub-rule (1) of this Rule, the decree or order of the court shall expressly recite the grant of the leave sought from the court in respect of the compromise, agreement or other action as aforesaid after consideration of the affidavit and the certificate mentioned above and shall also set out either in the body of the decree itself or in a schedule annexed thereto the terms of the compromise or agreement or the particulars of other action.
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> (3) Any such agreement or compromise entered into without the leave of the court so recorded shall be voidable against all parties other than the minor.
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> …… ……. …..…. …… …… ...……
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> **16.** There is no hurdle for a natural guardian or duly constituted guardian as defined under the Hindu Guardianship Act to represent minor plaintiff or defendant in a law suit. But such guardian should not have adverse interest against minor. **If the natural guardian or the duly constituted guardian has adverse interest against the minor in the law suit, then a next friend or guardian ad litem, as the case may be, would represent the minor in the civil litigation.**"

8. Further three coordinate Benches of the High Court of Madras, Kerala and Punjab and Haryana have taken the view that, a person who has sufficient interest in the minor, can move an application seeking maintenance under Section 125 of the CrPC and procedure provided under Order XXXII of the CPC or the strict rule of the guardianship is not required to be complied with necessarily.

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8.1 In the case of R. Ochappan vs. Keerthana, **2024 Live Law (Mad) 36**, a coordinate Bench of Madras High Court has held as under :-

> "5.7****Section 125 of Cr.P.C., does not prohibit any person from filing maintenance petition on behalf of the minor children. It creates an obligation to pay maintenance to the minor. Without any legislative prohibition to file the maintenance claim on behalf of the minor brother by the married sister who has taken care of the said minor brother, the dismissal of the maintenance petition on the ground of the locos standi by the learned trial Judge is not legally correct.**
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> When there is no legal impediment to file the maintenance petition by the sister of the minor brother, the learned trial Judge ought to have picked out the interpretation of the provision of Section 125 of Cr.P.C., which advances the cause. The same was emphasised by the Hon'ble Supreme Court in the following judgments:
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> Ramesh Chander Kaushal v. Veena Kaushal reported in (1978) 4 SCC 70:
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> > **9**.… 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 advances the cause — the cause of the derelicts."

8.2 In the case of Subhadra Bhargavan vs. Dhanapalan S, **2025 Supreme (Online) (KER) 10845**, a coordinate Bench of Kerala High Court has held as under :-

> "5. The paternity of the 2nd petitioner is not in dispute. The learned counsel for the petitioner in RPFC No. 61/2024 submitted that the maintenance case filed by the respondents before the Family Court is not maintainable for two reasons**: (i) When the mother of the 2nd petitioner is alive, the 1st petitioner cannot maintain a petition on behalf of the minor, the 2nd petitioner**. (ii) The entire dispute between the respondent and the mother of the 2nd petitioner was settled and at the time of the settlement, he had given Rs.5,00,000/- in lieu of maintenance to the 2nd petitioner as the full and final settlement and based on the said settlement, the Lok Adalat passed an award and as such, the 2nd petitioner cannot claim maintenance.
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> 6. **So far as the first contention is concerned, it is not in dispute that the 1st petitioner is the grandmother of the 2nd petitioner. It is also not much in dispute that at the time of filing the M.C., the 2nd petitioner was under the care and custody of the 1st petitioner. The 2nd petitioner, being minor, cannot directly file a petition for maintenance. It is settled that a person who has sufficient interest in the minor can move an application seeking maintenance under Section 125 of Cr.P.C. [Ramakrishnan v. Kali 1987 KHC 618]. Therefore, the contention that the 1st petitioner has no locus standi to file a petition for maintenance on behalf of the 2nd petitioner cannot be accepted."**

8.3 In the case of Kamaljit Singh vs. Gurkirat Kaur, **2026 Live Law (PH) 144 = CRR(F)-192 of 2026 (O&M) dtd. 28.04.2026**, a coordinate Bench of Punjab and Haryana High Court has held as under :-

> "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.
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> …. ….. ….. ….. ….. …. ….
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> 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.
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> 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

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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. InGanesh 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."

9. It is also pertinent to observe that while passing the impugned order dismissing the interim maintenance pendente lite**,** the Family Court has taken into consideration an unreported decision of Delhi High Court given on **04.04.2022 in CM APPL. 16706/2022**. Upon perusal of the same, it is clear that it has not dealt with the aforesaid requirement of law, i.e. filing of the application under Section 125 of the CrPC on behalf of a minor by a person having sufficient interest in the minor. So, the said decision of Delhi High Court is not applicable at all, to the present case.

10. The provision under Section 125 of the CrPC is to be interpreted in a manner so as to advance the social justice and to extend the benefit to the helpless persons. The Family Court failed to take note of the fact that it is the minor whose rights are required to be enforced and not the next friend i.e. maternal grandmother. The Family Court is required to advance the benefit of provision to the minor daughter irrespective of person through whom she claims his entitlement to maintenance.

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11. In view of aforesaid discussion and in view of aforesaid factual scenario, in my considered opinion, the Family Court has committed an illegality in dismissing the application for interim maintenance pendente lite, that too without taking care of the aforesaid settled legal position.

12. Resultantly, instant criminal revision succeeds and is allowed and by setting aside the impugned order dated 05.09.2022, matter is remanded to the concerned Family Court for deciding the application for interim maintenance afresh, in accordance with law and after taking into consideration the aforesaid settled legal position.

13. Parties are directed to remain present before the concerned Family Court on 16.11.2026. It is also made clear that if any of the parties does not appear, the Court shall issue fresh notice/summons with a view to secure their presence before the Court.

14. With the aforesaid, the instant criminal revision is partly allowed and disposed of.

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

(DWARKA DHISH BANSAL)
JUDGE

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