

S.125 CrPC | Major Unmarried Daughter Not Entitled To Maintenance From Father Merely On Ground That She Is Unable To Maintain Herself: Kerala HC

2023 LiveLaw (Ker) 46

IN THE HIGH COURT OF KERALA AT ERNAKULAM

A. BADHARUDEEN, J.

R.P.F.C No.503 of 2017; 25 January, 2023

GIREESH KUMAR N. versus RAJANI K.V.

Revision Petitioner / Respondent by Advs. K.P. Sujesh kumar, Bijukumar.

Respondents / Petitioners by Advs. S. Rajeev, K.K. Dheerendrakrishnan, Public Prosecutor - G. Sudheer

ORDER

This Revision Petition has been filed under Section 397 and 401 of the Code of Criminal Procedure (hereinafter referred to as `Cr.P.C' for short) and the revision petitioner is the respondent in M.C.No.252/2016 on the files of the Family Court, Thiruvananthapuram. The respondents herein are the original petitioners in the above M.C.

2. Heard the learned counsel for the revision petitioner as well as the learned counsel appearing for the respondents.

3. The questions emanate in this revision petitioner are:

(i) Whether an unmarried daughter can claim allowance of maintenance under Section 125(1) of Cr.P.C even after attaining majority? If so, on what contingency?

(ii) Is there any other enabling provision of law for a Hindu unmarried daughter to claim maintenance dehors the provision under Section 125 of Cr.P.C?

4. The 1st respondent herein is the wife of the revision petitioner and the 2nd respondent is the daughter of the revision petitioner, aged 17 years during 2016. The respondents had approached the Family Court with prayer to grant allowance of maintenance on the submission that they did not have means of maintenance. Further, it was contended that the revision petitioner, who had been conducting "He `N' She Dress Makers", had been earning Rs.40,000/- per day and, therefore, he could pay maintenance to the tune of Rs.50,000/- to the 1st respondent and Rs.25,000/- to the 2nd respondent.

5. The revision petitioner filed objection and resisted the contention. According to him, he had been working in a tailoring shop on a daily wage basis and had been getting Rs.500/- as daily wage. He had denied the business and also denied the illicit relationship alleged against him.

6. The Family Court ventured the matter. The 1st respondent examined as PW1 and the revision petitioner got examined as CPW1. Exts.B1 to B3 were marked on the side of the revision petitioner.

7. The Family Court, on the basis of the evidence, granted Rs.10,000/- and Rs.8,000/- as maintenance to the 1st and 2nd respondents respectively per month from the date of filing of the petition (1.7.2016).

8. The learned counsel for the revision petitioner zealously argued that the Family Court failed to consider the income of the revision petitioner. Admittedly the revision petitioner was getting Rs.500/- per day while working in the tailoring shop as a manager, and, therefore, the maintenance granted to the respondents is on higher side and the same requires interference. It is pointed out further that the 2nd respondent herein was aged 17 years during 2016 and during 2017, she became major. Therefore, she could

not claim maintenance under Section 125 of Cr.P.C. He also pointed out that in order to sustain claim of maintenance at the instance of an unmarried daughter, belongs to Hindu community, she should file a petition under Section 20 of the Hindu Adoptions and Maintenance Act, 1956, and in a petition filed under Section 125 of Cr.P.C an unmarried daughter, who attained majority, could not claim maintenance after attaining majority. In this connection, the learned counsel for the revision petitioner placed a decision of the Apex Court reported in [2020 (5) KHC 235 : AIR 2020 SC 4355 : 2020 (6) KLT 341 : 2020 KLJ 814], **Abhilasha v. Parkash & Ors.** In the said decision the Apex Court considered the questions and held as under:

“The moot question that arose for consideration in this appeal was whether a daughter, who although had attained majority and is still unmarried, is entitled to claim maintenance from her father in proceedings under S.125 CrPC although she is not suffering from any physical or mental abnormality/injury? What are the rights of an unmarried daughter under Section 20 of the Hindu Adoptions and Maintenance Act, 1956?”

9. While answering the said queries, the Apex Court held as under:

*“The right of unmarried daughter under S.20 to claim maintenance from her father when she is unable to maintain herself is absolute and the right given to unmarried daughter under S.20 is right granted under personal law, which can very well be enforced by her against her father. The judgment of this Court in **Jagdish Jugtawat** (supra) laid down that S.20(3) of the Act, 1956 recognised the right of a minor girl to claim maintenance after she attains majority till her marriage from her father. Unmarried daughter is clearly entitled for maintenance from her father till she is married even though she has become major, which is a statutory right recognised by S.20(3) and can be enforced by unmarried daughter in accordance with law. The purpose and object of S.125 Cr.P.C as noted above is to provide immediate relief to applicant in a summary proceedings, whereas right under S.20 read with S.3(b) of Act, 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under S.20, the proceedings need to be initiated under S.20 of the Act and the Legislature never contemplated to burden the Magistrate while exercising jurisdiction under S.125 Cr.P.C to determine the claims contemplated by Act, 1956. We, thus, accept the submission of the learned counsel for the appellant that as a proposition of law, an unmarried Hindu daughter can claim maintenance from her father till she is married relying on S.20(3) of the Act, 1956, provided she pleads and proves that she is unable to maintain herself, for enforcement of which right her application/suit has to be under S.20 of Act, 1956.”*

10. It was further held that:

“The Act, 1956 was enacted to amend and codify the law relating to adoptions and maintenance among Hindus. A bare perusal of S.125(1) Cr.P.C. as well as S.20 of Act, 1956 indicates that whereas S.125 Cr.P.C limits the claim of maintenance of a child until he or she attains majority. By virtue of S.125(1) (c), an unmarried daughter even though she has attained majority is entitled for maintenance, where such unmarried daughter is by reason of any physical or mental abnormality or injury is unable to maintain itself. The Scheme under S.125(1) Cr.P.C, thus, contemplate that claim of maintenance by a daughter, who has attained majority is admissible only when by reason of any physical or mental abnormality or injury, she is unable to maintain herself.”

11. It is submitted by the learned counsel for the revision petitioner further that in this particular case, no evidence let in to substantiate that the 2nd respondent suffers from any physical or mental abnormality or injury and she could not maintain herself.

12. Per contra, it is submitted by the learned counsel for the respondents that an unmarried daughter, who attained majority, also would get maintenance if she cannot maintain herself.

13. While answering the queries (i) and (ii), the legal position emerges is that by virtue of Section 125 (1) of Cr.P.C, an unmarried daughter, who attained majority, could not

claim maintenance in the ordinary circumstance, viz. merely on the ground that she does not have means for her sustenance. At the same time, even though the unmarried daughter, who attained majority, is entitled for maintenance, where such unmarried daughter is by reason of any physical or mental abnormality or injury is unable to maintain herself, for which, pleadings and evidence in this regard are mandatory. Otherwise, the legal proposition is that an unmarried Hindu daughter can claim maintenance from her father till she is married resorting to S.20(3) of Hindu Adoptions and Maintenance Act, 1956, provided, she pleads and proves that she is unable to maintain herself, for enforcement of which right her application/suit has to be under S.20 of Act, 1956. On evaluation of the evidence available in this matter, no evidence let in to show that the 2nd respondent has any physical or mental abnormality, or she has any injury so that she could not maintain herself and, therefore, grant of maintenance to the 2nd respondent, (who is now aged above 18 years) from the date of attaining majority, is found to be erroneous and thereby the order impugned stands set aside to that extent, limiting entitlement of maintenance by the 2nd respondent till the date she attained majority.

14. Coming to the other challenge, the specific case put up by the 1st respondent herein before the trial court was that she did not have any means of maintenance. In fact, the revision petitioner did not raise any contention asserting that the 1st respondent was capable of maintaining herself and no evidence also adduced in this behalf. The Family Court disbelieved the version of CPW1 to the effect that he had been working as a labourer and getting Rs.500/per day as income. The Family Court observed that during cross examination CPW1 had stated that he had been working as Manager of "He `N' She Dress Makers"" and there are 52 employees working in that firm. Therefore, the Family Court found contradiction in his versions about his job and accordingly found that the revision petitioner had sufficient means to pay Rs.10,000/- to the 1st respondent and Rs.8,000/- to the 2nd respondent.

15. Since the claim of maintenance to the 2nd respondent stands limited till her date of attaining majority, the question of maintenance granted to the 2nd respondent at Rs.8,000/- is found reasonable and the same is confirmed. Now the remaining question is whether grant of Rs.10,000/- as maintenance to the 1st respondent needs interference in any manner.

16. Going by the evidence of PW1, she would say that the revision petitioner had been getting Rs.40,000/- per day. But CPW1 confined his income to Rs.500/- per day after admitting that he had been working as Manager of "He `N' She Dress Makers", where admittedly 52 employees were working. Therefore, the income stated by CPW1 was found not believable by the Family Court and this Court also could not believe the same to hold in the contrary to reduce the maintenance granted to the 1st respondent by the Family Court. Therefore, it has to be held that the Family Court rightly granted Rs.10,000/- as the allowance of monthly maintenance to the 1st respondent and the same does not require any interference.

17. In view of the above, the order impugned stands modified confining Rs.8,000/- (Rupees Eight thousand only) per month as maintenance to the 2nd respondent till the date of her attaining majority, while confirming grant of maintenance @ Rs.10,000/- per month to the 1st respondent, as per the impugned order.

This Revision Petition stands allowed in part as above.