

Judgment Reserved on: 04.06.2024
Judgment Delivered on: 02.08.2024
A.F.R.
Neutral Citation No. - 2024:AHC:124416

Court No. - 53

Case :- CRIMINAL REVISION No. - 83 of 2024

Revisionist :- Awadhesh Singh

Opposite Party :- State Of Up 2 Others

Counsel for Revisionist :- Varun Srivastava, Vishnu Bihari Tewari

Counsel for Opposite Party :- Ashwani Kumar Yadav, G.A.

with

Case :- CRIMINAL REVISION No. - 5926 of 2023

Revisionist :- Smt. Urmila And Another

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Ashwani Kumar Yadav

Counsel for Opposite Party :- G.A., Vishnu Bihari Tewari

Hon'ble Manish Kumar Nigam, J.

1. Criminal Revision No. 83 of 2024 has been filed by husband/revisionist against the judgment and order dated 26.09.2023 passed by Principle Judge, Family Court, Hathras in Case No. 656 of 2009 (Smt. Urmila and another v. Awadhesh Singh) in proceedings under Section 125 Cr.P.C. granting maintenance of Rs. 25,000/- per month to the wife Smt. Urmila and Rs. 20,000/- per month to the daughter Km. Gauri Nandini from the date of order
2. Criminal Revision No. 5926 of 2023 has been filed by the wife and daughter against the judgment and order dated 26.09.2023 passed by Principle Judge, Family Court, Hathras in Case No. 656 of 2009 (Smt. Urmila and another v. Awadhesh Singh) in proceedings under Section 125 Cr.P.C. initiated by the wife and daughter for enhancement of the maintenance as awarded by the

order dated 16.09.2023.

3. Since both the revisions are against the same order, they are being decided together.
4. Heard Sri Vishnu Bihari Tewari, learned counsel for the revisionist in Criminal Revision No. 83 of 2024 and for the opposite party in Criminal Revision No. 5926 of 2023 and Sri Ashwani Kumar Yadav, learned counsel for the opposite party in Criminal Revision No. 83 of 2024 and for the revisionist in Criminal Revision No. 5926 of 2023.
5. Brief facts of the case are that an application under Section 125 Cr.P.C. was filed by Smt. Urmila and Km. Gauri Nandini aged about 4 years under the guardianship of her mother Smt. Urmila against Awdhesh Kumar Singh for maintenance on 05.10.2009. As per the aforesaid application, Smt. Urmila was married to Awdhesh Kumar Singh on 26.01.1992 as per the Hindu Rites. After marriage, Smt. Urmila was treated badly by her husband and in-laws. After one and a half year of the marriage, husband Awdhesh Kumar Singh filed a divorce petition being Case No. 381 of 1993 under Section 13 of Hindu Marriage Act. Couple was blessed with one daughter namely Km. Gauri Nandani - applicant No.2 in the original application. It was further alleged that Smt. Urmila and her daughter were ill treated by the husband and his family members and ultimately she was thrown out of her matrimonial home along with her daughter on 09.02.2009. It was also alleged that the husband Awdhesh Kumar Singh was a permanent lecturer in D.A.V. Degree College, Kanpur and was earning about Rs. 81,000/- per month at the time of making the application. The applicant - wife had no means to maintain herself and her daughter and therefore, a prayer was made to award maintenance from the date of being turned out from the matrimonial home to the tune of Rs. 35,000/-

per month. This application was filed on 05.10.2009.

6. The application was contested by the husband by filing the written statement denying the averments made in the application except for the birth of daughter and that the husband was employed as lecturer in D.A.V. Degree College, Kanpur. It was stated in the objections that the wife and his family members used to pressurize the husband to live separately from his parents and wife treated the husband with cruelty and therefore, an application for divorce was filed by the husband. Allegations of cruelty were denied and it was also stated that the applicant is M.A. passed and was taking tuitions and earning about Rs. 8,000/- per month. It was also stated that the applicant had left the matrimonial home on 10.01.2010 and she had taken all the jewellery along with her. It had also been stated in the objections that the husband had taken a policy of Rs. 4,00,000/- in the name of his daughter and the premium of Rs. 18748/- was being paid by the father. After deduction of tax and G.P.F. carry home salary of the husband was Rs. 56,000/- per month. The objections were filed by the husband/revisionist on 09.07.2010.
7. The application under Section 125 Cr.P.C. was allowed by the Judicial Magistrate, Court No. 3, Hathras by its judgment and order dated 31.01.2013 awarding maintenance of Rs. 20,000/- per month to the wife and Rs. 10,000/- to the daughter. Against the order dated 31.01.2013, two revisions were were filed, one by the husband and other was by the wife. Both the revisions were allowed by the order dated 09.10.2013 passed by Additional Session Judge, Court No. 2, Hathras and order dated 31.01.2013 was set-aside and the matter was remanded for rehearing after providing opportunity of hearing to both the sides. The order dated 09.10.2013, was challenged by the wife and daughter Smt. Urmila and Km. Nandani before this Court in Criminal Misc. Writ Petition No. 25465 of 2013 (Smt. Urmila and another v. Awdhesh Kumar Singh). The writ petition so

filed by Smt. Urmila was disposed of by this Court by order dated 17.02.2022 with a direction to the parties to appear before the trial court in compliance of order dated 09.10.2013 and trial court was directed to decide the matter expeditiously as early as possible in accordance with law without granting unnecessary adjournment to either of the parties preferably within a period of six months. It was also directed by the writ court that till final decision of the application, the respondent husband should pay month to month maintenance amount pursuant to the order passed by the trial court i.e. Rs. 30,000/- per month as had been ordered by this Court vide interim order dated 20.12.2013. It was also directed by this Court that the amount already paid by the respondent husband would also be adjusted in the final payment of the maintenance.

8. During pendency of application, an amendment was sought by the wife that maintenance amount be increased to Rs. 70,000/- for herself and Rs. 30,000/- for the daughter.
9. The application under Section 125 Cr.P.C. was allowed by the Principle Judge, Family Court, Hathras awarding Rs. 25,000/- per month to the wife and Rs. 20,000/- to the daughter as maintenance from the date of order, hence, the present revision.
10. Criminal Revision No. 5926 of 2023 has been filed by the wife and daughter for enhancement of the maintenance amount.
11. Since the facts and the order impugned is common in both the Criminal Revisions, this Court taking the Criminal Revision No. 83 of 2024 as the leading case.
12. It has been contended by the learned counsel for the revisionist, that the opposite party no. 3 Km. Gauri Nandini (daughter) was born on 25.06.2005 and had attained the age of majority on 25.06.2023 before the order impugned dated 26.09.2023. The court below had erred in law awarding maintenance to the daughter who

was major on the date of order and was not entitled to maintenance in view of the provisions of the Section 125 Cr.P.C. Learned counsel for the revisionist relied upon the judgment of the Apex Court in case of *Abhilasha v. Parkash and others* reported in 2020 CrLJ 4770 SC wherein the Supreme Court has held that unmarried daughter who has attained majority and is not suffering any mental or physical abnormality, is not entitled to claim maintenance under Section 125 Cr.P.C.

13. Learned counsel for the revisionist has also contended that as both the parties has not filed affidavit disclosing their assets and liability, the objective assessment of approximate amount to be awarded towards maintenance, is not possible and the amount awarded towards maintenance is excessive. In this regard, learned counsel for the revisionist has also relied upon the judgment and order passed by Supreme Court in Case of *Rajnish v. Neha and others* in Criminal Appeal No. 703 of 2020 (arising out of SLP(Crl) No. 950 of 2018) decided on 04.11.2020 and also repored in MANU/SC/0833/2020.

14. Before proceeding with the matter, it would be appropriate to look into the provisions of Section 125 Cr.P.C. as under:

“125. Order for maintenance of wives, children and parents.- (1) If any person having sufficient means neglects or refuse 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 of 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.

Explanation.- For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of 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 is 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 with 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.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(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."

15. There is no dispute that the opposite party no. 3 daughter was born on 25.06.2005 and has attained majority on 25.06.2023. The order impugned has been passed on 26.09.2023 awarding maintenance of Rs. 20,000/- from the date of order to the opposite party no. 3. Date of birth of opposite party no. 3 has not been denied by the opposite parties and from the perusal of the application under Section 125 Cr.P.C. filed by the opposite parties on 05.10.2009, it is apparent that opposite party no. 3 has been alleged to aged about four years on 05.10.2009 which confirms the date of birth of the opposite party no. 3 and the fact that prior to passing of the order impugned, the opposite party no. 3 has attained majority.

16. Per contra, learned counsel appearing for the opposite party wife and daughter contended that the trial court has rightly passed the order awarding maintenance to the wife and daughter. It has been further contended that this Court should not interfere in the order passed by the court below even if it comes to the conclusion that in proceedings under Section 125 Cr.P.C., the court below could not have awarded maintenance to the daughter after she attained majority as the daughter is entitled for maintenance till she is married in view of the provisions contained in Section 20 of the Hindu Adoption and Maintenance Act, 1956 (herein after referred to as the Act of 1956). No exception should be taken to the

judgment and order passed by the court below on combined reading of provisions of Section 125 Cr.P.C. and Sub clause (3) of Section 20 the Act of 1956. It is further contended since daughter is entitled for maintenance under the Act of 1956, no useful purpose would be served in setting aside the order passed by the court below and relegating the daughter to move an application under the provisions of Section 20 and Sub-clause (3) of Act of 1956 for the same relief which have already been granted in the proceedings under Section 125 Cr.P.C.

17. Learned counsel for the respondent next contended that the maintenance awarded by the court below was on lower side as the revisionist/husband is employed as a permanent teacher in a degree college. It has been further contended that the court below erred in law in awarding maintenance from the date of order and it ought to have awarded maintenance from the date of application. Maintenance awarded to the wife and daughter be enhanced considering the income of the revisionist/husband.
18. Before considering the rival submissions of the parties, it will be useful to note the provisions of Act of 1956 regarding maintenance of wife and daughter.
19. Section 18 of the Act of 1956 contemplates maintenance of wife which is quoted as under:

18. Maintenance of wife.- (1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance-

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of willfully neglecting her;

(b) If he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

20. Section 20 of the Act of 1956 contemplates maintenance of children and aged parents and the same is quoted as under:

20. Maintenance of children and aged parents.- (1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his own earning or other property.

21. Section 23 of the Act of 1956 provides for amount of maintenance and the same is quoted as under:

23. Amount of maintenance.- (1) It shall be in the discretion of the court to determine whether any, and if so

what, maintenance shall be awarded under the provisions of this Act, and in doing so the court shall have due regard to the considerations set out in sub-section (2) or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to-

- (a) the position and status of the parties;
- (b) the reasonable wants of the claimant;
- (c) if the claimant is living separately, whether the claimant is justified in doing so;
- (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earning or from any other source;
- (e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependent under this Act, regard shall be had to-

- (a) the net value of the estate of the deceased after providing for the payment of his debts;
- (b) the provision, if any, made under a Will of the deceased in respect of the dependent;
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependant;
- (e) the past relations between the dependant and the deceased;
- (f) the value of the property of the dependent and any income derived from such property; or from his or her earning or from any other source;
- (g) the number of dependents entitled to maintenance under this Act.

22. Section 24 of the Act of 1956 provides that no person is entitled to

claim maintenance if he or she has ceased to be Hindu by conversion to any other religion.

23. Some persons are unable to earn their livelihood due to their tender years, old age, some mental drawback or some social inhibition. Law imposes in their interest the obligation of maintaining them on some other persons. In other words, these persons are given the right to obtain maintenance from some other persons.
24. Every legal system has fixed an age before attaining which no person is regarded competent to settle his legal status. On completing that age he is made sui juris, legally competent and free to take decisions about his status. The law takes upon its own shoulders the responsibility of safeguarding the interests on the court or an authority of State to carry out that responsibility.
25. The duty to maintain the dependents has been lent the sanction of religion. The Dayabhaga has quoted Manu:
- “Maintenance of the group of dependants opens the way to heaven. If this group is troubled, it leads to hell. Therefore, efforts should be made to maintain it.” भरणं पोष्यवर्गस्य प्रशस्तं स्वर्गसाधनम् । नरकं पीडने चास्य तस्मात् यत्नेन त भरेत् ॥ Manu in Dayabhaga, II:23. Not found in the Manusmriti.
26. In Classical Hindu Law prior to codification, a Hindu male was always held morally and legally liable to maintain his aged parents, a virtuous wife and infant child. Hindu Law always recognised the liability of father to maintain an unmarried daughter. In this context, we refer to paragraph 539 and 543 of Mulla- Hindu Law- 22nd Edition, which is as follows:

“539. Personal liability; liability of father, husband and son-
A Hindu is under a legal obligation to maintain his wife, his minor

sons, his unmarried daughters, and his aged parents whether he possesses any property or not. The obligation to maintain these relations is personal in character and arises from the very existence of the relation between the parties.

27. Under Hindu law the right to or the obligation of maintenance is founded on two grounds: relationship and property. A is entitled to get maintenance from B.

(a) If A has a particular kind of relationship with B. On this basis the minor son and unmarried daughter are entitled to maintenance from his or her father, aged parents from their son and the wife from her husband. It has been put in the mouth of Manu by the Mitakshara that a man should maintain his aged parents, chaste wife and minor son (i.e. child) even by doing a hundred such deeds which are not prescribed for him. वृद्धौ च माता पितरौ साध्वी भार्या सुतः शिशुः। अप्यकार्यं शतं कृत्वा भर्तव्या मनूब्रवीत् ॥ Quoted by Mit. On Yaj. I: 224. The word अकार्य has been translated as 'misdeeds'. (see Mayne's HINDU LAW AND USAGE, 14th Edn., p. 1153, S. 722) it is submitted that the translation is not correct.

The word अकार्य does not mean misdeed- those action which are wrong or injurious to others. It means those actions which are not properly his act according to the Shastras as a member of a particular Varna or Ashrama etc. For example, if a Brahman is unable to make sufficient means for the support of his family or parents by the professions of a teacher or priest (which are prescribed for him as a Brahman), he can take to agriculture, business or service etc. (which are not prescribed for him).

(b) If B has any such property out of which A is entitled to get maintenance. If B is not possessed of that property, he has no duty to maintain A, although he may be possessed of immeasurable wealth. In fact, this is not the right unto B, this is the right unto the property

which is charged with the maintenance of A and which is at present owned or managed or controlled by B. For example, a karta of a joint Hindu family is bound to maintain all the members of the joint family because he is the manager of the joint family property: He has no obligation to give maintenance out of his separate or personal property to those members on the ground of relationship.

28. During the British period, three Acts were passed which affected directly or indirectly the right to maintenance of a female Hindu.

(1) Hindu Widows' Remarriage Act, 1856. It provided that all rights and interests which a widow had in her husband's property by way of maintenance, ceased upon her remarriage (*Dharmarajan v. Narayanan*, (2001) 1 HLR 126 (Ker). This Act is repealed by the Hindu Widows' Remarriage (Repeal) Act, 1983.

(2) Hindu Women's Rights to Property Act, 1937. This Act conferred the right of inheritance upon the widow of a Hindu, his son's widow and his son's son's widow. Before that she had only the right to maintenance from those who inherited her husband's property, instead of the right of inheritance from her husband. The Act did not expressly abolish her right of maintenance but the effect of giving the right of inheritance to her was that her right to maintenance lost its basis. This Act did not extend to agricultural land (*Hindu Women's Right to Property Act, 1937, In re*, AIR 1941 FC 72: 1941 FCR 72). She was, therefore, entitled to get maintenance from those who inherited the agricultural land from her husband. The Act is now repealed by the Hindu Succession Act, 1956 (HSA Section 31).

(3) Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946. This Act gave a Hindu wife the right to live separately from her husband and also to get maintenance from him on certain grounds. The Act now stands repealed by the Hindu

Adoption and Maintenance Act, 1956 (HAMA Section 29) because the provisions of that Act have been assimilated in Section 18 of the HAMA.

29. Sub section (b) of Section 3 of Act of 1956 defines maintenance which is as under:

“(a)....

(b) “maintenance” includes-

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

(ii) in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage;

(c)

30. The first of the definition is general, applicable to one and all. According to this definition the provision for the five necessary wants is maintenance. These wants are food, clothing, residence, education, and medical attendance and treatment. This is a healthy concept of maintenance. The satisfaction of these wants is the minimum necessity of civilized *homo sapiens*, so that a man may not live, in the words of B. Mukherjee, J., "the life of a dog" (*Kiran Bala v. Bankim Chandra*, AIR 1967 Cal 603, 605).

This definition of maintenance is more humane than the understanding of maintenance before it. Earlier provision for the satisfaction of three wants was considered sufficient as maintenance. For example, the Madras High Court has held in *Arunachala v. Anandayammal* (AIR 1933 Mad 688: (1933) 56 Mad 913: 34 Cri LJ 950), that maintenance includes nothing more than appropriate food, clothing and lodging.

31. The inclusion of provision for education and medical assistance and treatment by Act of 1956 in definition of maintenance has definitely enlarged the concept of maintenance of other laws, personal

and local, e.g. Section 125 Cr.P.C.

32. The second part of the definition of maintenance applies only to the case of an unmarried daughter. In addition to the provision for the necessary wants as mentioned above, her maintenance includes the reasonable expenses of and incident to her marriage.

33. Muslim Law also recognises the obligation of father to maintain his daughters until they are married. Referring to Mulla's Principle of Mohammedan Law, Supreme Court in State of Haryana and Others Vs. Santra (Smt.), (2000) 5 SCC 182:(AIR 2000 SC 1888) in paragraph 40 held:-

“40. Similarly, under the Mohammedan Law, a father is bound to maintain his sons until they have attained the age of puberty. He is also bound to maintain his daughters until they are married. [See: Mulla's Principles of Mohammedan Law (19th Edn.) page 300].....”

34. Section 20(3) of Hindu Adoptions and Maintenance Act, 1956 is nothing but recognition of principles of Hindu Law regarding maintenance of children and aged parents. Section 20(3) now makes it statutory obligation of a Hindu to maintain his or her daughter, who is unmarried and is unable to maintain herself out of her own earnings or other property.

35. Section 20 of Hindu Adoptions and Maintenance Act, 1956 cast a statutory obligation on a Hindu to maintain his daughter who is unmarried and unable to maintain herself out of her own earnings or other property. As noted above, Hindu Law prior to enactment of Act, 1956 always obliged a Hindu to maintain unmarried daughter, who is unable to maintain herself. The obligation, which is cast on the father to maintain his unmarried daughter, can be enforced by her against her father, if she is unable to maintain herself by enforcing her right under Section 20.

36. The Act, 1956 was enacted to amend and codify the law relating

to adoptions and maintenance among Hindus. A bare perusal of Section 125(1) Cr.P.C. as well as Section 20 of Act, 1956 indicates that whereas Section 125 Cr.P.C. limits the claim of maintenance of a child until he or she attains majority. By virtue of Section 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 Section 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.

37. In the Code of Criminal Procedure, 1898, Section 488 Cr.P.C. was the provision governing the maintenance of wife or legitimate or illegitimate child of any person. Section 488(1) Cr.P.C. provided:

“488(1). If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or 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, at such monthly rate, not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.”

38. Section 488 Cr.P.C. (old) Section 125 (new) sought to inhibit negligence of woman and children with intent to serve a social purpose. The provision provided for summary proceeding to enable a deserted wife or helpless child, legitimate or illegitimate, to get urgent relief. The laws are nothing but collective consciousness of community. It is in the interest of the community and social order that woman and child who are neglected be maintained and should be provided a forum to obtain urgent relief to enable them to sustain.

39. Supreme Court in *Nanank Chand Vs. Chandra Kishore Aggarwal*

and Others, (1969) 3 SCC 802 had occasion to consider the provision of Section 488 Cr.P.C., 1898 in reference to provisions of Hindu Adoptions and Maintenance Act, 1956, which provided for overriding effect of Act. Section 4 of the Act, 1956 is to the following effect:

“Section 4. Overriding effect of Act- Save as otherwise expressly provided in this Act,-

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.”

40. In Nanak Chand’s case the question arose as to whether by virtue of Section 4 of Act, 1956, the provision of Section 488 Cr.P.C. shall be overridden. In the above case Supreme Court explained the provisions of Section 488 Cr.P.C. as well as Section 20 of the Act, 1956. Supreme Court held that there is no inconsistency between Section 488 Cr.P.C. and the Hindu Adoptions and Maintenance Act and both can stand together. Supreme Court further held that Section 488 Cr.P.C. provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. Following was laid down in paragraph 4:

“4.....The learned Counsel says that Section 488 Cr.P.C., insofar as it provides for the grant of maintenance to a Hindu, is inconsistent with Chapter III of the Maintenance Act, and in particular, Section 20, which provides for maintenance to children. We are unable to see any inconsistency between the Maintenance Act and Section 488, Cr.P.C. Both can stand together. The Maintenance Act is an act to amend and codify the law relating to adoptions and maintenance among Hindus. The law was substantially similar before and nobody ever suggested that Hindu Law, as in force immediately before the commencement of this Act, insofar as it dealt with the maintenance of children, was in any way inconsistent with Section 488, Cr.P.C. The scope of the two laws is different. Section 488 provides a summary remedy and is applicable to

all persons belonging to all religions and has no relationship with the personal law of the parties. Recently the question came before the Allahabad High Court in Ram Singh v. State, AIR 1963 All 355 , before the Calcutta High Court in Mahabir Agarwalla v. Gita Roy [1962] 2 Cr. L.J.528 and before the Patna High Court in Nalini Ranjan v. Kiran Rani, AIR 1965 Pat 442. The three High Courts have, in our view, correctly come to the conclusion that Section 4(b) of the Maintenance Act does not repeal or affect in any manner the provisions contained in Section 488, Cr.P.C.”

41. Supreme Court in Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another, (1988) 1 SCC 530, held that personal law applicable to the parties cannot altogether be excluded from consideration in proceeding under Section 125 Cr.P.C.

42. In Yamunabai’s case (supra), the question involved was as to whether a Hindu woman who is married after coming into force of Hindu Marriage Act, 1955 to a Hindu male having a living lawfully wedded wife, can maintain an application for maintenance under Section 125 Cr.P.C. Supreme Court in the above case held the marriage of Yamunabai to be null and void from its very inception. In the above context, Supreme Court referred to provision of Hindu Marriage Act, 1955 to find out marital status. In paragraphs 5 and 6, following was laid down:

“5. It has been contended on behalf of the appellant that the term 'wife ' in Section 125 of the Code should be given a wider and extended meaning so as to include therein not only a lawfully wedded wife but also a woman married in fact by performance of necessary rites or following the procedure laid down under the law. Relying upon the decision of Supreme Court in Mohd. Ahmed khan v. Shah Bano Beghum, 1985 Cri LJ 875 it was argued that the personal law of the parties to a proceeding under Section 125 of the Code should be completely excluded from consideration. The relationship of husband and wife comes to an end on divorce, but a divorcee has been held to be entitled to the benefits of the section, it was urged, and therefore applying this approach a woman in the same position as the present appellant should be brought within the sweep of the section. We are afraid, the argument is not well founded. A divorcee is included within the section on account of Clause (b) of the Explanation. The position under the corresponding Section 488 of the code of 1898 was different. A divorcee could not avail of the summary remedy. The wife's right to maintenance depended upon the continuance

of her married status. It was pointed out in Shah Bano's case that since that right could be defeated by the husband by divorcing her unilaterally under the Muslim Personal Law or by obtaining a decree of divorce under any other system of law, it was considered desirable to remove the hardship by extending the benefit of the provisions of the section to a divorced woman so long as she did not remarry, and that was achieved by including Clause (b) of the Explanation. Unfortunately for the appellant no corresponding provision was brought in so as to apply to her. The legislature decided to bestow the benefit of the Section even on an illegitimate child by express words but none are found to apply to a de facto wife where the marriage is void ab initio.

6. The attempt to exclude altogether the personal law applicable to the parties from consideration also has to be repelled. The section has been enacted in the interest of a wife, and one who intends to take benefit under Sub-section (1)(a) has to establish the necessary condition, namely, that she is the wife of the person concerned. This issue can be decided only by a reference to the law applicable to the parties. It is only where an applicant establishes her status on relationship with reference to the personal law that an application for maintenance can be maintained. Once the right under the section is established by proof of necessary conditions mentioned therein, it cannot be defeated by further reference to the personal law. The issue whether the section is attracted or not cannot be answered except by the reference to the appropriate law governing the parties. In our view the judgment in Shah Bano's case does not help the appellant.

It may be observed that for the purpose of extending the benefit of the section to a divorced woman and an illegitimate child the Parliament considered it necessary to include in the section specific provisions to that effect, but has not done so with respect to women not lawfully married.”

43. It is to be noted that in the above case personal law was looked into to find out as to whether an application filed by the appellant Yamunabai claiming to be his wife was maintainable or not. Another judgment which needs to be noted is Kirtikant D. Vadodaria Vs. State of Gujarat and Another, (1996) 4 SCC 479. The question which came for consideration before Supreme Court Court was as to whether expression “mother” used in clause (d) of sub-section (1) of Section 125 Cr.P.C. includes stepmother. Supreme Court referring to Section 125 Cr.P.C. as well as provision of Section 20 of Act, 1956 held that

stepmother can claim maintenance from her stepson provided she is widow of her husband, if living, and also incapable of maintaining and supporting her.

44. The Calcutta High Court in case of Kiran Bala Saha plaintiff v. Bankim Chandra Saha defendant reported in AIR 1967 Calcutta 603 (V 54 C 128) has held that the Court should take notice of subsequent events that post suit events as they are called and to mould its relief so as to shorten litigation, preserve the rights of the parties and thus, best subserve the end of justice. In paragraph no. 22 of the judgment of Calcutta High Court has held as under:

“22..... The obvious answer to an approach as this appears to be that it is the duty of the Court, which still retains control of the judgment, to take notice of subsequent events, post-suit events as they are called, and to mould its decree so as to shorten litigation, preserve the rights of parties, and thus best subserve the ends of justice. What to say of the primary court, as mine is even a court of appeal is to take notice of facts which may have arisen subsequently, provided that such action causes no prejudice to either party. Here I see no prejudice, no possibility of prejudice even, to the defendant, because the facts I take notice of are all in the realm of admissions. The proposition I go by is supported by a crowd of decisions. To mention but a few, here are they: (1) Ram Ratan Sahu v. Mohant Sahu, (1907) 6 Cal LJ 74, (2) Ramyad Sahu v. Bin-deshwari Kumar Upadhay, (1907) 6 Cal LJ 102, (3) Rai Charan Mondal v. Biswanath Mondal. 20 Cal LJ 107 = (AIR 1915 Cal 103). (4) Annapurna Dasi v Sarat Chandra Bhatta-charjee , (5) Raja Kamala Ranjan Roy v. Baijnath Bajoria, (1949) 53 Cal WN 329, (6) Surinder Kumar v. Gian Chand 1958 SCA 412=(AIR) 1957 SC 875). On the contrary, if I do not take notice of such subsequent facts--and admitted facts at that--the result will be multiplicity of proceedings either in the shape of a fresh suit or a petition under Section 25 of the Hindu Adoptions and Maintenance Act 78 of 1956 for increase of the maintenance I grant. That augurs no good for either of the spouses.”

45. After enactment of Family Courts Act, 1984, a Family Court shall also have the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX of Cr.P.C. relating to order for maintenance of wife, children and parents. Family Courts shall have the jurisdiction only

with respect to city or town whose population exceeds one million, where there is no Family Courts, proceedings under Section 125 Cr.P.C. shall have to be before the Magistrate of the First Class. In an area where the Family Court is not established, a suit or proceedings for maintenance including the proceedings under Section 20 of the Act, 1956 shall only be before the District Court or any subordinate Civil Court.

46. There may be a case where the Family Court has jurisdiction to decide a case under Section 125 Cr.P.C. as well as the suit under Section 20 of Act, 1956, in such eventuality, Family Court can exercise jurisdiction under both the Acts and in an appropriate case can grant maintenance to unmarried daughter even though she has become major enforcing her right under Section 20 of Act, 1956 so as to avoid multiplicity of proceedings.

47. In case of Jagdish Jugtawat v. Manju Lata and others reported in (2002) 5 SCC 422, the facts of the case were that the respondent No.3 was a minor unmarried girl of the petitioner. The wife of the petitioner, i.e., mother of respondent No.3 filed an application under Section 125 Cr.P.C. claiming maintenance @ Rs.500/- per month to each of the applicant, which was granted by the Family Court. A revision was filed before the High Court assailing the order contending that the respondent No.3, Kumari Rakhi was entitled to maintenance only till she attains majority and not thereafter. High Court although accepted the legal position that under Section 125 Cr.P.C., a minor daughter is entitled to maintenance from her parents only till she attains majority but declined to interfere with the orders passed by the Family Court taking the cue from Section 20(3) of the Hindu Adoptions and Maintenance Act. The facts of the case and observations of the High Court have been made in the paragraph 2 of the judgment, which is to the following effect:-

“2. The Petitioner is the father of Kumari Rakhi, Respondent 3

herein, who is a minor unmarried girl. Considering the application filed under Section 125 of the Criminal Procedure Code by Respondent 1, wife of the Petitioner and mother of Respondent 3, claiming maintenance for herself and her two children, the Family Court by order dated 22.7.2000 granted maintenance @ Rs.500 per month to each of the Applicants. The Petitioner herein filed a revision petition before the High Court assailing the order of the Family Court on the ground, inter alia, that Respondent 3 was entitled to maintenance only till she attains majority and not thereafter. Considering the point the learned Single Judge of the High Court accepted, the legal position that under Section-125, CrPC, a minor daughter is entitled to maintenance from her parents only till she attains majority, but declined to interfere with the order passed by the Family Court taking the cue from Section 20(3) of the Hindu Adoptions and Maintenance Act under which the right of maintenance is given to a minor daughter till her marriage. The learned Single Judge was persuaded to maintain the order of the Family Court with a view to avoid multiplicity of proceedings. The relevant portion of the judgment of the High Court is quoted here:

“Thus, in view of the above, though it cannot be said that the order impugned runs counter to the law laid down by the Hon'ble Supreme Court, the provisions of Section 125 CrPC are applicable irrespective of the personal law and it does not make any distinction whether the daughter claiming maintenance is a Hindu or a Muslim. However, taking an overall view of the matter, I, with all respect to the Hon'ble Court, am of the candid view that the provisions require literal interpretation and a daughter would cease to have the benefit of the provisions under Section 125 CrPC on attaining majority, though she would be entitled to claim the benefits further under the statute/ personal law. But the Court is not inclined to interfere, as the order does not result in miscarriage of justice, rather interfering with the order would create great inconvenience to Respondent 3 as she would be forced to file another petition under sub-section (3) of Section 20 of the Act of 1956 for further maintenance etc. Thus, in order to avoid multiplicity of litigations, the order impugned does not warrant interference.”

48. The question which came for consideration before Supreme Court in Jagdish Jugtawat's case has been noted in paragraph 3 of the

judgment which is to the following effect:

“3. In view of the finding recorded and the observations made by the learned Single Judge of the High Court, the only question that arises for consideration is whether the order calls for interference.”

49. Supreme Court answered the question noticed in paragraph 3 as above in paragraph 4 in the following words:

“4. Applying the principle to the facts and circumstances of the case in hand, it is manifest that the right of a minor girl for maintenance from parents after attaining majority till her marriage is recognized in Section 20(3) of the Hindu Adoptions and Maintenance Act. Therefore, no exception can be taken to the judgment/order passed by the learned Single Judge for maintaining the order passed by the Family Court which is based on a combined reading of Section 125, Code of Criminal Procedure and Section 20(3) of the Hindu Adoptions and Maintenance Act. For the reasons aforesaid we are of the view that on facts and in the circumstances of the case no interference with the impugned judgment order of the High Court is called for.”

50. In the present case, the order impugned has been passed by the family court exercising jurisdiction under Family Courts Act, 1984. The family court has jurisdiction for trying cases both under Section 125 Cr.P.C. as well as under Section 20 of the Act of 1956.

51. In case of *Abhilasha v. Parkash* (supra), the Supreme Court has held that an unmarried daughter has right of maintenance under Section 125 Cr.P.C. till she attains majority or is covered by the exception as carved out in the Section 125 Cr.P.C. The Supreme Court, however, declined to interfere with the order impugned before the Supreme Court for the reason that the proceedings were in the aforesaid case before Judicial Magistrate First Class and not before family court. The Judicial Magistrate First Class has no jurisdiction to entertain an application under Section 20 of the Act of 1956. The Supreme Court also granted liberty to the appellants before the Supreme Court to take recourse Sub-clause (3) of Section 20 of the Act

of 1956, if so advised, for claiming any maintenance against her father.

52. Since, in the present case, the order has been passed by the family court which has jurisdiction to entertain the application under Section 125 Cr.P.C. as well as application under Sub-clause (3) of Section 20 of Act of 1956, no purpose will be served in interfering with the revision and relegating the daughter to move a fresh application before the same court under different provision of law i.e. Section 20(3) of Act of 1956, and therefore, I am not inclined to interfere with the order and consequently, the revision No. 83 of 2023 fails and is **dismissed**.

53. So far as the revision No. 5926 of 2023 filed by the wife and daughter is concerned, the amount of maintenance awarded by the court below appears to be just as no new material was brought before this Court, requiring interference by this Court. Therefore, I am of the view that no interference is required with the order impugned at the behest of wife and daughter i.e. revisionist and consequently, revision No.5926 of 2023 is also **dismissed**. However, dismissal of this revision will not come in the way of revisionists to claim suitable modification of the order in view of the provisions of Section 127 Cr.P.C. or to get the amount of maintenance enhanced by moving an appropriate application before the Family Court under relevant provision of law, if so advised, on the subsequent facts, which may be brought to the knowledge of the court below.

Order Date :- 2.8.2024
Ved Prakash

(Manish Kumar Nigam, J.)