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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 50 OF 2020  
WITH  
INTERIM APPLICATION NO. 1322 OF 2020**

Sanjay J Phagnekar

....Applicant

V/s.

The State of Maharashtra and others

.....Respondents

Mr. Pritam Runwal for the Applicant

Mrs. Pooja Phagnekar Respondent no. 3 in person

**CORAM : NITIN W. SAMBRE, J.****DATE: NOVEMBER 23, 2020.****P.C.:**

1] Present Application is moved by Applicant-father under the provisions of Section 482 of Code of Criminal Procedure, 1973 (Hereinafter referred to as 'Cr.P.C.' for the sake of brevity) questioning the order dated 12/07/2019 passed by Judicial Magistrate First Class, Ulhasnagar thereby allowing the Application Exh. 55 for grant of interim maintenance moved under Section 125 of Cr.P.C. Learned

Magistrate has directed the payment of maintenance of Rs. 5,000/- to the Respondent-daughter who was born on 04/09/1998 from the date of the order i.e. from July 2019. Present Applicant-father, feeling aggrieved, preferred Revision being Criminal Revision No. 96 of 2019 pursuant to provisions of Section 397 of Cr.P.C. The Revision came to be dismissed by the learned Sessions Judge, Kalyan vide impugned order dated 28/11/2019. As such, this Application.

2] Shri. Runwal, learned counsel for the Applicant-father would invite attention of this Court to the provisions of Section 125 of Cr.P.C. particularly clause (b) & (c) of Sub-Section 1. According to him, father has an obligation to maintain the daughter who is not married, however, the said provision does not confer any right in major daughter to claim interim maintenance after such daughter attains majority and if she is physically or mentally not suffering from any abnormality or injury. Shri. Runwal would also invite attention of this Court to the provisions of Section 20 of Hindu Adoption and Maintenance Act and by relying on the recent

Judgment of Apex Court in the matter of **Abhilasha Vs. Parkash and Others** reported in **[2020 SCC OnLine SC 736]** he would contend that major daughter ought not to have been granted interim maintenance pursuant to provisions of Section 125 of Cr.P.C. as same goes contrary to the very scheme and object of the said provision.

3] While countering the aforesaid submissions, Respondent-daughter who is appearing in person has urged that the act of Trial Court of not deciding the Application for maintenance for years together cannot be viewed or come to the help of the Applicant particularly when Statute contemplates an obligation on the Applicant-father to pay maintenance to a minor daughter pursuant to the provisions of Section 125 (1) of Cr.P.C. According to her, since the Magistrate has failed to decide the interim maintenance Application within 60 days, same has caused legal injury to her on the issue of her claim of maintenance. She had tried to demonstrate from the factual matrix of the case that father i.e. Applicant herein has refused to take her custody or has abandoned her custody and same

reflects about his neglect to maintain the family member or the dependent like Respondent-daughter. The Judgment in the matter of **Abhilasha** [cited supra] is sought to be distinguished on the factual issues such as proceedings were decided by the Magistrate comparatively at much earlier stage than the one in the present case and land handed over by father of Abhilasha towards her maintenance. As such, according to party-in-person, even if she has attained majority on 04/09/2016, the Judgment in the matter of **Abhilasha** [cited supra] or the failure on the part of the learned Magistrate in deciding the Application within the statutory period shall not take away her claim of interim maintenance. As such, she has sought dismissal of the Application.

4] Considered rival submissions.

5] The undisputed facts on record are that Respondent Miss. Pooja was born on 04/09/1998 and she has attained majority on 04/09/2016.

Respondent has no individual source of income and claimed to

be residing with her mother who are not living with Applicant-father. Respondent has admitted that intermittently she got financial aid from her father i.e. present Applicant. It is not in dispute that Applicant father has sufficient means. The claim of the wife of Applicant for grant of interim maintenance was already rejected by the Court below.

6] It appears from the record that Respondent-daughter alongwith her mother Meena moved an Application No. 108 of 2009 styling the same to be under Section 125 (1)(a)(b) of Cr.P.C. claiming maintenance of Rs. 5,000/- per month for each of the claimant. Said application appears to have been moved on or about 06/05/2009 which I am informed is still pending adjudication. Before the aforesaid proceedings were taken out, Applicant Sanjay moved M.P. No. 451 of 2005 before the Jt. Civil Judge Senior Division, Kalyan for dissolution of marriage. Said proceedings for dissolution of marriage came to be allowed vide Judgment and Order dated 03/02/2018 passed by 5<sup>th</sup> Jt. Civil Judge Senior Division, Kalyan with following observations:

**“ORDER**

- 1] *The petition is allowed.*
- 2] *The marriage between the petitioner and respondent solemnized on 06/02/1996 is dissolved by decree of divorce on the ground of cruelty, with effect from 03/02/2018.*
- 3] *The petitioner shall pay Rs. 10,000/- per month from the date of this order, towards educational and regular expenditure of his daughter namely Pooja, till she is married or till she is capable to and earns sufficient amount to maintain herself, whichever is earlier.*
- 4] *Both the parties to bear their own costs.*
- 5] *Decree be drawn up accordingly.*
- 6] *Copy of the order be given free of cost to both the parties in compliance with the mandate of Section 23(4) of The Hindu Marriage Act, 1955”.*

7] Upon perusal of the aforesaid order, it is apparent that present Applicant was directed by the Civil Judge Senior Division, Kalyan to pay Rs. 10,000/- per month from the date of order i.e. 03/02/2018 towards educational and regular expenditure of present non-applicant Pooja till she is married or till she is capable to ear sufficient amount to maintain herself. The aforesaid Judgment is not questioned by Applicant, however, wife of Applicant, Meena preferred

Regular Civil Appeal No. 24 of 2018 which is pending on the file of learned District Judge, Kalyan. It is worth to note that no maintenance was granted to mother of the Respondent.

8] There is one more angle to the matter. In the above referred proceedings i.e. MP No. 451 of 2005, pursuant to the prayer made by the Respondent, during pendency of the said proceedings, Applicant was directed to pay maintenance of Rs. 3,000/- per month from the date of Application i.e. from 29/09/2006 to the wife Meena towards maintenance of daughter Pooja, non-applicant herein. As a consequence of above referred order passed in exercise of powers under Hindu Marriage Act, It is aptly clear that respondent-daughter was getting maintenance of Rs. 3,000/- per month w.e.f. 29/09/2006 and at the rate of Rs. 10,000/- w.e.f. 03/02/2018.

9] In spite of above, application Exh. 55 came to be moved in the proceedings preferred under Section 125 of Cr.P.C. for grant of interim maintenance. Needless to observe that said Application Exh.

55 was moved on 19/06/2019 and the fact about passing of the aforesaid order of maintenance was not brought to the notice of learned Magistrate or the Revisional Court.

10] It appears that while claiming interim maintenance under Section 125 of Cr.P.C., Applicant has specifically raised a defence that Respondent-daughter has attained majority and that being so, she cannot claim interim maintenance.

11] If the scheme of clause (c) of sub-section (1) of Section 125 of Cr.P.C. is considered, what is appreciated is, legitimate or illegitimate child (not being a married daughter) who has attained majority who by reason of any physical or mental abnormality or injury, if unable to maintain herself, can claim maintenance from father or a person who has sufficient means and who has neglected or refused to maintain.

12] In the case in hand, means to maintain of present Applicant are

not disputed. What is required to appreciated is, Respondent-daughter has attained majority and she is already getting expenses as was ordered in proceedings under the Hindu Marriage Act as is apparent from the order dated 03/02/2018 and interim maintenance pursuant to order dated 16/01/2007.

13] It is not the case of the Applicant that even if Respondent has attained majority, she has an independent source of income or she by reason of any physical or mental abnormality or injury is unable to maintain herself.

14] That being so, the claim as is put forth by virtue of an Application Exh. 55 for grant of interim maintenance vide Application dated 19/06/2019 that too after Respondent has attained majority ought not to have been entertained.

15] The Apex Court has dealt with the scheme of Section 125 of Cr.P.C. in the matter of **Abhilasha** [cited supra], while dealing with

the said scheme of Section 125 of Cr.P.C. and Section 20 of Hindu Adoption and Maintenance Act, the Hon'ble Apex Court in para 31 to 35 has observed thus:

*“31. The provision of Section 20 of Act, 1956 cast clear statutory obligation on a Hindu to maintain his unmarried daughter who is unable to maintain herself. The right of unmarried daughter Under Section 20 to claim maintenance from her father when she is unable to maintain herself is absolute and the right given to unmarried daughter Under Section 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 Section 20(3) of 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 Section 20(3) and can be enforced by unmarried daughter in accordance with law.*

*32. 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 Code of Criminal Procedure 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 Code of Criminal Procedure 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.*

33. *There may be a case where the Family Court has jurisdiction to decide a case Under Section 125 Code of Criminal Procedure 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 as observed by this Court in the case of Jagdish Jugtawat (supra). However the Magistrate in exercise of powers Under Section 125 Code of Criminal Procedure cannot pass such order.*

34. *In the case before us, the application was filed Under Section 125 Code of Criminal Procedure before Judicial Magistrate First Class, Rewari who passed the order dated 16.02.2011. The Magistrate while deciding proceedings Under Section 125 Code of Criminal Procedure could not have exercised the jurisdiction Under Section 20(3) of Act, 1956 and the submission of the Appellant cannot be accepted that the Court below should have allowed the application for maintenance even though she has become major. We do not find any infirmity in the order of the Judicial Magistrate First Class as well as learned Additional Magistrate in not granting maintenance to Appellant who had become major.*

35. *The maintenance as contemplated under Act, 1956 is a larger concept as compared to concept of maintenance Under Section 125 Code of Criminal Procedure Section 3(b) while defining maintenance gives an inclusive definition including marriage expenses in following words:*

*3. Definitions- In this Act unless the context otherwise requires-*

XXXXXXXXXXXXXXXXXX

*(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) "minor" means a person who has not completed his or her age of eighteen years".*

16] From the Judgment of **Abhilasha** [cited supra] it is clear that under Section 20 of the Hindu Adoption and Maintenance Act, right of unmarried daughter to claim maintenance from her father when she is unable to maintain herself is absolute. Such right is granted under the personal law which such daughter has every right in law enforce against her father. As such, right under Sub-section 3 of Section 20 of the said provisions is recognized to be existing to claim maintenance after she attains majority till her marriage, from her father. In other words, unmarried daughter is entitled to claim maintenance from her father till she is married even though she has become major which right is recognized under Section 20 (3) of the

Hindu Adoption and Maintenance Act.

17] As such, the law already gives a remedy to claim maintenance to a daughter under the provisions of Hindu Adoption and Maintenance Act even if she is a major by age and unmarried and dependent on her father.

18] Learned Magistrate or the Revisional Court have failed to appreciate the aforesaid intricacies of provisions of Section 125 (1)(c) of Cr.P.C. and also the right of daughter such as non-applicant herein provided under Section 20 (3) of the Hindu Adoption and Maintenance Act.

19] In the case in hand, it appears that Applicant-father has specifically pleaded in the defence that the daughter has attained majority and in law, she has not incurred any disqualification as is provided under Section 125 of Cr.P.C. i.e. even if she is unable to maintain herself being a major daughter, she has not physically or

mentally abnormal or has any injury so as to maintain herself.

20] The aforesaid statutory provision has been lost sight of by both the Courts below.

21] As such, both the Courts below have committed an error apparent on the face of record in awarding interim maintenance to major daughter in exercise of powers under Section 125 of Cr.P.C. In the aforesaid background, present Application needs to be allowed.

22] The order passed by the learned Magistrate on 12/07/2019 and confirmed in Revision by the learned Sessions Judge vide order dated 28/11/2019 is hereby quashed and set aside. Application Exh. 55 as such stands rejected.

23] However, this will not preclude the Respondent-daughter from pressing her claim for maintenance under Section 125 of Cr.P.C. till

the date she attains majority. Respondent-daughter is also at liberty to claim maintenance under Section 20 of the Hindu Adoption and Maintenance Act.

24] The amount deposited by the Applicant pursuant to the interim order passed by this Court be transferred to by the Registry in the pending proceedings for maintenance initiated under Section 125 of Cr.P.C. being proceedings No. 108 of 2009 pending on the file of Judicial Magistrate First Class, Ulhasnagar, immediately. It is directed that the said proceedings be decided expeditiously and in any case within period of three months from the date of production of this order. Till such period, amount shall be kept with the Court below and same be adjusted against liability, if any, accrued towards payment of maintenance in the said proceedings. If there is no liability accrued on the Applicant towards payment of maintenance in the said proceedings, it shall be open for the Applicant to apply for withdrawal of the same before the very same Court.

25] Observations made herein are confined to the issue which is canvassed before this Court and shall not affect the merits of the other proceedings pending between the parties.

26] As a consequence of order passed in Criminal Application No. 50 of 2020, Interim Application No. 1322 of 2020 is not pressed. As such, Interim Application is disposed of as not pressed.

**[NITIN W. SAMBRE, J.]**