



IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 964 OF 2025

MADHUMITA HALDER

For the Petitioner : Mr. Abhijit Sarkar, Adv.

Mr. Raja Biswas, Adv.

For the Opposite

Party No. : Mr. Jayanta Banerjee, Adv.

Ms. Ruximini B. Roy, Adv.

Mr. Argha Bhattacharjee, Adv.

Last heard on : 12.09.2025

Judgement on : 12.09.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This revisional application under Section 528, read with Section 442 of BNSS 2023 is filed for quashing the impugned order dated 5.12.24 passed by the Learned Judicial Magistrate, Railway Court, Kharagpur, as well as the proceedings of M.R case number 43/2022, under Section 125 of the criminal procedure code, 1973, pending before the court of Learned Judicial Magistrate, Railway Court at Kharagpur whereby an order has been passed, directing the present petitioner to pay a sum of ₹15,000 per month to the opposite party No.2 and ₹10,000 per month to the minor daughter till the day of her



attaining majority as an interim maintenance from the date of filing of petition that is from 20.12.2022 .

2. The fact of the case, as it appears that the marriage between the parties were solemnised on 2.5.2004 at Chhoto, Batala, P.O and P.S – New Barrackpur, District 24 Parganas North, and after marriage, they resided together at Bombay and led their conjugal life. They were blessed with a girl child who was born on 17.3.2005 and presently an adult lady.

Grievance of the petitioner/wife is concerned in respect of the CRR 964 of 2005 is that the Learned Court of Judicial Magistrate has passed such order considering that the same is applicable till the daughter attained majority and the daughter is aged about of 19 years. It is her case that since the daughter is still studying and if not being provided with any maintenance she will be highly prejudiced.

3. Learned Advocate representing the wife, petitioner/Opposite Party submits that though in the provision under Section 125 Cr. Pc nothing is said about granting a n order of maintenance to a daughter who has attained majority but the provision under Section 20 of Hindu Adoption and Maintenance Act provides for maintenance till marriage of the daughter and attained majority. In this regard the Learned Advocate relied upon a decision reported in ***Jagdish Jugtawat v. Manju Lata and ors*¹**.

4. The Learned Advocate representing the husband raises strong objection and it is specifically argued that under the scheme of Section 125 Cr.Pc maintenance cannot be granted in favour of a daughter who has attained majority and nothing is mentioned about her incapacity or inability to maintain herself. In

¹ 2002 (5) SCC 422



this regard on perusal of the decision relied upon by the Learned Advocate representing the wife it is found that the application was filed there in under Section 125 of Cr.Pc claiming maintenance for herself and her two daughters and the Family Court by an order granted maintenance to each of the applicant and against which revisional application was filed challenging on the ground that the daughter is not entitled to maintenance as she attained majority.

The High Court accepted the legal position but declined to interfere with such order taking into consideration Section 20 (3) of Hindu Adoption and Maintenance Act under which the right of maintenance is given to a minor daughter till her marriage. The matter travelled upto Hon'ble Supreme court and Hon'ble Supreme Court also considered such provision of Hindu Adoption and Maintenance Act and observed that no exception can be taken to the judgement/order passed by the Learned Single Judge for maintaining order passed by the Family Court.

5. In this regard another decision passed by the Hon'ble Supreme Court in **AIR 2020 Supreme Court 4355 Avilasha Parekh²** is taken note of by this Court where identical situation arose and the Learned Additional Sessions Judge held that since the child who attained majority is not suffering from any physical or mental abnormality or injury she will be entitled to maintenance only till the time she attained majority. The matter was challenged under Section 482 Cr.Pc before the High Court where the same application was dismissed and affirmed the order passed by the Learned Session Judge against which the matter travelled up to Hon'ble Supreme Court and in paragraph 12

² AIR 2020 Supreme Court 4355



of the said judgement, the provision mentioned in Section 125 of Cr.Pc as well as Section 20 of Hindu Adoption and Maintenance Act 1956. Were considered which is reproduced herein

12. 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. In the present case, the Revisional Court has returned a finding that appellant is not suffering from any physical or mental abnormality or injury due to which she is unable to maintain herself. The above findings are not even questioned before us. What is contended that even if she is not suffering from any physical or mental abnormality or injury, by virtue of Section 20 of Act, 1956, she is entitled to claim maintenance till she is unmarried.

The Hon'ble Supreme Court further examined the nature extend and scope of Section 125 Cr.Pc and Section 488 Cr.Pc which is the provision governing the maintenance of wife or legitimate or illegitimate child of any person .section 488 Cr.Pc provided

Para 488....

"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.”

The Hon’ble Court also took note of the Judgement **Jagdish Jugtawat v.**

Manjulata and ors. (Supra) and observed in paragraph 24;

24. In the above case, an order was passed by the Family Court by granting maintenance which was based on combined reading of Section 125 Cr.P.C. and Section 20 of Act, 1956. Although, the High Court and this Court had declined to interfere with the order of the Family Court taking the cue from Section 20(3) of the Act, 1956 under which the right of maintenance is given to a minor daughter till her marriage, but the judgment of this Court in Jagdish Jugtawat (supra) cannot be read to laying down the ratio that in proceedings under Section 125 Cr.P.C. filed by the daughter against her father, she is entitled to maintenance relying on the liability of the father to maintain her unmarried daughter as contained in Section 20(3) of the Act, 1956. The High Court in exercise of Criminal Revisional jurisdiction can very well refuse to interfere with the judgment of Courts below by which maintenance was granted to unmarried daughter. This Court while hearing criminal appeal against the above judgment of High Court was exercising jurisdiction under Article 136 of the Constitution of India, and in the facts of that case, this Court refused to interfere with the judgment of High Court but in refusal to interfere by this Court, no ratio can be read in the judgment of Jagdish Jugtawat (supra) as contended by learned counsel for the appellant.

In paragraph 30 of the Judgement the Hon’ble Supreme Court further took note of Section 3 of Muslim Women (Protecting of Rights of Divorce) Act, 1986



and Section 125 Cr.Pc. IT is relevant to refer to the following observation made by this Court in Paragraph 7 of the Judgement. Para 7....

7. From the submissions of the learned counsel for the parties, following two questions arise for consideration in this appeal:-

(i) Whether the appellant, who although had attained majority and is still unmarried is entitled to claim maintenance from her father in proceedings under [Section 125 Cr.P.C.](#) although she is not suffering from any physical or mental abnormality/injury?

(ii) Whether the orders passed by learned Judicial Magistrate as well as learned Revisional Court limiting the claim of the appellant to claim maintenance till she attains majority on 26.04.2005 deserves to be set aside with direction to the respondent No.1 to continue to give maintenance even after 26.04.2005 till the appellant remains unmarried?

6. The Hon'ble Court lastly accepted the submission of the Learned Court there in that as the proposition of law an unmarried woman can claim maintenance from her father till she is married relying on Section 20 (3) of the Act, 1956 providing that she pleads and proves that she is unable to maintain herself for enforcement of which right her application/suit has to be under Section 20 of the Act of 1956. Therefore in the instant case the wife filed such application under Section 125 of Cr.Pc claiming daughter maintenance for the minor daughter who has attained majority and in view of the above discussions held by the Hon'ble Supreme Court in the above two decisions there is doubt of room that even though a provision exist under Section 20 of the Hindu Adoption and Maintenance Act for granting maintenance in favour of the daughter till she is married no such provision is there in Section 125 Cr.Pc regarding granting of such maintenance in favour of the daughter when she



attains majority. More so pursuant to the observation of the Hon'ble supreme court 'the purpose and object of Section 125 Cr.P.C. as noted above is to provide immediate relief to applicant in a summary proceedings, whereas right under Section 20 read with Section 3(b) of Act, 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under Section 20, the proceedings need to be initiated under Section 20 of the Act and the legislature never contemplated to burden the Magistrate while exercising jurisdiction under Section 125 Cr.P.C. to determine the claims contemplated by Act, 1956.'

7. Therefore at stage of granting interim maintenance the court had no occasion to determine as to whether the daughter is unable to maintain herself or otherwise not in a position to maintain herself and therefore at this stage this court do not find any irregularities or infirmities for which any interference is necessary.

The other prayer made by the petitioner /wife is that the quantum of interim maintenance granted in favour of the petitioner is not in consonance with the income of the husband which is more than 1 lakhs per month. To this extent the order impugned is perused which reveals that the Learned court considered the amount of E.M.I towards the mortgage loan and as an interim maintenance such amount was provided. This court is of the view that considering the Affidavit of asset as declared by the husband such amount was considered and only in course of trial after taking evidence the final amount of maintenance can be calculated as how far the wife is entitled to have an order of maintenance. Therefore at this stage the amount granted



appears to be reasonable enough and hence this court finds no reason to interfere with the same.

8. Hence this revisional application stands dismissed.

9. Urgent Photostat copy of the order be supplied upon compliance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)

