2025:KER:81376

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 29TH DAY OF OCTOBER 2025 / 7TH KARTHIKA, 1947

RPFC NO. 157 OF 2021

AGAINST THE ORDER DATED 09.03.2021 IN MC NO.306 OF 2017 OF FAMILY COURT, ERNAKULAM

REVISION PETITIONER/RESPONDENT:

[redacted]-18.

BY ADVS.
SRI.K.M.MADHU
SMT.VISHNUJA AJAYAN

RESPONDENTS/PETITIONERS:

1 [redacted],82016.

2 [redacted],82016.

BY ADVS.
SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA

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SRI.R.GITHESH
SMT.HANI P.NAIR
SHRI.AJAY BEN JOSE
SRI.MANJUNATH MENON
SHRI.NAVEEN A.VARKEY
SMT.ANNA LINDA EDEN
SHRI.HARIKRISHNAN S.

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 29.10.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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"C.R."

ORDER

This revision petition has been filed challenging the order dated 09.03.2021 passed by the Family Court, Ernakulam, in M.C.No. 306 of 2017.

2. The parties are Christians. The petitioner is the husband of respondent No.1 and father of respondent No.2. The respondents filed a maintenance case against the petitioner before the Family Court, Ernakulam, claiming monthly maintenance at the rate of Rs. 30,000/- and Rs. 15,000/-, respectively. The Family Court, after trial, granted monthly maintenance at the rate of Rs 20,000/- to the respondent No.1 and Rs 10,000/- to the respondent No.2. The Family Court further granted Rs 30,000/- to the respondent No.1 towards the educational expenditure of the respondent No.2 incurred by her from January 2017 to April 2017.

3. The learned counsel for the petitioner assailed the impugned order mainly on three grounds: (i) since the respondent No.2 was a major on the date of the petition, she is not entitled to

claim maintenance, (ii) the respondent No.1 has been living separately without sufficient reason after deserting the petitioner and hence she is also not entitled for maintenance, and (iii) the respondent No.1 is employed and has sufficient means to maintain herself.

4. I find merit in the first ground urged. Section 125 of Cr.P.C. (Section 144 of BNSS) limits the claim of maintenance of the child until he or she attains majority. However, by virtue of Section 125(1)(c) of Cr.P.C. (Section 144(1)(c) of the BNSS), an unmarried daughter, even though she has attained majority, is entitled to maintenance, where she is, by reason of any physical or mental abnormality or injury, unable to maintain herself. The scheme under Section 125(1)(c) of Cr.P.C. (Section 144(1)(c) of BNSS), thus, contemplates that a 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. Here, the petitioner does not have a case at all that the respondent No.2 is unable to maintain herself because of any physical or mental

abnormality or injury. On the other hand, it has come out in evidence that she is a practising lawyer.

5. The question whether an unmarried Hindu daughter who has attained majority is entitled to claim maintenance from her father in a proceeding under Section 125 of Cr.P.C. (Section 144 of BNSS), although she is not suffering from any physical or mental abnormality or injury, came up for consideration before the Supreme Court in ***Jagdish Jugtawat v. Manju Lata & Ors.*** [(2002) 5 SCC 422]. In that case, the mother of a minor, unmarried girl, filed an application under Section 125 of Cr.P.C. claiming maintenance from her father before the Family Court. The Family Court allowed the claim. The father challenged the order of the Family Court before the High Court in revision, mainly contending that the daughter is entitled to maintenance till she attains majority and not thereafter. The High Court, though, accepted the legal position that under Section 125 of Cr.P.C., a minor daughter is entitled to maintenance from her parents only till she attains majority, declined to interfere with the orders passed by the Family Court, taking the cue from Section 20(3) of the

Hindu Adoption and Maintenance Act, 1956 (for short, 'HAMA'). The Supreme Court held that the High Court was justified in upholding the order of the Family Court, by which it granted maintenance under Section 125 of Cr.P.C. to the daughter even after her attaining majority but till her marriage, taking the view that it would avoid multiplicity of proceedings as otherwise the party would be forced to file another petition under Section 20(3) of the HAMA for further maintenance. Again, the question came up for consideration before the Supreme Court in ***Abhilasha v. Parkash & Ors.*** [(2021) 13 SCC 99]. It was found that the judgment in ***Jagdish Jugtawat*** (supra) cannot be read to lay down the ratio that in a proceedings under Section 125 of Cr.P.C. filed by the daughter against her father, she is entitled to maintenance relying on the liability of the father to maintain his unmarried daughter as contained in Section 20(3) of the HAMA. However, in paragraph 34 of the judgment, it was observed that in a case where the Family Court has jurisdiction to decide a case under Section 125 of Cr.P.C as well as the suit under Section 20 of the HAMA, the Family Court can exercise jurisdiction under both the Acts and in

appropriate case can grant maintenance to unmarried daughter even though she has become major enforcing her right under Section 20 of the HAMA so as to avoid multiplicity of proceedings. The dictum laid down in these decisions was based on the provision under Section 20(3) of the HAMA, which enables an unmarried major Hindu daughter to claim maintenance from her father.

6. Section 20(3) of the HAMA casts civil liability on the father to maintain his unmarried daughter. The Muslim Personal Law also obliges the father to maintain his unmarried daughter. But there is no corresponding personal law applicable to Christians that enables a Christian unmarried daughter to claim maintenance from her father. The decision of the Full Bench of the Kerala High Court in ***Mathew Varghese v. Rosamma Varghese*** [2003 (3) KLT 6 (FB)] only declares that a Christian father is under an obligation to maintain his minor child. Therefore, an unmarried Christian daughter who has attained majority is not entitled to claim maintenance from her father in a proceeding under Section 125 of Cr.P.C. (Section 144 of BNSS), unless she is unable to maintain herself by reason of any physical or

mental abnormality or injury. The finding of the Family Court that the respondent No.2 is entitled to maintenance cannot, thus, be sustained.

7. The next point canvassed by the learned counsel for the petitioner is that the respondent No.1, who chose to live separately at Mumbai, deserting him since 2017 without sufficient reason, is disentitled to maintenance under Section 125(4) of Cr.PC (Section 144(4) of BNSS). The right of the wife to claim maintenance from her husband, who has sufficient means, is not absolute. It is subject to sub-section (4) of Section 125 (Section 144(4) of BNSS). It is crucial to assess whether the wife's decision to live separately is based on valid grounds. If valid grounds, such as cruelty or desertion, exist, she may still claim maintenance despite living apart. In cases where the wife refuses to live with the husband without any just cause, the wife is not entitled to maintenance.

8. It has come out in evidence that there is sufficient reason for respondent No.1 to reside in Mumbai, away from the petitioner. She has given evidence that her ailing younger son is studying in Mumbai and she is staying there for the educational purposes and

medical treatment of her ailing son. The petitioner does not have a case that the son is not well and is not residing with respondent No.1. Indeed, the right of the wife to be maintained by the husband stems from the corresponding obligation to perform marital duty. But a mother has obligations to both her husband and child. A mother's parental obligation is generally considered wider in scope than her marital obligation. When a wife chooses to reside away from her husband to provide better treatment and education for her ailing son, it cannot be said that she is living separately without sufficient reason to be disentitled to maintenance under Section 125(4) of Cr.PC (Section 144(4) of BNSS).

9. The third point urged by the learned counsel of the petitioner is that respondent No.1 is disentitled to claim maintenance from the petitioner since she is employed and has sufficient means to maintain herself. Section 125(1)(a) of Cr.PC (Section 144(1)(a) of BNSS) provides maintenance to the wife who is unable to maintain herself. However, "unable to maintain herself" in Section 125 of Cr.P.C (Section 144 of BNSS) does not mean that the wife must be in a state

of impecuniousness. It is settled that even if the wife has the capability to earn or is earning something, it does not disentitle her from claiming maintenance from her husband. The test is whether the wife can maintain herself, more or less, in the status that her husband had maintained her. In ***Rajnesh v. Neha*** [(2021) 2 SCC 324], the Supreme Court has held that even if the wife is earning, it cannot operate as a bar from being awarded maintenance by her husband. In ***Chaturbhuj v. Sita Bai*** [(2008) 2 SCC 316], it was held that the court has to determine whether the income of the wife is sufficient to enable her to maintain herself in accordance with the lifestyle of her husband in the matrimonial home. In ***Sunita Kachwaha v. Anil Kachwaha*** [(2014) 16 SCC 715], the husband raised a contention that since the wife was employed as a teacher and had sufficient income, she was not entitled to maintenance from the husband. The Supreme Court repelled this contention and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

10. In the evidence, respondent No.1 has admitted that she

was doing a part-time job on and off. There is nothing on record to show that she has permanent job and steady income. The wife's temporary job, even if it provides some income, would not disentitle her to claim maintenance from her husband if she asserts that the said income is insufficient for her maintenance.

11. The petitioner has admitted in the affidavit that he is the proprietor of AGL International Recruiting Agency and the owner of two flats at Royal Coronet, having a total value of Rs. 90,00,000/-. He has also produced his bank account details, which are shown in paragraph 19 of the judgment. His account statement would show that he has an average monthly withdrawal of Rs. 60,000/- per month from his bank account. Considering the ability and financial capacity of the petitioner and the requirement of respondent No.1, the monthly maintenance of Rs. 20,000/- fixed by the Family Court to respondent No.1 appears to be very reasonable. The claim for maintenance by a wife who is unable to maintain herself would also include the expenses incurred by her towards the education of the child who is dependent on her. Merely because the child is a major would not

prevent the wife from claiming maintenance from her spouse to meet the needs of the dependent child. Section 125 of Cr.P.C does not prevent such a situation. Therefore, I see no reason to interfere with the monthly maintenance of Rs. 20,000/- and consolidated educational expenditure of Rs. 30,000/ granted to the respondent No.1.

For the reasons stated above, the impugned order, to the extent it granted monthly maintenance to respondent No.2, is hereby set aside. The revision petition stands allowed in part.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

APA