

Court No. - 12

Case :- CRIMINAL REVISION No. - 13 of 2025

Revisionist :- Anurag Pandey

Opposite Party :- State Of U.P. Thru. Addl. Prin. Secy. Home Lko. And Another

Counsel for Revisionist :- Amit Kumar Singh, Ajai Kumar Gupta

Counsel for Opposite Party :- G.A., Rohit Singh Parmar

Hon'ble Rajnish Kumar, J.

1. Heard Shri Amit Kumar Singh, learned counsel for the revisionist, learned AGA and Shri Rohit Singh Parmar, learned counsel for the respondent no. 2.

2. This Criminal Revision has been filed assailing the judgment and order dated 30.07.2024 passed in Criminal Misc. Case No. 280 of 2023; Kumari Neha Pandey vs. Anurag Pandey under Section 125 of Criminal Procedure Code (here-in-after referred as CrPC) by Principal Judge, Family Court, District Sultanpur.

3. The sole argument advanced by learned counsel for the revisionist is that the respondent no. 2 is major in age and it was disclosed in the application under Section 125 CrPC itself, therefore, the maintenance could not have been allowed in the proceeding(s) under Section 125 CrPC and if the court was of the view that a major daughter can claim maintenance under Section 20(3) of Hindu Adoption and Maintenance Act, 1956, the proceedings could have been converted and after trial as a civil suit in accordance with law, the order could have been passed. He further submits that the judgment of the Hon'ble Supreme Court, in the case of **Abhilasha vs. Parkash and others; (2021) 13 SCC 99**, has wrongly and illegally been interpreted by the trial court. Thus, the submission is that the

impugned judgment and order is liable to be set aside and the revision is liable to be allowed.

4. Learned counsel for the respondent no. 2, though opposed the prayer of the revisionist on the ground that the respondent no. 2 is in need of money, but could not contradict the legal position as argued by learned counsel for the revisionist and fairly submits that the impugned judgment and order may be set aside and the matter may be remitted to the concerned Family Court for converting and deciding afresh under Section 20(3) of Hindu Adoption and Maintenance Act, 1956 to avoid multiplicity of cases and the same may be directed to be decided in a time bound manner. To which there is no objection by learned counsel for the revisionist.

5. In view of above and consensus among learned counsels for the parties that being legal issue, this revision can be decided on the material placed on record of this revision.

6. Having considered the submissions of learned counsel for the parties, I have perused the records.

7. The respondent no. 2 had filed an application under Section 125 CrPC claiming maintenance from the revisionist. The respondent no. 2; daughter of the revisionist was major in age at the time of filing of the application and it was disclosed in the application under Section 125 CrPC.

8. Section 125 CrPC provides that if any person having sufficient means neglects or refuses to maintain his legitimate or illegitimate minor child whether, married or not, unable to maintain itself, a Magistrate of the first class, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of such child at such monthly rate, as such Magistrate deems fit. Proviso appended to Sub-section (1) provides 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. Section 125(1) CrPC is extracted here-in-below:

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

(3)

(4)

(5)

(6)..... U.P. Amendment"

9. In view of above, only a minor daughter is entitled for maintenance under Section 125 CrPC. However, a major

daughter is entitled for maintenance, who is not married if by reason of any physical or mental abnormality or injury, she is unable to maintain herself. Thus, the case of the respondent no. 2 is not covered under Section 125 CrPC and she was not entitled for order of maintenance under the said section. Learned trial court after considering it and the provisions of Section 20(3) of Hindu Adoptions and Maintenance Act, 1956 (here-in-after referred as Act of 1956) allowed the application filed under Section 125 CrPC in terms of Section 20(3) of the Act of 1956 and directed to the revisionist to pay an amount of Rs. 10,000/- per month as maintenance from the date of application. Hence, this revision has been filed.

10. In view of above, this Court has to see as to whether in an application for maintenance under Section 125 CrPC, the order for maintenance can be passed under Section 20(3) of the Act of 1956. The Act of 1956 has been enacted to amend and codify the law relating to adoptions and maintenance among Hindus. It has overriding effect under Section 4 of the Act. Chapter 3 of the Act deals with maintenance. Section 20 in Chapter 3 deals with the maintenance of children and aged parents. Sub-section (3) of Section 20 provides the obligation of a person to maintain his or her daughter, who is unmarried and is unable to maintain herself out of her own earnings or the property. Section 20 is extracted hereinbelow:-

"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 or her own earnings or other property.*

Explanation.—In this section "parent" includes a childless step-mother."

11. The amount of maintenance, which may be allowed under the Act of 1956 has been provided under Section 23 of the Act. Sub-section 2 provides the grounds on which the maintenance shall be awarded to a wife, children or aged or infirm parents under the Act. The relevant Sections 23(1) and 23(2) are extracted here-in-below:-

"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 earnings or from any other source;

(e) the number of persons entitled to maintenance under this Act.

3. In determining the amount of maintenance"

12. Section 24 of the Act of 1956 provides that no person shall be entitled to claim maintenance under this Chapter, if he or she has ceased to be a Hindu by conversion to another religion.

13. In view of above, the maintenance to a daughter, who has attained majority can be allowed under the Act of 1956, if she has not ceased to be a Hindu by conversion to another religion and unable to maintain herself out of her own earnings or other property upon consideration of the factors given in Sub-section (2) of Section 23 of Act of 1956.

14. The Family Courts Act, 1984 (here-in-after referred as Act of 1984) has been enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. The establishment of Family Court has been given in Section 3 of

the Act. The jurisdiction conferred on the Family Courts has been given under Section 7, which is extracted here-in-below:-

"7. Jurisdiction.-(1) *Subject to the other provisions of this Act, a Family Court shall—*

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.—The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

15. The procedure generally to be followed by the Family Courts has been given in Section 10 of Act of 1984, which is extracted here-in-below:-

"10. Procedure generally.-

(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before a Family Court and for the purposes of the said

provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other."

16. The execution of decrees and orders passed by the Family Court has been given under Section 18, which is extracted here-in-below:-

"18. Execution of decrees and orders.- *(1) A decree or an order, other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.*

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution."

17. Section 19 of the Act of 1984 provides for appeal. Sub-section (1) provides that an appeal from every judgment and order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law. Sub-section (4) added by amendment by Act 59 of 1991 w.e.f. 28.12.1991 provides that the High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of CrPC. Section 19 of the Act of 1984 is extracted here-in-below:

"19. Appeal.-*(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.*

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX

of the Code of Criminal Procedure, 1973 (2 of 1974): Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and, as to the regularity of such proceeding.

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges."

18. In view of Sections 7, 10, 18 and 19, it is apparent that a Family Court exercises all the jurisdiction exercisable by any district court or any subordinate civil court in respect of suit(s) and proceedings of the nature referred to in explanation in Section 7 of Act of 1984 and according to Explanation (f), a suit or proceeding for maintenance can be filed before the Family Court. As per Sub-section (2) of Section 7, a Family Court shall also have and exercise jurisdiction exercisable by the Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of CrPC. Thus, both the powers have been conferred upon the Family Courts. However, these are to be exercised under the respective procedural law as provided under Section 10, according to which, the provisions of Code of Civil Procedure, 1908 (herein-after referred as CPC) and of any other law for the time being shall apply to the suit(s) and proceedings other than the proceedings under Chapter IX of CrPC before a Family Court and for the said purpose, as per Sub-section (1), a Family Court shall be deemed to be a civil court and shall have powers of such court. Sub-section (2) of Section 10 of the Act of 1984 provides that subject to this Act and Rules made thereunder, the

provisions of CrPC or the rules made thereunder shall apply to the proceedings under Chapter IX of CrPC before a Family Court. Similarly, the procedure for execution of decrees and orders has been provided under Section 18 of the Act of 1984, which shall be under the respective codes. Further the remedies provided in both the cases is different. The judgment and order passed in a suit for maintenance dealt with in accordance with CPC can be challenged in an Appeal before this Court, whereas the order passed under Chapter IX of CrPC dealt with in accordance with CrPC can be challenged in a Revision before this Court.

19. Section 9 of CPC provides that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

20. In view of above, a suit or proceeding for maintenance under Section 20(3) of Act of 1956 is to be dealt with in accordance with the procedure prescribed under CPC and any other law applicable on such suits and proceedings and for the said purpose the Family Courts shall exercise the jurisdiction of Civil Courts in respect of suits under CPC and proceedings under Section 125 CrPC, which is under Chapter IX of CPC, is to be dealt with in accordance with the procedure prescribed under CrPC and exercising the jurisdiction as Magistrate of First Class and accordingly, the execution is to be made of the decrees and orders and separate remedies can be availed for challenging the orders in respective proceedings.

21. The Family Courts have been established under Section 3 of the Act of 1984 for area having population exceeding one million and in the areas where the population is less than one million, the suites and the proceedings are being dealt with by the respective civil courts and criminal courts. Thus, it is

apparent that the proceedings under Section 125 CrPC are to be dealt with as per the procedure prescribed under Section 126 CrPC exercising jurisdiction of Magistrate First Class, whereas the proceedings under Section 20(3) of the Act of 1956 are of civil in nature, which is to be dealt with by the Family Courts as District or Sub-ordinate Civil Court.

22. The Hon'ble Supreme Court, in the case of **Abhilasha vs. Parkash and others (Supra)**, held that the purpose and objective of 125 CrPC is to provide immediate relief to applicant in a summary proceedings, whereas right under Section 20 read with Section 3(b) of Act of 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under Section 20 of the Act of 1956, the proceedings need to be initiated under Section 20 of the Act of 1956 and the Magistrate, while exercising jurisdiction under Section 125 Cr.P.C. to determine the claims contemplated by Act of 1956, cannot decide the proceedings under Section 20 of the Act of 1956 determining maintenance in accordance with law. The relevant paragraphs 33, 34, 35, 36, 37 and 39 are extracted here-in-below:

36. 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.

37. There are three more reasons due to which we are satisfied that the orders passed by the learned Judicial Magistrate as well as learned Additional Sessions Judge in the revision was not required to be interfered with by the High Court in exercise of jurisdiction under Section 482 Cr.P.C. The reasons are as follows:-

(i) The application was filed by the mother of the appellant in the year 2002 claiming maintenance on her behalf as well as on behalf of her two sons and appellant, who was minor at that time. The appellant being minor at that time when application was filed on 17.10.2002, there was no occasion for any pleading on behalf of the appellant that she was not able to maintain herself even after attaining the majority.

Section 20 of the Act, 1956 on which reliance has been placed by learned counsel for the appellant recognising the right of maintenance of unmarried daughter by a person subject to the condition when “the parents or the unmarried daughter, as the case may be, is unable to maintain themselves/herself out of their/her own earnings or other property”. The learned Additional Sessions Judge noticed the submission of the respondent that appellant did not come in the witness box even when she had attained majority to claim that she was unable to maintain herself, which contention has been noted in paragraph 12 of the judgment of the learned Additional Sessions Judge.

(ii) From the judgment of the learned Judicial Magistrate, another fact, which is relevant to be noticed is that applicant Nos. 2 to 4, which included the appellant also had filed the proceedings under Section 20 of the Act, 1956 being Suit No. 6 of 2001, which was dismissed as withdrawn on 17.12.2012.

(iii) Another factor, which need to be noticed that in the counter affidavit filed in this appeal, there was a specific pleading of the respondent that a plot of land was purchased in name of the appellant admeasuring 214 sq. Yds. In the rejoinder affidavit filed by the appellant, it has been admitted that the plot was purchased on 31.07.2000 from the joint income earned by mother and father of the appellant, which had been agreed to be sold in the year 2012 for a total sale consideration of Rs.11,77,000/-. In the rejoinder affidavit, an affidavit of prospective purchaser has been filed by the appellant, where it is mentioned that agreement to sell had taken place between appellant and Arjun on 31.07.2000 for a sale consideration of Rs.11,77,000/-, out of which appellant had received Rs.10,89,000 as earnest money.

38.

39. In facts of the present case the ends of justice be served by giving liberty to the appellant to take recourse to Section 20(3) of the Act, 1956, if so advised, for claiming any maintenance against her father. Subject to liberty as above, the appeal is dismissed.

23. The Family Court, while exercising both the powers, has jurisdiction to decide under Section 125 CrPC as well as the suit under Section 20 of the Act of 1956, therefore, the Family Court can exercise jurisdiction under both the act and in appropriate case, can grant maintenance to married daughter, even if she has become major under Section 20 of the Act of 1956.

24. In view of above, it cannot be disputed that the application filed under Section 125 CrPC can be dealt with and the maintenance can be granted under Section 20 of the Act of 1956 by the Family Courts, if the unmarried daughter claiming the maintenance has become major. Thus, in case during pendency

of the application under Section 125 CrPC, a daughter becomes major, the maintenance can be allowed to her invoking the provisions of Section 20 of the Act of 1956, but in the present case, the application was filed by the daughter i.e. respondent no. 2 after attaining the age of majority, therefore, it was not a case in which his daughter had become major during pendency of the application and maintenance could have been awarded in the same proceeding, that too without considering the factors for determination of maintenance under Section 20(3) read with Sections 23 and 24 of Act of 1956. However, since both the powers can be exercised by the Family Court, therefore, this Court is of the view that if the application has been filed under Section 125 CrPC, it can be got converted into a suit under Section 20 of the Act of 1956 as it is to be dealt by the same court and after converting under the relevant provision and dealing with the application as suit for maintenance and after adopting the procedure as prescribed and upon consideration of pleadings and evidence on record under the provision of Act of 1956, if the Family Court finds that the case for maintenance is made out, the court can order for maintenance to avoid multiplicity of suits, but not on the basis of summary proceedings under Section 125 CrPC. The remedy for challenging the order passed under both the proceedings are also separate as discussed above.

25. In view of above, this Court is of the view that the Family Court, while deciding the application under Section 125 CrPC in the present case could not have allowed the maintenance under Section 20(3) of the Act of 1956 without considering the relevant factors to be considered and recording finding in regard to those, but the learned Family Court without considering the law as discussed above and misinterpreting the judgment of the Hon'ble Supreme Court, in the case of

Abhilasha vs. Parkash and others (Supra), allowed the application under Section 125 CrPC and awarded the maintenance under Section 20(3) of the Act of 1956. Thus, the same is not sustainable in the eyes of law and liable to be set-aside.

26. In view of above and the consensus among learned counsel for the parties, the revision is **allowed**. The impugned judgment and order 30.07.2024 passed in Criminal Misc. Case No. 280 of 2023; Kumari Neha Pandey vs. Anurag Pandey under Section 125 of CrPC by Principal Judge, Family Court, District Sultanpur is hereby set aside. The matter is remitted back to the concerned Family Court, where the parties shall appear on 18.08.2025 on which date an application may be moved by the respondent no. 2 for converting the application under Section 125 CrPC into a suit under Section 20(3) of the Act of 1956 and the Family Court shall consider and pass appropriate order thereon in accordance with law and the observations made herein-above in this order on the same day or within two weeks thereafter and the Family Court shall proceed accordingly and in such case make endeavour to decide the suit expeditiously and preferably within a period of six months without granting unnecessary adjournment to either of the parties. It is also expected that the parties shall assist the court in expeditious disposal of the case.

Order Date :- 31.7.2025/Raj