

**A.F.R.**



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**RPFAM No.18 of 2021**

(In the matter of an application Under Section 19(4) of the Family Court, 1984, r/w Section-401 of the Code of Criminal Procedure, 1973)

.... **Petitioner**

- -

.... **Opposite Parties**

**For Petitioner : Mr. B.P.B. Bahali, Advocate**

**For Opposite : Mr. A.Pradhan, Advocate**  
**Party**

**CORAM:**

**JUSTICE G. SATAPATHY**

**DATE OF HEARING : 09.07.2025**

**DATE OF JUDGMENT: 16.09.2025**

**G. Satapathy, J.**

**1.** In the instant revision, the petitioner-husband seeks to challenge the impugned order dated 23.12.2019 passed in CMC No. 52-734 of 2012-16 by which the learned Judge Family Court, Bargarh has allowed the petition filed U/s. 125 of CrPC of OP-wife and daughter for maintenance @ Rs.5,000/- each per month; total Rs.10,000/- w.e.f. 06.03.2012.

**2.** The short facts involved in this case are that the petitioner and OP No.1 who are the husband



and wife and their marriage was solemnized on 19.01.2001 according to their caste and customs and after their marriage, they are blessed with a girl child who is OP No.2 in this case. However, owing to dissension and rancor between them with regard to allegation of demand of further dowry articles, the OP No.1 reported the matter to Mahila Sammittee, and thereafter, the revision-petitioner allegedly deserted the OPs in the year 2004. Thus, the revision-petitioner filed MAT Case No. 06 of 2004 against the present OPNo.1 before the learned Civil Judge(Sr.Divn.), Sambalpur for dissolution of their marriage and such proceeding was decreed ex-parte on 08.03.2007, but thereafter, the present OP No.1 filed a petition under Order IX, Rule 13 of the Code of Civil Procedure, 1908 ( in short, "the CPC") to set aside the above ex-parte decree in CMA No. 28 of 2007 which was dismissed for default on 02.02.2012 and thereafter, the present OPNo.1 filed another petition U/s. 151 of CPC to set aside the order dated 02.02.2012 as passed in CMA No. 28 of 2007 which proceeding was registered as CMA No. 13 of 2012.



While the matter stood thus, the present OPs filed a petition U/s. 125 of CrPC against the revision-petitioner for grant of maintenance and in such petition, the present OPs have averred that the revision-petitioner is an Advocate and earns Rs.20,000/- per month, out of his profession and he also earns Rs.1,00,000/- per month from his Hero Honda showroom and Rs.50,000/- per month from house rent.

In resisting such claim, the present revision-petitioner filed his show cause denying his liability, but admitting the relationship with present OPs. In such objection, the revision-petitioner has also averred that the present OP No.1 is a qualified lady with MA LLB Degree and she is earning more than him and she being a LIC Agent & Teacher in private school with landed property and building at heart of Bargarh town, does not need any money to maintain herself or their daughter. It is also claimed by revision-petitioner that since present OP No.1 voluntarily deserted him without any cause is not entitled to be maintained and he is not having any landed property and his old and ailing mother being dependent on him with his two



younger brothers is not able to pay the maintenance @ Rs.5,000/- each to the OP Nos. 1 & 2. It is also contended in the objection by the revision-petitioner that he has a small residential house over land of about Ac.0.07dec. at \_\_\_\_\_ which belong to his father and he thereby having no other house has not given any house on rent. With the aforesaid averments, the revision-petitioner has prayed to dismiss the maintenance proceeding.

**3.** After having considered the rival pleas upon hearing the parties, the learned Judge Family Court, Bargarh by formulating some points proceeded to dispose the maintenance proceeding U/S. 125 of CrPC by allowing the same with consequential direction to the present revision-petitioner to pay Rs.5,000/- each to his wife and daughter total Rs.10,000/- per month w.e.f. 06.03.2012. Being aggrieved, the husband-cum-revision petitioner is before this Court in this present revision.

**4.** Heard, Mr. Biplab P.B.Bahali, learned counsel for the Petitioner and Mr. Adhikari Pradhan, learned counsel for OPs in the matter and perused the



record. In addition to oral argument, both the parties have filed their written notes of submissions.

**4.1.** Mr. Biplab P.B. Bahali, learned counsel for the petitioner, however, primarily raised three grounds in his argument to dispute the claim of the wife & daughter for maintenance; firstly, the wife-cum-present OP No.1 being a well-qualified and earning lady is not entitled to maintenance; secondly, OP No.2 being a major daughter is also not entitled to maintenance and thirdly, the OP No.1-wife having deserted the husband voluntarily without any excuse is not entitled to any maintenance.

**4.2.** On the other hand, Mr. Adhikari Pradhan, learned counsel for the present OPs has countered such argument by submitting *inter alia* that the OP No.1-wife being an Advocate is not having so much of income to maintain herself and her daughter by catering the need of the daughter as a Law student and the OP No.1-wife having never deserted voluntarily the revision-petitioner and the revision-petitioner having already married to another lady, is thereby guilty of neglecting the present-OPs as his wife and daughter. It is further



argued that the revision-petitioner is a man of means and his younger brother is a Software Engineer and the mother cannot be said to be dependent only on the present petitioner, who is also having own spare part shop in prime location of Sambalpur town and earning some handsome amount/income out of the shop and thereby, he is squarely liable to maintain his first wife and daughter. Mr. Adhikari accordingly, has prayed to dismiss the revision.

**5.** After having considered the rival submissions upon perusal of record together with the written notes of submissions as produced, there is hardly any dispute about the relationships between the parties and it is borne out from the record that the OP No.1 was the wife of petitioner, whereas OP No.2 is their daughter. The revision-petitioner, however, has taken a technical plea of desertion against the OP No.1 to absolve him from the liability to pay maintenance, but since being not disputed about petitioner having married for the second time, it can be well presumed that the OP No.1 has an valid excuse in law to live separately from the revision-petitioner, which is in fact



mandated in the explanation appended to Sub-Sec(3) of Sec. 125 of the CrPC, wherein it is laid down that 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. Besides, it is also not in dispute that the revision-petitioner has filed a proceeding before the Court seeking divorce from OP No.1 and, therefore, such desertion plea could not enure to the benefit of the revision-petitioner.

**6.** In coming back to the next challenge of the revision-petitioner with regard to father not liable in law to maintain unmarried major daughter, it appears that Section 125(1)(b)(c) of the CrPC, however, casts a responsibility on the father to maintain his minor child unable to maintain itself as well as major child, but not being a married daughter where such child is by reason of any physical or mental abnormality or injury unable to maintain itself. In this case, initially the wife and minor daughter had claimed maintenance, however, in the meantime, the daughter has already attained majority. True it is that Section 125 of CrPC does not have any express provision to grant maintenance to



major unmarried daughter/child except when such child is by reason of any physical or mental abnormality or injury unable to maintain itself. Admittedly, OP No.2 is not a special child or a married daughter within the meaning of Sec. 125(1)(c) of the CrPC, but by virtue of Sec.20(3) for the Hindu Adoptions and Maintenance Act, 1956 ( in short, "HAMA"), an unmarried daughter is entitled to maintenance, provided she is unable to maintain herself out of her own earnings or other property. For clarity the provision of Sec. 20 of the HAMA is extracted 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 or her own earnings or other property".*

*Explanation- In this Section "parents" includes a childless step mother.*





**7.** On a careful scrutiny of 125(1)(c) of the CrPC, it only contemplates the claim of maintenance by a special child including a daughter who even though attained majority is entitled to maintenance only when by reason of any physical or mental abnormality or injury, is unable to maintain herself, but there is no such limitation in Sec. 20(3) of the HAMA. Whether Sec. 125 of CrPC and Sec. 20 of the HAMA can stand together has been answered by the Apex Court in ***Nanak Chand Vrs. Chandra Kishore Aggarwal and others; (1969) 3 SCC 802***, wherein while explaining the provision of Sec. 488 of Code of Criminal Procedure, 1898(125 of CrPC) and Sec. 20 of the HAMA, the Apex Court in Paragraph-4 has observed as under:-

*"4.xx xx The learned Counsel says that Section 488 of Code of Criminal Procedure, 1898, 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 of Code of Criminal Procedure, 1898. 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 of Code of Criminal Procedure, 1898. The scope of the two laws is different. Section 488 of Code of Criminal Procedure, 1898 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 xx xx xx”.*

**8.** It is no doubt true that Sec. 125 of CrPC operates in the field of maintenance irrespective of religion, but Sec. 20 of HAMA operates in the context of Hindu Personal Law, however, in the present case, the religion of the parties are not in dispute and they are Hindus. In Classical Uncodified Hindu Law, a Hindu male was always held morally and legally liable to maintain his aged parents, a virtuous wife and infant child. Hindu Law always recognized the liability of father to maintain an unmarried daughter. In this context, this Court considers it useful to refer to paragraph 539 and 543 of Mulla Hindu Law– 20<sup>th</sup> Edition, which are 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.*

**543. Daughter, (1): A father is bound to maintain his unmarried daughters.** *On the death of the father, they are entitled to be maintained out of his estate”.*

After the codification of Hindu Laws, HAMA came into operation and deals with the question of maintenance of the wife, widowed daughter-in-law, children and aged parents as been dealt in Sec 18 to 20 of the HAMA. It is, therefore, very clear that Sec. 20(3) of the HAMA is nothing, but the recognition of principle of un-codified Hindu Law regarding maintenance of children and aged parents. Sec. 20(3) of the HAMA makes it obligatory on a Hindu to maintain his or her aged or infirm parents, or a daughter who is unmarried and unable to maintain herself out of her own earnings or other properties and, therefore, Sec. 20(3) of HAMA casts 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 properties. Be that as it may, the statutory embargo as placed either in Sec. 125 of CrPC or U/s. 20(3) of the HAMA lies on the very same ingredients for the person claiming



maintenance to establish that he or she is unable to maintain himself or herself. It is, therefore, in essence both the sections are applicable subject to satisfaction of the Court that person claiming maintenance is unable to maintain itself out of their own earning or other property. Further, the laws are nothing, but collective consciousness of community. One of the apparent conflicts in Sec. 125 of CrPC and Sec. 20 of HAMA is that the daughter on the literal interpretation of provision of Sec. 125 of CrPC would cease to claim maintenance on attaining majority, but she can claim maintenance under HAMA on the satisfaction that she is unable to maintain herself. The purpose and object of Sec. 125 of CrPC is benevolent and it is a social welfare legislation so as to provide some relief to the person unable to maintain itself from destitution & vagrancy and, therefore, even if the daughter is ceased to have her claim of maintenance on attaining majority in terms of Sec. 125 of CrPC., but she is entitled to maintenance even after on attaining majority under personal law. However, this Court feels that the daughter may not be forced to seek a remedy before the Court again for the



selfsame relief under Personal Law merely because her proceeding is one U/s. 125 of CrPC when the Family Court has jurisdiction to decide a case either U/s. 125 of CrPC or U/S. 20 of the HAMA. In this case, the impugned order has been passed by the learned Judge Family Court who is competent to pass order U/S. 20(3) of the HAMA. Further, had the impugned order being passed by a learned Magistrate in exercise of power U/S. 125 of CrPC., there would have some rationale to ask the daughter to seek the same remedy again under Personal Law. Learned counsel for the petitioner has, however, relied upon the decision in ***Abhilasha Vrs. Prakash & others; AIR 2020 SC 4355***, to contend that the present OP No.2 is not entitled to maintenance on attaining majority, but in the aforesaid relied on decision, the Apex Court has in fact granted liberty to the major unmarried daughter to approach the Court again U/S. 20(3) of the HAMA inasmuch as, the impugned order thereon was passed by learned Judicial Magistrate and a proceedings U/S. 20 of the HAMA being filed by the applicants therein was dismissed as withdrawn, but it is crystal clear that



the impugned order has been passed in this case by learned Judge Family Court, Bargarh who has concurrent jurisdiction to decide the application of the applicants either under CrPC or under Personal Law. In this situation, this Court does not see any valid reason to force OP No.2 after six years to approach again to the same Court for selfsame relief which has been allowed to her in the year 2019 and remained unsettled till today.

**9.** One precedent which would clarify the position of law in this regard is the decision in ***Jagdish Jugtawat vrs. Manju Lata and others; (2002) 5 SCC 422*** wherein a three Judge Bench of the Apex Court in Paragraphs-3 & 4 has held as under:-

*"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 xx xx xx ....."*

*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."*

On analysis of the facts involved in this case together with the precedents as referred to above, the position of law as emerges that even though Section 125 of the CrPC restricts the payment of maintenance to the children till they attain the majority, but when it comes to the daughter, it is consistent view that the major unmarried daughter would be entitled to maintenance till she remains unmarried by virtue of Section 20(3) of HAMA and the rationale behind the aforesaid view is to avoid the multiplicity of proceedings and to avoid situation like this for pushing unmarried major daughter to file an independent petition seeking for maintenance U/S.20(3) of HAMA again, more particularly when the Family Court has jurisdiction to decide the application of such daughter either U/S125 of CrPC or U/S. 20(3) of HAMA and therefore it cannot be forgotten that the



unmarried daughter though has attained majority is entitled to claim maintenance in law from her father. The aforesaid position of law has in fact been recognized in Section 144 of Bharatiya Nagarika Surakhshya Sanhita 2023 (in short BNSS), which is *pari materia*, to Section 125 of CrPC, but slightly in different way inasmuch as it does not save the word "minor" and simply says "child" not being a married daughter in its provision. Besides, Section 125 (1)(c) speaks about the special child who by reason of any physical or mental abnormality or injury unable to maintain itself, but such injury may also include mental injury and it would not be incorrect to say that mental injury is nothing, but malice in law which can be gathered on the basis of violation of a legal right to claim maintenance vested under law and if the right to claim maintenance of the daughter is infringed, probably it may be called as a injury which can very well fit into the definition to material injury. On a cumulative consideration of the discussions made hereinabove, it is apparently clear that even though





the daughter has attained majority, but she can maintain an application for maintenance under personal law and the impugned order in the present case having been passed by learned judge, Family Court, who has the jurisdiction to decide maintenance for the major unmarried daughter by invoking the provision of Sec.20(3) of the HAMA, it would not be proper to ask the daughter to file a proceeding for her maintenance after such length of time as in this case. It is no more *res integra* that it is the substance, but not the form under which a party applies to the Court and appropriate relief, to which such party is entitled to, should not be withheld merely because the petition has been filed under wrong nomenclature. Accordingly, the plea for maintenance by major unmarried daughter is unsustainable as advanced does not stand to the legal scrutiny and the impugned order does not call for any interference by this Court on such plea of the revision-petitioner, provided it is established that such daughter is unable to maintain herself out of his own earning or other properties.



**10.** On coming to the next question of maintenance to the present OPs, it appears that the learned trial Court on analysis of evidence albeit has considered present OP No.1 as an advocate at Bargarh Bar, but it has considered that all the advocates have no sufficient income. True it is that the income of each and every advocates cannot be generalized or it cannot be said that all the advocates are earning handsomely, but even for a moment, taking the OP No.1 for having some income out of her profession, no document or evidence is forthcoming or produced by the revision petitioner to establish that OP No.1 is having a particular income and taking into account the averments of OP No.1 in her additional affidavit that her monthly expenses is around Rs.7,000/- to Rs.8,000/-, it is quite probable in the present day market index. In addressing the plea of OP No.1 that she has got no independent income, no evidence has been tendered to establish the income of OP No.1, however, she is an Advocate is not disputed, but the wife and children are required to be maintained in law



commensurate to the standard of livings of husband/father. Further, no document or evidence has been produced by the revision-petitioner to show that OPNo.1 had appeared in how many cases and contested the same for her clients. It may so happen that a person may be enrolled as an Advocate, but he or she may not have engagement for days, months and years together and in absence of any evidence with regard to engagement of the OPNo.1 as a counsel for different parties, it can be considered that she is not having sufficient means to maintain herself and her daughter in present day market cost, however, even if the plea of revision-petitioner as advanced in oral argument & written note of submission that the monthly income of OP No.1 is Rs.6,000/- to Rs.7,000/- from advocacy is taken into consideration, such income of OPNo.1 cannot be held to be sufficient, more particularly when the daughter, who is reading law might be requiring such amount/earning of the mother towards her study. It is also argued that the father of the petitioner is having numerous landed



properties, but there is no liability of the father in law to maintain his married daughter. Further, neither any document has been tendered in the evidence nor produced before this Court to establish that the OP No.2-cum-major daughter is earning and not depending on the income of her mother. It is, however, claimed that the OP. No.2 is pursuing her study in law which has not been controverted and disputed by the petitioner. The revision petitioner, however, takes a plea right now that he is not having sufficient income and he having dependents children out of his wedlock with second wife and dependent mother may not be able to share any amount towards the maintenance of the OPs, but the learned trial Court on analysis of exhibit 4 to 6 which are income tax returns acknowledgement of the revision petitioner for the year 2016-17, 2017-18, 2018-19 respectively has found the revision petitioner to have gross total income of Rs.6,06,888/- in the year 2018-19 with payment of income tax of Rs.10,655/-. The learned trial Court has also found on analysis of exhibit 7 to 10 that the revision petitioner has deposited the money in SBI, LIC of India



and S.R.E.I Equipment Finance Ltd. which are never disputed by the revision petitioner. It is neither denied nor disputed that Ext.1 is the ROR of a piece of land in the prime location at Ainthapali in Sambalpur Town which stands recorded in the name of revision-petitioner and Ext.2 is another piece of land which stands recorded in the name of his father. Further, the revision-petitioner has admitted his income @ Rs.12,000/- per month out of his avocation as an Advocate and right now the revision-petitioner in the written notes of argument claims to have an income Rs.15,000/- per month. On analysis of the admitted facts on record together with the discussions as referred to above with regard to revision-petitioner filing Income Tax returns in the year 2016-17, 2017-18, 2018-19, it can, therefore, be said that the revision petitioner has sufficient income and he is liable to provide maintenance to the present OPs being his first wife and daughter who have no sufficient means to maintain themselves.

**11.** It is also argued for the petitioner by relying upon the decision of this Court in ***Madan Kumar Satpathy Vrs. Priyadarshini Pati RPFAM No.417 of***



**2023** disposed of on 07.02.2025 that since the petitioner is a well qualified woman and she having prospect to earn, no maintenance is admissible to her and her dependent daughter, but this decision was rendered on a particular facts and the wife therein was earlier working, but remained idle and for that reason, the maintenance amount to the wife in the relied on case was reduced to Rs.5,000/-, however, such situation is not prevailing in this case. Besides, it cannot have any universal application in all the cases that wife having high qualification is intentionally avoiding to work only to harass the husband with a intention to saddle the liability to pay maintenance to her, unless there is material evidence to that effect, inasmuch as in absence of any evidence of income and/or prospect to earn, it would be unfair to say that the wives are breeding a class of idle women to burden their husband. On the other hand, taking into account the materials placed on record and the discussions made hereinabove together with analysis of evidence on record, since it appears that the OPs are not having sufficient means to maintain themselves out of their own earnings and properties,



and they being the wife and major daughter of revision-petitioner are entitled to maintenance, but the entitlement of the major daughter is till she remains unmarried and on consideration of present day market cost and standard of living of OPs which must commensurate to the standard of living of revision-petitioner, it cannot be said that the grant of maintenance to OPs @ Rs.5,000/- per month each is neither exorbitant or on higher side, even after taking into consideration of the income of an Advocate of the stature of OP No.1 who is considered to be not a serious practitioner and, therefore, the impugned order calls for no interference by this Court.

**12.** In the result, the revision stands dismissed on contest, but in the circumstance, there is no order as to costs. Consequently, the impugned judgment dated 23.12.2019 passed by the learned Judge, Family Court, Bargarh in CMC No. 52-734 of 2012-16 is hereby confirmed.

**(G. Satapathy)**  
**Judge**

*Orissa High Court, Cuttack,  
Dated the 16<sup>th</sup> September, 2025/kishore*