

AIR 2017 GUJARAT 1

GUJARAT HIGH COURT

J. B. PARDIWALA , J.Special Criminal Application (Maintenance) No. 5202 of 2015, **D/- 18 - 3 - 2016**

Nitaben Dineshkumar Oza v. Dineshkumar Ishwarlal Oza and Anr.

(A) Criminal P.C. (2 of 1974), S.125 - Majority Act (9 of 1875), S.3 - Hindu Adoptions and Maintenance Act (78 of 1956), S.20(3) - Payment of maintenance - Liability of father to maintain major son - Hindu parent is bound under S. 20(3) to maintain unmarried daughter even after she attains majority - Such principle not applicable however, in case of determining obligation of Hindu father to maintain his own major son - Male child, either legitimate or illegitimate, who attained majority as per S. 3 of 1875 Act, and not suffering from any physical or mental abnormality, not entitled for benefit under S. 125 of Code - S. 125 ought to be interpreted keeping on view earlier legislation. AIR 1970 SC 446, 2015 Cri LJ 1836, 2002 (5) SCC 422, 2004 Law Suit (PandH) 1081, AIR 1986 Gujarat 116 and AIR 2015 SC 839, Disting.

(Paras 17 , 19 , 20 , 22)

(B) Criminal P.C. (2 of 1974), S.125, S.127 - Alteration of allowance of maintenance - Alteration in circumstances - Legislature made special arrangement for alteration of allowance of maintenance on receiving proof of change in circumstances- Change in circumstances of concerned person needed to be judged in accordance with S. 125 - Provisions of S. 127 being subject to provisions of S. 125, if any person cease to be entitled to receive grant of maintenance under S. 125, he cannot seek alteration or enhancement of allowance of maintenance under S. 127.

(Paras 9 , 10 , 14)

Ms. Sneha A. Joshi, for Applicant; Dakshesh Mehta, Rushang G. Mehta, APP, for Respondents.

Judgement

1. ORDER :-By this application under Article 226 of the Constitution of India, the petitioner-wife of the respondent No.1 herein has prayed for the following reliefs:

"16) a) Your Lordships may be pleased to quash and set aside the impugned judgment and order passed below Exhibit 1 in Criminal Misc. Application No.2444 of 2014 dated 4/8/2015, so far as it is against the petitioner and further be pleased to direct the opponent to clear the huge arrears accrued thereon till date as per the chart with further direction to opponent to pay the regular maintenance to the petitioner.

b) Pending admission hearing and final disposal of this petition, Your Lordships may be pleased to direct the learned Principal Judge, Family Court, Ahmedabad to disburse the deposited part of the arrears amount of Rs.78,000/- for the period of 11/8/13 to 10/9/14 to the petitioner forthwith in the interest of justice and further be pleased to direct the opponent to clear the rest of the arrears till date as per the chart placed on record with direction to pay the maintenance amount to the petitioner.

c) Be pleased to pass such other and further orders as thought fit in the interest of justice."

2. The facts of this case may be summarized as under:

2.1. The petitioner, namely, Nitaben Dineshkumar Oza got married with the respondent No.1, namely, Dr. Dineshkumar Ishwarlal Oza on 27th February, 1994. In the wedlock, a son was born on 5th October, 1995 named Sahil.

2.2. It appears that the matrimonial problems cropped up and it is the case of the petitioner that she was driven out of her matrimonial home along with her minor son on 6th June, 2006.

2.3. The husband filed a Hindu Marriage Petition No.55 of 2006 in the Court of the Civil Judge (SD), Mehsana, for divorce under Section 13 of the Hindu Marriage Act. On the other hand, the petitioner lodged a First Information Report at the Satellite Police Station, Ahmedabad, for the offence punishable under Section 498A of the Indian Penal Code, which came to be registered vide C.R. No.I-591 of 2006.

2.4. It appears that, in the proceedings for divorce instituted by the husband, the wife appeared and prayed for Rs.20,000/- (Rupees Twenty Thousand only) per month towards maintenance for herself and her minor son Sahil. On 30th August, 2007, the Court passed an order of interim maintenance of Rs.5,000/- (Rupees Five Thousand only) from the date of application.

2.5. It appears that the petitioner preferred an application being the Criminal Miscellaneous Application No.1877 of 2006 under Section 125 of the Code of Criminal Procedure, 1973 seeking maintenance of Rs.12,500/- (Rupees Twelve Thousand Five Hundred only) for herself and Rs.7,500/- (Rupees Seven Thousand Five Hundred only) for her minor son. In the said proceedings, it was decided that the husband would pay Rs.5,000/- (Rupees Five Thousand only) per month, as awarded in the Hindu Marriage Petition proceedings while the minor son would be paid Rs.3,000/- (Rupees Three Thousand only) per month. On such understanding, the Family Court passed an order dated 23th March, 2010 accordingly.

2.6. The wife, after sometime, preferred another application being the Criminal Miscellaneous Application No.154 of 2012 before the Family Court under Section 125 of the Cr.P.C. and prayed for Rs.16,000/- (Rupees Sixteen Thousand only)

per month towards her maintenance. The Court, by way of an interim maintenance, directed the husband to pay Rs.9,000/- (Rupees Nine Thousand only) per month to the wife.

2.7. It appears that the petitioner preferred an application under Section 127 of the Cr.P.C. for enhancement of the amount of maintenance on behalf of her son Sahil. She prayed that the amount of Rs.3,000/- (Rupees Three Thousand only) be enhanced to Rs.15,000/- (Rupees Fifteen Thousand only) per month.

2.8. By judgment and order dated 18th November, 2013, the application was partly allowed and the Court enhanced the amount from Rs.3,000/- to Rs.6,000/- per month from the date of the application. It appears from the materials on record that the Court, while enhancing the amount of maintenance to Rs.6,000/-, clarified that the father i.e. the respondent herein shall pay Rs.6,000/- towards maintenance till the son attains the age of majority.

2.9. The order dated 18th November, 2013 referred to above came to be challenged before this Court by way of the Special Criminal Application No.950 of 2014. The said application came to be disposed of vide order dated 20th November, 2014 as under:

"1. This is an application at the instance of husband calling in question the legality and validity of the order dated 18.11.2013 passed by the learned Judge of the Family Court No.2, Ahmedabad below application Exh.5 in Criminal Misc. Application No.154 of 2012 filed by the wife and the minor son for maintenance under Section 125 of the Code of Criminal Procedure, 1973.

2. It appears that vide order dated 30.08.2007, the Court of the learned J.M.F.C., Mahesana passed an interim order of maintenance awarding Rs.5,000/- in favour of the wife and Rs.3,000/- in favour of the son. Thereafter, in November, 2013 an application was filed by the wife under Section 127 of the Code of Criminal Procedure for enhancement of the amount of interim maintenance. Such application was partly allowed and the interim order of maintenance of Rs.5,000/- was ordered to be enhanced to Rs.9,000/- and the interim order of maintenance of Rs.3,000/- was ordered to be enhanced to Rs.6,000/-. Therefore, in all, the husband has been directed to pay Rs.15,000/- per month towards the interim maintenance of his wife and son.

3. Since the order impugned before me is an interim order of maintenance, I do not intend to go into the merits of the same as the ends of justice would be met, if the Family Court is directed to take up the main matter for final disposal.

4. Without going into the legality and validity of the order impugned before me, I direct the Family Court No.2, Ahmedabad to give top priority to the Criminal Misc. Application No.154 of 2012 and Criminal Misc. Application No.1989 of 2011 and see to it that the same is disposed of finally within a period of three months from today.

The husband shall continue to pay the amount of Rs.15,000/- towards the interim maintenance. The parties shall co-operate with the Court for effective and speedy disposal of the proceedings before the Family Court.

5. With the above observations and directions, this application is disposed of."

2.10. There were other proceedings also between the parties and those proceedings also came to be disposed of by an order dated 20th November, 2014 passed by this Court in the Special Criminal Application No.3834 of 2013 and allied matters which reads as under:

"In view of the order passed today in the Special Criminal Application No.950 of 2014, the Special Criminal Application No.3834 of 2013; Criminal Misc. Application No.5384 of 2014 and Criminal Revision Application No.708 of 2013 filed by the wife are also disposed of.

It shall be open for the parties to raise all legal contentions available in law and the Court shall consider the same without being influenced by any of the observations made in the order."

2.11. On 5th October, 2013, the son attained the age of 18 years. In such circumstances, the respondent - husband stopped making the payment of Rs.6,000/- towards the maintenance of the son.

2.12. The above led to filing of the application under Section 125(3)

of the Cr.P.C. being the Criminal Miscellaneous Application No.2444 of 2014.

2.13. The Principal Judge of the Family Court, Ahmedabad passed the following order:

"13. Thereby, I am of the opinion that this Court without entering into merits of this case, which has already been decided on merits, cannot reappraise the evidence on merits and it is not possible as the matter is conclusively decided, and therefore, the prayer, at this stage, to continue the payment of interim maintenance amount to the child after the completion of age of majority i.e. 18 years.

14. The provisions of explanation (a) of the Section 125 of the Criminal Procedure Code, 1973, is very much clear, and therefore, I am of the opinion that when this Court cannot travel beyond its own judgment without any direction or order from the higher authority, according to law.

15. Hence, I cannot go beyond my decision Exh.13 in Criminal Miscellaneous Application No.1989 of 2011 which is clearly and very well decided order directing the opponent to pay Rs.6,000/- p. m. to the son Sahil, till attaining the age of majority.

16. Hence, the applicant may seek clarification from the Hon'ble High Court in this regard.

17. Further, the opponent is hereby directed to deposit Rs.78,000/- (Rupees Seventyeight Thousand only) within 3 days from this order before this Court subject to following any order or clarification from the Hon'ble High Court of Gujarat in this regard."

2.14. Hence this petition.

3. Ms. Joshi, the learned advocate appearing for the petitioner submitted that the impugned order is ex facie illegal and deserves to be quashed. She submitted that the controversy is with regard to recovery of the arrears. According to her, the husband is obliged to pay Rs.78,000/- (Rupees Seventy Eight Thousand only) for the period between 11th August, 2013 and 10th September, 2014.

4. On the other hand, this application has been vehemently opposed by Mr. Dakshesh Mehta, the learned counsel appearing for the respondent - husband. He has filed an affidavit-in-reply on behalf of the husband inter alia stating as under:

"4. At the outset, I submit that the petition is filed challenging the order dated 4.8.2015 in Criminal Misc. Case No.2444/2014 which is with reference to the maintenance for son Sahil. It is submitted that it is undisputed position that the son Sahil was born on 5.10.1995 and he has become major on 5.10.2013 by attaining the age of 18 years. Thus, if Sahil wanted to file petition he himself has to file the petition and his mother is filing the petition saying that she is filing the petition "as natural guardian of minor sahil". It is submitted that first of all, the necessary corrections are required to be made in the cause title of the petition and if Sahil desires to file petition he has to file the petition under his signature.

5. With reference to the contentions and averments raised in para 1 of the petition, I say that they are not true as no fundamental right of the petitioner is violated in passing the order dated 4.8.2015 by the Principal Judge of the Family Court at Ahmedabad in Criminal Misc. Application No.2444/2014.

6. With reference to the contentions and averments raised in para 2 of the petition, I say that they are not true and are hereby denied. The order dated 4.8.2015 is just and proper considering the provisions

of Sec. 125 of Criminal Procedure Code, 1973 "Minor" means a person who, under the provisions of the Indian Majority Act, 1975 is deemed not to have attained majority and according to Sec. 3 of the Indian Majority Act, 1975 every person domiciled in India shall attain the age of majority on his completion of the age of 18 years and not before. Looking to the aforesaid provision of law, the learned Judge of the Family Court No.2 was pleased to pass the final order dated 18.11.2013 enhancing the maintenance to minor Sahil from Rs.3000 to Rs.6000 with effect from 21.9.2011 under the provision of Sec. 127 of the Criminal Procedure Code wherein it is categorically mentioned that this amount is to be paid till the minor son attains majority. It is undisputed position that the respondent has already paid the arrears and regular maintenance to son Sahil till the date of his attaining majority i.e. 5.10.2013. It is

submitted that the husband and wife both have filed different petitions and revisions challenging the different orders passed by the learned Magistrate and learned Judge of the Family Court being Criminal Application No.950/2014, Criminal Misc. Application No.154/2012 and Criminal Misc. Application No.1989/2011. All these matters were directed to be heard together and most of them were challenging the interim order of the trial courts. Thus, this Hon'ble Court (Coram Hon'ble Mr. Justice J.B. Pardiwala) was pleased to pass order dated 20.11.2014 wherein without going into the merits of the order passed by the Family Court the direction was made to the Family Court to dispose of the matters with respect to the maintenance finally within a period of three months from the date of the order and the interim arrangement was made by consent of both the lawyers that they will co-operate in disposing of the matters pending before the trial courts within three months and during these three months the husband shall pay Rs.15,000/-per month towards interim maintenance. By these observations, the pending matters challenging the different orders filed by both husband and wife against each other were disposed of.

It is pertinent to note here that the respondent has complied with the order of making payment of Rs.15,000/- per month towards the interim maintenance as directed by this Hon'ble Court during the pendency of the interim maintenance applications. It is respectfully submitted that the learned Judge of the Family Court has finally decided the application for the maintenance of the minor son Sahil by order dated 18.11.2013 which is annexed at page 49-55 of the paper Book of this petition. Thus, the question of passing any further order of interim maintenance does not arise. Now so far as the petitioner Nitaben D. Oza is concerned, her application for maintenance is also finally decided by final order dated 19.2.2015 whereby of Sec. 175 of the Criminal Procedure Code and the husband was directed to pay Rs.16,000/- per month from 19.1.2012. Xerox copy of the said order is annexed hereto and marked as Annexure-I to this reply."

5. The principle argument of Mr. Mehta is that the liability of his client as father to maintain his son came to an end the day son attained majority i.e. on 5th October, 2013. His submission is that his client is now not liable to maintain his son who has attained majority.

6. In rejoinder, Ms. Joshi submitted that the father is liable to maintain his son till the son is able to stand on his own legs and start earning. According to Ms. Joshi, the son is still studying and in such circumstances, the father owes the responsibility both legal and moral to take care of his son.

7. Ms. Joshi, in support of her submissions, placed reliance on the following judgments:

(1) Meharunnisa v. Syed Habeeb [2015 Cri LJ 1836]

- (2) Jagdish Jugtawat v. Manju Lata [(2002(5) SCC 422]
- (3) Satish Kumar v. State of Punjab [2004 Law Suit (PandH) 1081]
- (4) Ankush v. Ranjana and Ors [2014 Law Suit (Bom) 2641]: (2015 (2) ABR Cri 728)
- (5) Nanak Chand v. Chandra Kishore Aggarwal and others [AIR 1970 SC 446]
- (6) In the matter of Prakash Navnitbhai, petitioner [Civil Application No.16 of 1985 in Misc. Petn. No.4 of 1979 D/- 5.8.1985] [AIR 1986 Gujarat 116]
- (7) Charu Khurana and others v. Union of India and others [(2015) 1 SCC 192] : (AIR 2015 SC 839).

8. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the father is liable to maintain his major son and pay maintenance under Section 125 of the Cr.P.C.

9. Sections 125 to 128 falling in Chapter IX of the Cr. P.C. make provisions for order for maintenance; procedure to be adopted for passing such order; alteration in allowance; and enforcement of such order. A proceeding drawn u/S. 125 is of summary nature. It provides a speedy remedy for maintenance of wives, children and parents. By Section 127, the Legislature has made a special arrangement for alteration in the allowance of maintenance on proof of a change in the circumstances., any person, who is receiving

maintenance u/S. 125 or who has been ordered to pay maintenance under the said section, as the case may be, may file an application for alteration and if the concerned Court finds that an alteration is required, it shall make such alteration in the order passed u/S. 125.

10. It is, thus, clear that the provisions of Section 127 are not independent as they provide for a consequential order upon proof of a change in the circumstances of any person receiving maintenance or directed to pay maintenance u/S. 125. The change in the circumstances of the concerned person, therefore, has to be judged in the light of the provisions of Section 125 and a Court, considering an application for alteration u/S. 127, cannot say go-by to the provisions of Section 125, which are basic provisions for grant of maintenance to the person concerned.

11. In *Bhagwan Dutt v. Smt. Kamla Devi and Anr.*, AIR 1975 SC 83, it was held with regard to Chapter XXXVI of the Code of 1898 that "Sections 488, 489 and 490 constitute one family. They have been grouped together in Chapter XXXVI of the Code of 1898 under the caption, "Of the maintenance of wives and children". This Chapter, in the words of Sir James Fitzstephen, provides "a mode of preventing vagrancy, or at least of preventing its consequences". These provisions are intended to fulfill a social purpose. Their object is to compel a man to perform the moral obligation which he owes to society in respect of his wife and children. By providing a simple, speedy but limited relief, they seek to ensure that the neglected wife and children are not left beggared and destitute on the scrap-heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence. Thus, Section 488 is not intended to provide for a full and final determination of the status and personal rights of the parties. The jurisdiction conferred by the section on the Magistrate is more in the nature of a preventive, rather than a remedial jurisdiction; it is certainly not punitive. As pointed out in *Thompson's case* 6 NWP 205 "the scope of the Chapter XXXVI is limited and the Magistrate cannot,

except as thereunder provided, usurp the jurisdiction in matrimonial disputes possessed by the Civil Courts. Sub-section (2) of Section 489 expressly makes orders passed under Chapter XXXVI of the Code subject to any final adjudication that may be made by a Civil Court between the parties regarding their status and civil rights".

12. In *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (AIR 2008 SC 530), it was further held that Section 125 Cr.P.C. is a measure of social justice specially enacted to protect women and children and falls within constitutional sweep of Article 15(3) reinforced by Article 39. The object is to prevent vagrancy and destitution. It provides a speedy remedy for supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The Supreme Court further reiterated that the object of maintenance proceeding is not to punish a person for his pass neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The case of *Bhagwan Dutt* (AIR 1975 SC 83) (supra) was also taken note of.

13. In *Jagir Singh v. Ranbhir Singh and Ors.*, (1979) 1 SCC 560 : (AIR 1979 SC 381), considering the scope of Section 484(2)(b) of the old Code of 1898 and Sections 125 and 127 of the Code of 1973, it was held that "Section 125 of the new Code corresponds to Section 488 of the old Code notwithstanding the fact that under the new Code a child who has attained majority and who does not suffer from any infirmity is not entitled to be maintained by the father. Once an order under Section 488, Cr.P.C., 1898, is deemed to be under Section 125, Cr.P.C., 1973 it will also be subject to Section 127 of the new Code. The change in the law in respect of maintenance, as much as other factual change of circumstances, are circumstances to be considered under Section 127".

14. It is, therefore, clear that provisions of Section 127 are always subject to the provisions of Section 125 and if a person ceases to be entitled to receive maintenance u/S. 125, he cannot seek an order of enhancement u/S.127.

15. Section 125 Cr. P.C. reads as under:

"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,

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 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 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) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be], remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due :

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. 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.

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be], from her husband under this section if she is living

in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

16. A bare perusal of Section 125 would make it clear that a legitimate or illegitimate minor child, whether married or not, unable to maintain itself, and a 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, are entitled to get maintenance and of the purpose of this Section, as per Explanation, '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.

17. Thus, if a child whether legitimate or illegitimate has attained majority as per the aforesaid Act of 1875 and is not suffering by any physical or mental abnormality or injury, thereby unable to maintain itself, would not be entitled to receive maintenance u/S. 125.

18. Strong reliance placed by Ms. Joshi on the decision of the Karnataka High Court in the case of Meharunnisa (2015 Cri LJ 1836 (Kar) (supra) is thoroughly misconceived. The issue before the learned single Judge of the Karnataka High Court was as under:

"Whether the unmarried daughters of Muslim parents are entitled for an award of maintenance u/S. 125, Cr.P.C. even after attaining the age of majority till their marriage, if they are unable to maintain themselves from their father?"

19. Under sub-section (3) of Section 20 of the Hindu Adoption and Maintenance Act, 1956 (for short, 'the Act, 1956'), a Hindu parent is bound not only to maintain unmarried daughter even after she attains the majority, but the marriage expenses of the daughter is also a legal obligation of parents and property given to her in marriage would amount to be a gift. Thus, under the Act of 1956, obligation of a Hindu father to maintain his unmarried daughter remains so far she is unable to maintain herself out of her own earnings. Similar remains the position under the Mohammedan Law. I fail to understand how this principle is made applicable in the case in hand. I am not concerned with the obligation of the father to maintain his unmarried major daughter. The case in hand is of obligation of the Hindu father to maintain his son who has attained majority.

20. The question, thus, arises whether under the provisions of Section 125 of the Cr.P.C., a relief can be extended to a son not suffering from mental/physical abnormality beyond the date of attaining his majority? I am of the view that if he is allowed to have maintenance even after attaining majority, the word "minor" which has been defined by giving reference to the provisions of Majority Act, 1875 would be reduced to otiose and such an interpretation is not permissible, nor it is permissible by the judicial interpretation that any word can be added or subtracted. [Vide A.K. Gopalan v. State of Madras, AIR 1950 SC 27; Ashwani Kumar Ghose and Anr. v. Arbindo Bose and Anr. AIR 1952 SC 369; State of Bihar v. Hiral Lal Kejriwal and Ors., AIR 1960 SC 47; Shyam Kishori Devi v. Patna Municipal Corporation, AIR 1966 SC 1678; Patel Chunibhai Dajibha v. Narayanrao K. Jambekar and Anr., AIR 1965 SC 1457; Sultan Begum v. Prem Chand Jain, (1997) 1 SCC 373 : (AIR 1997 SC 1006); South Central Railway Employees Cooperative Society Employees Union, Secunderabad v. Registrar of Cooperative Societies and Ors., (1998) 2 SCC 580 : II (1998) SLT 273 : (AIR 1998

SC 703); and Subhash Chander Sharma and Anr. v. Subhash Chander Sharma and Anrs. v. State of Punjab and Ors., (1999) 5 SCC 171: V (1999) SLT 198] : (AIR 1999 SC 2076).

21. In *Martine Burn Ltd. v. Corporation of Calcutta* [AIR 1966 SC 529], the Supreme Court held as under :

"That a result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must, of course, be given effect to whether a Court likes the result or not."

22. Undoubtedly, the provision has been enacted to serve the social purpose. Therefore, the approach of the Court, while interpreting such a social legislation, should be

benevolent and justice oriented. The principles of equity, justice and good conscience along with human consideration must dominate the scene. But the question does arise whether such consideration can sweep the plain and simple language provided by the Legislature in its wisdom knowing the previous enactment well?

23. In *Directorate of Enforcement v. Deepak Mahajan and Anr.* [AIR 1994 SC 1775], the Supreme Court observed as under :

"True, normally Court should be slow to pronounce the legislature to have been mistaken in its constantly manifested opinion upon a matter arising wholly within its will and take its plain and ordinary grammatical meaning of the words of the enactment as affording best guide, but to winch up the legislative intent, it is permissible for the Court to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane... in given circumstances it is permissible for Courts to have functional approaches and look into the legislative intention and sometimes may be even necessary to go behind the words of the enactment and taken other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and its scope and object may not become futile."

24. I may refer to and rely upon a decision of the Supreme Court in the case of *Amarendra Kumar Paul v. Maya Paul and others* [(2009) 8 SCC 359] : (AIR 2009 SC (Supp) 2869, Para 11, wherein, the Supreme, after quoting Section 125 of the Code in para 10, observed in last part as under:

"An application for grant of maintenance, therefore, is maintainable, so far as the children are concerned, till they had not attained majority. As a cause of action for grant of maintenance would arise only in the event a person having sufficient means, neglects or refuses to maintain his legitimate or illegitimate minor child unable to maintain itself. Once, therefore, the children attained majority, the said provision would cease to apply to their cases."

25. I have also gone through the other decisions relied upon by Ms. Joshi, but they are of no avail to the petitioner in any manner.

26. In the result, this application fails and is hereby rejected. Notice is discharged.

27. Although the petition has been rejected, yet I deem fit to quote the observations of the Karnataka High Court in the case of *Mallayya v. Smt Mahadevi and Ors* [2009(2) Karnataka LJ 130] : (2008 (6) AIR Kar R 279), wherein, the learned single Judge, after taking the view that only a minor son is entitled to claim maintenance from his father till he attains the age of majority and the principle laid down by the Supreme Court in the case of *Nanak Chand v. Chandra Kishore Aggarwal and Ors* [AIR 1970 SC 446] would not apply, observed as under:

"12. Smt. Vijaya Hanmantgad, learned counsel for the respondent-son vehemently contended that if this respondent, who is still a student studying in 2nd year of degree course, is not maintained by his father, at least till he completes his course, he would be forced to discontinue his studies and, in that event, he would be deprived of his opportunity to get a suitable job for his livelihood and therefore, this Court, exercising its discretionary powers, may direct the petitioner-father to provide the necessary facilities towards his education.

13. It is true that in these days, the children, whether male or female, would not be in a position to earn anything towards their own maintenance till they complete their education, at least by obtaining a Bachelor Degree or a Certificate in respect of a Diploma Course or any job oriented course. But the fact is that they cannot obtain such degree or certificate, till they attain the age of 20 to 22 years i.e., minimum of 2 to 4 years after they attain the age of majority. It is also true that father of such children has a duty and obligation, both moral and social, to maintain them despite they attaining the age of majority, so as to enable them to complete their education upto a certain stage, so that they would become eligible and competent to earn their livelihood by getting a suitable job or by opting some suitable profession or avocation. If such children are neglected in this regard, they may become

disappointed and also frustrated and consequently they may resort to shortcut methods for getting what they need for their maintenance and education. Such a short cut method may be unlawful one or opposed to public policy and morality. Further, the chances of such neglected children becoming antisocial elements in consequence of such disappointment and frustration cannot be ruled out. Therefore, it would be a moral and social obligation of every father to bring up his children, male or female, by giving proper education, culture etc., not only as his children, but also as the future citizens of the nation.

14. But the fact remains that in the absence of any statutory provision empowering the Courts to direct the father of such children to provide them with the least minimum facilities required for their maintenance and education, at least upto a certain stage, so as to enable themselves to acquire the ability to maintain themselves, no order whatsoever can be passed by the Courts issuing any kind of direction in this regard. Nothing can be done in favour of such children till suitable amendments are brought by the Legislature to the relevant provisions of law.

15. Since it is clear that a major son is not entitled, in law, to claim maintenance from his father unless such son has been suffering from any physical or mental abnormality or any injury resulting in his inability to maintain himself, I have no alternative but to hold that the 2nd respondent-son in this case cannot claim anything, as of his legal right, from his father, towards his maintenance or education. Though the petitioner-father has no legal obligation to maintain his son, nevertheless, he has social and moral obligation to provide him with bare minimum requirements till he completes his graduation and becomes able to maintain himself. Besides this it would be better if the petitioner-father keeps in his mind that if he does not discharge now his moral and social obligation towards his

son, he would lose his moral right to enforce his legal right to maintenance against his son in future if, for any reason, he becomes unable to maintain himself. Therefore having regard to the peculiar facts and circumstances of this case, the learned counsel for the petitioner-father shall, in the best interest of both the father and son, suitably advise the petitioner-father and persuade him to provide the 2nd respondent-son with the bare requirements so as to enable the latter to become able to maintain himself by completing his graduation."

28. I am in complete agreement with the views expressed by the learned single Judge of the Karnataka High Court referred to above. It is for the respondent-father to act accordingly.

Petition Dismissed