

IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKHAT SRINAGAR

Reserved on: 24.08.2022
Pronounced on:02.09.2022

CRM(M) No.238/2019

SHOWKAT AZIZ ZARGAR ... PETITIONER(S)

*Through: - Mr. Prince Hamza, Advocate, vice
Mr. M. Y. Bhat, Sr. Advocate.*

Vs.

NABEEL SHOWKAT & ANOTHER ...RESPONDENT(S)

Through: - None.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has invoked the jurisdiction of this Court under Section 561-A of the J&K Cr. P. C (corresponding to Section 482 of the Central Cr. P. C) challenging order dated 16.10.2018 passed by learned Judicial Magistrate, 1st Class (2nd Additional Munsiff) Srinagar, whereby application of the petitioner seeking cancellation of maintenance order granted in favour of the respondents has been dismissed. Challenge has also been thrown to order dated 11.07.2019, passed by learned 4th Additional Sessions Judge, Srinagar, whereby revision petition against the aforesaid order of the learned trial Magistrate has been dismissed.

2) It appears that the respondents, who happen to be the sons of the petitioners, had moved a petition under Section 488 of the J&K Cr. P. C

before the learned trial Magistrate and the said petition came to be disposed of by a consent order passed on 18.02.2012 whereby a monthly maintenance of Rs.1200/ was awarded to each of the respondents. It is pertinent to mention here that the respondents at the relevant time were residing with their mother Neelofer Jan, who was living separately from her husband, the petitioner herein. The petitioner retired from service and thereafter the respondents also attained the age of majority. The petitioner moved another application before the learned trial Magistrate seeking cancellation of maintenance granted in favour of the respondents. In the application it was claimed by the petitioner that respondent No.1 has attained the age of majority on 22.10.2016 whereas respondent No.2 has attained the age of majority on 14.03.2018. The said application was dismissed by learned trial Magistrate and while doing so, he relied upon the ratio laid down by this Court in the case of **Surjeet Kour & anr. bs. Bachhitar Singh**, 2005 (I) S.L.J 111.

3) As already noted, the revision petition filed by the petitioner against the aforesaid order was also dismissed by 4th Additional Sessions Judge, Srinagar, vide his order dated 11.07.2019.

4) The petitioner has challenged the impugned orders passed by the courts below on the ground that the respondents, upon attaining the age of majority, are not entitled to maintenance from their father i.e., the petitioner herein. It has been contended by learned counsel for the petitioner that in terms of Section 488 of the J&K Cr. P. C, it is only legitimate or illegitimate minor children unable to maintain themselves

who are entitled to claim maintenance from their father. On this ground, it is urged that the respondents having attained the age of majority are not entitled to claim maintenance from the petitioner from the date they attained the age of majority.

5) The respondents after being served put in their appearance through counsel but thereafter they stopped appearing in the case. Accordingly, the matter has been heard in their absence.

6) I have heard learned counsel for the petitioner and perused the impugned orders and the material on record.

7) The legal issue which is required to be determined in this case is as to whether a major son is entitled to claim maintenance from his father under the provisions contained in Section 488 of the Jammu and Kashmir Cr. P. C. In order to find an answer to this legal issue, the provisions contained in Section 488(1) of the J&K Cr.P.C are required to be noticed.

The same are reproduced as under:

“488. Order for maintenance of wives, children and parent.—(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.

Explanation.—For the purpose of this Chapter, “minor” means a person who, under the provisions of the Majority Act, Samvat 1977 is deemed not to have attained his majority.

8) From a literal interpretation of aforesaid provision, particularly clause (b) and the Explanation to sub-section (1) of Section 488 of the J&K Cr. P. C, it appears that legitimate or illegitimate minor son, whether married or not, who is unable to maintain himself, is entitled to claim maintenance from his father. The word “minor” as per the Explanation is a person who, under the provisions of the Majority Act, is deemed not to have attained the age of majority. That means a minor child would be a person who has not attained the age of 18 years.

9) Clause (c) of sub-section (1) of Section 488, quoted above, provides that maintenance can be claimed even by a legitimate or illegitimate child who has attained majority, where such child is by reason of any physical or mental abnormality or injury unable to maintain itself. Thus, irrespective of age of a child i.e., son/daughter, he/she is entitled to claim maintenance from father provided he/she has any physical or mental abnormality or injury on account of which he/she is unable to maintain himself/herself. In the instant case, it is not the case of the respondents

that they are suffering from any such physical or mental abnormality. Therefore, we are only concerned with interpretation of clause (b) of sub-section (1) of Section 488 of the J&K Cr. P.C.

10) This Court in the case of **Surjeet Kour** (supra), has, after interpreting the provisions of Section 488 of the Cr. P. C, observed that any child who has attained majority does not automatically cease to claim maintenance and he/she cannot be allowed to starve if he/she is unable to maintain himself/herself. It was a case of major unmarried daughter and this Court observed that major unmarried daughter is dependent upon the mother, particularly in pursuing study in the college and thus unable to maintain herself. The Court observed that she would be entitled to claim maintenance from her father and she cannot be allowed first to wait to suffer mental injury so as to come within the definition of sub-section (1)(c) and then ask for maintenance. The Court went on to hold that the petitioner in that case though had attained majority but still she was pursuing her studies in the college and dependent on the mother and, as such, she would be entitled to claim maintenance from her father.

11) Relying upon the judgment in **Surjeet Kour's** case (supra), a Single Judge of this Court in the case of **Tariq Mehmood Bhat vs. Zubaida Akhtar and Ors.** (CRM(M) No.139 of 2020 decided on 02.09.2021), has observed that for seeking cancellation of order of maintenance, it has to be shown that the major son is gainfully employed or he has attained such qualification so as to maintain himself.

12) As already noted, a literal interpretation of the provisions contained in Section 488 (1) of the J&K Cr. P. C lead us to only one conclusion that a son is entitled to claim maintenance from his father only up to the age of attainment of majority and if he claims maintenance beyond that age, it has to be shown that the son is suffering from any physical or mental disability, as a result of which he is unable to maintain himself. In **Surjeet Kour's** case (supra), this Court avoided to give a plain meaning to the provisions contained in Section 488(1) of the J&K Cr. P.C by assigning the reason that the provision is aimed at not only to remedy the neglect and refusal to maintain but also to prevent the evil consequence of such neglect or refusal to maintain. The Court went on to observe that when a child suffers neglect in context with all basic things, she is sure to be emotionally hit which amounts to mental injury reflecting upon her mental faculty. After giving these reasons, the learned Single Judge of this Court concluded that any child who has attained majority does not automatically cease to claim maintenance and that he/she cannot be allowed to starve.

13) It is a settled principle of interpretation of Statutes that words and expressions used in a Statute have to be assigned their plain meaning. A court does not have power to add or subtract something from a Statute which is not there. If a court finds some ambiguity in a Statute which becomes an impediment in achieving the aim and object of the Statute, the court can give a purposive interpretation to the Statute but where the language of the Statute is clear and unambiguous, it is not open to the Court to add, alter or supply words to the said Statute and no need of

interpretation would arise. The purpose of interpretation of Statutes is to help the Judge to ascertain the intention of the Legislature and not to control that intention or to confine it within the limits, which the Judge may deem reasonable or expedient.

14) The Constitution Bench of the Supreme Court has, in the case of **A. R. Antulay vs. R. S. Nayak**, (1988) 2 SCC 602, held that if the words of the Statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The Court observed that the question of interpretation arises only in the event of an ambiguity or if the plain meaning of the words used in the Statute would be self defeating.

15) Again, the Supreme in the case of **Grasim Industries Ltd. vs. Collector of Customs, Bombay**, (2002) 4 SCC 297, has followed the same principle and observed that where the words are clear and there is no obscurity or ambiguity, the intention of the legislature is to be gathered from the language used. The Court further observed that while doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided.

16) In **Surjeet Kour's** case, this Court has, while interpreting the provisions contained in Section 488(1) of the J&K Cr. P. C, tried to control the intention of the legislature so as to bring it in tune with what the court

though expedient or reasonable. The plain reading of Section 488(1) of the J&K Cr. P. C leads to only one conclusion that a major son/daughter is not entitled to maintenance from his/her father unless he/she is suffering from any disability. Reading something else into these provisions would amount to doing violence to the provisions of the Statute. The course adopted by this Court in the aforesaid case is not in tune with the settled principles of interpretation of statutes as discussed hereinbefore. Therefore, I would respectfully beg to differ with the opinion of the two learned Single Judges rendered in the cases of **Surjeet Kour** (supra) and **Tariq Mehmood Bhat** (supra).

17) I am conscious of the fact that as per the law of precedents, if a Bench of the High Court is in disagreement with the opinion of a co-equivalent Bench, the only course open is to refer the matter to a larger Bench but then in the instant case, the judgments in the case of **Surjeet Kour** (supra) and **Tariq Mehmood Bhat** (supra) appear to have been passed in ignorance of the binding precedents of the Supreme Court on the subject, which will be noticed hereinafter. Thus, there may not be any need to make a reference of the matter to a larger Bench.

18) In **Noor Saba Khatoon vs. Mohd. Quasim**, (1997) 6 SCC 233, the Supreme Court has, while considering a question as to whether in the face of provisions contained in Section 3(1)(b) of Muslim Women (Protection of Rights on Divorce) Act, 1986, the obligation of a Muslim father to maintain the minor children is governed by Section 125 of Cr. P. C, observed that obligation of a Muslim father to maintain his minor children

is governed by Section 125 Cr. P. C and his obligation to maintain them is absolute till they attain majority or are able to maintain themselves, whichever date is earlier. The Court further held that in the case of female children, this obligation extends till their marriage. The Court proceeded to observe that ordinarily every Muslim child below 18 years can invoke the Cr. P. C law to obtain maintenance from its parents if they "neglect or refuse" to maintain it despite having sufficient means. While holding so, the Court relied upon the Explanation to Section 125(1)(a) of the Cr. P. C, which is in *pari materia* with the provisions contained in Explanation to Section 488(1) of the J&K Cr. P. C.

19) In **Jagir Singh vs. Ranbir Singh and Ors., (1979) 1 SCC 560**, the Supreme Court was dealing with a case where the Magistrate had held that respondent Ranbir Singh, was a student who was unable to maintain himself, therefore, the question whether he was minor or major was immaterial. The Supreme Court, after discussing the matter at some length in the context of the provisions contained in Section 488 of the old Cr.P.C and Section 125 of the new Code, held that the admitted attainment of majority of the respondent and the change of the law are surely circumstances which entitled the appellant to have the order in favour of the respondent cancelled. Accordingly, the appeal was allowed.

20) In **Jagdish Jugtawat vs. Manju Lata and others, (2002) 5 SCC 422**, The Supreme Court was considering a case where Family Court had granted maintenance in favour of major unmarried girl and the said order was upheld by the High Court. The Supreme Court in the said case

observed that the provisions contained in Section 125 of the Cr. P. C require a literal interpretation and a daughter would cease to have the benefit of the provisions under Section 125, Cr.P.C. on attaining majority, though she would be entitled to claim the benefits further under the Statute/Personal Law. The Court did not interfere with the order of the Family Court on the ground that right of a minor girl for maintenance from her parents after attaining majority till her marriage is recognized in Section 20(3) of the Hindu Adoption and Maintenance Act and, as such, no exception could be taken to the judgment/order passed by the High Court and the Family Court which was based on combined reading of Section 125 of the Cr. P. C and Section 20(3) of the Hindu Adoption and Maintenance Act.

21) Again, the Supreme Court has, in the case of **Amarendra Kumar Paul vs. Maya Paul and others**, (2009) 8 SCC 359, while interpreting the provisions contained in sub-section (i) of Section 125 of the Cr.P.C, which is in *pari materia* with the provisions contained in Section 488(1) of the J&K Cr. P. C, observed that an application for grant of maintenance is maintainable so far as the children are concerned till they had not attained majority. The Court went on to observe that the 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 who is unable to maintain itself. It was held that once the children attain majority, the said provision would cease to apply to their cases.

22) In a recent case of **Abhilasha vs. Parkash & ors.** (Criminal Appeal

No.615 of 2020 decided on 15th September, 2020), a three Judge Bench of the Supreme Court considered the question as to whether a Hindu unmarried daughter is entitled to claim maintenance from her father under Section 125 of the Cr. P. C only till she attains majority or she can claim maintenance till she remains unmarried. The Court observed that a bare perusal of Section 125(1) of the Cr. P. C indicates that it limits the claim of maintenance of a child until he or she attains majority.

23) In the aforesaid case, the Judicial Magistrate, 1st Class, Rewari, had awarded maintenance in favour of the appellant only till her attainment of age of majority and the said order was upheld by the learned Sessions Judge as well as by the High Court. Before the Supreme Court, the appellant contended that even after attaining the age of majority, since she was unmarried, she was entitled to claim maintenance from her father. The Supreme Court, while considering the provisions contained in Section 125 of the Cr. P. C and Section 20(3) of the Hindu Adoption and Maintenance Act, observed that a Family Court, which has jurisdiction to decide the case under Section 125 of the Cr. P. C as well as a suit under Section 20 of the Hindu Adoption and Maintenance Act, can exercise jurisdiction under both the Acts and grant maintenance to an unmarried daughter but the same is not the case with a Judicial Magistrate of 1st Class. Paras 33 and 34 of the judgment are relevant to the context and the same are reproduced as under:

“33. There may be a case where the Family Court has jurisdiction to decide a case under Section 125 Cr.P.C. as well as the suit under Section 20 of Act, 1956, in such

eventuality, Family Court can exercise jurisdiction under both the Acts and in an appropriate case can grant maintenance to unmarried daughter even though she has become major enforcing her right under Section 20 of Act, 1956 so as to avoid multiplicity of proceedings as observed by this Court in the case of Jagdish Jugtawat (supra). However the Magistrate in exercise of powers under Section 125 Cr.P.C. cannot pass such order.

34. In the case before us, the application was filed under Section 125 Cr.P.C. before Judicial Magistrate First Class, Rewari who passed the order dated 16.02.2011. The Magistrate while deciding proceedings under Section 125 Cr.P.C. could not have exercised the jurisdiction under Section 20(3) of Act, 1956 and the submission of the appellant cannot be accepted that the Court below should have allowed the application for maintenance even though she has become major. We do not find any infirmity in the order of the Judicial Magistrate First Class as well as learned Additional Magistrate in not granting maintenance to appellant who had become major.”

24) From the foregoing analysis of the law on the subject, it is clear that the Supreme Court has taken a consistent view that a major son or daughter cannot be awarded maintenance by a Magistrate in exercise of his powers under Section 125 of the Central Cr. P. C/488 of the Jammu and Kashmir Cr. P. C but in an appropriate case, a Family Court has jurisdiction to grant maintenance to a major Hindu daughter on the basis of a combined reading of the provisions contained in Section 125 of the Cr. P. C and Section 20(3) of the Hindu Adoption and Maintenance Act.

25) The aforesaid ratio laid down by the Supreme Court has not been noticed by this Court while rendering judgments in the cases of **Surjeet Kour** and **Tariq Mehmood Bhat**. A judgment which has been rendered without considering a binding precedent of a superior court rendered on

the same issue qualifies for application of rule of *per incuriam*. In the instant case, the aforesaid two judgments of the Coordinate Benches of this Court, in view of the fact that the same have been rendered without considering the binding precedents of the Supreme Court as narrated hereinbefore, are *per incuriam*.

26) Now coming to the facts of the instant case, the respondents have, admittedly, attained the age of majority, as such, in view of the law laid down by the Supreme Court in the aforesaid judgments, they are not entitled to claim maintenance from their father after they attained the age of majority. The learned trial Magistrate, as such, did not have jurisdiction to award maintenance in favour of the respondents beyond their age of majority. The order passed by the learned trial Magistrate dismissing the application of the petitioner for cancellation of order of maintenance is, therefore, without jurisdiction. The impugned order passed by the learned 4th Additional Sessions Judge upholding the order of learned trial Magistrate is also not in accordance with law for the same reason.

27) For what has been discussed hereinbefore, the petition is allowed and the impugned order passed by the trial Magistrate as upheld by the Revisional Court is set aside and it is held that the respondents are entitled to maintenance from their father i.e., the petitioner herein, only up to the age of their majority. If any amount of maintenance has been paid by the petitioner to the respondents after the attainment of their age of majority, the same, having regard to the relationship between the parties, shall not be recovered from them. The amount deposited in the Registry pursuant

to the order dated 11.09.2019, shall be released in favour of the petitioner.

The petition stands disposed of accordingly.

(SANJAY DHAR)
JUDGE

Srinagar,
02.09.2022
“Bhat Altaf, PS”

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

