

A

ABHILASHA

v.

PARKASH & ORS.

(Criminal Appeal No. 615 of 2020)

B

SEPTEMBER 15, 2020

**[ASHOK BHUSHAN, R. SUBHASH REDDY AND
M. R. SHAH, JJ.]**

C *Code of Criminal Procedure, 1973: s.125 – Whether a Hindu unmarried daughter is entitled to claim maintenance from her father under s.125 Cr.P.C. only till she attains majority or she can claim maintenance till she remains unmarried – Held: The Scheme under s.125(1) Cr.P.C. contemplate that claim of maintenance by an unmarried daughter, who has attained majority is admissible only when by reason of any physical or mental abnormality or injury, she is unable to maintain herself – However, an unmarried Hindu daughter can claim maintenance from her father till she is married in terms of s.20(3) of the Act, 1956, provided she pleads and proves that she is unable to maintain herself, for enforcement of which right her application/suit has to be under s.20 of Act, 1956 – Hindu Adoptions and Maintenance Act, 1956 – s.20 – Code of Criminal Procedure, 1898 – s.488.*

E

Code of Criminal Procedure, 1973: s.125 – Nature, extent and scope of – Discussed.

F *Code of Criminal Procedure, 1973: s.125 – Hindu Adoptions and Maintenance Act, 1956 – Distinction between – Held: The purpose and object of s.125 is to provide immediate relief to applicant in a summary proceedings, whereas right under s.20 read with s.3(b) of Act, 1956 contains larger right, which needs determination by a Civil Court, hence for the larger claims as enshrined under s.20, the proceedings need to be initiated under s.20 of the Act and the legislature never contemplated to burden the Magistrate while exercising jurisdiction under s.125 Cr.P.C. to determine the claims contemplated by Act, 1956.*

G

H *Family Courts Act, 1984: Jurisdiction of Family Court – Family Courts shall have the jurisdiction only with respect to city or town*

whose population exceeds one million and where there is no Family Courts, proceedings under s.125 Cr.P.C. shall have to be before the Magistrate of the First Class – In an area where the Family Court is not established, a suit or proceedings for maintenance including the proceedings under s.20 of the Act, 1956 shall only be before the District Court or any subordinate Civil Court – There may be a case where the Family Court has jurisdiction to decide a case under s.125 Cr.P.C. as well as the suit under s.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 s.20 of Act, 1956 so as to avoid multiplicity of proceedings – Hindu Adoptions and Maintenance Act, 1956 – s.20 – Code of Criminal Procedure, 1973 – s.125.

Dismissing the appeal, the Court

HELD: 1. A bare perusal of Section 125(1) Cr.P.C. as well as Section 20 of the Hindu Adoptions and Maintenance Act, 1956 indicates that Section 125 Cr.P.C. limits the claim of maintenance of a child until he or she attains majority. By virtue of Section 125(1)(c), an unmarried daughter even though she has attained majority is entitled for maintenance, where such unmarried daughter is by reason of any physical or mental abnormality or injury is unable to maintain itself. In the present case, the Revisional Court returned a finding that appellant is not suffering from any physical or mental abnormality or injury due to which she is unable to maintain herself. The above findings are not even questioned before this court. What is contended that even if she is not suffering from any physical or mental abnormality or injury, by virtue of Section 20 of Act, 1956, she is entitled to claim maintenance till she is unmarried. [Para 12][253-B-E]

2. In the Code of Criminal Procedure, 1898, Section 488 was the provision governing the maintenance of wife or legitimate or illegitimate child of any person. Section 488 sought to inhibit negligence of woman and children with intent to serve a social purpose. The provision provided for summary proceeding to

H

A enable a deserted wife or helpless child, legitimate or illegitimate, to get urgent relief. The laws are nothing but collective consciousness of community. It is in the interest of the community and social order that woman and child who are neglected be maintained and should be provided a forum to obtain urgent relief to enable them to sustain. [Paras 13, 14][253-F; 254-A-B]

B

Mulla – Hindu Law 22nd Edition – referred to.

3. Section 20(3) of the Act, 1956 is nothing but recognition of principles of Hindu Law regarding maintenance of children and aged parents. Section 20(3) now makes it statutory obligation of a Hindu to maintain his or her daughter, who is unmarried and is unable to maintain herself out of her own earnings or other property. The right of unmarried daughter under Section 20 to claim maintenance from her father when she is unable to maintain herself is absolute and the right given to unmarried daughter under Section 20 is right granted under personal law, which can very well be enforced by her against her father. [Paras 27, 31] [262-E-F; 264-C-D]

D

Noor Saba Khatoon v. Mohd. Quasim (1997) 6 SCC 233 : [1997] 6 SCC 182 – relied on.

E 4. After enactment of Family Courts Act, 1984, a Family Court shall also have the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX of Cr.P.C. relating to order for maintenance of wife, children and parents. Family Courts shall have the jurisdiction only with respect to city or town whose population exceeds one million, where there is no Family Courts, proceedings under Section 125 Cr.P.C. shall have to be before the Magistrate of the First Class. In an area where the Family Court is not established, a suit or proceedings for maintenance including the proceedings under Section 20 of the Act, 1956 shall only be before the District Court or any subordinate Civil Court.

F

G 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

H

she has become major enforcing her right under Section 20 of Act, 1956 so as to avoid multiplicity of proceedings. However the Magistrate in exercise of powers under Section 125 Cr.P.C. cannot pass such order. [Paras 32, 33][264-E-H; 265-A]

Jagdish Jugtawat v. Manju Lata and Others (2002) 5 SCC 422 – relied on.

5. The maintenance as contemplated under Act, 1956 is a larger concept as compared to concept of maintenance under Section 125 Cr.P.C. Section 3(b) while defining maintenance gives an inclusive definition including marriage expenses. The purpose and object of Section 125 Cr.P.C. 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. [Paras 35, 36][265-D, G]

6. An unmarried Hindu daughter can claim maintenance from her father till she is married relying on Section 20(3) of the Act, 1956, provided she pleads and proves that she is unable to maintain herself, for enforcement of which right her application/suit has to be under Section 20 of Act, 1956. 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. [Paras 38, 39][267-B, C-D]

Nanak Chand v. Chandra Kishore Aggarwal and Others (1969) 3 SCC 802 : [1970] 1 SCR 565; Ram Singh v. State AIR 1963 All 355; Nalini Ranjan v. Kiran Rani AIR 1965 Pat. 442; Mahabir Agarwalla v. Gita Roy [1962] 2 Cr. L.J.528; Mst. Zohara Khatoon v. Mohd. Ibrahim (1981) 2 SCC 509 : [1981] 2 SCR 910; Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav

A

B

C

D

E

F

G

H

A *and Another (1988) 1 SCC 530; Kirtikant D. Vadodaria v. State of Gujarat and Another (1996) 4 SCC 479 : [1996] 2 Suppl. SCR 45; State of Haryana and Others v. Santra (Smt.) (2000) 5 SCC 182 : [2000] 3 SCR 195–referred to.*

B	<u>Case Law Reference</u>		
	(2002) 5 SCC 422	relied on	Para 15
	[1970] 1 SCR 565	referred to	Para 15
	[1981] 2 SCR 910	referred to	Para 17
C	(1988) 1 SCC 530	referred to	Para 18
	[1996] 2 Suppl. SCR 45	referred to	Para 20
	[2000] 3 SCR 195	referred to	Para 26
	[1997] 6 SCC 182	relied on	Para 29

D CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 615 of 2020.

From the Judgment and Order dated 16.08.2018 of the High Court of Punjab and Haryana at Chandigarh in CRM-M-16328 of 2014 (O&M).

E Ms. Vibha Datta Makhija, Sr. Adv., Aditya Singh, Shubham Singh, Ajay Ravish, Deepkaran Dalal and Karan Dalal, Advs., for the appearing parties.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

F 1. Leave granted.

G 2. This appeal has been filed by the appellant, daughter of respondent Nos. 1 and 2, challenging the order of the High Court of Punjab and Haryana at Chandigarh dated 16.08.2018 by which order the High Court dismissed the application under Section 482 Cr.P.C. filed by the appellant praying for setting aside the order of the Judicial Magistrate First Class, Rewari dated 16.02.2011 as well as the order dated 17.02.2014 passed by the Additional Sessions Judge, Rewari.

H 3. The brief facts necessary to be noticed for deciding this appeal are:-

- 3.1 The respondent No.2, mother of the appellant, on her behalf, as well as on behalf of her two sons and the appellant daughter, filed an application under Section 125 Cr.P.C. against her husband, the respondent No.1, Parkash, claiming maintenance for herself and her three children. The learned Judicial Magistrate vide its judgment dated 16.02.2011 dismissed the application under Section 125 Cr.P.C. of the applicant Nos. 1, 2 and 3 and allowed the same for applicant No.4 (appellant before us) for grant of maintenance till she attains majority. A B
- 3.2 Aggrieved against the judgment dated 16.02.2011, all the four applicants filed a criminal revision before the Court of Sessions Judge, which criminal revision was dismissed by learned Additional Sessions Judge by order dated 17.02.2014 with the only modification that revisionist No.4 (appellant before us) shall be entitled to maintenance till 26.04.2005 when she attains majority. Learned Additional Sessions Judge held that as per provision of Section 125 Cr.P.C., the children, who had attained majority are entitled to maintenance, if by reason of any physical or mental abnormality or injury, they are unable to maintain themselves. Learned Additional Sessions Judge also held that the revisionist No.4 (i.e. appellant) is not suffering from any physical, mental abnormality or injury, therefore, she is entitled to maintenance only till 26.04.2005 i.e., till she attains majority. C D E
- 3.3 Challenging the order of Sessions Judge as well as the Judicial Magistrate, an application under Section 482 Cr.P.C. was filed before the High court by all the applicants including the appellant. High Court by the impugned judgment dated 16.02.2018 dismissed the application filed under Section 482 Cr.P.C. by making following observations:- F
- “Both the Courts are consistent with regard to declining maintenance to petitioners No. 1 to 3. As regards grant of maintenance to Abhilasha by the trial Court, the order regarding it was modified by learned Additional Sessions Judge, Rewari observing that she was entitled to get maintenance till attaining majority and not thereafter since she is not suffering from any physical or mental abnormality or injury, in those eventualities G

A a child, who though has attained majority but is unable to maintain itself is entitled to get maintenance.

I do not find any illegality or infirmity in the judgment passed by learned Additional Sessions Judge, Rewari, which might have called for interference by this Court while exercising jurisdiction under Section 482 Cr.P.C.

B Therefore, the petition stands dismissed.”

3.4 This appeal has been filed challenging the judgment of the High Court.

C 4. Ms. Vibha Datta Makhija, learned senior counsel appearing for the appellant submits that even though the appellant had attained majority on 26.04.2005 but since she is unmarried, she is entitled to claim maintenance from her father. Learned senior counsel contends that High Court committed error in dismissing the application filed under Section 482 Cr.P.C. of the appellant on wrong premise that since appellant has attained majority and is not suffering from any physical or mental abnormality, she is not entitled for any maintenance. Ms. Makhija has relied on provisions of Section 20 of the Hindu Adoptions & Maintenance Act, 1956 (hereinafter referred to as “Act, 1956”) and submits that as per Section 20 obligation of a person to maintain his daughter, who is unmarried, extends till she is married. Ms. Makhija relies on judgment of this Court in **Jagdish Jugtawat Vs. Manju Lata and Others, (2002) 5 SCC 422** in support of her submission. She submits that High Court committed error in taking a contrary view to the above judgment of this Court. Ms. Makhija submits that appellant is still unemployed, hence, she is entitled to claim maintenance from her father.

F 5. Learned counsel for the respondent refuting the submission of the learned senior counsel for the appellant contends that Courts below have rightly confined the claim of the maintenance of the appellant till she attains majority on 26.04.2005. It is submitted that as per Section 125 Cr.P.C. entitlement to claim maintenance by daughter, who has attained majority is confined to case where the person by reason of any physical or mental abnormality or injury unable to maintain herself. Revisional Court has returned a finding that there is no case that appellant is by reason of any physical or mental abnormality or injury is unable to maintain herself. It is submitted that High Court has rightly dismissed the application filed under Section 482 Cr.P.C. of the appellant since no

H

case was made out to interfere in orders passed by the Judicial Magistrate and learned Revisional Court in exercise of jurisdiction under Section 482 Cr.P.C. A

6. We have considered the submissions of the learned counsel for the parties and have perused the records.

7. From the submissions of the learned counsel for the parties, following two questions arise for consideration in this appeal:- B

(i) Whether the appellant, who although had attained majority and is still unmarried is entitled to claim maintenance from her father in proceedings under Section 125 Cr.P.C. although she is not suffering from any physical or mental abnormality/injury? C

(ii) Whether the orders passed by learned Judicial Magistrate as well as learned Revisional Court limiting the claim of the appellant to claim maintenance till she attains majority on 26.04.2005 deserves to be set aside with direction to the respondent No.1 to continue to give maintenance even after 26.04.2005 till the appellant remains unmarried? D

8. Both the questions being interconnected, we proceed to take them together. Application under Section 125 Cr.P.C. was filed on 17.10.2002 by the applicants including the appellant as applicant No.4 against Parkash, father of the appellant. The date of birth of the appellant being 26.04.1987, she was minor at the time when the application was filed. Learned Judicial Magistrate allowed the application of the appellant for maintenance till she attains majority. Learned Revisional Court has also affirmed the judgment with modification that appellant was entitled to receive maintenance till 26.04.2005 instead of 07.02.2005, which is date when she attains majority. In support of application under Section 125 Cr.P.C., applicant had examined Surya Dev Pandey as PW1, Chunni Lal Saini as PW2, Vikas Saini as PW3 and Dr. Raj Saini as PW4. The claim of the applicant Nos. 1, 2 and 3 was rejected, which was also affirmed by Courts below and is not subject matter of this appeal. E F G

9. The question to be answered in the present case is as to whether a Hindu unmarried daughter is entitled to claim maintenance from her father under Section 125 Cr.P.C. only till she attains majority or she can claim maintenance till she remains unmarried. Section 125(1) Cr.P.C., which is relevant for the present case is as follows:- H

A **“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 (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

C (d) his father or mother, unable to maintain himself or herself,

XXXXXXXXXXXXXXXXXXXXXXXXXXXXX”

D 10. The claim of maintenance of applicant No.4 was filed at the time when she was minor. During pendency of the application, she became major on 26.04.2005. The learned Judicial Magistrate, therefore, allowed the application of the appellant for maintenance till she attains majority on 26.04.2005.

E 11. Learned counsel for the appellant contends that the appellant is entitled to receive maintenance till she remains unmarried but said argument was rejected only on the ground that appellant is not suffering from any physical or mental abnormality or injury, therefore, she is not entitled for maintenance. The provision on which learned counsel for the appellant has placed reliance, i.e., Section 20 of the Hindu Adoptions and Maintenance Act, 1956, needs to be noted, which provides for maintenance of children and aged parents, which is as follows:-

F **“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.

G (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

H

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. A

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

12. The Act, 1956 was enacted to amend and codify the law relating to adoptions and maintenance among Hindus. A bare perusal of Section 125(1) Cr.P.C. as well as Section 20 of Act, 1956 indicates that whereas Section 125 Cr.P.C. limits the claim of maintenance of a child until he or she attains majority. By virtue of Section 125(1)(c), an unmarried daughter even though she has attained majority is entitled for maintenance, where such unmarried daughter is by reason of any physical or mental abnormality or injury is unable to maintain herself. The Scheme under Section 125(1) Cr.P.C., thus, contemplate that claim of maintenance by a daughter, who has attained majority is admissible only when by reason of any physical or mental abnormality or injury, she is unable to maintain herself. In the present case, the Revisional Court has returned a finding that appellant is not suffering from any physical or mental abnormality or injury due to which she is unable to maintain herself. The above findings are not even questioned before us. What is contended that even if she is not suffering from any physical or mental abnormality or injury, by virtue of Section 20 of Act, 1956, she is entitled to claim maintenance till she is unmarried. B C D E

13. For answering the question as noted above, we need to examine the nature, extent and scope of Section 125 Cr.P.C. In the Code of Criminal Procedure, 1898, Section 488 Cr.P.C. was the provision governing the maintenance of wife or legitimate or illegitimate child of any person. Section 488(1) Cr.P.C. provided: F

“488(1). If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or 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, at such monthly rate, not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.” G

H

A 14. Section 488 Cr.P.C. sought to inhibit negligence of woman and children with intent to serve a social purpose. The provision provided for summary proceeding to enable a deserted wife or helpless child, legitimate or illegitimate, to get urgent relief. The laws are nothing but collective consciousness of community. It is in the interest of the community and social order that woman and child who are neglected be maintained and should be provided a forum to obtain urgent relief to enable them to sustain.

B
C 15. This Court in **Nanank Chand Vs. Chandra Kishore Aggarwal and Others, (1969) 3 SCC 802** had occasion to consider the provision of Section 488 Cr.P.C., 1898 The Court had occasion to consider the nature of proceedings under Section 488 Cr.P.C. in reference to provisions of Hindu Adoptions and Maintenance Act, 1956, which provided for overriding effect of Act. Section 4 of the Act, 1956 is to the following effect:

D “**Section 4. Overriding effect of Act-** Save as otherwise expressly provided in this Act,-

E (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

F (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.”

G 16. In **Nanak Chand’s** case the question arose as to whether by virtue of Section 4 of Act, 1956, the provision of Section 488 Cr.P.C. shall be overridden. In the above case this Court explained the provisions of Section 488 Cr.P.C. as well as Section 20 of the Act, 1956. This Court held that there is no inconsistency between Section 488 Cr.P.c. and the Hindu Adoptions and Maintenance Act and both can stand together. This Court further held that Section 488 Cr.P.C. 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. Following was laid down in paragraph 4:

H “4.....The learned Counsel says that Section 488 Cr.P.C., 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, Cr.P.C. 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, Cr.P.C. The scope of the two laws is different. Section 488 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. Recently the question came before the Allahabad High Court in *Ram Singh v. State*, AIR 1963 All 355, before the Calcutta High Court in *Mahabir Agarwalla v. Gita Roy* [1962] 2 Cr. L.J.528 and before the Patna High Court in *Nalini Ranjan v. Kiran Rani*, AIR 1965 Pat 442. The three High Courts have, in our view, correctly come to the conclusion that Section 4(b) of the Maintenance Act does not repeal or affect in any manner the provisions contained in Section 488, Cr.P.C.”

17. In **Nanak Chand (supra)** this Court had approved the judgments of Allahabad High Court in **Ram Singh Vs. State, AIR 1963 All 355**, judgment of Patna High Court in **Nalini Ranjan Vs. Kiran Rani, AIR 1965 Pat. 442** and judgment of Calcutta High Court in **Mahabir Agarwalla Vs. Gita Roy, [1962] 2 Cr. L.J.528**. This Court in **Mst. Zohara Khatoon Vs. Mohd. Ibrahim, (1981) 2 SCC 509**, after noticing the judgment of this Court in **Nanak Chand’s case** extracted relevant portions of judgments of **Ram Singh, Mahabir Agarwalla** and **Nalini Ranjan (supra)** which were approved by this Court in **Nanak Chand**. In **Ram Singh’s case**, Allahabad High Court took the view that Section 18 of Act, 1956 cannot be substituted for Section 488 Cr.P.C. In **Nalini Ranjan**, Patna High Court held that Section 488 Cr.P.C. provided a separate remedy and Section 488 Cr.P.C. covered the civil liability of a husband under the personal law. It is useful to extract paragraphs 8, 9 and 10 of the judgment of this Court in **Zohara Khatoon** which are to the following effect:

“8. It would be seen that this Court approved of the decisions in the cases of *Ram Singh*, *Mahabir Agarwalla* and *Nalini Ranjan*

A mentioned in the observations extracted above. In order to understand the proper scope of Section 488 of the 1898 Code which is almost the same as that of Section 125 of the 1973 Code, it may be necessary to examine the decisions which were referred to with approval by this Court in Nanak Chand's case (supra). In Ram Singh v. State and Anr. Kailash Prasad, J. observed as follows :-

B
C
D
E
F
G
H
"There is nothing in the Hindu Adoptions and Maintenance Act to suggest expressly or by necessary implication that the Act is intended to be a substitute for the provisions of Section 488 Cr.P.C. In fact the provisions of Section 18 of the Act cannot be a substitute for Section 488 Cr.P.C. The latter provision is general and is applicable to a wife, irrespective of her religion, but the former is applicable to the case of Hindus only. It could not, therefore, be intended to be a substitute for Section 488 Cr.P.C.

D To the same effect is the decision of the Patna High Court in Nalini Ranjan Chakravarty v. Smt. Kiran Rani Chakravarty, AIR 1965 Pat 442 where the following observations were made :-

E
F
G
H
Before the enactment of 1956, it was well settled that the right conferred by Section 488 Cr.P.C. was independent of the personal law of the parties. The right of maintenance under Section 488 was irrespective of the nationality or creed of the parties, the only condition precedent to the possession of that right being in the case of a wife the acceptance of the conjugal relation. Further, Section 488 provided for only a speedy remedy and a summary procedure before a Magistrate against starvation of a deserted wife or child. This section did not cover the civil liability of a husband or a father under his personal law to maintain his wife and children.

G
H
9. The Calcutta High Court also took the same view in Mahabir Agarwalla v. Gita Roy [1962] 2 Cr. L.J. 528 where the following observations were made :-

H
An alternative but not inconsistent summary remedy was provided by Section 488 of the CrPC not only to the Hindu wife but generally to wives irrespective of religion for recovery of maintenance from the husband. The two remedies were, however, not co-extensive.

10. Thus, on a consideration of the authorities mentioned above, it is clear that the 1898 Code by virtue of Section 488 provided a summary remedy for awarding maintenance to neglected wives irrespective of caste, creed, community or religion to which they belonged. It was in this context that the Courts referred to above considered the effect of Hindu Adoption and Maintenance Act and other similar Acts.”

18. This Court in **Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another, (1988) 1 SCC 530**, held that personal law applicable to the parties cannot altogether be excluded from consideration in proceeding under Section 125 Cr.P.C.

19. In **Yamunabai’s case(supra)**, the question involved was as to whether a Hindu woman who is married after coming into force of Hindu Marriage Act, 1955 to a Hindu male having a living lawfully wedded wife, can maintain an application for maintenance under Section 125 Cr.P.C. This Court in the above case held the marriage of Yamunabai to be null and void from its very inception. In the above context, this Court referred to provision of Hindu Marriage Act, 1955 to find out marital status. In paragraphs 5 and 6, following was laid down:

“5. It has been contended on behalf of the appellant that the term ‘wife ‘ in Section 125 of the Code should be given a wider and extended meaning so as to include therein not only a lawfully wedded wife but also a woman married in fact by performance of necessary rites or following the procedure laid down under the law. Relying upon the decision of this Court in *Mohd. Ahmed khan v. Shah Bano Beghum, 1985 Cri LJ 875* it was argued that the personal law of the parties to a proceeding under Section 125 of the Code should be completely excluded from consideration. The relationship of husband and wife comes to an end on divorce, but a divorcee has been held to be entitled to the benefits of the section, it was urged, and therefore applying this approach a woman in the same position as the present appellant should be brought within the sweep of the section. We are afraid, the argument is not well founded. A divorcee is included within the section on account of Clause (b) of the Explanation. The position under the corresponding Section 488 of the code of 1898 was different. A divorcee could not avail of the summary remedy. The wife’s right to maintenance depended upon the continuance

A of her married status. It was pointed out in Shah Bano’s case that
since that right could be defeated by the husband by divorcing her
unilaterally under the Muslim Personal Law or by obtaining a
decree of divorce under any other system of law, it was considered
desirable to remove the hardship by extending the benefit of the
provisions of the section to a divorced woman so long as she did
not remarry, and that was achieved by including Clause (b) of the
Explanation. Unfortunately for the appellant no corresponding
provision was brought in so as to apply to her. The legislature
decided to bestow the benefit of the Section even on an illegitimate
child by express words but none are found to apply to a de facto
wife where the marriage is void ab initio.

6. The attempt to exclude altogether the personal law applicable
to the parties from consideration also has to be repelled. The section
has been enacted in the interest of a wife, and one who intends to
take benefit under Sub-section (1)(a) has to establish the necessary
condition, namely, that she is the wife of the person concerned.
This issue can be decided only by a reference to the law applicable
to the parties. It is only where an applicant establishes her status
on relationship with reference to the personal law that an
application for maintenance can be maintained. Once the right
under the section is established by proof of necessary conditions
mentioned therein, it cannot be defeated by further reference to
the personal law. The issue whether the section is attracted or not
cannot be answered except by the reference to the appropriate
law governing the parties. In our view the judgment in Shah Bano’s
case does not help the appellant. It may be observed that for the
purpose of extending the benefit of the section to a divorced
woman and an illegitimate child the Parliament considered it
necessary to include in the section specific provisions to that effect,
but has not done so with respect to women not lawfully married.”

20. It is to be noted that in the above case personal law was
looked into to find out as to whether an application filed by the appellant
Yamunabai claiming to be his wife was maintainable or not. Another
judgment which needs to be noted is **Kirtikant D. Vadodaria Vs. State
of Gujarat and Another, (1996) 4 SCC 479**. The question which
came for consideration before this Court was as to whether expression
“mother” used in clause (d) of sub-section (1) of Section 125 Cr.P.C.

H

includes stepmother. This Court referring to Section 125 Cr.P.C. as well as provision of Section 20 of Act, 1956 held that stepmother can claim maintenance from her stepson provided she is widow of her husband, if living, and also incapable of maintaining and supporting her. A

21. Now, we come to the Three Judge Bench judgment of this Court as relied by learned counsel for the appellant, i.e., **Jagdish Jugtawat (supra)**. In the above case, the respondent No.3 was a minor unmarried girl of the petitioner. The wife of the petitioner, i.e., mother of respondent No.3 filed an application under Section 125 Cr.P.C. claiming maintenance @ Rs.500/- per month to each of the applicant, which was granted by the Family Court. A revision was filed before the High Court assailing the order contending that the respondent No.3, Kumari Rakhi was entitled to maintenance only till she attains majority and not thereafter. High Court although accepted the legal position that under Section 125 Cr.P.C., a minor daughter is entitled to maintenance from her parents only till she attains majority but declined to interfere with the orders passed by the Family Court taking the cue from Section 20(3) of the Hindu Adoptions and Maintenance Act. The facts of the case and observations of the High Court have been made in the paragraph 2 of the judgment, which is to the following effect:- B
C
D

“2. The Petitioner is the father of Kumari Rakhi, Respondent 3 herein, who is a minor unmarried girl. Considering the application filed under Section 125 of the Criminal Procedure Code by Respondent 1, wife of the Petitioner and mother of Respondent 3, claiming maintenance for herself and her two children, the Family Court by order dated 22.7.2000 granted maintenance @ Rs.500 per month to each of the Applicants. The Petitioner herein filed a revision petition before the High Court assailing the order of the Family Court on the ground, inter alia, that Respondent 3 was entitled to maintenance only till she attains majority and not thereafter. Considering the point the learned Single Judge of the High Court accepted, the legal position that under Section-125, CrPC, a minor daughter is entitled to maintenance from her parents only till she attains majority, but declined to interfere with the order passed by the Family Court taking the cue from Section 20(3) of the Hindu Adoptions and Maintenance Act under which the right of maintenance is given to a minor daughter till her marriage. The learned Single Judge was persuaded to maintain the order of the E
F
G
H

A Family Court with a view to avoid multiplicity of proceedings. The relevant portion of the judgment of the High Court is quoted here:

B “Thus, in view of the above, though it cannot be said that the order impugned runs counter to the law laid down by the Hon’ble Supreme Court, the provisions of Section 125 CrPC are applicable irrespective of the personal law and it does not make any distinction whether the daughter claiming maintenance is a Hindu or a Muslim. However, taking an overall view of the matter, I, with all respect to the Hon’ble Court, am of the candid view that the provisions require literal interpretation and a daughter would cease to have the benefit of the provisions under Section 125 CrPC on attaining majority, though she would be entitled to claim the benefits further under the statute/ personal law. But the Court is not inclined to interfere, as the order does not result in miscarriage of justice, rather interfering with the order would create great inconvenience to Respondent 3 as she would be forced to file another petition under sub-section (3) of Section 20 of the Act of 1956 for further maintenance etc. Thus, in order to avoid multiplicity of litigations, the order impugned does not warrant interference.”

E *(underlined by us)*

F 22. The judgment of this Court in **Jagdish Jugtawat (supra)** is sheet anchor of learned counsel for the appellant. The question which came for consideration before this Court in **Jagdish Jugtawat’s case** has been noted in paragraph 3 of the judgment which is to the following effect:

“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.”

G 23. This Court answered the question noticed in paragraph 3 as above in paragraph 4 in the following words:

H “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.”

24. In the above case, an order was passed by the Family Court by granting maintenance which was based on combined reading of Section 125 Cr.P.C. and Section 20 of Act, 1956. Although, the High Court and this Court had declined to interfere with the order of the Family Court taking the cue from Section 20(3) of the Act, 1956 under which the right of maintenance is given to a minor daughter till her marriage, but the judgment of this Court in **Jagdish Jugtawat (supra)** cannot be read to laying down the ratio that in proceedings under Section 125 Cr.P.C. filed by the daughter against her father, she is entitled to maintenance relying on the liability of the father to maintain her unmarried daughter as contained in Section 20(3) of the Act, 1956. The High Court in exercise of Criminal Revisional jurisdiction can very well refuse to interfere with the judgment of Courts below by which maintenance was granted to unmarried daughter. This Court while hearing criminal appeal against the above judgment of High Court was exercising jurisdiction under Article 136 of the Constitution of India, and in the facts of that case, this Court refused to interfere with the judgment of High Court but in refusal to interfere by this Court, no ratio can be read in the judgment of **Jagdish Jugtawat (supra)** as contended by learned counsel for the appellant.

25. In Classical Hindu Law prior to codification, a Hindu male was always held morally and legally liable to maintain his aged parents, a virtuous wife and infant child. Hindu Law always recognised the liability of father to maintain an unmarried daughter. In this context, we refer to paragraph 539 and 543 of Mulla – Hindu Law – 22nd Edition, which is 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

A relations is personal in character and arises from the very existence of the relation between the parties.

Section 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 deal with the question of maintenance of wife, children and aged parents. Reference may be made to the notes under those sections.

B

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.

XXXXXXXXXXXXXXXXXX”

C

26. Muslim Law also recognises the obligation of father to maintain his daughters until they are married. Referring to Mulla’s Principle of Mohammedan Law, this Court in **State of Haryana and Others Vs. Santra (Smt.)**, (2000) 5 SCC 182 in paragraph 40 held:-

D

“40. Similarly, under the Mohammedan Law, a father is bound to maintain his sons until they have attained the age of puberty. He is also bound to maintain his daughters until they are married. [See: Mulla’s Principles of Mohammedan Law (19th Edn.) page 300].....”

E

27. Section 20(3) of Hindu Adoptions and Maintenance Act, 1956 is nothing but recognition of principles of Hindu Law regarding maintenance of children and aged parents. Section 20(3) now makes it statutory obligation of a Hindu to maintain his or her daughter, who is unmarried and is unable to maintain herself out of her own earnings or other property.

F

28. Section 20 of Hindu Adoptions and Maintenance Act, 1956 cast 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 property. As noted above, Hindu Law prior to enactment of Act, 1956 always obliged a Hindu to maintain unmarried daughter, who is unable to maintain herself. The obligation, which is cast on the father to maintain his unmarried daughter, can be enforced by her against her father, if she is unable to maintain herself by enforcing her right under Section 20.

G

H

29. We may also notice another judgment of this Court in **Noor Saba Khatoon Vs. Mohd. Quasim, (1997) 6 SCC 233**, which was a case under Section 125 Cr.P.C. A Muslim wife with her two daughters and a son filed an application claiming maintenance under Section 125 Cr.P.C. The trial court allowed the maintenance to the wife and children from her husband. The husband after divorcing the wife filed application in the trial court seeking modification of the order in view of the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The trial court modified the order insofar as the grant of maintenance of wife was concerned but maintained the order of maintenance to each of the three minor children. The husband challenged the order by means of revision, which was dismissed by the Revisional Court. An application under Section 482 Cr.P.C. was filed in the High Court. The High Court accepted the claim of husband and relying on provision of Section 3(1)(b) of the Act, 1986 held that a Muslim wife is entitled to claim maintenance from her previous husband for her children only for a period of two years from the date of birth of the child concerned. The High Court held that minor children were not entitled for maintenance under Section 125, Cr.P.C. A special leave to appeal was filed questioning the judgment. This Court dealing with Section 125 Cr.P.C. as well as Act, 1986 held that effect of a beneficial legislation like Section 125 Cr.P.C. cannot be allowed to be defeated except through clear provisions of a statute. This Court held that there is no conflict between the two provisions.

30. This Court noticed the provisions of Section 3 of Muslim Women (Protection of Rights on Divorce) Act, 1986 and Section 125 Cr.P.C. It is relevant to refer to the following observations made by this Court in paragraph 7 of the above judgment:

“7....Under Section 125, CrPC the maintenance of the children is obligatory on the father (irrespective of his religion) and as long as he is in a position to do so and the children have no independent means of their own, it remains his absolute obligation to provide for them. Insofar as children born of Muslim parents are concerned there is nothing in Section 125 CrPC which exempts a Muslim father from his obligation to maintain the children. These provisions are not affected by Clause (b) of Section 3(1) of the 1986 Act and indeed it would be unreasonable, unfair, inequitable and even preposterous to deny the benefit of Section 125 CrPC to the children only on the ground that they are born of Muslim

A parents. The effect of a beneficial legislation like Section 125
CrPC, cannot be allowed to be defeated except through clear
provisions of a statute. We do not find manifestation of any such
intention in the 1986 Act to take away the independent rights of
the children to claim maintenance under Section 125 CrPC where
they are minor and are unable to maintain themselves. A Muslim
B father's obligation, like that of a Hindu father, to maintain his minor
children as contained in Section 125 CrPC is absolute and is not
at all affected by Section 3(1)(b) of the 1986 Act.”

31. The provision of Section 20 of Act, 1956 cast clear statutory
obligation on a Hindu to maintain his unmarried daughter who is unable
C to maintain herself. The right of unmarried daughter under Section 20 to
claim maintenance from her father when she is unable to maintain herself
is absolute and the right given to unmarried daughter under Section 20 is
right granted under personal law, which can very well be enforced by
her against her father. The judgment of this Court in **Jagdish Jugtawat**
D (**supra**) laid down that Section 20(3) of Act, 1956 recognised the right
of a minor girl to claim maintenance after she attains majority till her
marriage from her father. Unmarried daughter is clearly entitled for
maintenance from her father till she is married even though she has
become major, which is a statutory right recognised by Section 20(3)
and can be enforced by unmarried daughter in accordance with law.

E 32. After enactment of Family Courts Act, 1984, a Family Court
shall also have the jurisdiction exercisable by a Magistrate of the First
Class under Chapter IX of Cr.P.C. relating to order for maintenance of
wife, children and parents. Family Courts shall have the jurisdiction only
with respect to city or town whose population exceeds one million, where
F there is no Family Courts, proceedings under Section 125 Cr.P.C. shall
have to be before the Magistrate of the First Class. In an area where
the Family Court is not established, a suit or proceedings for maintenance
including the proceedings under Section 20 of the Act, 1956 shall only be
before the District Court or any subordinate Civil Court.

G 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
H 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. A

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. B C

35. The maintenance as contemplated under Act, 1956 is a larger concept as compared to concept of maintenance under Section 125 Cr.P.C. Section 3(b) while defining maintenance gives an inclusive definition including marriage expenses in following words:- D

“**3.Definitions-** In this Act unless the context otherwise requires-

XXXXXXXXXXXXXXXXXX

(b) “Maintenance” includes-

- (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;
- (ii) in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage;

(c) “minor” means a person who has not completed his or her age of eighteen years.” F

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. G

H

- A 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:-
- B (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.
- C
- D
- E
- F (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.
- G (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
- H

prospective purchaser has been filed by the appellant, where A
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. We, thus, accept the submission of the learned counsel for the B
appellant that as a proposition of law, an unmarried Hindu daughter can
claim maintenance from her father till she is married relying on Section
20(3) of the Act, 1956, provided she pleads and proves that she is unable
to maintain herself, for enforcement of which right her application/suit
has to be under Section 20 of Act, 1956.

39. In facts of the present case the ends of justice be served by C
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.