

(2012) 12 SHI CK 0066

In the High Court Of Himachal Pradesh

Case No : Criminal M.M.O. No's. 28 and 67 of 2012

Virender Kumar Sharma

APPELLANT

Vs

Uma Sharma

RESPONDENT

Date of Decision : 01-12-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(1)(c), 482
Hindu Adoptions and Maintenance Act, 1956 — Section 20(3)

Citation : (2012) 12 SHI CK 0066

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Advocate : R.K. Sharma, with Mr. Mohan Sharma in Cr. M.M.O. No. 28 of 2012 and Mr. Yogesh Kumar Chandel in Cr. M.M.O. No. 67 of 2012, for the Appellant; Yogesh Kumar Chandel, Advocate in Cr. M.M.O. No. 28 of 2012 and Mr. R.K. Sharma with Mr. Mohan Sharma, Advocate in Cr. M.M.O. No. 67 of 2012, for the Respondent

Judgement

Justice V.K. Ahuja, J.

Cr. M.M.O. No. 28 of 2012:

1. This is a petition filed by petitioner Virender Kumar under Article 227 of the Constitution of India read with Section 482 of the Cr. P.C. for quashing the order, dated 2.11.2011, passed by the learned Sessions Judge, Kullu, vide which he has modified the order passed by the learned Chief Judicial Magistrate, Kullu, dated 30.9.2010.

Cr. M.M.O. No. 67 of 2012:

This is a petition filed by petitioner Uma Sharma under Article 227 of the Constitution of India read with Section 482 of the Cr. P.C. for quashing the order, dated 2.11.2011, passed by the learned Sessions Judge, Kullu, restricting the maintenance to the petitioner till she attains the age of majority, and modified the order passed by the learned Chief Judicial Magistrate, Kullu, dated 30.9.2010.

2. Briefly stated, the facts of the case are that Uma Sharma aged about 17 years at the time of filing of the petition u/s 125 Cr. P.C. through her mother and natural guardian Smt. Sudesh Kumari, filed a petition u/s 125 Cr.P.C. for grant of maintenance which was filed by her against her father Virender Kumar Sharma. The original petitioner Uma Sharma alleged that being daughter of Virender Kumar, she has no source of income and is unable to maintain herself. The father did not contest the petition and was proceeded against ex parte and vide the impugned order passed by the learned Chief Judicial Magistrate, Kullu, the daughter i.e. the original petitioner was granted maintenance at the rate of Rs. 3,000/- per month from the date of filing of the petition till her marriage.

3. A revision petition was filed by the petitioner father against the said order and the learned Sessions Judge, Kullu, upheld the grant of maintenance but restricted the same till the daughter attains the age of majority. The said order has been challenged by way of the present petitions.

4. The allegations made by Virender Kumar Sharma in challenging the said order were that daughter Uma Sharma has completed the age of 21 years and has also completed her study and since she is employed at Chandigarh and has got independent source of income, she is not entitled to any maintenance and was entitled to maintenance till she attained majority.

5. During the course of arguments, Mr. R.K. Sharma, learned Senior Advocate, appearing for Virender Kumar Sharma, father, has raised a point that the daughter Uma Sharma was entitled to maintenance only till her majority and not till her marriage under the provisions of Section 125 Cr.P.C. To substantiate his point, the learned counsel for the petitioner has relied upon the provisions of Section 125(1)(c) of the Cr. P.C., which read as under:

(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

6. It was submitted that the original petitioner has to prove that after the majority, she was not able to maintain herself since she is suffering from any infirmity and she can be presumed to be capable of maintaining herself unless contrary is proved.

7. Reliance was also placed by the learned senior counsel upon the decision in *Saraswati versus Madhavan*, AIR 1961 Kerala 297. The question raised in the said case was whether the word "child" can apply to a person who had already attained the age of majority. The said case was u/s 488 of the Cr. P.C. under the old Code of Criminal Procedure. The observations made in paragraph 11 of the said judgment are relied upon which are reproduced below:

Again in this case the petitioner for whom maintenance is claimed is aged 22 years. She is a fairly well educated lady, healthy and is not stated to be suffering from any illness. Such a person should be presumed capable of maintaining

herself until the contrary is proved. The burden of proving that she is not capable of maintaining herself is on her and if she fails to adduce sufficient proof the Magistrate would be perfectly justified in disallowing her claim for maintenance. If a person is a minor there can be no presumption that he or she is able to maintain himself. On both these grounds the order of the learned First Class Magistrate is correct and calls for no interference. The Revision Petition is dismissed.

8. On the other hand, Mr. Yogesh Kumar Chandel, learned counsel appearing for the daughter Uma Sharma has submitted that this question was considered at length by the Hon''ble Supreme Court in Jagdish Jugtawat versus Manju Lata and others, (2002)5 Supreme Court Cases, 422. Their Lordships considered the provisions of Section 125 Cr. P.C. as well as Section 20(3) of the Hindu Adoption and Maintenance Act and held that on a combined reading of the two provisions, the High Court was justified in upholding the order of Family Court by which it granted maintenance u/s 125 Cr. P.C. to the daughter even after majority, but till her marriage.

9. It is, therefore, clear that their Lordships had considered the provisions of Section 125 Cr. P.C. as well as Section 20(3) of the Hindu Adoption and Maintenance Act and held that the order passed granting maintenance to a daughter till her marriage is recognized under the Hindu Adoption and Maintenance Act and accordingly, the said order granting maintenance was upheld. Their Lordships had considered the provisions of Section 125 Cr. P.C. as well as that of Hindu Adoption and Maintenance Act and had not placed any rider at the power to grant maintenance u/s 125 Cr. P.C. that the unmarried daughter has to prove that she is unable to maintain herself or is suffering from any disability or so.

10. The decision of the Kerala High Court, referred to above, is relevant but not binding in view of the fact that the question was directly considered by the Hon''ble Supreme Court and the order granting maintenance to a minor daughter till her marriage was upheld and, therefore, that lays down the law of the land applicable to all. There is no substance in the plea raised by the Mr. R.K. Sharma that u/s 125(1)(c) Cr. P.C., the maintenance can be granted only to a person suffering from physical or mental abnormality and is unable to maintain itself. These provisions were certainly considered by the Hon''ble Supreme Court and then the above law was laid down and it applies to the present facts also. Moreover, in the present case, this ground has not been taken in the ground of revision challenging the said order since it was not specifically alleged that daughter Uma Sharma was not entitled to maintenance beyond her majority till the date of her marriage.

11. In view of the above discussion, the judgment passed by the learned Sessions Judge restricting the grant of maintenance till the daughter attains the age of majority is set aside and that of the learned trial Court is maintained. Both the petitions stand disposed of accordingly, so also the pending application(s), if

any.