* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 5th OCTOBER, 2021

IN THE MATTER OF:

\+ **CRL. REV. P. 549/2018**

URVASHI AGGARWAL & ORS. ..... Petitioner

Through Mr. Praveen Suri and Ms. Komal Chhibber, Advocates

versus

INDERPAUL AGGARWAL ..... Respondent

Through Mr. Digvijay Ray and Mr. Aman Yadav, Advocates

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

CRL. M.A. 11083/2021

1. This Application under Section 482 Cr.P.C. has been filed for seeking the review of the Order of this Hon'ble Court dated 14.06.2021 in Criminal Revision Petition 549/2021 wherein this Court had granted a sum of Rs. 15,000/- per month as interim maintenance to the revisionist/Petitioner No.1 till the Petitioner No. 2 completes his graduation or starts earning, whichever is earlier.

2. Mr. Digvijay Rai, Counsel for the Respondent, has put forth four grounds for recalling the Order dated 14.06.2021 rendered by this Hon'ble Court:

i. The learned Counsel for the Respondent has submitted that the impugned Judgement fails to deal with Amarendra Kumar Paul

v. Maya Paul & Ors., **(2009) 8 SCC 359**, wherein the Supreme Court had held that according to Section 125 of the Cr.P.C., an application for grant of maintenance is maintainable so far as the concerned children have not attained majority. It is stated that Petitioner No. 2 had attained majority on 14.08.2018, and completion of graduation would entail maintenance being given till 14.08.2021.

ii. It has been submitted by Mr. Rai that this Hon'ble Court has proceeded on the ground that the Petitioner No. 1 is an Upper Division Clerk in MCD earning Rs. 60,000/- per month, whereas in actuality she is an Assistant Section Officer (Gazetted) and her Gross Salary for the month of January 2020 was Rs.71,328/-. It has been stated that these figures are a matter of record, and that apart from this figure, Petitioner No.1 has also been obtaining education expenses from her employer. It has been submitted as per RTI obtained by the Respondent, Rs. 8,000/- was received by Petitioner No.1 from September 2008 to December 2008, Rs. 6,000/- from January 2009 to March 2009, Rs. 12,000/- from April 2009 to September 2009, Rs. 6,000/- from October 2009 to December 2009, and Rs. 6,000/- from January 2010 to March 2010. It has been stated that educational expenses of Petitioner Nos. 2 and 3 have been paid till date.

iii. The learned Counsel for the Respondent has stated that impugned Judgement, granting a sum of Rs. 15,000/- per month as interim maintenance to Petitioner No. 1 for Petitioner No. 2 from the date of attaining majority till he completes his

graduation or starts earning, whichever is earlier, is outside the scope of this Hon'ble Court as it could not have it have extended it for a period beyond the final adjudication of the case by the Trial Court.

iv. It has been submitted by Mr. Rai that this Hon'ble Court has erred in proceeding with the matter on the basis that Petitioner No. 1 has been denied maintenance whereas the case was that Petitioner No. 1 had only been denied maintenance at interim stage.

3. This Court has heard the submissions of the learned Counsel for the Respondent and perused the material on record.

4. At the outset, this Court finds it pertinent to state that the embargo contained in Section 362 Cr.P.C., which prohibits the Court from altering or reviewing its judgement or final order disposing of the case, is inapplicable to an Order of maintenance passed under Section 125 Cr.P.C. The Saving Clause contained in Section 362 Cr.P.C. entails that the rigour of the provision is relaxed in two conditions, i.e. save as otherwise provided by *(i)* the Code of Criminal Procedure or *(ii)* any other law for the time being in force.

5. In Sanjeev Kapoor v. Chandana Kapoor and Ors., **(2020) 13 SCC 172**, the Supreme Court had observed that the legislature was aware that there were situations where altering or reviewing of criminal court judgement were contemplated in the Code itself or any other law for the time being in force. Noting that Section 125 Cr.P.C. was a social justice legislation, the Supreme Court held that a closer look at Section 125 Cr.P.C. itself indicated that the Court after passing judgment or final order in the

proceedings under Section 125 Cr.P.C. did not become functus officio, and that the Section itself contains express provisions wherein an Order passed under Section 125 Cr.P.C. could be cancelled or altered, and that this was noticeable from Sections 125(1), 125(5) and 127 Cr.P.C. Therefore, the legislative scheme as delineated by Sections 125 and 127 Cr.P.C. clearly enumerates circumstances and incidents provided in the Code where the Court passing a judgement or final order disposing of the case can alter or review the same. The embargo as contained in Section 362 is, thus, relaxed in proceedings under Section 125 Cr.P.C.

6. Section 125 Cr.P.C. is a tool for social justice enacted to ensure that women and children are protected from a life of potential vagrancy and destitution. The Supreme Court has consistently upheld that the conceptualisation of Section 125 was meant to ameliorate the financial suffering of a woman who had left her matrimonial home; it is a means to secure the woman's sustenance, along with that of the children, if any. The statutory provision entails that if the husband has sufficient means, he is obligated to maintain his wife and children, and not shirk away from his moral and familial responsibilities.

7. In Kirtikant D. Vadodaria v. State of Gujarat, **(1996) 4 SCC 479**, while discussing the dominant purpose of Section 125 of the Code, the Supreme Court had held as follows:

> *"**15.** ... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral*

> *claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation."*

8. A similar stand was taken by the Supreme Court in Chaturbhuj v. Sita Bai, **(2008) 2 SCC 316**, wherein the legal position pertaining to Section 125 of the Code was reiterated and it was stated that the provision was a measure of social justice, specially enacted to protect women and children, and it thereby fell within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. Therefore, while adjudicating a matter pertaining to this provision, it must be borne in mind that the dominant object of Section 125 is to prevent destitution and vagrancy by compelling those individuals, who have the means as well as the moral obligation, to support those who are unable to support themselves.

9. It is further pertinent to note that it is true that in majority of households, women are unable to work due to sociocultural as well as structural impediments, and, thus, cannot financially support themselves. However, in households wherein the women are working and are earning sufficiently to maintain themselves, it does not automatically mean that the husband is absolved of his responsibility to provide sustenance for his children. A father has an equal duty to provide for his children and there cannot be a situation wherein it is only the mother who has to bear the burden of expenses for raising and educating the children.

10. This Court cannot shut its eyes to the reality that simply attaining

majority does not translate into the understanding that the major son is earning sufficiently. At the age of 18, it can be safely assumed that the son is either graduating from 12th standard or is in his first year of college. More often than not, it does not place him in a position wherein he can earn to sustain or maintain himself. It further places the entire burden on the mother to bear the expenses of educating the children without any contribution from the father, and this Court cannot countenance such a situation.

11. The Supreme Court and other High Courts have, in a slew of judgements, in view of the facts and circumstances of the case placed before them, upheld the maintenance allowance granted to a son post attaining majority on the ground that the father has a duty to finance basic education of the child and that the child cannot be deprived of his right to be educated due to his parents getting divorced. In Chandrashekhar v. Swapnil and Anr., **Criminal Appeal Nos. 265-266 of 2021**, the Supreme Court had upheld the arrangement to provide maintenance to the son until he completed his first degree course after high school so as to ensure that he becomes a self-supporting individual and can live in dignity. In Rita Dutta and Anr. v. Subhendu Dutta, **(2005) 6 SCC 619**, the Supreme Court had maintained the allowance which had been granted to the elder son who had attained majority.

12. In Jayvardhan Sinh Chapotkat v. Ajayveer Chapotkat, **Civil Writ Petition No. 2117 of 2012,** while allowing a writ petition on the question as to whether maintenance could be paid to the son by the father even after attainment of majority, the Bombay High Court had held as follows:

> *"**16.** A major son may not be entitled for maintenance under the Hindu Marriage Act. In the present case, the*

> *Petitioner has made out a specific claim for educational expenses which can be availed by him after attaining the age of 18 years. The son/claimant would attain majority as far as age is concerned, however, it would not be the proper age for becoming economically independent so as to earn his living. In the given facts of the case, a major son of a the well-educated and economically sound parents can claim educational expenses from his father or mother irrespective of the fact that he has attained majority. It is not maintenance in strict senses as contemplated under Section 125 of the Code of Criminal Procedure or maintenance as contemplated under Section 20 under Hindu Marriage Act".*
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> *"**20.** In view of this, this Court is of the opinion that since the father i.e. the respondent is well placed financially, it would be incumbent upon him to bear educational expenses of his son till he is able to earn his own living or till he completes his education. This is in fact, a concession to a major son and therefore, the Petition filed by the Petitioner deserves to be allowed".*

13. The Madras High Court, in T. Vimala v. S. Ramakrishnan, **Crl. R.C. (MD) No. 180 of 2014**, while noting that daughters could be maintained after attaining majority as a result of Section 20 of the Hindu Marriage Act, had emphasised on how the law, i.e. Section 125 of the Code, had to be interpreted liberally as well as the obligation of a father to meet educational expenses of his children. It had observed as follows:

> *"**18.** The very purpose of Section 125 Cr.P.C. is also to protect the children from want of roof, food, clothing and necessities of life. Education is an important*

> *aspect in children's life. Amounts need to be spent for it. Those expenses are educational expenses. Every father is bound to provide a good education to his children. No father is expected to produce a criminal or a disorderly person. Thus, he has to bear the educational expenses of his children. Children have to maintain their education by meeting the educational expenses. Even a man on the pavement will be dreaming of his children becoming a qualified person in life. Therefore, the obligation of a father to maintain, to meet the educational expenses of his children cannot be excluded for the component of maintenance. Section 125 Cr.P.C. is not only for food for life, it should also be for food for thought. Otherwise, so far as the children are concerned, we will be doing violence to the very object of Section 125 Cr.P.C."*

14. In the instant case, the challenge to the maintenance granted for the education of the major son has been mounted by the Respondent on the ground that it is contrary to the relevant statutory provision, i.e. Section 125, and that it diametrically opposes the interpretation of Section 125 as has been laid down in Amarendra Kumar Paul v. Maya Paul & Ors. (supra).

15. The Supreme Court in Amarendra Kumar Paul v. Maya Paul & Ors. (supra) has interpreted Section 125 Cr.P.C. and held that an application for grant of maintenance would be maintainable for an illegitimate or legitimate child, whether married or not, as long as it has not attained majority and is unable to maintain itself. The Hon'ble Apex Court had observed as follows:

> *"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".

16. It would be pertinent at this juncture to reproduce the relevant portion from the impugned Judgement which has been sought to be recalled by the Respondent herein. It reads as follows:

*"**12.** The Petitioner No. 1 is working as an Upper Division Clerk in Delhi Municipal Corporation, earning about Rs. 60,000/- per month. The records indicate that the respondent has filed his salary certificate which shows that his gross monthly income, as on November, 2020, is Rs. 1,67,920/-. The two children are living with the mother. After attaining the age of majority, the entire expenditure of the petitioner No.2 is now being borne by the Petitioner No.1. The petitioner No.1 has to take care of the entire expenditure of the Petitioner No.2 who has now attained majority but is not earning because he is still studying. The learned Family Court, therefore, failed to appreciate the fact that since no contribution is being made by the respondent herein towards the petitioner No.2, the salary earned by the petitioner No.1 would not be sufficient for the petitioner No.1 to maintain herself. This Court cannot shut its eyes to the fact that at the age of 18 the education of petitioner No.2 is not yet over and the petitioner No.2 cannot sustain himself. The petitioner No.2 would have barely passed his 12th Standard on completing 18 years of age and therefore the petitioner No.1 has to look after the petitioner No.2 and bear his entire expenses. It cannot be said that the obligation of a father would come to an end when his son reaches 18 years of age and the entire burden would fall only on the mother. The amount earned by the mother has to be spent on her and on her children without any contribution by the*

> *father because the son has attained majority. The Court cannot shut its eyes to the rising cost of living.* ***It is not reasonable to expect that the mother alone would bear the entire burden for herself and for the son with the small amount of maintenance given by the respondent herein towards the maintenance of his daughter. The amount earned by the petitioner No.1 will not be sufficient for the family of three, i.e. the mother and two children to sustain themselves. The amount spent on the petitioner No.2 will not be available for the petitioner No.1. This Court is therefore inclined to grant a sum of Rs. 15,000/- per month as interim maintenance to the petitioner No.1 from the date of petitioner No.2 attaining the age of majority till he completes his graduation or starts earning whichever is earlier.*** *The instant petition was filed in the year 2008. The learned Family Court is directed to dispose as expeditiously as possible, preferably within 12 months of the receipt of a copy of this order."*
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> (emphasis supplied)

17. A perusal of the relevant portion of the aforementioned paragraph reveals that this Court has not granted the interim maintenance allowance to Petitioner No.2 (the son who has attained majority), but to Petitioner No.1 for maintaining Petitioner No.2 till he completes his graduation or starts earning, whichever is earlier. In view of this, the judgement relied upon by the learned Counsel for the Respondent is not applicable to the instant case as maintenance has not been granted to the major son in the first place, but to the mother. Therefore, the ground on the basis of which the Respondent has sought the recall of the impugned Judgement does not appertain to the matter herein.

18. Furthermore, the contentions that this Court has erred in proceeding

on the basis that maintenance has not been granted to Petitioner No.1 and that educational expenses are being footed by the employer of Petitioner No.1 cannot be taken into consideration as the duty of the Respondent to bear the responsibilities to raise his children and educate them cannot be extinguished at the end of the day.

19. Before closing the matter, this Court would further like to note that statutes or provisions, which are particularly for the furtherance of social welfare, must be construed liberally. It is well settled that the Courts should adopt the rule of purposive interpretation while construing the provisions in a social legislation and that the same must be done in a manner which advances the *purpose* for which the legislation was enacted. Therefore, the legislative intent, i.e. the purport and object of the Act, must be read in its entirety in order to ensure that the interpretation of the Court does not further the mischief that was sought to be curbed by the legislature in the first place. (See S. Gopal Reddy v. State of Andhra Pradesh, **(1996) 4 SCC 596**). In Indian Handicrafts Emporium and Others v. Union of India, **(2003) 7 SCC 589,** the Supreme Court had observed that the best textual interpretation of a legislation or a statutory provision would be one that would match the contextual. Therefore, in this context, social welfare legislations cannot and should not be interpreted in a narrow manner because doing so will defeat the purpose for the enactment of such legislation and will become counterproductive.

20. In Savitaben Somabhai Bhatiya v. State of Gujarat, **(2005) 3 SCC 636,** the Supreme Court, while interpreting Section 125 Cr.P.C. had observed that sections of statutes which called for construction by Courts were not petrified print, but vibrant words for social functions to fulfil. It had

stated that for social relevance, interpretation had to be informed by the brooding presence of the constitutional empathy for weaker sections like women and children. (See also Shantha Alias Ushadevi and Anr. v. B.G. Shivananjappa, **(2005) 4 SCC 468**).

21. The context of Section 125 Cr.P.C. is to ensure that the wife and the children of the husband are not left in a state of destitution after the divorce. The husband must also carry the financial burden of making certain that his children are capable of attaining a position in society wherein they can sufficiently maintain themselves. The mother cannot be burdened with the entire expenditure on the education of her son just because he has completed 18 years of age, and the father cannot be absolved of all responsibilities to meet the education expenses of his son because the son may have attained the age of majority, but may not be financially independent and could be incapable of sustaining himself. A father is bound to compensate the wife who, after spending on children, may hardly be left with anything to maintain herself.

22. In light of the above, the application is accordingly dismissed.

23. Pending applications, if any, stand disposed of.

SUBRAMONIUM PRASAD, J.

OCTOBER 05, 2021
Rahul