

Muhammed Vs. Kunhayisha

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Court : Kerala

Decided On : Jun-19-2003

Reported in : II(2003)DMC756; 2003(3)KLT106

Judge : R. Basant, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : R.P. (F.C.) No. 12 of 2003

Appellant : Muhammed

Respondent : Kunhayisha

Advocate for Def. : K.P. Mujeeb, Adv.

Advocate for Pet/Ap. : K.M. Sathyanatha Menon, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

R. Basant, J.

1. Is a Muslim daughter, notwithstanding the fact that she has attained majority and notwithstanding the fact that she suffers from no physical or mental abnormality or injury, entitled to claim maintenance under Section 125 Cr.P.C.?

Does the decision of the Supreme Court reported in *Noor Saba Khatoon v. Mohd. Quasim* (1997 SCC (CRL) 924), confer on her any such right? These are the questions that fall for determination in this revision petition.

2. Fundamental facts are all admitted. The parties are referred to in this order in the manner in which they are ranked before the Family Court. The second petitioner is aged 20 years. She is the daughter of the counter petitioner (revision petitioner herein). She along with her mother claimed maintenance under Section 125 Cr.P.C. The mother's claim for maintenance was turned down. That rejection has now become final without challenge. I need not hence advert to her claim at all.

3. There is no contention that the second petitioner/daughter is by reason of any physical or mental abnormality or injury unable to maintain herself. That she is unable to maintain herself is asserted in the petition and at any rate there is no satisfactory evidence now to come to either conclusion. Thus the question is only whether an unmarried Muslim daughter unable to maintain herself, who has no physical or mental abnormality or injury is entitled to claim maintenance from her father under Section 125 Cr.P.C.

4. I have been taken through the provisions of Section 125 Cr.P.C. The Legislature has advisedly chosen to employ expressions and terminology in the 1973 Code armed with the wisdom and expertise gained from the working of Section 488 of the earlier Code. Section 125 Cr.P.C. is a piece of secular law applicable to all persons in India whatever be their religious faith. Chapter IX of the Cr.P.C. though it appears in the procedural/adjactival Code confers substantive rights and provides a machinery for enforcement of such rights. To maintain one's own wife/child/parent etc. may have been the duty under the personal law or purely under the norms of morality of the Society earlier. But under Section 125 it is made the legal duty of all Indians. It is a futile exercise to look for authority under the personal law for the statutory stipulations in Chapter IX. That is, according to me, an unnecessary exercise. Whatever be the basis or the rationale which prompted the Parliament to impose such a duty on the parent/husband/children to maintain their children/wife/parents, it remains that Chapter IX creates such statutory

liability and seeks to enforce the same through the criminal adjudicatory process. It is true that Courts have on some occasions, unnecessarily perhaps, looked up to the personal law to discover/invent the basis or rationale of the provisions of Chapter IX. But whether such rationale/basis exists or not, it is very evident that Section 125 Cr.P.C. obliges every person to maintain the persons specified in Clauses (a) to (d) of Section 125(1). Parliament's competence to impose such a duty on all is beyond controversy.

5. We are in this revision concerned with clauses (b) and (c). They deal with the obligation of every person to maintain children. Minor children are covered under the sweep of clause (b) whereas the major children are covered by the sweep of clause (c). All minors are entitled to look up to their parents to provide maintenance to them. Whether such minor children are married or not the obligation of the parents continue. Clause (b) therefore applies only to minor children and they are entitled for payment of maintenance if the other pre-conditions are satisfied.

6. The right to claim maintenance from their parents is not confined only to minor children. Even children who have already attained majority are entitled to be maintained by their parents. Their case is covered by clause (c). Two fundamental pre-conditions are to be satisfied if such a child who has attained majority were to claim maintenance from its parents. They are

(1) Such child should not be a married daughter. The Legislature advisedly appears to have excluded married major daughter from the sweep of Section 125(c) as she is entitled to claim maintenance from her husband under Section 125(1)(a).

(2) Such child must be one unable to maintain itself 'by reason of any physical or mental abnormality or injury'. In respect of such children suffering from such physical or mental abnormality the parent is made liable to maintain them even beyond the period of minority. This is obviously because they are unable to maintain themselves and cannot be expected to do so on account of their physical and mental infirmity. Vagrancy has to be prevented and the charge of looking after them must be assigned to some one and undoubtedly their parents having

sufficient means are the best persons who must be obliged to shoulder that responsibility.

7. In the instant case the second petitioner is not a married daughter and therefore that disability does not apply to her, But is she unable to maintain herself 'by reason of any physical or mental abnormality or injury'? This is the crucial question. There is absolutely no pleadings or evidence to show that she does suffer from any physical or mental abnormality or injury.

8. The learned counsel for the respondent contends that a Muslim married daughter must be presumed to suffer from physical or mental abnormality or injury. Her status as an unmarried daughter born to Muslim parents is the physical/mental abnormality or injury which she suffers from. Therefore she is entitled for maintenance, it is contended.

9. Even hard cases cannot lay down bad law and the Court has to be very conscious of that. The language of Section 125, according to me, does not at all permit a construction that the status of a major daughter as an unmarried person can by itself be construed as 'physical or mental abnormality or injury' sufficient, to bring her case within the sweep of Section 125(c). Whatever be the religion of the parties, the language of the Statute does not permit an unmarried major daughter to be brought within the purview of Section 125(c) on that sole reason/ground of her being an unmarried daughter. She has to prove further that she is unable to maintain herself and such inability to maintain herself is attributable to physical or mental abnormality or injury, if any, which she is afflicted with. If the intention of the Legislature were to grant maintenance to unmarried female children, solely on the ground that they are unmarried female children, nothing prevented the Legislature from making express provisions imposing liability on the parents to provide maintenance to their female children till they are married. Their disability - if that be one, of remaining unmarried alone was definitely not reckoned by the Legislature as sufficient to entitle them to claim maintenance under Section 125 Cr.P.C. That evidently is the reason why the Parliament which must be presume to have been conscious of the rights of the, unmarried daughters under the Hindu and Mohammedan personal law (statutory and customary) to claim maintenance

from their parents till they are married, did not choose to confer such right on them under Section 125 Cr.P.C.

10. All available indications from the Statute as also precedents seem to convincingly lead the Court to the conclusion that an unmarried female child cannot claim maintenance from her parents unless her inability to maintain herself is attributable to her physical or mental abnormality or injury.

11. It is contended that the Supreme Court has held contra in the decision reported in *Noor Saba Khatoon v. Mohd. Quasim* (AIR 1997 SC 3280). Reliance was placed particularly on the conclusion of the Supreme Court expressed in para 11 of the said judgment, which I extract below:

'Thus our answer to the question posed in the earlier part of the opinion is that the children of Muslim parents are entitled to claim maintenance under Section 125 Cr.P.C. for the period till they attain majority or are able to maintain themselves, whichever is earlier, and in case of females till they get married, and this right is not restricted, affected or controlled by divorcee wife's right to claim maintenance for maintaining the infant child/children in her custody for a period of two years from the date of birth of the child concerned under Section 3(1)(b) of the 1986 Act. In other words Section 3(1)(b) of the 1986 does not in any way affect the rights of the minor children of divorced Muslim parents to claim maintenance from their father under Section 125 Cr.P.C. till they attain majority or are able to maintain themselves or in the case of females, till they are married'. (emphasis placed by counsel on the words underlined)

12. Reliance was also placed on paragraphs 9 and 10 of the said judgment, in which the Supreme Court refers to the absolute liability of the Muslim father to maintain his female children till they get married under their personal law.

13. It is further contended that a later decision of the Supreme Court in *Jagdish Jugtawat v. Manjit Lata and Ors.* (2002) 5 SCC 422, has further confirmed that the Supreme Court in the earlier decision had intended to declare that a Muslim unmarried daughter is entitled to claim maintenance under Section 125 Cr.P.C. on that sole ground. Reliance was placed on the following passage appearing in para.

3 of the said judgment:

'A similar question came up for consideration by this Court in the case of Noor Saba Khatoon v. Mohd. Quasim relating to the claim of a Muslim divorced woman for maintenance from her husband for herself and her minor children. This Court while accepting the position that Section 125 Cr.P.C. does not fix liability of parents to maintain children beyond attainment of majority, read the said provision and Section 3(1)(b) of the Muslim Women (Protection of Rights on Divorce) Act together and held that under the latter statutory provision liability of providing maintenance extends beyond attainment of majority of a dependant girl'.

14. A judicial precedent is authority only for the principle which it declares and applies to the fact before it. Of course even the obiter of the Supreme Court is binding on all courts of the land. But precedents are not to be read, reckoned and understood as statutory provisions are read, reckoned and understood. In Noor Saba Khatoon's case the argument before the Supreme Court was that a Muslim father does not have the liability to pay maintenance to his minor children aged more than two years because of the provisions in Section 3(1)(b) of the Muslim Women (PRD) Act. The Supreme Court repelled that contention and held that the provisions of the Muslim Women (PRD) Act do not at all affect the rights of the children to claim maintenance under Section 125 Cr.P.C. The Supreme Court was not called upon to consider whether a Muslim daughter who has attained the age of majority is still entitled to claim maintenance from her father under Section 125 Cr.P.C. That question was not decided by the Supreme Court. The Supreme Court was dealing with the claims of three minor children. The dictum in the said decision is only that the claims of children under Section 125 Cr.P.C. are unaffected by the provisions of the Muslim Women (PRD) Act. This and this alone was considered, discussed and decided by the Supreme Court in the said decision. Of course, while stating that the rights of the children under Section 125 Cr.P.C. are not affected, the Supreme Court did proceed to refer to such rights. It would be puerile and myopic to come to any conclusion about the ambit of the rights of major unmarried female children from the observations made in paragraph 11 in a totally different context. That certainly is not the correct way to understand a precedent. Instead of stating that the rights of the children under

Section 125 Cr.P.C. are not affected by the provisions of the Muslim Women (PRD) Act, the Supreme Court said that their rights under Section 125 Cr.P.C. to claim maintenance from their parents till they attain majority etc. are not affected. It would be totally unreasonable to reckon that observation as laying down the nature of the rights which a child has under Section 125 Cr.P.C. The decision is authority only for the proposition that rights under Section 125 are not affected. It does not lay down or declare what the rights under Section 125 are. It would be artificial, improper and unreasonable to construe the observations in Noor Sabha as expanding the right to maintenance under Section 125 Cr.P.C. to all major unmarried daughters or to all major Muslim unmarried daughters.

15. The later decision of the Supreme Court, which I have already extracted above, was also not concerned with the precise question as to whether unmarried daughters of Muslim parents are entitled to claim maintenance even if they do not suffer from physical or mental abnormality or injury under Section 125(c). It would be incorrect to read into the observations in paragraph 3 extracted above the declaration of law that major unmarried daughters who do not suffer from any physical or mental abnormality or injury would be entitled to claim maintenance from their father solely on the ground of their status as unmarried daughters.

16. In the instant case the learned Family Court has committed the error of reckoning the decision in Noor Saba Khatoon's case as laying down and declaring a proposition that major unmarried daughters are on that ground alone entitled to claim maintenance from their father until such status as unmarried daughter continues. No such proposition springs out of the said decision of the Supreme Court.

17. The learned counsel for the respondent relying on the course followed by the Supreme Court in Jagdish Jugtawat's case contends that the impugned order may not be disturbed. The learned counsel, relying on the observations in Noor Saba Khatoon's case in paragraphs 9 and 10 contends that at least under the personal law the respondent/major unmarried daughter is entitled to claim maintenance from her father. In these circumstances, following the course adopted by the Supreme Court in Jagdish Jugtawat's case, the impugned order may not be set

aside, it is contended.

18. The learned counsel for the revision petitioner, on the other hand, contends that he had no opportunity to defend a claim under the personal law. A contention was specifically raised that the second respondent is not entitled for maintenance as she had attained majority and is healthy. There was no specific pleadings or evidence to show that she was unable to maintain herself. In these circumstances the revision petitioner was not called upon to meet the claim under the personal law and he had not raised contentions which he could have raised if such a claim under personal law were raised. He was not called upon to defend such a claim. I do find merit in this contention. In the total absence of satisfactory pleadings or evidence on the question of inability of the respondent daughter to maintain herself, I am of opinion that it will be improper in this proceedings to conclude that the respondent/major unmarried daughter is entitled to claim maintenance under the personal law from the revision petitioner, her father. It follows, therefore, that the impugned order cannot be upheld. The claim, if any, under the personal law will have to be raised and decided in appropriate proceedings before appropriate forum.

19. The above discussions lead me to the specific and irresistible conclusion that under Section 125 Cr.P.C. a major unmarried daughter is not entitled to claim maintenance from her parents unless her inability to maintain herself is attributable to her physical or mental abnormality or injury and that her mere status as an unmarried daughter -whatever be her religion - does not entitle her to claim maintenance under Section 125 Cr.P.C. The decisions of the Supreme Court referred above do not also clothe her with any such right. The impugned order therefore deserves revisional interference. The challenge succeeds.

20. In the result

(a) this revision petition is allowed.

(b) the impugned direction to pay maintenance to the counter petitioner/daughter is set aside.

