

DE JURE NEXUS LAW JOURNAL

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**ABHILASHA VS. PRAKASH**

Court: The Supreme Court of Indian

Citation: Criminal Appeal No. 615 of 2020 (arising out of SLP(Crl.) No. 8260/2018)

Coram – Ashok Bhushan, J.

Theme- Appeal by a daughter(major) for her maintenance from her father.

Subject: Code of Criminal Procedures 1974, Hindu Adoption and Maintenance Act,1956.

Judgement- India

LAW JOURNAL

BRIEF FACTS OF THE CASE

The appellants, who filed the case challenging the orders of high court was the daughter of the respondent (the mother). The respondent filed a case against the father (Prakash) for the maintenance for her family. the judicial magistrate gave a judgement dated February 16th 2011 and cancelled the plea for the maintenance of the mother and the two sons and granted the maintenance to the daughter (appellant) till she reaches/attains the age of majority.

As the grant to maintenance was not given to all of them by the judicial magistrate, all the applicants filed a revision of the prior plea and this was in front of the court of session judge, this was dismissed and stated that Abhilasha (the appellant daughter) will only be entitled or will only get the maintenance till April 26th, 2005 that is until then she will remain a minor and after that date she will become a major and hence, will not be entitled to the maintenance by her father Prakash. At this point the mother filed an application under 482 of the Criminal Procedure Act.

The high court in its judgement of 2018 dismissed the application filed by the applicants under the same section as the high court said that the judgements or decisions of the judicial magistrate and the additional session court cannot be challenged and rejected as they were valid statements on their parts. High court further stated that the daughter will be entitled to get the maintenance only till she attains the majority and once she does, she will no more be able to get the maintenance from his father. And in this case, Abhilasha has already attained the age of majority therefore no maintenance is needed to be provided as according to the section of the criminal procedure states that the major child either legitimate or illegitimate will get the maintenance only when they are unsound or disabled either physically or mentally.

Later a very senior counsel argued that Abhilasha was still unmarried and according to the section of the Hindu adoption and maintenance act, a father has a duty of his to maintain and provide for his daughter until she marries and hence, an obligation was made around Prakash.

The judgement came as clear as a crystal, the question was that whether maintenance will be given to Abhilasha till she remains unmarried. The question was answered by the section of 125 of the criminal procedure and it stated that any Hindu unmarried girl will only get the maintenance from any person only if she is not in the position to maintain herself due to any mental or physical condition. And when the decision of high court was challenged in the supreme court the judgement remained the same as the supreme court also stated the previously stated laws.

ANALYSIS OF THE CASE

In this particular case, the appellant had already attained the age of majority in the year 2005 and still the respondent (Mother) still demanded the money for the maintenance for herself and her two sons and her daughter (appellant) even after the judicial magistrate and the additional session court under the section 125 of the criminal procedure code, according to this section it orders to give maintenance to the wife, children and parents in any case if they are not able to maintain themselves, the person will be liable to pay the maintenance to the children if they are minor and are not able to afford a living for themselves by working only then the father or the person will be liable or will be obligated to pay the sum of money as a maintenance and in this particular case no child or the wife was mentally or physically incapable to earn money hence, this application was canceled under the section 125 of the CrPC.

This decision was then challenged in the high court as the applicants then went to high court and filed an application against the judicial magistrate and the additional session court under the section 482 of the CrPC. Which says, that the high court will have the power to provide a proper justice in any case where the other tribunals and to provide the proper justice, the high court provided a judgement under the section 482 of the CrPC that both the judicial magistrate and the additional session court provided a correct decision as according to the section 125 of the CrPC, “the maintenance will only be provided to the children if they are having some kind of mental or physical illness or disability”. In this case the children had all attained an age of majority and were all healthy. Hence, no maintenance was to be given to them was the final decision of the high court.

Then there was another application filed in the supreme court which challenged the judgement of the high court and this time the case was filed by the appellant under the section 20 of the

Hindu adoption and maintenance act, 1956 as she is currently unmarried and that she should be given maintenance until she marries a person and under the section 125 of the CrPC that the daughter (appellant) is still entitled for the maintenance.

This was again a false claim as according to these above-mentioned sections the applicants were not in any way entitled or should be given the maintenance as they were all majors with perfectly healthy mind and body.

ISSUES OF THE CASE

The main issue of the case was that whether the appellant was entitled to take the maintenance from the respondent No. 2 who was the father. The first issue when the mother filed an application and according to this section the mother stated that they should be entitled to get the maintenance from the father (Prakash). As according to this section, the wife, children and the parents will get the maintenance only if they are physically or mentally ill. Which in case this was not the problem as all of the applicants were healthy.

The next issue was through which the application was section 482 of the criminal procedure code in which it was stated that the judicial magistrate and the additional session court consistently denied the application and hence it was stated that both the judicial magistrate and the additional session court and hence the application was filed in the high court but the decision of the high court was not in the sides of the applicants. Once again, a plea was made in the supreme or the apex court by the daughter (Abhilasha) against her father (Prakash). With a view that the respondent should have an obligation to pay the maintenance to the appellant till she gets married, according to the section 20 of the Hindu adoption and maintenance act, 1956. And also, under the section 125 of the section, 1974. According to this section the maintenance should be provided to the appellant by Mr. Prakash but then the supreme court passed the judgement which canceled the plea or the application of the applicants and ordered Mr. Prakash to not to pay any maintenance. The problem with this case was also that the applicants were all at the age of majority and were all in good shapes to work and earn a living. They would have been entitled to the maintenance if they would have been in a very bad conditions and would not be able to work because of some reasonable condition.

JUDGEMENT

The first judgement was issued by the judicial magistrate according to the section 125 of the CrPC and according to this section it was stated that the wife and her two sons will not be getting any maintenance from the father/respondent (Prakash) and the only person who will be getting the maintenance will be Abhilasha who was at that time a minor.

Not happy with the judgement/decision of the Judicial magistrate the applicants then went to the additional session court, they again filed an application under the section 125 of the CrPC and again the judgement that came was that Abhilasha will only be getting the maintenance till she attains majority which was in the year 2005, the judgement came by the year 2011. The applicants were not satisfied with this judgement either and hence, they now appealed in the high court where they challenged the judgement of both the judicial magistrate and the

additional session court under the section 482 of the CrPC and they claimed that both of them have not played their roles diligently and that they have both consistently denied the maintenance and because of which they have now put a plea in the high court about the same.

The judgement of the high court came and it denied all the claims and it stated that the applicants will not be entitled to the maintenance as all of them were now of majority age and they can work for their living. In addition the High court also stated that the decisions and the judgements given by the prior judges were of good quality which meant these judgements should have been adhered to.

Still not compromising with the judgements, the applicants now filed a plea in the supreme court challenging the judgement of the high court, under the section 125 of the CrPC and the section 20 of the Hindu adoption and Maintenance Act, 1956. According to which they stated that the appellant (Abhilasha) is unmarried and according to the later act she must get maintenance from his father (Prakash) until she gets married to someone. Supreme court's judgement came in the year 2020 which stated that, the respondent will not be liable to pay any maintenance amount as Abhilasha however unmarried is in a complete position to earn a living and also stated that according to the section 20(3) of the Hindu adoption and maintenance act a child or daughter only gets maintenance from her guardians only if she is physically or mentally ill by any chance. Therefore, this was the final verdict of the supreme court.

CURRENT SITUATION OF THE CASE

The last scenario was the judgement of the supreme court which came in the year 2020 and it stated that the application will be canceled as the decisions given by the other courts was valid. As of now, Mr. Prakash is not obligated to pay any maintenance amount to the appellant as she has already attained majority and she is both mentally and physically well and is in the perfect state to earn a living for herself and to live a normal life, she need not to be dependent on the respondent No. 2. And according to section 20 of the Hindu adoption and maintenance act the appellant will not get any money till she marries because the maintenance is given to only those who are mentally or physically backwards or ill.

CONCLUSION

In conclusion, I would like to say that the sections 125 of the CrPC and section 20 of the Hindu adoption and maintenance act were formulated as to provide necessary maintenance to the person who requires it, the person who really does need to get the maintenance are the people who are mentally or physically challenged and are not able to make the ends meet. According to the section 125 of the CrPC it states that the maintenance will only be given to any person who has not attained the age of majority and is still a minor and hence has no means to work by his own legally. The Hindu adoption and maintenance act on the other hand states that if you are a Hindu unmarried girl then you will still not be entitled to get the maintenance, until and unless you are in a good condition till then you can earn on your own and go through with your life without any dependency.