

(2025:HHC:31444)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Revision (FC) No. 49 of 2024.

Judgment Reserved on : 06.08.2025.

Date of decision: 12.09.2025.

Rishita Kapur and another **...Petitioners.**

Versus

Vijay Kapur and another **...Respondents.**

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting? Yes

For the Petitioners : Mr. Ramakant Sharma and Mr. Parav Sharma, Advocates.

For the Respondents : Mr. Ashwani Pathak, Senior Advocate with Mr. Dev Raj, Advocate, for respondent No.1.

Mr. Rupesh Kumar, Advocate, for respondent No.2.

Vivek Singh Thakur, Judge

Petitioners have approached this Court against the dismissal of their application for enhancement of maintenance vide order dated 07.03.2024 passed in Petition No.24/22/18 by Additional

Principal Judge, Family Court, Sarkaghat, District Mandi, H.P.

2. Petitioners herein are children of respondent No.1 Vijay Kapur and proforma respondent No.2 Neelam Kumari. The dates of birth of petitioner No.1 Rishita Kapur and petitioner No.2 Suchet Kapur are 01.08.1998 and 17.03.2002, respectively. They have attained majority on 01.08.2016 and 17.03.2020, respectively.

3. According to the petitioners, petitioner No.1 is pursuing her study of Ph.D from H.P. Krishi Vishwa Vidyalaya, Palampur, District Kangra and petitioner No.2 is doing B.Tech from Guru Nanak Dev University, Amritsar (Punjab). It has been submitted that for financial constraints, their studies are bound to be adversely affected and disrupted.

4. In an application preferred by proforma respondent No.2 Neelam Kumari and present petitioners, under Section 125 Cr.P.C., against respondent Vijay Kapur, for grant of maintenance allowance, Judicial Magistrate First Class, Sarkaghat, vide order 09.07.2012 had awarded Rs.2000/- per month maintenance to each of the applicants.

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5. In revision petition preferred against the aforesaid order, Additional Sessions Judge-II, Mandi, Camp at Sarkaghat vide order dated 20.03.2015 had enhanced maintenance from Rs.2,000/- to Rs.3,000/- per month. Subsequently, the aforesaid maintenance allowance was enhanced to Rs. 4,000/- per month in Lok Adalat on 22.07.2017.

6. Thereafter, on 02.07.2018, proforma respondent Neelam Kumari and petitioners preferred a petition under Section 127 Cr.P.C. for further enhancement of the maintenance allowance.

7. The Additional Principal Judge, Family Court, Sarkaghat, allowed the enhancement from Rs.4,000/- to Rs.8,000/- per month with respect to proforma respondent No.2, but dismissed the claim of enhancement of maintenance qua petitioners on the ground that they have attained the age of majority.

8. Section 125 of Cr.P.C. and corresponding Section 144 of Bharatiya Nagarik Suraksha Sanhita, provides *pari materia* provisions with respect to entitlement of wife and children for maintenance, if any person having sufficient means, neglects or refuses to

maintain (a) his wife, unable to maintain herself; (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself; and (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.

9. From the aforesaid provisions, it is apparent that a child (legitimate or illegitimate) is entitled for maintenance from father before attaining the age of majority and after attaining such majority, only that child (legitimate or illegitimate) shall be entitled for maintenance, who because of physical or mental abnormality or injury is unable to maintain itself.

10. In the present case, petitioners are legitimate children of respondent No.1 and proforma respondent No.2. They are not suffering any physical or mental abnormality or injury so as to render them incapable to maintain.

11. In view of provisions of Section 125 Cr.P.C., petitioners were legally entitled for maintenance till attaining the age of majority. Therefore, petitioner

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No.1(daughter) was entitled for maintenance from her father under Section 125 Cr.P.C. till 01.08.2016, whereas, petitioner No.2 (son) was entitled for maintenance under Section 125 Cr.P.C. till 17.03.2020.

12. At the time of filing application for enhancement on 02.07.2018, petitioner No.1 (daughter) was already major for attaining the age of majority on 01.08.2016. However, petitioner No.2 (son) was minor till 17.03.2020.

13. Family Court keeping in view the index of price of essential commodities as well as salary of respondent No.1 and other circumstances has enhanced the maintenance of proforma respondent No.2 from Rs.4,000/- to Rs.8,000/- per month. No challenge has been laid to this enhancement. Therefore, this enhancement has attained finality between the parties.

14. This enhancement has been made payable from the date of filing of the application i.e. 02.07.2018. Family Court has failed to notice that though petitioner No.1 (daughter) had attained majority on 01.08.2016 i.e. prior to filing of application for enhancement of

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maintenance, however, petitioner No.2 (son) was minor at that time who attained majority only on 17.03.2020. Being a minor till 17.03.2020, petitioner No.2 was entitled for enhancement till 17.03.2020. Therefore, Family Court has committed a mistake by rejecting the claim of enhancement on behalf of petitioner No.2 in toto, instead from the date of attaining the age of majority. Petitioner No.2 is entitled for enhanced amount of maintenance at the rate of Rs.8,000/- from 02.07.2018 till 17.03.2020.

15. Section 26 of the Hindu Marriage Act, 1955, deals with custody, maintenance and education of minor children and such children are entitled for maintenance and education during the pendency of the proceedings under Section 26 of Hindu Marriage Act as well as thereafter, but it again provides maintenance only for minor children.

16. Section 20(2) of the Hindu Adoptions and Maintenance Act, 1956, also provides that legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is minor. Section 20(3) states of an obligation of a person to

maintain a daughter, who is unmarried and is unable to maintain herself out of her own earning or other property.

17. Though in Section 26 of the Hindu Marriage Act, daughter shall be entitled for maintenance till attaining the age of majority, however, under Section 20(3) of the Hindu Adoptions and Maintenance Act, an unmarried daughter, unable to maintain herself out of her own earning or property, is entitled for maintenance from her father, irrespective of her age. However, Section 125 Cr.P.C. (now Section 144 of BNSS) does not have provisions for maintenance to a major daughter, even if she is unmarried.

18. In view of above, we do not find any infirmity, illegality or perversity in the order denying maintenance to petitioner No.1 Rishita Kapur. However, as noticed supra, there is a mistake committed by the Family Court by denying maintenance to petitioner No.2 Suchet Kapur at the enhanced rate from 02.07.2018 to 17.03.2020. Therefore, apart from respondent No.2 Neelam Kumari, petitioner No.2 shall

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also be entitled for maintenance at the enhanced rate of Rs.8,000/- per month from 02.07.2018 to 17.03.2020.

19. In case, maintenance amount has not been paid by respondent No.1, he shall pay the arrears on or before 15.10.2025 to petitioner No.2 Suchet Kapur.

20. In case respondent No.1 has paid maintenance to petitioners No.1 and 2 even after attaining the age of majority by them, even then, he shall not be entitled to recover the same or adjust it against maintenance payable to either of child or proforma respondent No.2 because being a father, even if, he has no legal duty, but has a moral obligation and duty as a father to ensure maintenance to his children, particularly, when they are at the verge of completing their education as any order to refund the amount paid in excess to the children would hamper the future prospects of the petitioners.

21. Needless to say, the rejection of prayer of petitioners for their maintenance after attaining the age of majority under Section 125 Cr.P.C. shall not debar them from claiming their right for maintenance or otherwise in the estate of their father or predecessors-

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in-interest, if any, with them under other provisions of law.

22. With the aforesaid observations, petition is partly allowed in aforesaid terms upholding the right of petitioner No.2 Suchet Kapur for enhanced maintenance uptill 17.03.2020 from 02.07.2018. Rest prayer is rejected with rider that respondent No.1 shall not be entitled for refund of any amount paid in excess for maintenance to his children.

All pending applications also stand disposed of.

(Vivek Singh Thakur)
Judge

(Sushil Kukreja)
Judge

12th September, 2025.
(krt)