

38. **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CRL.M.C. 704/2007 & CRL.M.C. 2405/2007

Date of order : 7th March, 2008

SUDERSHAN KUMAR BHASIN Petitioner
Through Mr. Gurinder Pal Singh with
Mr. Nitin Mangla, Advocates.

versus

KAMAL BHASIN Respondent
Through Mr. M.R. Akhtar Hussain, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

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| 1. Whether Reporters of restricted papers may be allowed to
see the order? | Yes |
| 2. To be referred to the reporter or not? | Yes |
| 3. Whether the order should be reported in the Digest? | Yes |

Dr. S. Muralidhar, J. (open court)

1. This petition challenges an order dated 15th February, 2007 passed by the learned Additional Sessions Judge ('ASJ'), Delhi in Criminal Revision No. 25 of 2006 affirming an order dated 14th November, 2005 passed by the learned Metropolitan Magistrate ('MM'), Delhi granting interim maintenance @ Rs. 2,000/- per month in Petition No. (RT) MP 651/04/1996.

2. Three grounds have been urged by the learned counsel for the Petitioner to assail the impugned order of the learned ASJ.

3. First, it is submitted that the Respondent has filed the petition under Section 125 of the Code of Criminal Procedure, 1973 ('CrPC') stating that she was the step-mother of the Petitioner here. In other words, she did not dispute the fact that she married the father of the Petitioner after the Petitioner was born to the earlier wife. According to the learned counsel for the Petitioner, there is no legal obligation, under Section 125 CrPC, for a step-son to maintain his step-mother. He places reliance on the judgment of the Hon'ble Supreme Court in ***Kirtikant D. Vadodaria v State of Gujarat (1996) 4 SCC 479***.

4. Secondly, it is submitted that in certain pending civil proceedings, the brother of the Respondent has deposed to the effect that the Respondent was married to some other person and not to the Petitioner's father. It is stated that although the said evidence was recorded on 22nd January 2004, i.e., prior to the passing of the order by the learned MM on 14th November 2005, it could not be brought to the notice of either the learned MM or the learned ASJ.

5. Thirdly, and without prejudice to the above submissions, it is urged that the costs of Rs. 20,000/- imposed on the Petitioner by the impugned order is excessive and ought to be reduced.

6. The learned counsel for the Respondent has raised a preliminary objection to the maintainability of this petition under Section 482 CrPC. He submits that the impugned order dismissing the revision petition, cannot further be challenged in a

petition under Section 482 CrPC.

7. For reasons discussed hereafter, this Court finds no ground having been made out for interference and therefore does not prepare to deal with the preliminary objection.

8. As regards the first ground, it is seen from the impugned orders of the learned MM and the learned ASJ, as well as the revision petition filed before the learned ASJ, that the ground that the petitioner is not obliged to maintain the Respondent step-mother in his capacity as a step-son, was never urged before those courts. Nevertheless, since the Petitioner sought to urge this as a pure question of law, he was permitted to do so by this Court. The law in relation to the obligation of a step-son to maintain a step-mother, in the context of Section 125 CrPC, has been explained by the Hon'ble Supreme Court decision in ***Kirtikant D. Vadodaria*** in para 15 as under:

“15. The point in controversy before us however is whether a ‘*stepmother*’ can claim maintenance from the stepson or not, having regard to the aims and objections of Section 125 of the Code. 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. Having regard to this special object the provisions of Section 125 of the Code have to be given a liberal construction to fulfill and achieve this intention of the legislature. Consequently, to achieve this objective, **in our opinion, a childless step-mother may claim maintenance from her step-son provided she is a widow or her husband, if living, is also incapable of supporting and maintaining her.** The obligation of the son to maintain his father, who is unable to maintain himself, is unquestionable. When she claims maintenance from her natural born children, she does so in her status as their ‘mother’. Such an interpretation would be in accord with the explanation attached to Section 20 of the Hindu Adoptions and Maintenance Act, 1956 because to exclude altogether the Personal Law applicable to the parties from consideration in matters of maintenance under Section 125 of the Code may not be wholly justified. However, no intention of Legislature can be read in Section 125 of the Code that even though a mother has her real and natural born son or sons and a husband capable of maintaining her, she could still proceed against her step-son to claim maintenance. Since, in this case we are not concerned with, we express no opinion, on the question of liability, if any, of the step-son to maintain the step-mother, out of the inherited family estate by the step-son and leave that question to be decided in an appropriate case. Our discussion is confined to the obligations under Section 125 Cr. PC only.” (emphasis supplied)

9. It is clear from the above enunciation of the law by the Hon’ble Supreme Court that a step-mother who is childless, and is either a widow or where her husband is unable to maintain her, can claim maintenance from her step-son. It was contended by the learned counsel for the Petitioner that the Respondent has nowhere stated that she has no child. This Court is unable to appreciate this submission. If the Petitioner seeks to urge that the Respondent is disentitled to maintenance because she has a child, it is for the Petitioner to prove it. The

Petitioner is unable to do so. The first ground is, therefore, without merit.

10. As regards the second submission concerning the deposition of the brother of the Respondent in certain civil proceedings, it is seen that the date of the deposition is 22nd January 2004. This was much prior to the learned MM passing the order dated 14th November 2005. There is no reason why this point could not have been urged before the learned MM or even the learned ASJ. In any event the civil proceedings are still pending and it is premature to use the deposition of a witness in those proceedings for the purposes of the present proceedings under Section 125 CrPC. Moreover, the impugned order is one fixing interim maintenance and this point, if available to be urged by the Petitioner, can be considered at the stage of final disposal of the application under Section 125 CrPC.

11. As regards the third ground concerning costs, keeping in view the facts and circumstances of the case, this Court directs that costs of Rs. 20,000/- ordered by the learned ASJ should be reduced to Rs. 10,000/-. In other words, the only relief that is granted in this petition is that the direction in the impugned order dated 15th February 2007 passed by the learned ASJ in Criminal Revision No. 25 of 2006 that costs of Rs. 20,000 should be paid by the Petitioner, to the Respondent is modified and the amount of costs is reduced to Rs.10,000/-.

12. It is further directed that the arrears of maintenance as directed by the learned MM and the costs of Rs.10,000 will be paid by the Petitioner to the

Respondent within four weeks from today and in any event not later than 9th April, 2008. Given the fact that the petition under Section 125 CrPC was filed in the year 1997, the learned MM is requested to make an endeavour to finally dispose of the petition as expeditiously as possible and within a period of six months from today.

13. The petition and application are disposed of.

14. A copy of the order be given dasti to the learned counsel for the parties.

S. MURALIDHAR, J.

MARCH 07, 2008

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