

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Revision No.123 of 2015

1. Deenbandhu, S/o Brijlal, aged about 45 years, R/o Tikrapara, Tahsil and Police Station Charama, District North Bastar Kanker (C.G.), Address Shiksha Karmi, District Dhamtari (C.G.)
2. Kanwar Lal, S/o Brijlal, Caste Kalar, aged about 40 years, R/o Tikrapara, Tahsil and Police Station Charama, District North Bastar Kanker (C.G.), Address Police Karmi, District North Bastar Kanker (C.G.)

---- Applicants

Versus

Smt. Birajho Bai, widow of Brijlal, Caste Kalar, aged about 70 years, R/o Village Halba, Tahsil and Police Station Charama, District North Bastar Kanker (C.G.)

--- Non-applicant

For Applicants: Mr. D.N. Prajapati, Advocate.

For Respondent: Mr. Ashok Patil, Advocate.

Amicus Curiae: Mr. Sourabh Dangi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

15/07/2015

1. The short question that falls for consideration is,

“Whether the step-mother can claim maintenance from the step-son under Section 125 of the Code of Criminal Procedure, 1973?”
2. The above stated question arises in the following background: -
3. The non-applicant herein filed an application under Section

125 of the Code stating inter alia that she is a widow aged about 70 years and has lost her husband on 22-7-2009, she has no source of earning and the applicants herein being her step-sons having misappropriated their property left by her husband are not maintaining her as such, she is unable to maintain herself and, therefore, an amount of maintenance to the extent of Rs.3,000/- per month from each of the applicants be granted to her. The applicants herein seriously opposed the application filed by the non-applicant herein for maintenance and averred that the non-applicant herein is only a concubine of their father and as such, there is no family relation between her and the present applicants as such, the question of giving maintenance to her does not arise and therefore, the application is liable to be rejected.

4. The learned Family Court after appreciating the oral and documentary evidence on record partly granted the application holding inter alia that the non-applicant herein is the first wife of deceased Brijlal and the applicants herein are sons of second wife of deceased Brijlal, Brijlal had already died, the non-applicant who is the first wife of Brijlal is childless and the present applicants being step-sons are not maintaining the non-applicant herein, and the non-applicant, who is an aged widow woman, is unable to maintain herself. The provision under Section 125 of the

Code of Criminal Procedure, 1973 (for short 'the Code'), being a welfare provision, step-mother who is childless is entitled for maintenance from her step-son, the applicants herein.

5. Invoking the revisional jurisdiction of this Court under Section 19 (4) of the Family Courts Act, this revision has been filed by the applicants herein questioning the order of the Family Court dated 28-11-2014 passed by the Judge, Family Court, North Bastar Kanker in Misc. Criminal Case No.46/2013 by which the non-applicant's application for grant of maintenance under Section 125 of the Code has been allowed by the Family Court directing the applicants herein to pay maintenance allowance to the extent of Rs.1,000/- per month from each of the applicants, to the non-applicant from the date of order i.e. 28-11-2014.
6. Mr. D.N. Prajapati, learned counsel for the applicants, would submit that Section 125 (1) (d) of the Code does not include the step-mother who is unable to maintain herself and only the natural mother is entitled for maintenance and as such, the impugned order is liable to be set aside on that count alone. He would also submit that the finding of the Family Court holding the non-applicant herein to be the step-mother of the present applicants is also not based on evidence available on record and as such, the order impugned deserves to be set aside.

7. Mr. Ashok Patil, learned counsel for the non-applicant, however, would support the order of the Family Court granting maintenance. He placed reliance on the decision in the matter of **Kirtikant D. Vadodaria v. State of Gujarat and another**¹ and also in the matter of **Ulleppa s/o Siddanna Kamballi and others v. Gangabai w/o Late Siddanna Kamballi**².
8. Mr. Sourabh Dangi, learned amicus curiae, would submit that though under Section 125 (1) (d) of the Code, mother would not include step-mother, but step-mother, who is childless, would be entitled for maintenance from her step-son, as the provision of Section 125 of the Code is a beneficial and benevolent legislation and therefore, the order of the Family Court is not unexceptionable and not liable to be interfered. He also relied upon the decision of **Kirtikant** (supra) in support of his plea.
9. I have heard learned counsel for the parties and perused the records of the trial Court with utmost circumspection.
10. The question whether step-mother is entitled for maintenance from step-son under Section 125 of the Code is no longer *res integra* now, as it stands conclusively and authoritatively decided by their Lordships of the Supreme Court in the matter of **Kirtikant** (supra). Their Lordships of the Supreme Court while resolving the controversy and

1 (1996) 4 SCC 479

2 2003 Cri.L.J. 2566

conflict of judicial decision amongst various High Courts with regard to the status and claim of maintenance by step-mother from her step-son, have held that the expression 'mother' as used in Section 125 (1) (d) of the Code means only the natural mother who has given birth to the child and not the one who is the wife of one's father by another marriage, by holding as under: -

“.....Thus, on a conspectus view of dictionary meaning of the two expressions – 'mother' and 'stepmother' in various dictionaries, it clearly emerges that there is inherent distinction between the status of a 'mother' and 'stepmother' and they are two distinct and separate entities and both could not be assigned the same meaning. The expression 'mother' clearly means only the natural mother who has given birth to the child and not the one who is the wife of one's father by another marriage.”

11. Their Lordships further observed in para 12 of the said matter as under: -

“.....That being so, another woman who is taken as a wife by the father of the child cannot be given the status of a mother to the child born from another woman as there is no blood relation between the two.”

12. Their Lordships in para 13 of the report concluded that the 'stepfather' or 'stepmother' are not included in the expression “his father or mother” occurring in clause (d) of

Section 125 (1) of the Code giving a clear indication of the legislative intent, and upheld the view taken by the High Courts of Madhya Pradesh, Bombay and Andhra Pradesh with regard to the meaning of expression 'mother' in Section 125 (1) (d) of the Code holding it the correct view.

13. Their Lordships of the Supreme Court thereafter, further considered whether a step-mother can claim maintenance from her step-son with reference to the aims and objects of Section 125 of the Code and held that a childless step-mother may claim maintenance from her step-son provided she is widow or her husband, if living, is also incapable of supporting and maintaining her by holding as under: -

“.....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 stepmother may claim maintenance from her stepson provided she is 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.....”

14. The Karnataka High Court in the matter of **Ulleppe** (supra), following the decision of their Lordships of the Supreme Court in **Kirtikant** (supra), has clearly held that petition for maintenance by step-mother is maintainable if she proves that she is living alone and due to old age unable to maintain herself, and held as under:-

“10. In the light of the above referred judgments, as I mentioned earlier, a step-mother in terms of the judgment of the

Supreme Court can maintain a petition in the light of the larger object of [Section 125](#) but she has to prove her helplessness in the matter. The Supreme Court in (1996) 4 SCC 479 has noticed that liberal construction has to be given to achieve the intention of the legislature and ruled that a childless step-mother can claim maintenance from her step-sons provided she is a widow of her husband, and if living, is also incapable of supporting and maintaining her.”

15. Applying the principles of law laid down by Their Lordships of the Supreme Court in the above cited case **Kirtikant** (supra) to the factual score of the present case, there is a categorical finding recorded by the learned Family Court after appreciation of oral and documentary evidence on record that the non-applicant is first wife of Brijlal and is childless and the applicants are sons of Brijlal with his second wife Jainbai as such, they are step-sons of the non-applicant. Aforesaid finding is based upon evidence available on record including the admission of the applicants' witnesses Santosh Kumar. The said finding is unexceptionable and unquestionable. Consequently, the non-applicant being a childless step-mother living alone and unable to maintain herself is entitled for maintenance from her step-sons, the applicants, and the order of the Family Court granting maintenance to the non-applicant from the applicants, who are step-sons, is unexceptionable

and the Family Court is absolutely justified in granting maintenance to the non-applicant keeping in view the benevolent provisions contained in Section 125 of the Code.

16. Concludingly, present revision sans substratum and deserves to be and is accordingly dismissed.

17. Before parting with the record, this Court appreciates the excellence of written submission prepared and submitted by learned amicus curiae Mr. Sourabh Dangi, Advocate, on short notice which enabled the Court to decide the issue involved herein.

Sd/-
(Sanjay K. Agrawal)
Judge

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--- Non-applicant

HEAD NOTE

Childless step-mother is entitled for maintenance from her step-son(s).

निःसंतान सौतेली माँ अपने सौतेले पुत्र या पुत्रों से भरण पोषण प्राप्त करने की अधिकारिणी है।