

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Writ Petition No. 15 of 2016

District : Nanded

Pandit s/o. Ganpatrao Shinde,
Age : 32 years,
Occupation : Agriculture,
R/o. Karmodi, Taluka : Hadgaon,
District : Nanded.

.. Petitioner.

versus

Shakuntala w/o. Ganpatrao Shinde,
Age : 52 years,
Occupation : Nil,
R/o. Karmodi, Taluka : Hadgaon,
District : Nanded.

.. Respondent.

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Mr. S.S. Gangakhedkar, Advocate, for the petitioner.

Mrs. S.G. Chincholkar, Advocate, for the respondent.

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CORAM : N.W. SAMBRE, J.

DATE : 15TH MARCH 2016

COURT'S ORDER :

1. The respondent moved Misc. Criminal Application No. 78/2014 before the Court of Judicial Magistrate (F.C.), Hadgaon [District : Nanded], which came to be allowed on 22nd July 2015, ordering payment

of maintenance of Rs. 1,000/- per month to the respondent by the present petitioner, she being stepmother of the petitioner. The revision carried before the learned Sessions Judge, Nanded, vide Criminal Revision No. 90/2015 suffered same fate, as is apparent from the order dated November 21, 2015. As such, the present petition.

2. Mr. Gangakhedkar, the learned Counsel for the petitioner, would strenuously urge that the Hon'ble Apex Court in the case of ***Kirtikant D. Vadodaria Vs. State of Gujarat***, reported in **1996(4) SCC 479**, has taken a view that a childless stepmother may claim maintenance from her stepson, provided she is a widow or her husband, if living, is not capable of supporting and maintaining her. According to Mr. Gangakhedkar, there is married daughter to the present respondent with whom she is residing and as such, she can claim maintenance from her. He would place reliance on paras 14 and 15 of the judgment in the case of ***Kirtikant D. Vadodaria*** (cited supra). He would then submit that the claim of the petitioner for disentitling the respondent for maintenance is also required to be appreciated in view of the fact that she can claim her maintenance from the daughter with whom she is residing as she cannot claim to be issueless stepmother.

3. Mrs. Chincholkar, the learned Counsel for the respondent, while inviting my attention to the observations in para 15 of the judgment in the case of ***Kirtikant D. Vadodaria*** (cited supra) and the observations of the learned Single Judge of this Court at Nagpur Bench, in the case of ***Namdeo Pandurang Dighade Vs. Manjulabai Pandurang Dighade***, reported in **2013(1) Bom.C.R. (Cri.) 233**, while relying upon paras 10 and 11 of the

said judgment, would urge that the respondent cannot claim maintenance from a married daughter. She would submit that a suit for partition against the present petitioner at the behest of this respondent was already decreed and an appeal against the same is pending at the behest of the petitioner. The learned Counsel would then urge that in view of the above factual matrix, that during lifetime of the husband of the present respondent, she was never blessed with son and the fact that she had a married daughter, the respondent is rightly held to be entitled for the maintenance.

4. Having bestowed my thoughts to the submissions made, it is worth to re-produce observations in para 15 of the judgment of the Hon'ble Apex Court in the case of ***Kirtikant D. Vadodaria*** (cited supra) as under :-

“ 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 objects 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 fulfil 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 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 stepson 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 stepson to maintain the stepmother, out of the inherited family estate by the stepson and leave that question to be decided in an appropriate case. Our discussion is confined to the obligations under Section 125 Criminal Procedure Code only. ”

Upon perusal of the said observations, it would depict that the respondent can claim maintenance from the stepson in case if she has non-living husband and she is unable to maintain herself. The fact remains that the daughter of the present respondent with whom she is staying is not claimed to be having independent source of income. In that view of the

matter and having regard to observations of the Hon'ble Apex Court in the case of ***Kirtikant D. Vadodaria*** (cited supra), in my opinion, no case for interference is made out in exercise of extraordinary jurisdiction of this Court under Article 226 or 227 of the Constitution of India.

5. In the result, the Petition fails and the same is dismissed.

(N.W. SAMBRE)
JUDGE

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