

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

CRIMINAL WRIT PETITION NO. 693 OF 2006

Shridhar s/o Babanrao Wagh,
Age: 57 years, Occ: Agri./Labour,
R/o. Pokharni, Tq. & Dist. Parbhani. ...Petitioner

versus

1. Jebubai w/o Babanrao Wagh,
Age: 71 years, Occ: Nil,
R/o. Pokharni,
Tq. & Dist. Parbhani.
2. The State of Maharashtra. ...Respondents

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Mr. Vinayak Solunke, Advocate h/f Mr. B.A. Shinde, Advocate for
petitioner
Mr. A.S. Kulkarni, Advocate for respondent No. 1
Mr. D.V. Tele, A.P.P. for respondent No. 2
.....

CORAM : N.W. SAMBRE, J.

DATE : 18th MARCH, 2016

ORAL JUDGMENT :

The order dated 25/09/2001 passed by learned Judicial Magistrate, First Class, Parbhani in Misc. Criminal Application No. 71 of 2001 and the order dated 25/08/2005 passed by learned 2nd Adhoc Additional Sessions Judge, Parbhani in Criminal Revision No. 134 of 2004 confirming the order of Magistrate referred supra, are questioned in the present petition.

2. Few facts, as are necessary, for deciding the present writ petition, are as under :-

The petitioner, claims to be step son of the respondent and the respondent-step mother of present petitioner. Invoking provisions of Section 125 of the Code of Criminal Procedure bearing Criminal Misc. Application No. 122 of 1993 was allowed by learned Magistrate in favour of respondent, ordering the petitioner to pay maintenance of Rs. 250/- per month to the respondent.

2. The respondent then filed Criminal Misc. Application No. 71 of 2001 seeking invoking of Section 127 of the Code of Criminal Procedure for enhancement/arrears of order of maintenance passed on 23/11/1993. On 25/09/2001 learned Judicial Magistrate, First Class, Parbhani allowed Criminal Misc. Application No. 71 of 2001 ordering payment of maintenance of Rs.1500/- per month to the respondent from the date of application. The revision, questioning the said order, before learned Sessions Judge, Parbhani suffered dismissal.

3. The above referred order of confirming the enhancement of maintenance of Rs.1500/-, is questioned in the present petition.

4. In the above referred background, learned Counsel for the petitioner-step son would submit that the land owned by the petitioner is dry crop land and as such, he has hardly any income out of the said land to satisfy the enhanced maintenance order. He would then submit that the step mother is not entitled for maintenance from the petitioner, as in law, there is no obligation on the part of the petitioner to maintain step mother. So as to substantiate the contention, he has relied upon the judgment of Andhra Pradesh High Court **Ayyagari Suryanarayana Vara Prasad Rao vs. Ayyagari Venkatakrishna Veni & anr.** reported in **1989 Cr. L.J. 673** so as to espouse his cause that step mother is not entitled for claiming maintenance under Section 125 of Code of Criminal Procedure.

5. Per contra, learned Counsel for the respondent wife would submit that the law laid down by the Apex Court in the matter of **Kirtikant D. Vadodaria Vs. State of Gujarat** reported in **1996 (4) SCC 479** qualifies obligation of the step son to maintain his step mother. He would then submit that the enhancement as was granted is just and proper, particularly having regard to her age which is 84 years and expenses incurred by her for her maintenance.

6. Having bestowed my thoughts to the submissions made,

it is required to be noted that, the original order of grant of maintenance under Section 125 of Code of Criminal Procedure passed by the learned Magistrate on application bearing Criminal Misc. Application No. 122 of 1993 on 23/11/1993 granting maintenance of Rs. 250/- p. m. was not questioned by the petitioner on the ground that he is not liable to give maintenance to his step mother. The petitioner, rather has suffered the said order and has paid maintenance to the respondent. It is only after the Court ordered enhancement under Section 127 of Code of Criminal Procedure, the present petitioner-step son has tried to raise an issue about his legal obligation to maintain his step mother.

7. So far as the legal obligation of the petitioner to maintain his step mother is concerned, the law laid down by the Apex Court in the matter of **Kirtikant D. Vadodaria** (supra) is worth referring to. The Hon'ble Apex Court has already held that step son is duty bound to maintain his mother, in case, if the husband of such mother is non-surviving, she has no independent source of income, there is no real son to maintain her. In my opinion, the observations of the Apex Court in para No. 15 of the said judgment is worth referring to, which reads thus :

15) The point in controversy before us however is whether a 'stepmother' can claim maintenance from the step-son 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 social 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 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.P.C. only.

8. Here the case in hand is, where the respondent mother is aged about 84 years as on date, there is hardly any material on record to depict that she is capable of maintaining her. There is no natural born issue to her and as such, in my opinion, in view of provisions of Hindu Adoptions and Maintenance Act, 1956, particularly Section 20 entitles her to claim maintenance from the petitioner based on above observations.

9. As such, there is no substance in the writ petition, petition fails, same stands dismissed. Rule is discharged.

[N.W. SAMBRE, J.]