

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 139 OF 2017

Smt. Shakuntalabai W/o Shivajirao Chaudhari,
Age : 70 Years, Occ. Household,
R/o. Hatte Nagar, Raod no.4, Latur.
Dist. Latur.

..Applicant.

Versus

1] Sandhya W/o Rameshwar Chaudhary,
Age : 30 years, Occ. Service,
R/o. S.T. Workshop, India Nagar,
Latur.

2] Smt. Shobha W/o Ashok Chaudhary,
Age : 40 Years, Occ. Household,
R/o. Hatte Nagar, Latur

..Respondents.

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Advocate for Applicant : Mr. V. P. Narwade & M.V. Narwade
Advocate for respondents : Mr. S.V. Gundre

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CORAM : MANGESH S. PATIL, J.

Reserved on : 02.07.2018

Pronounced on : 27/07/2018

JUDGMENT:

In this revision under Section 397 of the Code of Criminal Procedure the only point which arises for determination is as to whether a mother-in-law can claim maintenance under Section 125 of the Code of Criminal Procedure.

2] The facts as are necessary for the decision of the revision are to the effect that the husband of the applicant who is the father-in-law of

the respondents was serving in Maharashtra State Road Transport Corporation. While being on duty he died on 23.10.2000. One of his sons Rameshwar who was the husband of respondent no.1 was appointed on compassionate ground in place of his father. Unfortunately, even Rameshwar died on 22.08.2009. Respondent no.1 being the widow got appointment in his place on compassionate ground. The elder son of the applicant who was the husband of respondent no.2 also died on 14.03.2009. It was then alleged that the husband of the applicant had purchased couple of house properties one of which was standing in the name of Rameshwar, there is one more house standing in his name. The other house property is in possession of respondent no.2. Both the respondents have been earning by letting some portion of the house properties. They are also earning from agriculture. However, they are not providing anything for maintenance of the applicant who is old aged. There are no means for her to maintain herself. She made a request for maintenance at the rate of Rs. 10,000/- per month from the respondents jointly and severally.

3] The respondent no.1 opposed the application, *inter alia* on the ground that being mother-in-law the applicant was not entitled to claim maintenance under Section 125 of the Code of Criminal Procedure. She however, expressed her willingness to maintain the applicant. She barely got sufficient income from the salary and had to maintain a son

and was not having sufficient means to provide maintenance to the applicant separately. Respondent no.2 denied the allegations but submitted that she was ready and willing to pay the maintenance as ordered by the Court.

4] The learned Family Court Judge by the impugned order dated 06.05.2017 dismissed the application on the ground that the application having been made by a mother-in-law who is not entitled to claim maintenance under Section 125 of the Code of Criminal Procedure from the daughter-in-law, the application was not maintainable and dismissed it. Even otherwise on merits he held that the applicant was having a share in the joint family properties. There were three daughters of the applicant, one of whom is a Lecturer and other two are economically sound and it was the daughters who were liable to provide maintenance to the applicant, who his their mother and therefore, she was not entitled to claim maintenance.

5] The learned Advocate for the applicant by referring to the decision of this Court in the case of Saroj Govind Mukkawar Vs. Chandrakalabai Polshetwar and another ; 2009 (4) Mh. L. J. 665, submitted that this Court has awarded maintenance to mother-in-law under Section 125 of the Code of Criminal Procedure and the same course should be followed even in the matter in hand. The learned

Advocate submitted that in the peculiar facts and circumstances when the husband of respondent no.1 who was primarily liable to pay maintenance to the applicant had secured appointment/employment on compassionate ground after death of his father, and when even she has similarly got the employment on compassionate ground after demise of her husband, it is her moral and legal duty to provide maintenance to the applicant. He would further point out that there is ample evidence to show that respondents have been earning from rent. The house properties are personal/self acquired properties of the husband of the applicant, still it is the respondents who are earning rent and have not been providing anything/any share to the applicant. Therefore, the order passed by the learned Family Court Judge ignoring all these facts and circumstances and the decision in the case of Saroj Govind Mukkavar Vs. Chandrakalabai Polshetwar and another : 2009(4) Mh.L.J.665 is not sustainable in law and may be quashed and set-aside and the applicant may be awarded maintenance.

6] The learned Advocate for respondent no.1 strongly opposed the application. He submitted that a mother-in-law is not covered by the provision under Section 125 of the Code of Criminal Procedure and is not entitled to claim maintenance from the daughter-in-law. In fact the applicant has three daughters who are primarily liable to pay maintenance to her under that provision and still the applicant had

chosen to invoke the provision against the daughters-in-law. It is not tenable. She may have a remedy under the civil law in an appropriate proceeding. However, the respondents cannot be fastened with any liability under Section 125 of the Code of Criminal Procedure. The learned Advocate therefore, prayed to dismiss the revision.

7] I have perused the record. Perusal of the provision of Section 125 of the Code of Criminal Procedure clearly shows that it is only the following persons who are entitled to claim maintenance.

- (a) Wife ;
- (b) Legitimate or illegitimate children, whether married or not unable to maintain itself ;
- (c) Legitimate or illegitimate child (not being a married daughter) who has attained majority but where such child is, by reason of any physical or mental abnormality or injury, unable to maintain itself ;
- (d) Father or mother.

8] Its are exhaustive list of persons who are entitled to claim maintenance under this provision. No other relation can resort to this provision. When the legislature in its wisdom has restricted the remedy to specified class of persons/relatives of the person who is liable to provide for maintenance the list is apparently exhaustive and there is no scope of any interpretation being put to it so as to include a relative which is not covered by this list. In view of such a legal provision, when

admittedly the applicant is the mother-in-law of the respondents she is not entitled to resort to this provision for claiming maintenance. There is no scope for reading down this provision so as to include the mother-in-law in its sweep.

9] The decision in the case of Saroj Govind Mukkawar Vs. Chandrakalabai Polshetwar and another : 2009(4) Mh.L.J.665 in my considered view, was rendered in the peculiar facts and circumstances of the case. In that case the sole son had died and the daughter-in-law had secured employment in his place on compassionate ground and had submitted an undertaking to the employer to maintain the mother-in-law. She having failed to act in accordance with the undertaking, the mother-in-law had claimed maintenance. In such peculiar state of affairs, she was held entitled to claim maintenance. In my considered view, with utmost respect, the decision in the case of Saroj Govind Mukkawar Vs. Chandrakalabai Polshetwar and another : 2009(4) Mh.L.J.665 cannot be followed as a precedent. Consequently, the applicant is not entitled to claim any benefit from this decision.

10] One can fruitfully refer to the decision in the case of Kirtikant D. Vadodaria Vs. State of Gujarat ; (1996) 4 SCC 479. In that case, it was held that a stepmother does not falls in the category of expression

mother and was not entitled to maintenance under Section 125 of the Code of Criminal Procedure. When the legislature has clearly excluded any other relations by expressly providing for only the specified list/relations to be entitled to claim maintenance, there is no scope for any interpretation in the matter in hand. The relation of mother-in-law is conspicuously absent and she cannot claim maintenance by resorting to this provision.

11] Needless to state that the applicant being mother-in-law may independently have civil rights to claim partition or even the maintenance. However, she is not entitled to take recourse to Section 125 of the Code of Criminal Procedure.

12] Apart from the above state of affairs, even otherwise the applicant admittedly has three daughters and it has come in the evidence that one of the daughters is a Lecturer and still when the daughters are liable to maintain the applicant the latter has for the reasons best known to her not resorted to this provision for claiming maintenance.

13] Be that as it may, the application preferred by the applicant under Section 125 was not maintainable and no fault can be found with such a conclusion drawn by the learned Judge and dismissing it for that

reasons. For that matter even on facts the observations and the conclusions drawn by him are clearly borne out from correct appreciation of the evidence and by no stretch of imagination can it be said to be either perverse or arbitrary or capricious.

14] The revision is dismissed.

(MANGESH S. PATIL, J.)

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