

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

CRIMINAL WRIT PETITION NO. 906 OF 2016

Mrs. Santoshi Dattatray Puri,
Age 45 years, Occ. Service,
C/o House of Vishwanath Giri, ... **Petitioner.**
Opp. Medical College, Somwanshi
Nagar, Aarvi, Latur.

VERSUS.

- 1 Mr. Kalidas s/o Kashinath Puri ... **Deleted**
- 2 Mrs. Laxmibai w/o Kalidas Puri,
Age 66 years, Occ. Housewife,
R/o. C/o. Smt. Anusaya Adinath ... **Respondents.**
Puri, Vishal Nagar, Swami
Samarth Nagar, Near Khandesari,
Aarvi, Latur.

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Advocate for Petitioner : Mr. M.M. Dabholkar.
Advocate for respondents : Mr. S.S. Halkunde.

WITH

CRIMINAL WRIT PETITION NO. 817 OF 2016

Mr. Dattatray Kalidas Puri,
Age 45 years, Occ. Service,
C/o House of Vishwanath Giri, ... **Petitioner.**
Opp. Medical College, Somwanshi
Nagar, Aarvi, Latur.

VERSUS.

- 1 Mr. Kalidas s/o Kashinath Puri ... **Deleted**
- 2 Mrs. Laxmibai w/o Kalidas Puri,
Age 66 years, Occ. Housewife,
R/o. C/o. Smt. Anusaya Adinath ... **Respondents.**
Puri, Vishal Nagar, Swami
Samarth Nagar, Near Khandesari,
Aarvi, Latur.

...

Advocate for Petitioner : Mr. M.M. Dabholkar.
Advocate for respondents : Mr. S.S. Halkunde.

CORAM : K. L. WADANE, J.
Reserved on : 02nd April, 2018.
Pronounced on : 03rd April, 2018.

JUDGMENT

1. The petitioners have assailed the order passed by the Appellate Tribunal dated 18.05.2016 in Appeal presented under section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred as "Senior Citizens Act"). The parties herein shall be referred in their original status.

2. Applicant No. 1 Kalidas and applicant No. 2 Laxmibai have filed an application for maintenance under the provisions of Section 5 of the Senior Citizen Act on 23.11.2015 before the learned Tribunal at Latur against the respondent No. 1 Dattatraya and his wife respondent No. 2 Santoshi. The applicants have contended that the respondent No. 2 is in government service and getting Rs. 40,000/- per month by way of salary. Likewise respondent No. 2 Santoshi is also a government servant and serving as a nurse and getting Rs. 45,000/- per month by way of salary.

3. Applicants No. 1 and 2 have further contended that both of them are old aged having no source of earning. Applicant No. 1 alienated the ancestral property in favour of respondent No. 1, as respondent No. 1 assured him to pay Rs. 10,000/- per month by way of maintenance. The applicant No. 1 is heart patient and applicant No. 2 is a Asthama patient. Hence both of them have claimed maintenance of Rs. 10,000/- per month.

4. The petition was resisted by the respondents on the ground that the applicants have sufficient source of earning as well as they are holding immovable property.

5. Considering the evidence on record, learned Tribunal has awarded maintenance to the applicants at the rate of Rs. 2500/- per month. The respondents assailed this order before the Appellate Tribunal by filing appeal. Same was heard and rejected by the Appellate Tribunal. Hence, the original respondents have preferred these two writ petitions.

6. During the pendency of these petitions original applicant No. 1 Kalidas died, therefore his name is deleted from the array of the petition.

7. I have heard the arguments of learned counsel

for respondents as well as learned counsel for applicant No. 2.

8. Learned counsel for respondents has submitted that certain immovable property is in the name of applicant No. 1 and by selling water the applicants are getting sufficient income. Secondly; he argued that respondent No. 2 Santoshi is not a children covered under the definition of 'children' as defined in section 2 of the Senior Citizen Act, therefore, order directing the respondent No. 2 to pay maintenance is without jurisdiction. The respondent No. 2 i.e. daughter-in-law of the applicants is not liable to pay the maintenance. Thirdly, learned counsel for respondents has argued that the petition for maintenance is not filed against another brother of respondent No. 1 namely Someshwar and lastly learned counsel for respondents argued that the respondent No. 1 is ready to maintain his mother. He further submitted that the petition before the Tribunal was filed by the applicants on the instigation of other siblings.

9. As against this learned counsel for applicant No. 2 submits that there is no bar to file the petition for maintenance against one of the child. Furthermore,

the landed property which the applicant No. 1 has allotted to the respondent No. 1 is in common possession of the respondents No. 1 and 2. Therefore, respondent No. 2 is also liable to pay the maintenance amount.

10. Looking to the submissions made by both the counsels, I am of the opinion that the respondent No. 2 namely Santoshi is not covered under the definition of "children" of the Senior Citizens Act, which reads as follows:

2(a) "Children" includes son, daughter, grandson and grand-daughter but does not include a minor.

11. Admittedly, the respondent No. 2 Santoshi is daughter-in-law of the applicants and therefore is not a "child" within the meaning of definition of "children", therefore, obviously she is not responsible to pay amount of maintenance.

12. As far as the aspect of maintainability of application is concerned, Section 4 of the Senior Citizens Act is very important to that effect, from which it is crystal clear that a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under section

5 of the Senior Citizens Act against one or more of his children, nor being a minor. The relations between the parties are not in dispute, therefore, the applicants have filed the petition for maintenance under the provisions of Section 5 of the Senior Citizens Act is maintainable against one of the children. Therefore there is no bar to include all the children and make them as respondents.

13. Learned counsel for respondents submitted that the applicants have presented the application under section 125 of the Code of Criminal Procedure before a Criminal Court at Latur. Therefore, the present proceeding is not maintainable, in view of the provisions of section 12 of the Senior Citizens Act.

14. I have perused the documents produced on record in this proceedings, from which it appears that the applicants have filed proceedings under section 125 of the Code of Criminal Procedure, in which the respondents have appeared and submitted their say. In para No. 16 of their say they have contended that the applicants have filed proceedings under the Senior Citizens Act.

15. Thus from record it reveals that the proceedings under section 125 of the Code of Criminal

Procedure is still pending for consideration in the Criminal Court at Latur and the petition presented before the Tribunal and the appeal presented before the Appellate Tribunal were disposed of, against which the present two writ petitions are filed.

16. Looking to the section 12 of the Senior Citizens Act it reveals that, this clause provides that where a senior citizen or a parent is entitled for maintenance under this Act and also under Chapter IX of the Code of Criminal Procedure, 1973 relating to the maintenance of wives, children and parents, the parents or senior citizens will have the option to pursue their claim either under the Code of Criminal Procedure, 1973 or under the provisions of this Act."

17. In view of the aforesaid provision certainly the applicants are not entitled to pursue both remedies. However, looking to the facts and circumstances of the case, the proceedings under section 125 of the Code of Criminal Procedure is still pending and it is not concluded. In such circumstances, the respondents can very well raise this question before the Criminal Court regarding the option on which the Criminal Court may decide the maintainability of proceedings under section 125 of the Code of Criminal

Procedure.

18. The applicants are old aged persons. During the pendency of the writ petitions one of the applicant namely Kalidas died. From the record it appears that the applicant No. 2 Luxmibai is also old aged. The reasons recorded by the learned Tribunal as well as Appellate Tribunal are appears to be just and proper. Therefore, it is not necessary to disturb their findings except the liability of payment of maintenance by the respondent No. 2 Santoshi.

19. In such circumstances, following order is passed.

O R D E R

i) Criminal Writ Petition No. 906 of 2016 is allowed and the order to the extent of direction given to the respondent No. 2 Santoshi Dattatraya Puri (petitioner in Criminal Writ Petition No. 906/2016) to pay maintenance to applicants is set aside.

ii) Criminal Writ Petition No. 817 of 2016 stands dismissed.

iii) It is made clear that the applicant No. 2 is entitled for the maintenance at the rate of

Rs. 2500/- (Rs. Two Thousand and Five Hundred only) per month from the respondent No. 1 Dattatraya Kalidas Puri (petitioner in Criminal Writ Petition No. 817/2016)

20. Both criminal writ petitions stand disposed of accordingly. No costs.

(K. L. WADANE, J.)

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