

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITIONS NO.75 & 76 OF 2018**

Shri Gopinath Govind Teli
69 years of age, married,
Indian National, Retired,
r/o. H.No.48, Ward No.8,
Valpoi Market, Valpoi,
Sattari Goa.

... Petitioner

versus

Smt. Sundarabai Govind Teli,
88 years of age, widow,
Through her Power of Attorney,
Shri Sitaram Govind Teli,
Major of age, Businessman,
Both r/o. H.No.28,
Behind Govt. High School,
Valpoi, Sattari Goa.

... Respondent

Shri S. Taleigaonkar, Advocate for the Petitioner.

Shri S. Sayed, Advocate for the Respondent.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on :-11th OCTOBER, 2018

Pronounced on :-17th OCTOBER, 2018

JUDGMENT :

Rule. Rule made returnable forthwith with the consent of the learned Counsels appearing for the parties. Learned Counsel appearing for the respondent waives service.

2. Both these petitions take exception to the order passed by the learned Additional Sessions Judge, Mapusa dated

12/10/2017 pursuant to which the revision filed by the petitioner challenging the order of the learned Judicial Magistrate First Class directing him to either deposit ₹5,000/- in the account of the respondent or alternatively to provide medical care and food in that amount was dismissed by the learned Additional Sessions Judge and modifying the order to the extent of directing him to deposit ₹5,000/- in the account of the respondent. The second petition which was disposed off by the learned Additional Sessions Judge was at the instance of the respondent/original applicant challenging the order of the learned Judicial Magistrate First Class directing the applicant herein to deposit the amount or alternatively to provide medical care and food in that amount to her was allowed by modifying the order to direct the applicant to deposit ₹5,000/- in her account and quashing the part of the order directing the applicant to provide medical care and food articles costing ₹5,000/-. In sum and substance, both these orders were required to be challenged by a solitary petition but for the reasons best within the knowledge of the petitioner, he has chosen to file two separate petitions to challenge these orders which in sum and substance direct him to deposit ₹5,000/- in the account of the respondent and

quashing the order directing him to provide medical care and food to the extent of ₹5,000/- to her. Hence, both these petitions would be dealt with by this common judgment which would squarely deal with the issue in both the petitions which is common to them and in which the parties would be referred to as the petitioner and the respondent for brevity's sake hereinafter.

3. It was the contention of Shri S. Taleigaonkar, learned Advocate for the petitioner that a suit was filed by the respondent with her other children against the petitioner for declaration and other reliefs as early as in 2010 and the application for maintenance moved by her was an outcome of the said suit against the petitioner. She had clearly admitted in her maintenance application that she had other children besides the petitioner namely two more sons and two married daughters who could maintain her considering her old age and medical condition. The petitioner herein in his reply to the maintenance application had clearly shown his readiness and willingness to maintain the respondent at his house and to provide for her food, medicines, clothes, etc. and that she should shift to his residence to facilitate for providing all these

benefits to her. He had even assured to engage a person to take her care during her entire remaining lifetime and on that premise had pressed for the dismissal of the maintenance application.

4. Besides, he had taken a plea that the maintenance application was not tenable against him alone and as there were other children of the respondent who could very well maintain her and provide for her maintenance. The learned Judicial Magistrate First Class on hearing the parties made an interim order pursuant to which she directed the petitioner to deposit ₹5,000/- in the account of the respondent or otherwise provide for her medical care and food to the extent of ₹5,000/- which order was challenged in revision by the petitioner as also the respondent before the learned Additional Sessions Judge, Mapsua. The learned Judge found favour with the judgment in **Dr. Mrs. Vijaya Manohar Arbat V/s. Kashirao Rajaram Sawai & Anr. [AIR 1987 SC 1100]** relied upon on behalf of the petitioner.

5. Shri S. Taleigaonkar, learned Advocate for the petitioner placed reliance in **Vasant, S/o. Govindrao Naik V/s.**

Govindrao Upasrao Naik & Anr. [2016 ALL MR (CRI) 1728] and submitted in reply that all the children were required to be joined as necessary parties to the proceedings and only then was it appropriate for the Court to determine the capacity of the children to maintain the respondent. He also submitted that the judgments relied upon on behalf of the respondent were clearly distinguishable and therefore the petitions had to be allowed.

6. Shri S. Sayed, learned Advocate for the respondent submitted that it was an interim order of maintenance passed by the learned Judicial Magistrate First Class which was challenged in revision by the petitioner and also by the respondent herein and of which the net result was that the petitioner was directed to deposit an amount of ₹5,000/- in the account of the respondent while modifying the order and setting it aside to the extent of directing him to provide food and medicines of the value of ₹5,000/- to her every month. It was next his contention that the respondent through her attorney being her younger son had clearly pleaded that he was running a hotel business with monthly income of ₹60,000/- and besides having an additional income of

₹25,000/- from the hardware business. He was also enjoying the yield from the various plantation and the average income was ₹1,20,000/- p.a. He was also getting ₹5,000/- from a shop in the ancestral house and besides he was in money lending business earning enormous income. However, the younger son was unable to maintain and support her permanently and take care of her physical and emotional needs on account of his condition. He placed reliance in **Mahendrakumar Ramrao Gaikwad V/s. Gulabbai Ramrao Gaikwad & Anr. [2000 (2) Mah.L.J. 378]**, **A. Ahathinamiligao V/s. Arumughnam [1986 SCC OnLine Mad 260]**, **Akham Joy Kumar Singh V/s. Akham Ibobi Singh & Ors. [(2005) 3 Gauhati Law Reports 236]** and submitted that the judgment in **Vasant** (supra) was clearly distinguishable. The learned Judicial Magistrate First Class had only determined the interim maintenance and the final maintenance was yet to be adjudged. The petitioner had otherwise not complied with the directions of the Sessions Court to deposit the amount with interest and on that count too the petitions were not maintainable and liable for dismissal.

7. I have heard Shri S. Taleigaonkar, learned Advocate for the petitioner and Shri S. Sayed, learned Advocate for the respondent in both the petitions.

8. In **Dr. Mrs. Vijaya M. Arbat** (supra), the only question involved in the appeal was whether the respondent was entitled to claim maintenance from his married daughter i.e. the appellant under Section 125(1)(d) of the Criminal Procedure Code. She raised a preliminary objection to the maintainability of the application on the ground that Section 125(1)(d) of the Code of Criminal Procedure did not entitle a father to claim the maintenance from his daughter which came to be overruled by the learned Magistrate holding that the application was maintainable giving rise to the revision before the Bombay High Court confirming the order of the learned Magistrate and dismissing the revision application giving rise to the appeal by special leave. The Hon'ble Apex Court on a reading and construction of Section 125 of the Criminal Procedure Code observed that it was the moral obligation of a son or a daughter to maintain his or her parents and it was not desirable that even though a son or a daughter has sufficient means, his or her parents would

starve. The Hon'ble Apex Court also did not find favour with the contention on behalf of the appellant that the expression "his" in clause (d) of Section 125 related only to a son who was burdened with the obligation to maintain his parents. The Hon'ble Apex Court did not find favour with such a contention and observed that in their opinion the use of the word "his" does not exclude the parents claiming maintenance from their daughter.

9. In **Dr. Mrs. Vijaya M. Arbat** (supra), the Hon'ble Apex Court also considered the recommendations of the Joint Committee on the Criminal Procedure Code Bill, 1973 where the Joint Committee had made the recommendations at paragraph 5 as below:

"The Committee considers that the right of the parents not possessed of sufficient means, to be maintained by their son should be recognised by making a provision that where the father or mother is unable to maintain himself or herself an order for payment of maintenance may be directed to a son who is possessed of sufficient means. If there are two or more children the parents may seek the remedy against any one or more of them."

The Hon'ble Apex Court in their opinion and on reading the report of the Joint Committee also observed that it did not place the burden of maintaining the parents only on the son,

but recommended that the liability to maintain the parents should be of the sons and the daughters as well and in that view of the matter held that they were unable to accept the contention that a married daughter had no obligation to maintain her parents even if they are unable to maintain themselves.

10. **Vasant** (supra), challenged in revision the order passed by the learned Principal Judge, Family Court, Amravati by which he had been directed to pay ₹20,000/- per month each to his father and mother. The respondents being his parents had filed an application under Section 125 of the Criminal Procedure Code against the applicant for grant of maintenance in the sum of ₹20,000/- per month each, stating that they were his parents, residing in the house of their daughter Rajani and that the applicant was serving in a high position in a company in Saudi Arabia and receiving an eye-popping salary in the sum of ₹3,00,000/-. He was also the elder son possessing qualification of M.Sc. in Petrochemicals while the daughter Rajani was married and residing in the United States of America (USA) unlike the younger son-Chandan who was unemployed and residing with the parents.

They had carved a case that the applicant was supporting them but after his marriage he had stopped giving any monetary help and on the contrary tortured them claiming an amount of ₹2,00,000/- for booking of a flat at Mumbai, ill-treated and threatened them and, as such, they were required to obtain temporary injunction order from the Civil Court to prohibit him from entering their house at Amravati.

11. In **Vasant** (supra), the applicant had denied the allegations against him and stated that he was never supported by his parents for completing his education and quite on the contrary the ancestral land was sold by them and money was spent on the education of Rajani and Chandan. She was settled in USA earning ₹5,00,000/- per month while the second son was doing the business of an estate broker. He had purchased six plots in the name of his younger brother and father out of love and affection. But his brother had disposed off the plots. The applicant also took an objection that the married sister Rajani and brother Chandan were also under a legal obligation to maintain their parents and they should have been made parties to the petition for claiming maintenance and non-joinder thereof and, as such, the

application for maintenance was liable to be dismissed.

12. In **Vasant** (supra), a learned Single Judge framed three questions for consideration of which one might assume significance to the present case where the married daughter and son of the respondents were necessary parties to the application under Section 125 of the Criminal Procedure Code filed by the respondents against Vasant, the other two questions being on the territorial jurisdiction of the Court to deal with the application and whether the married daughter Rajani having a source of income was obliged to provide maintenance to her parents i.e. the respondents. In so far as the question of the other children being necessary parties to the application, the learned Single Judge considered the judgment in **Dr. Mrs. Vijaya Arbat** (supra), and found that the question whether the parents could seek the remedy against any one or more of the children did not fall for consideration of the Hon'ble Apex Court since the same was neither raised nor decided. In **Dr. Mrs. Vijaya Arbat** (supra), the Apex Court had held that the married daughter cannot be excluded from the obligation to maintain the parents and ultimately held that **Dr. Mrs. Vijaya Arbat**

(supra) was not an authority for the proposition that the parents could seek the remedy against any one or more of the children though the report of the Joint Committee on the Criminal Procedure Code Bill, 1973 provided for such a remedy to the parents if there were two or more children.

13. In **Mahendrakumar R. Gaikwad** (supra), a learned Single Judge referred to the observations of the Joint Committee of the Parliament namely "If there are two or more children, the parents may seek the remedy against anyone or more of them" and observed that if the intention of the legislature in enacting the special provision for parents is taken into consideration then there is no manner of doubt that the parents can claim maintenance from anyone or more of them and the choice is given to the parents. It is however not an authority for proposition that the parent can claim maintenance from any one or both the children, looking to the report of the Joint Committee which made such a recommendation.

14. **A. Ahathinamiligai** (supra), challenged in revision the order of the Chief Metropolitan Magistrate, Egmore by which

he was directed under Section 125 of the Criminal Procedure Code to pay the monthly maintenance to the respondents. In the brief facts, the respondents filed the application under Section 125 of the Criminal Procedure Code on the allegation that the petitioner was his son and that he was aged 60 years and was living with his wife and five children who were unemployed and was managing his big family with the income of the petitioner whose marriage he had conducted in 1980 by borrowing a sum of ₹10,000/- and even when the above debts were outstanding, the petitioner had left home contracting a second marriage and had taken up a permanent residence elsewhere with his second wife. They were unable to maintain themselves and were starving without food and any means of livelihood. This application was resisted by the petitioner on the ground that besides him the respondent had other sons and daughters, some of whom were earning and were living with the respondent and therefore he was not liable to pay the maintenance. Moreover, he had no other source of income and he had to maintain his family out of his pay. The respondent examined himself and so did the petitioner and the Chief Metropolitan Magistrate on the basis of the material placed before him found that the respondent

had no means to maintain himself and that the averments of the petitioner that there were other brothers and sisters who were earning had not been substantiated and furthermore the petitioner had neglected and failed to maintain the respondent and fixing the pay of the petitioner, ordered to pay monthly maintenance to the respondent giving rise to the revision at his instance.

15. **A. Ahathinamiligai** (supra), took a plea that he could not be directed to pay maintenance unless all the children of the respondents were made parties to the proceedings and maintenance be claimed from all of them. It was not open to him to pick up one among the several children and seek an order of maintenance against him alone giving rise to the violation of Article 14 of the Constitution of India. The learned Single Judge considered the object of Section 125 of the Criminal Procedure Code and observed that the provision was enacted on public grounds based upon social necessity. It was a speedy remedy that was given to starving wives, children and parents for the specific purpose of preventing vagrancy and destitution. When an order of maintenance is passed against any one under Section 125 of the Criminal

Procedure Code, it is not to punish that person for the past neglect or failure to maintain. The object is merely to prevent the starvation of the person in whose favour the order is passed. The jurisdiction of the Criminal Court being summary in nature, is independent of an auxiliary to that of the Civil Court. This being the object behind the provision, it is clear that any parent who is unable to maintain himself or herself and who has a child, who has means, can resort to the above section for securing maintenance. The liability of a son to pay maintenance under the above provision is distinct from and independent of the liability of the other children in the family to maintain the parents. It cannot, therefore, be accepted as a position of law that unless all the children are made parties in a claim for maintenance by the parent, the latter would not be entitled for an order of maintenance.

16. In **Akham Joy Kumar Singh** (supra), a learned Single Judge of the Gauhati High Court held that in seeking maintenance it was not obligatory on the part of the Magistrate or on the part of the person seeking relief under Section 125 of the Criminal Procedure Code to include all sons and daughters when parents are claimants. A plain reading of

the law shows that the Legislature has intentionally used the word 'any person' thereby definitely meaning that any of the several persons may be chosen and it is not obligatory on the part of the claimant seeking maintenance to name all the persons 'having sufficient means' to be proceeded against, or in other words, it is optional for a claimant to seek an order of maintenance from any of the several persons, if there are more than one, having sufficient means, 'having sufficient means' is the qualifying phrase for 'any person' notwithstanding.

17. A reading of Section 125 of the Criminal Procedure Code contained in Chapter IX would indicate that an order for maintenance of wives, children and parents reads that if any person having sufficient means neglects or refuses to maintain -

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or

injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

It also empowers the Magistrate during the pendency of the proceedings regarding monthly allowance for the maintenance, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct. A bare reading of this provision would reveal that there is no requirement that all the children are required to be made parties when the parent/s seek maintenance from their child.

18. It has been the contention throughout on behalf of the petitioner that he had more brothers and sisters and that the respondent was duty bound to implead them as parties to the

petition, seeking maintenance not only from him but also from her other children. It was consistently the case of the respondent that she was 84 years old, bedridden, residing with her younger son and that the petitioner despite sufficient means was neglecting to maintain her when he had all the resources at his command. The petitioner had taken a plea that he was ready to maintain her provided she joined him in his residence and when he could provide for her maintenance, food and other upkeep. The learned Additional Sessions Judge while dealing with the order passed by the Court below i.e. the learned JMFC considered the case of the petitioner and the respondent and found that there was no legal bar for the respondent to move the application for maintenance through her constituted attorney. The learned Judge also found on a consideration of the material before her that though she had other children, she could file the maintenance application against the petitioner alone who was not maintaining her on the premise that it was the moral obligation of the petitioner as her son to maintain her being the parent.

19. The learned Additional Sessions Judge however found and rightly so that the order as passed by the learned JMFC

directing the petitioner to provide medical care and articles to the extent of ₹5,000/- was vague and not practical for execution and to that extent went ahead and modified the order made by the learned JMFC. The petitioner has failed to show the manner in which the learned Additional Sessions Judge had fallen in error in the exercise of its jurisdiction while deciding the revision petition as to justify interference by this Court in the exercise of its supervisory powers under Article 227 of the Constitution of India. The order passed by the learned Additional Sessions Judge therefore does not call for any interference at the instance of the petitioner, considering the judgments relied upon on behalf of the petitioner even in **Vasant** (supra). There is also no justification at the instance of the petitioner to seek for a direction to join all the children as necessary parties looking to the very same judgment and what was the intention of the Legislature while enacting Section 125 of the Criminal Procedure Code on the statute book.

20. In the result therefore, i pass the following

ORDER

- (i) The Writ Petition is dismissed.
- (ii) Rule is discharged.

NUTAN D. SARDESSAI, J.

NH

21. Shri J. Supekar, learned Advocate for the respondent submits that an amount of ₹1,10,000/- has been deposited in the Registry of this Court on 27/07/2018 and the same be permitted to be credited to the account of the respondent. He shall furnish the account details to the Registrar (Judicial).

NUTAN D. SARDESSAI, J.

NH