

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

Criminal Writ Petition No. 1092 of 2022

Shobha w/o Sanjay Tidke

Aged : 38 years, Occ.: Service,

R/o J. J. Hospital,

Mumbai.

...Petitioner

Versus

1. Kishanrao S/o. Ramrao Tidke,

Age : 68 years, Occ. : Nil,

2. Kantabai W/o. Kishanrao Tidke,

Age : 60 years, Occ.: Household,

Both are R/o. Kunki, Tq. Jalkot,

District Latur.

...Respondents

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Advocate for Petitioner : Mr. Murkute J. M.

Advocate for Respondents : Mr. Chillarge Subhash S.

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CORAM : KISHORE C. SANT, J.

DATE : 12th APRIL 2023.

Oral Judgment :

Heard.

1. Rule. Rule made returnable forthwith by consent of the parties..

2. A short question that is involved in this petition is as to whether father-in-law and mother-in-law can claim for maintenance from their widowed daughter-in-law under Section 125 of the Code of Criminal Procedure? The facts in short are that the petitioner-Shobha, widow of deceased son of respondent no.1 and 2, who was serving as a Conductor in MSRTC. After death of her husband, the petitioner for her survival started doing job in the health department and presently is working at J.J. Hospital, Mumbai. The case of the respondents is that now they are old aged persons having no source of income. Since their son is expired, there is no one to look after them and therefore they filed an application for maintenance in Nyayadhikari Gram Nyayalaya, Jalkot.

3. The petitioner appeared in the proceeding and filed an application below Exhibit-9. She also filed her say in which she has stated that the respondents have four daughters, who are married and staying with their husbands. The respondents are having 2 Acre 30 Gunth of land at Village Kunki, Tq. Jalkot Dist. Latur. They have their own house. After the death of husband, respondent no.2/mother of deceased received an

amount of Rs.1,88,000/- from MSRTC. The remaining amount is given to the minor son of the deceased. However the same is not mentioned in the application. She also stated that all the daughters have a share in the property of respondents and therefore daughters are liable to pay the maintenance to their parents/respondents. Her service is not on a compassionate ground in the place of her husband and therefore she is not legally bound to pay the maintenance under Section 125 of Cr.PC. to the respondents. Thereafter she filed application below Exhibit-9 stating that the application for maintenance is not maintainable against her and prayed for rejection at this stage itself. A say was filed by the respondents stating that the application under Section 125 is maintainable as they come under category mentioned in Section 125 sub-section 1.

4. The learned trial Court after considering a judgment in the case of **Smt. Saroj W/o. Govind Mukkawar Vs. Smt. Chandrakalabai Polshetwar and Anr.** reported in 2009 ALL MR (Cri) 1139, held that maintenance can be claimed even from the daughter-in-law by relying upon paragraph no.12 of the said judgment. It is further held that since the

respondents are senior citizens, without source of liability, this petitioner is liable to maintain the respondents in the peculiar facts of the case. It is this order passed by the Nyayadhikari Gram Nyayalaya, Jalkot, District Latur, against which the petitioner has approached this Court.

5. The submission of the petitioner on the basis of 125 of Cr.P.C. is that the categories of the persons are mention in Clause (a) to (d). of the said Section. The respondents does not fall in any of the categories mentioned in the said Section. For the purpose of this discussion, Section 125 is reproduced as below.

Section 125 in The Code Of Criminal Procedure, 1973

125. Order for maintenance of wives, children and parents.

(1) 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 not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

6. By reading of the Section 125, it is clear that the father-in-law and mother-in-law are not mentioned in the said Section. Even for the Clause (a) to (d), those are qualified by further wording as unable to maintain himself or herself. Thus this question was also fallen for consideration in Criminal Revision Application No. 139/2017, wherein this Court has clearly held that the parents-in-law will not be entitled to claim maintenance from their widowed daughter-in-law. It is held that it is not the scheme of legislature and the legislature has not included parents-in-law in Section 125. The list given of the relations is exhaustive and there is no scope for any other interpretation. This Court has also considered that the judgment in the case of Saroj W/o. Govind Mukkawar (supra) and held that the petition at the behest of other relatives, is not maintainable except mentioned in categories of

Clause (a) to (d) of Section 125. The facts show that the mother-in-law had filed an application under Section 125 against her daughter-in-law. The Family Court had rejected the said application filed by mother-in-law under Section 125 holding that no application was maintainable against the daughter-in-law. The said order was carried by the mother-in-law to this Court and this Court upheld the order passed by the learned Judge, Family Court.

7. The learned Advocate for the respondents vehemently opposes the application by relying upon the judgment in the case of Saroj W/o. Govind Mukkawar (supra). He submits that the respondents were depending on their deceased son is not disputed. After son everything in his name would now be transferred in the name of petitioner. When petitioner is to succeed the property it becomes her liability to maintain the respondents.

8. This Court has considered the submission and the judgment in the case of Saroj W/o. Govind Mukkawar (supra). In the case of Saroj W/o. Govind Mukkawar (supra), the distinguishing factor was that the

widow of the deceased son was appointed by the department, where the deceased was serving, on a compassionate ground, wherein she was required to give an undertaking that she will maintain the members of the family who were dependent on the deceased. In this case, there is nothing to indicate that the job secured by the petitioner is on a compassionate ground. Even by looking at the application, it is clear that deceased husband was working in MSRTC, whereas now the petitioner is appointed in health department of the State Government. Thus it is clear that the appointment is not on a compassionate ground. Further the case of Saroj W/o. Govind Mukkawar (supra) was considered by this Court in Criminal Revision Application No.139/2017 alongwith another judgment of the Hon'ble Apex Court in the case of **Kirtikant D. Vadodaria Vs. State of Gujarat**, reported in (1996) 4 SCC 479. That was a case where the stepmother had applied for maintenance under Section 125 of the Code from her stepson. In that case it was held that stepmother is not included in the category mentioned in Section 125. The submission that the petitioner would succeed the property of deceased need not be considered in the proceedings under Section 125 of Cr.P.C. The categories of persons

entitled to claim maintenance are already mentioned in Clause (a) to (d) of Sub-Section 1 of Section 125. This Court has already held in Criminal Revision Application No.139/2017 that maintenance under the said section can be claimed only by the persons falling in the category mentioned in the Section.

9. Thus considering this legal position and the facts of the case it is clear that the respondents are not entitled to receive maintenance from the petitioner on the counts firstly that they are not coming under the relation mentioned in Section 125. Secondly the appointment of the petitioner was not on a compassionate ground in place of her husband. Thirdly on the count that the respondent no.2 has also received an amount of Rs. 1,88,000/- after the death of deceased son. The fact that the couple have a land and have their own house, is also not disputed. So even on facts this Court finds that no case is made out by the respondents to claim maintenance from the petitioner. In view of the above discussion, this Court finds that the continuance of the proceeding of Criminal M.A. No.25/2019 pending in the Court of Learned Nyayadhikari Gram Nyayalaya, Jalkot, Dist. Latur would be an

abuse of process law and therefore the same is quashed. The Writ Petition is allowed and disposed off accordingly. Rule is made absolute in terms of prayer clause 'B'.

[KISHORE C. SANT, J.]

Najeeb.