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39-WP-694-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

39 CRIMINAL WRIT PETITION NO. 694 OF 2024

Jitendra Kanhaiyalal Batheja

VERSUS

Radhabai Kanhaiyalal Batheja And Another

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Mr. Dattatray K. Kulkarni, Advocate for the Petitioner.

Mr. Jitendra V. Patil, Advocate for Respondent No.1.

Mr. B. R. Kedar, Advocate for Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 21st AUGUST 2025.

PC :-

1. Heard Mr. Kulkarni, the learned Advocate for the Petitioner, Mr. Patil, the learned Advocate for Respondent No.1 and Mr. Kedar, the learned Advocate for Respondent No.2. Matter is taken up for final disposal at the stage of admission, with consent of the parties.

2. The petitioner, son of Respondent No.1 and step-brother of respondent No.2, has approached this Court challenging judgment and order dated 5th February 2024, passed by the learned Additional

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Additional Sessions Judge, Bhusawal, rejecting a revision application filed by the present petitioner bearing Criminal Revision Application No.79/2018.

3. A challenge in the Revision Application was to an order dated 1st October 2018 passed by the learned JMFC, Bhusawal in Criminal M. A. No.453/2014, directing the present petitioner to pay to Respondent No.1 an amount of Rs.10,000/- per month towards maintenance, exonerating Respondent No.2 from the said liability. As stated above, the parties are related to each other.

4. The mother (Respondent No.1) filed maintenance proceeding under Section 125 of the Cr.P.C. before the learned JMFC, Bhusawal. It is her case that her husband inherited property from her father-in-law and after demise of her husband, she and both sons succeeded to his property. It is further case that, because of her old age, she is not in a position to earn income for her livelihood. She, therefore, filed an application seeking maintenance for her sons. The learned trial Judge in

his judgment observed that the petitioner being real son of the respondent No.1, is liable to pay the maintenance. The respondent No.2 being step son is not liable to pay any maintenance. Against the said judgment, the petitioner filed revision only against respondent No.1 and not against Respondent No.2. The said Revision Application came to be rejected by confirming the reasoning by the learned trial Judge to the extent of respondent No.1.

5. Mr. Kulkarni, the learned Advocate for the petitioner, vehemently argued that, though the respondent No.2 happens to be a stepson, he is equally liable to pay maintenance to the mother. He relied upon the judgments in the cases of *Kirtikant D. Vadodaria Vs. State of Gujarat and Anr.*¹ and *Namdeo s/o. Pandurang Dighade Vs. Manjulabai W/o. Pandurang Dighade*².

6. Mr. Patil, the learned Advocate for Respondent No.1 vehemently opposed the petition. He submits that, the mother had rightly filed an

1 (1996) SCC 479

2 2012 ALL MR (Cri.) 1213

application. At the time of filing application, she was 65 years of age and not in position to maintain herself. The trial Court has rightly passed an order. He further submits that both the Courts have rightly passed the orders. He thus prays for dismissal of the writ petition.

7. Mr. Kedar, the the learned Advocate for Respondent No.2 vehemently argued that the trial Court has rightly passed an order. In the revision, the petitioner had not joined respondent No.2 as a party. The petitioner has thus accepted the finding to the extent of respondent No.2. It is not open for him now, to challenge the order exonerating respondent No.2. He thus submits that both the Courts have rightly passed the orders. He prays for rejection of the writ petition.

8. In the case of ***Kirtikant Vadodaria*** (supra), the question was as to whether the step-mother is entitled to claim maintenance from her stepson and in what circumstances. The Hon'ble Apex Court held that the expression “mother” appearing in Section 125(1)(d) of the Code of Criminal Procedure, 1973, means only real or natural mother and does

not include stepmother. It is further held that stepmother is a distinct and separate entity and cannot be equated with the natural mother giving birth to a child. The purpose of section was considered. It is held that if a stepmother is childless in that case, she can claim maintenance from her stepson provided she is a widow of her husband, if living, is also incapable of maintaining her. This Court finds that in the facts of present case, the said judgment has no application.

9. So far as the judgment in the case of *Namdeo Dighade* (supra) is concerned, this Court has taken a view that there is no rigid rule to decide maintainability under the provisions of Section 125 proceeding against stepson. It is held that a son who has not inherited to father's property may refuse maintenance to his stepmother. It is further held that no such refusal can be made when he succeeds to father's property.

10. Having heard the parties. The question before this Court in the present petition is as to whether the learned trial Judge has rightly exonerated the respondent No.2 from the liability of paying the

maintenance. It is matter of record that while filing the revision, the petitioner had not made respondent No.2 a party. To decide this question would thus only be an academic question and this Court need not decide the same.

11. So far as merit is concerned, this Court finds that no illegality or perversity is seen in directing the petitioner to pay maintenance to his mother. Learned Advocate has also fairly accepted that he has no serious contest on that issue. This Court is therefore not convinced on merits. There is no substance in the writ petition. Petition is therefore dismissed.

[KISHORE C. SANT, J.]