

Veerashetty and Another Vs. Suresh

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Court : Karnataka Kalaburagi

Decided On : Apr-13-2017

Judge : B. Veerappa

Appeal No. : R.P.F.C. No. 200037 of 2017

Appellant : Veerashetty and Another

Respondent : Suresh

Advocate for Pet/Ap. : Sri. Sanjeev Kumar C. Patil

Judgement :

(Prayer: This RPFC filed under Section 19 (4) of the Family Courts Act, praying to call for records and set aside the judgment and order dated 9.2.2017 passed by the District Judge, Family Court, Kalaburagi, in Crl. Misc.No.90/2015.)

1. Parties are referred to as per their ranking before the Family Court.

2. It is most unfortunate that the educated sons i.e., lecturer and driver have filed the present revision petition against the order dated 09.02.2017 made in Crl.Misc.No.90/2015 on the file of the District Judge, Family Court, Kalaburagi allowing the petition filed by the respondent petitioner, who is the father of the present petitioners-respondents, directing to pay maintenance of Rs.5,000/- per month by respondent No.1 and Rs.2,500/- per month by respondent No.2 from the date of the petition.

3. The present respondent, who is the father of the petitioners aged about 67 years filed a claim petition under Section 125 of the Criminal Procedure Code before the Family Court against his two sons for grant of maintenance of Rs.40,000/- per month. It is the specific case of the father that he was working in the KSRTC Department as a driver. He has given education to his sons and also provided them job. He has retired from service in the year 2008 and getting monthly pension of Rs.1,951/-. He is residing in a rented house at Shakti Nagar, Shahabad road, Kalaburagi along with his wife and son, who are unsound mind. He is paying rent of Rs.2,000/- per month. He is suffering from heart, B.P. and sugar diseases. He has taken loan of Rs.15,000/- from his friends for his treatment. Hence, he is unable to maintain himself, his wife and son who are unsounded mind.

4. It is further case of the petitioner that respondent No.1 is a lecturer in Mechanical Engineering and he is getting salary of Rs.90,000/- per month. Respondent No.2 is a conductor in KSRTC and his salary is Rs.20,000/- per month and his wife is also a Government Teacher with salary of Rs.25,000/- per month. The respondents are not maintaining their parents and residing separately. It is further case of the petitioner when, he has requested the respondents to maintain himself, his wife and son, they have refused and assaulted him on two or three occasions. In the month of April, 2015 a panchayat was held in the presence of elders and the respondents were advised to maintain the petitioner, his wife and son who are unsound mind but they have refused the same. Hence, he filed the petition seeking maintenance from the respondents sons.

5. The respondents have filed counter to the main petition and admitted that the petitioner is having three children who are respondent Nos.1 and 2 and one Uma Shankar. It is admitted that the petitioner is a retired KSRTC Driver. They denied that their father has provided good education and job. It is also denied that their father was getting pension of Rs.1,951/- per month and he is residing in rented house by paying rent of Rs.2,000/- per month. They also denied that their father was suffering from B.P., Sugar and suffered heart attack and borrowed a sum of Rs.15,000/- from his friends. It is admitted that respondent No.1 is working as Lecturer in Mechanical Engineering, but denied that he is getting salary of

Rs.90,000/- per month etc. Hence, sought for dismissal of the petition.

6. The Family Court based on the pleadings framed the following points for determination as under:

1. Whether petitioner proves that the respondents have sufficient income and neglected to maintain the petitioner?

2. What Order?

7. In order to establish his case, the present respondent who is petitioner before the Family Court examined himself as PW-1 and respondent No.2 examined himself as DW.1 and marked documents at Ex.D-1 to D-6. Memo is filed by respondent No.1 to adopt the evidence of respondent No.2.

8. The Family Court considering the entire material on record, recorded a finding that the petitioner has proved that the respondents are having sufficient income and have neglected to maintain the petitioner and petitioner is entitled to maintenance. Accordingly by the impugned order dated 09.02.2017 directed respondent No.1 to pay maintenance of Rs.5,000/- per month and respondent No.2 to pay Rs.2,500/- per month to the petitioner-father. Hence, present revision petition is filed by the dissatisfied sons.

9. I have heard the learned counsel for petitioners.

10. Sri Sanjeev Kumar C. Patil, learned counsel for the petitioners vehemently contended that the impugned order passed by the Family Court granting maintenance of Rs.5,000/- per month from respondent No.1 and Rs.2,500/- per month from the respondent No.2 is on the higher side and without any basis. He further contended that Family Court has not considered the fact that the petitioner-father is having agricultural lands as can be seen from Exs.D-3 to D-5 and he is getting income from the said lands. He also contended that the petitioner is a retired Government servant and he is getting pension, the same has not been considered by the Family Court. Therefore, he sought to set aside the impugned order passed by the Family Court.

11. In view of the aforesaid contentions advanced by the learned counsel for the petitioners, the only point that arises for consideration in the present revision petition is:-

Whether Family Court is justified in directing the respondent No.1 to pay Rs.5,000/- per month and respondent No.2 to pay Rs.2,500/- per month to the petitioner-father in the facts and circumstances of the present case?

12. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the petitioners and perused the entire material on record carefully.

13. It is the specific case of the petitioner who is the proud father of the respondents that he was a retired KSRTC driver and he was getting monthly pension of Rs.1,951/- and he is residing in a rented house at Shakti Nagar, Shahabad Road, Kalaburagi along with his wife and son who are unsound mind and he has to pay rent of Rs.2,000/- per month and he is suffering from B.P., Sugar and he has suffered heart attack earlier and he is not in a position to maintain himself. The respondents who are his great sons got educated, one become a lecturer and is getting salary of Rs.90,000/- per month and another son is a conductor and is getting salary of Rs.20,000/- per month. Therefore, they have sufficient means to maintain their unfortunate father, who are his own sons born out of his own blood.

14. It is specific case of the respondents that the petitioner is having agricultural land and there is no need to pay maintenance. The material on record clearly depicts that there is no dispute with regard to relationship of father and sons, between the parties to the lis. It is also not in dispute that the petitioner was working as a driver in KSRTC, given education to his sons-respondents, one become lecturer and another become conductor and they have well settled in their family and getting handsome salary as stated supra. The material on record also clearly depicts that the petitioner-father is a retired driver and he is getting only Rs.1,951/- per month as pension. It is also not in dispute that he along with his wife and son, who are unsound mind are residing in a rented house and he is paying rent of Rs.20,000/- per month. Though the present petitioners/sons

contended that their father is having sufficient means and there is no need to pay maintenance, the fact remains that they have not produced any material document to show that the petitioner-father is having sufficient means to maintain himself. In the absence of the same, it is the duty bound on the respondents who are the sons of the petitioner to pay maintenance under the provisions of Section 125 (1)(d) of Criminal Procedure Code, which clearly indicates that if any person having sufficient means neglects or refuses to maintain his father or mother, unable to maintain himself or herself are entitled to pay maintenance in accordance with law.

15. The Family Court considering the entire material on record, recorded findings of fact that in the objection unfortunately the respondents have denied that their father is suffering from B.P., Sugar and has suffered from heart attack, whereas DW-1 (second respondent) in his cross-examination admitted that his father has suffered heart attack on two occasions and he is suffering from B.P. and Sugar diseases. DW.1 has further admitted in his cross-examination that his father is residing in a rented house. Thus, it can be seen that in the objections, the respondents have taken causal defense even against their own father. Even assuming the petitioner-father at best is having income of Rs.2,000/- per month, he has to look after his wife and another son who are unsound mind. Therefore the respondents have to take care of such persons.

16. It is also not in dispute that the respondents who are sons of unfortunate petitioner-father have not produced any contra material to prove that the father is having sufficient means to maintain himself and there is no need to maintain as per Section 125 (1)(d) of Cr.P.C. It is also not in dispute that respondent No.1 is a lecturer in Mechanical Engineering, he would be getting salary of at least Rs.50,000/- per month and respondent No.2 is a conductor-cum-driver, he might have getting income of Rs.20,000/- per month.

17. It is also not in dispute that the wife of second respondent who is a teacher is also getting salary of Rs.25,000/- per month, therefore respondents 1 and 2 are having sufficient means and they have neglected to maintain their parents. Therefore respondent No.1 is entitled to pay maintenance of Rs.5,000/- per month

and respondent No.2 is entitled to pay maintenance of Rs.2,500/- per month to the petitioner as ordered by the Family Court.

18. It is an unfortunate case, where the father went before the court against his own sons for maintenance. The respondents being educated, who got education from their father and born out of his own blood, now they are not maintaining their own father, and father approached the Court with begging hands for maintenance from his children which is most painful for the court to pass orders in such cases and unfortunate petitioner is having such type of great sons. Admittedly both the sons are educated, one became Lecturer and another became Conductor. If they are not able to discharge their legal obligation and responsibility towards their father, what we can expect from these educated persons to the society, especially what moral values students can expect from such a Lecturer, who is not honest to his parents. Because of sons and daughters like the present petitioner, we come across large number of old age homes in and around us. The same has to be deprecated. The father is suffering from B.P. and Sugar and he has already suffered heart attack on two occasions as admitted by DW-1 and his wife and another son are in unsound mind and he is virtually leading a miserable life. It is duty of the sons, who are affluent in the society to share the sufferings of their parents and not only the enjoyment who got good education from his father and now they have deserted their own father who has no means and mother and brother who are unsound mind. Under these circumstances, it is the respondents who should support morally and financially. Unfortunately, same is not done in the present case. Therefore, the order passed by the Family Court is just and proper.

19. For properly appreciating the larger controversy raised in this case, I may once again refer to the provisions of Section 125 of the Code, which reads as follows:

125 (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.

Explanation:- For the purposes of this chapter,-

(a) minor means a person who, under the provisions of the Indian Majority Act, 1875 is deemed not to have attained his majority (9 of 1875);

(b) wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a

period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any ground of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just grounds for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive and [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be], from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

20. Prima facie though section 125 of the Code corresponds to section 488 of the old Code of Criminal Procedure it is obvious that it has brought about major and substantial changes. It is further clear that the said section creates a statutory liability irrespective of the personal law of the parties. The Hon'ble Supreme Court in the case of Nanak Chand v. Chandra Kishore reported in AIR 1970 SC 446 held that there is no inconsistency between the Maintenance Act and Section 488, Criminal Procedure Code. While dealing with this aspect of the matter under the old Code of Criminal Procedure, the Supreme Court observed as under:

The learned Counsel says that Sec.488, Criminal Procedure Code, in so far as it provides for the grant of maintenance to a Hindu, is inconsistent with Chapter III of the Maintenance Act, and in particular, Section 20, which provides for maintenance to children. We are unable to see any inconsistency between the

Maintenance Act and Section 488, Criminal Procedure Code. Both can stand together. The Maintenance Act is an Act to amend and codify the law relating to adoptions and maintenance among Hindus. The law was substantially similar before and nobody ever suggested that Hindu Law, as in force immediately before the commencement of this Act, in so far as it dealt with the maintenance of children was in any way inconsistent with Section 488, Criminal Procedure Code. The HC-NIC Page 6 of 14 Created On Sat Jan 23 01:52:44 IST 2016 R/SCR.A/1373/2014 ORDER scope of the two laws is different. Section 488 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. Recently the question came before the Allahabad High Court in Ram Singh v. State, AIR 1963 All 355, before the Calcutta High Court in Mahabir Agarwalla v. Gita Roy, 1962 (2) Cri LJ 528 (Cal), and before the Patna High Court in Nalini Ranjan v. Kiran Rani, AIR 1965 Pat 442. The three High Courts have, in our view, correctly come to the conclusion that Section 4(b) of the Maintenance Act does not repeal or affect in any manner the provisions contained in Section 488, Criminal Procedure Code.

21. The Hon ble Supreme Court while considering the scope of proceedings under section 488 of the old Code of Criminal Procedure in the case of Mst. Jagir Kaur v. Jaswant Singh reported in AIR 1983 SC 1521 has held as follows:

The proceedings under this section are in the nature of civil proceedings, the remedy is a summary one and the person seeking that remedy, as we have pointed out, is ordinarily a helpless person. So the words should be liberally construed without doing any violence to the language .

To summarize: Chapter XXXVI of the Code of Criminal Procedure providing for maintenance of wives and children intends to serve a social purpose. Section 488 prescribes alternative forums to enable a deserted wife or a helpless child, legitimate or illegitimate, to get urgent relief. Proceedings under the section can be taken against the husband or the father, as the case may be, in a place where he resides, permanently or temporarily, or where he happens to be at the time the proceedings are initiated.

22. Therefore, it is quite obvious that the object of the proceedings under Section 125 of the Criminal Procedure Code is to prevent vagrancy by compelling the husband or the father to support his wife or child unable to support itself. In a sense the provisions are not penal in nature, but are only intended for enforcement of a duty, a default of which is made penal. It is also clear that such a provision has been made to serve a social purpose for providing a speedy remedy in a summary manner to a person who is ordinarily helpless. Therefore, as observed by the Supreme Court in Ms. Jagir Kaur's case the words will have to be liberally construed without doing any violence to the language, of course within the permissible limits. It is well settled that a word which is not defined in the Act, but which is a word of everyday use must be construed in its popular sense. While construing a Statute, which is secular in nature and dealing with the matter relating to general public, the Legislature is presumed to use the words used in the Statute in the popular sense as understood in common parlance and, therefore, normally they should be their ordinary, natural and familiar meaning.

23. It is high time for the heartless sons/present petitioners to know that the life consists of reaction, resound and reflection. They would get back exactly what they are doing to their parents. What is the use of their education, when it does not help them to change their destiny. When the bad thoughts were entered in their mind, their education and intelligence become futile and meaningless. It is the time for the present petitioners/sons to rectify their mistakes and to take care of their parents and it is their moral obligation to maintain their parents. It is not desirable that even though a son or a daughter has sufficient means, his or her parents would starve. Apart from any law, the Indian Society casts duty on the children of a person to maintain their parents if they are not in a position to maintain themselves. It is also their duty to look after their parents when they become old and infirm.

24. Section 125 (1) (d) of Cr.P.C. has imposed liability on the sons to maintain their father or mother who is unable to maintain himself or herself. Section 488 of the old Criminal Procedure code did not contain a provision like Clause (d) of Section 125(1). The legislature in enacting Criminal Procedure Code, 1973 thought it wise to provide for the maintenance of the parents of a person when

such parents are unable to maintain themselves. The purpose of such enactment is to enforce social obligation to maintain their parents.

25. By a plain reading of the language used in Section 125(1) and to the provisions relating to the father and mother in clause (d) thereof, the only two circumstances which have to be gone into for the purpose of deciding a claim under Section 125(1) appear that the father or mother must be unable to maintain himself or herself and secondly, the person against whom an order under Section 125(1) is sought must have sufficient means to maintain the father or mother and yet neglects or refuses to maintain the father or mother. The provision in Section 125 is one of general application and is not related to the personal law of the parties. Implicit in the provision, therefore, is the statutory recognition of the obligation that a son who has sufficient means is bound to maintain a father or mother is unable to maintain himself or herself. The provision is really in the nature of an ameliorative provision made for the first time recognizing the right of infirm parents, who are unable to maintain themselves to be maintained by their son or daughter who is possessed of sufficient means as also providing as remedy to enforce that right.

26. While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation. Having regard to this special object, the provisions of Section 125 of the Code have to be given a liberal construction to fulfil and achieve this intention of the legislature.

27. The Hon ble Supreme Court while considering the provisions of Section 125 of Code of Criminal Procedure in the case of Bhuwan Mohan Singh V. Meena and

Others reported in AIR 2014 SC 2875 at para 3 held as under:

3. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short the code) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life dust unto dust . It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able bodied. There is no escape route unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

28. Admittedly in the present case, the father, unsound mother and brother are financially suffering and they have become destitutes in the hands of the respondents-sons. The principle laid down by the Hon ble Supreme Court stated supra is applicable to the facts of the present case and therefore the respondents are duty bound to pay maintenance to their father in view of provisions of Section 125(1)(d)of Criminal Procedure Code.

29. The maintenance under Section 125 (1) (d) Criminal Procedure Code is absolute right and cannot be defeated on the plea that the respondents-sons have no means to pay. Even assuming that they have no means, they are ably bodied

and the petitioner is not in a position to support himself. The respondents are under legal obligation to support their father in view of the provisions of Section 125 (1) (d) of Criminal Procedure Code.

30. For the reasons stated above, the point raised in the revision petition has to be answered in the affirmative holding that the Family Court is justified in awarding the compensation and the same is hardly insufficient to the father who has to take care of his wife and son, who are unsound mind. Hence, the impugned order passed by the Family court is just and proper. The respondents have not made out any ground to interfere with the impugned order passed by the Family Court exercising the power under Section 19(4) of the Family Courts Act.

31. Undisputedly only the father filed the petition for maintenance. The mother who is also entitled to maintenance under Section 125(1)(d) of Code of Criminal Code has not filed the petition and the present petitioners/sons have not discharged their legal obligation towards aged parents. Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that aging has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though, the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time consuming as well as expensive. Therefore the Legislature thought it fit to enact the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution. In view of the peculiar facts and circumstances of the present case, it is needless to observe that it is always open for the unfortunate father to invoke Section 127 of Code of Criminal Procedure for enhancement of compensation and the unfortunate mother either to invoke the provisions of Section 125 of Code of Criminal Procedure or to invoke the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 against their sons for the appropriate relief.

32. In view of the above, the revision petition is dismissed with costs of Rs.20,000/- (Rupees Twenty Thousand Only) payable by petitioners-sons (Rs.10,000/- each) to the respondent-father within a period of one month from the date of receipt of copy of this order, failing which the father is at liberty to recover the same before the Executing Court/Family Court.

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