

Kaushalya Devi Vs. Anil Kumar Agrawal

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Court : Patna

Decided On : Oct-17-1996

Judge : S.K. Chattopadhyaya, J.

Appeal No. : Criminal Revision No. 180 of 1991 (R)

Appellant : Kaushalya Devi

Respondent : Anil Kumar Agrawal

Advocate for Pet/Ap. : Mr. A. Sahay

Disposition : Application Allowed

Judgement :

S.K. Chattopadhyaya, J

1. Whether 'step mother' entitled for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (the Code for short), is the moot question to be answered in this application. However, as no decision either of the Apex Court or of this Court could be brought to my notice by the learned Counsel for the parties, the question is to be answered after reconciling the divergent views expressed by the different High Courts.

2. Before advertng to the points raised the factual backdrops may be looked into; Uncontrovertedly the petitioner is the wife of late Hari Narayan Prasad Agrawal

and is the step mother of the opposite party. The petitioner filed an application before the learned Magistrate claiming maintenance of Rs. 600/- per month for her own and Rs. 50 each for her two daughters. It was claimed by her that the opposite party has monthly income of Rs. 10, 000/- from the properties left behind by her husband. On such petition being filed the opposite party appeared and filed his show cause contending, inter alia, that the petitioner being the step mother is not entitled to maintenance under Section 125 of the Code.

3. It appears that the opposite party moved this Court in Cr. Misc. No. 2296/90 (R) challenging the proceeding initiated against him on the petition learned the petitioner. However, by order dated 4.2.91 the learned Counsel for the opposite party (petitioner in that case) was allowed to withdraw the application after some arguments.

4. The learned court below by the impugned order dated 12.9.91 merely relying on the decision of the Andhra Pradesh High Court in the case of Ayyagari Suryanarayana Vera Prasad Rao. v. Ayyagari Venkatakrishna Veni and Anr. reported in 1989 Cr LJ 673, has held that step mother cannot attain the status of mother for the purpose of claiming maintenance under Section 125 of the Code.

5. Mr. A. Sahay learned Counsel for the petitioner has contended that the said decision of the Andhra Pradesh High Court has not considered the wide connotation of these term 'mother' and has come to an erroneous conclusion. On the other hand, he contends, that the decision rendered by a learned Single Judge of the Orissa High Court in the case of Pitei Bewa v. Laxamidhar Jena and Anr. reported in 1985 Cr LJ 1124 is more appropriate inasmuch as it has dealt with the intention of the Legislature in inserting the beneficial provisions under Section 125 of the Code.

6. Mr. Samir Prasad appearing on behalf of the opposite party, however, strongly contended that the point is well settled by the decision of the Division Bench of the Andhra Pradesh High Court in the case of Ayyagari Suryanarayana Prasad Rao v. Ayyagari Venkatakrishna Veni and Anr. (supra).

7. Section 125 of the Code, inter alia, contemplates that if a person having sufficient means neglected or refuses to maintain his wife, unable to maintain herself or his legitimate or illegitimate minor child, whether married or not, unable to maintain themselves, or 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 his father or mother unable, to maintain himself or herself, competent court upon consideration may pass an order directing the person to pay monthly allowance.

8. From the perusal of the aforesaid provision it is clear that Section 125 of the Code provides swift and cheap remedy against any person who despite means neglects or refuses to maintain his father or mother and also others as provided in the said section. It is well settled that it is a measure of social justice falling within the constitutional sweep of Article 15(3) and 39 of the Constitution enacted to protect the weaker Section like woman and children.

The object is to compel a man to perform the moral obligation which he owes to society in respect of his wife and children and parents so that they are not left beggared and destituted on the scrap heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence.

9. In the case of Bai Tahira v. Ali Hussain Chothia and Anr. reported in : 1979 CriLJ151 their lordships have held that having social purpose, Section 125 of the Code and sister clauses, in their interpretation, must receive a compassionate expansion of sense that the words used permit. This section provides only speedy remedy against starvation of a deceased wife or child or indigent parents.

10. In the famous case of Sahabano Begum reported in : 1985 CriLJ875 , while considering the point as to whether a divorced Muslim Women is entitled for maintenance under Section 125 of the Code, their lordships, inter alia, observed as follows:-

Section 125 is a part of the Code of Criminal Procedure, not of the civil laws which define and govern, the rights and obligations of the parties belonging to particular religions, like the Hindu Adoptions and Maintenance Act, the Shariat, or the Farsi

Matrimonial Act. Section 125 was enacted in order to provide a quick and summary remedy to a class of persons who are unable to maintain themselves.

Neglect by a person of sufficient means to maintain these and the inability of those persons to maintain themselves are the objective criteria which determine the applicability of Section 125. Such provisions, which are essentially of a prophylactic nature, cut across the barriers of religion. True, that they do not supplant the personal law of the parties but, equally, the religion professed by the parties or the State of the personal law by which they are governed, cannot have any repercussion on the applicability of such laws unless, within the framework of the constitution, their application is restricted to a defined category of religious groups or classes. The liability imposed by Section 125 to maintain close relatives who are indigent is founded upon the individual's obligation to the society to prevent vagrancy and destitution. That is the moral edict of the law and morality cannot be clubbed with religion. Clause (b) of the Explanation to Section 125(1), which defines wife as , including a divorced wife, contains no words of limitation to justify the exclusion of Muslim Woman from the scope. Section 125 is truly secular in character.

11. According to shorter Oxford Dictionary (IIIrd Edition) the term 'mother' means (i) to acknowledge the maternity of (a child), (ii) to attribute maternity of (a child) to a woman. Similarly, 'step mother' means wife of one's father by a subsequent marriage. As far back as in 1933 a controversy arose before a Division Bench of the Allahabad High Court as to whether under Hindu law of partition a step mother is entitled to a share. In that case of *Ram Piari v. B. Hari Dutt and Ors.* reported in A.I.R. 1933 Allahabad, 562, the Division Bench was of the opinion that in a case of partition between the son and grand son, being the son of deceased's son the mother is entitled to a share.

It is immaterial whether she is step mother of the living or the deceased son and she is entitled to a share equal to that of each of her husband's son.

12. Though in order to overcome the import of the decisions in *Sahabano's* case (supra), subsequently the Parliament enacted the Muslim Woman (Protection of Right of Divorce) Act 1986 but, in my view, the interpretation given by their

lordships of Section 125 of the Code is of wide amplitude.

13. In the case of Ayygari Suryanarayana (supra) the Division Bench held that though the adoptive mother gets the status of 'mother' but the same cannot be applied to the case of a 'step mother'. Learned Judges relied on the decision of the Supreme Court reported in : 1988 CriLJ793 where the Supreme Court, inter alia, held that attempt to exclude altogether the personal law applicable to the parties from consideration is improper. Section 125 has been enacted in the interest of a wife and one who intends to take benefit under Sub-section (1)(a) has to establish the necessary conditions, namely, that she is wife of the person concerned. This issue can be decided only by reference to the law applicable to the parties.

14. On the contrary, a learned Single Judge of the Orissa High Court in the case of Pitie Bewa (supra) considering the law commission report has held that step mother is included within the ambit of Section 125(1)(b) of the Code and is entitled to be maintained under the said provision. His lordships relied on the decision of the Supreme Court reported in : [1964]2SCR73 as well as a Single Judge decision of the Gujarat High Court reported in (1978) 19, Gujarat Law Reports, 237.

15. It is true that in order to interpret the beneficial legislation like Section 125 of the Code, personal law applicable to the parties cannot be excluded altogether but similarly, as held in Sahabano's case, such persons who are essentially of prophylactic nature are across the barriers of religion. Though such provisions do not supplant the personal law of the parties who are religion professed by the parties or State of the personal law by which they are governed but they cannot have any repercussion on the applicability of such law unless, within the framework of the constitution, their application is restricted to a defined category of religious groups or classes.

16. It is not uncommon to find that natural mother has expired while giving birth to a child. In order to bring up the child the father remarries and such woman gives all affection of a natural mother to the newly born child and through passage of time becomes a member of the family. After such child settles in life under the case and affection of his step mother but immediately after the death of his father he or she starts neglecting the step mother. The question is what is the remedy of

such step mother if she is not given due attention by her said child? Does the law suggest that even under this circumstances such women is not entitled to get maintenance as because she is the step mother? The society has become so complex and materialistic that the law makers having considered this basic problem in the society, have enacted the provision which is beneficial in nature and as such, in my considered opinion, the term 'mother' cannot be given a restricted meaning by devouring the step mother from claiming maintenance from the step son after the death of her husband.

17. The matter can be viewed from another angle as well. When a step mother alongwith her husband become old and their child, settles in life and if such parents have no other means for survival, can the son refuse to maintain his father under such circumstances or he will be allowed to say that he is only legally bound to maintain his father and not the step mother? In my view, this will be against morality as well as judicial concept.

18. However, there may be a case where the father does not remarry immediately after the death of his first wife but when the son because young and settles and gets married, the father remarries. In that situation there may be some conflict between the son and the step mother because the son and his wife may not like remarriage of his father in that stage. These circumstances are totally of different consequences which are rare that even in the father remarries at that stage on the ground that after marriage of his son, the father requires a company, can it be said that such step mother who has been accepted by his father to be his wife, will not be entitled for maintenance after the death of her husband. The question to be answered is left open.

19. I have already noted above that the object of Section 125 of the Code is to compel a man to perform the moral obligation which he was not only to the society but in respect of his wife and children and also to the parents so that they are not left beggared and destituted on the scrap heap of the society and becomes a burden on the society. The step son, in my considered opinion, cannot be allowed to drive away his step mother to a life of vagrancy and immorality.

20. It is well settled that a daughter, unmarried or married, having sufficient means, is liable to pay maintenance and allowance to her father or mother who is unable to maintain himself or herself. The word 'his' in Clause (d) also includes daughter and according Supreme Court it is not possible to accept the contention that the daughter after her marriage has no obligation to maintain her parents even if they are unable to maintain themselves. The daughter after her marriage does not cease to be a daughter of the father or mother.

21. Thus, in my view the word 'mother' used in Section 125 of the Code must get a wide meaning and, as such, the step mother is also entitled for maintenance under Section 125 of the Code. It appear that the learned Magistrate has not considered this aspect of the matter and has come to a conclusion that the step mother is not entitled to receive maintenance merely relying on the decision of Ayyagari Suryanarayana case (supra).

22. In the result, this application is allowed. The impugned order dated 12.9.91 is set aside. The learned Magistrate is directed to consider the case of the parties on merits and to decide the same in accordance with law. As the petition for maintenance was filed by the petitioner in 1991, the learned Magistrate is directed to dispose of the same forthwith and preferably within a period of two months from the date of receipt/production of a copy of this order. Office is directed to send a copy of this judgment to the court below forthwith.