

(1978) 02 BOM CK 0017

In the Bombay High Court

Case No : Criminal Application No. 1025 of 1977

Baban Alias Madhav Dagadu Dange

APPELLANT

Vs

Parvatibai Dagadu Dange

RESPONDENT

Date of Decision : 09-02-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
General Clauses Act, 1897 — Section 3
Hindu Adoptions and Maintenance Act, 1956 — Section 12, 23, 4
Limitation Act, 1963 — Section 10, 5

Citation : (1978) 80 BOMLR 305 : (1978) MhLj 604

Hon'ble Judges : Sapre, J;Apte, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Apte, J.—The short question that arises in this petition filed by the original opponent is whether the expression "mother" used in Section 125(1)(d) of the Code of Criminal Procedure, 1973 (No. 2 of 1974), (hereinafter referred to as "the Code") includes "adoptive mother" as well.

2. The petitioner was adopted as a son by respondent No. 1 in 1948 after the death of her husband.

3. The respondent No. 1 filed an application u/s 125 of the Code for the monthly allowance by way of maintenance on the allegation that her adopted son-the present petitioner, had neglected and refused to maintain her although on adoption he had secured substantial property in his adoptive family and was, therefore, possessed of sufficient means.

4. The adopted son resisted the application raising various contentions all of which are not relevant for the purpose of this petition, since only one has been pressed before us. His principal contention was that the respondent No. 1 being his adoptive mother was not entitled to claim maintenance u/s 125 of the Code because the expression "mother" used therein was restricted only to natural

mother. In others words, what was contended was that under that section it is only the natural mother, who can claim maintenance from her natural son but not the adoptive mother from her adopted son.

5. The Judicial Magistrate before whom the original application was filed as well as the Sessions Judge, before whom the matter was taken by the present petitioner in revision, have rejected this contention.

6. The relevant provision of the Code so far as it is relevant for our purpose reads:

125. (1) If any person having sufficient means neglects or refuses to maintain-...

(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... 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:

7. It is necessary to state here that the provision for making an order for the maintenance of father or mother was for the first time introduced in the Code of 1973. In Section 488 of the Code of Criminal Procedure, 1898 which was replaced by the Code of 1973, there was no provision for passing an order against the son to pay a monthly allowance for the maintenance of his father or mother. Obviously, therefore, there is no previous authority on the precise point that arises for consideration in this case.

8. It is contended by Mr. Sawant for the petitioner that since the expression "mother" has not been defined either in the Code or in the General Clauses Act, 1897, this expression will have to be given its dictionary meaning. In this connection he pointed out that though the expressions "father" and "son" have respectively been defined in Sections 3(20) and 3(57) in the General Clauses Act, the expression "mother" has not been defined in that Act.

9. According to Mr. Sawant, this omission on the part of the Legislature cannot be said to be merely accidental but is deliberate. He, therefore, urges that the Legislature intended that the expression "mother" should be construed according to its dictionary meaning.

10. Section 3(20) of the General Clauses Act, 1897, defines the expression "father" as follows:

"father", in the case of any one whose personal law permits adoption shall include an adoptive father;

11. The expression "son" is defined in Section 3(57) as follows:

"son", in the case of any one whose personal law permits adoption, shall include an adopted son;

12. It is, therefore, clear that according to the definitions given in the General Clauses Act, the expression "father" includes both natural as well as adoptive father and the expression "son" also includes both natural born son as well as an adopted son.

13. It is true that the General Clauses Act has not defined the expression "mother". But that does not mean that necessarily the expression should be taken in its restrictive sense. Indeed there are many expressions which have not been defined in the General Clauses Act. The General Clauses Act does not claim to be an encyclopaedia or dictionary which defines all expressions. One has therefore to look, while interpreting such expressions which have not been defined, to the context in which the expression has been used. It would have been a different matter, had the expression "mother" been defined by the General Clauses Act only to mean the "woman" who has given birth to the child, that is to say the natural mother only. Indeed the definition of the expressions "father" and "son" in the General Clauses Act would furnish a clue to the interpretation of the term "mother" which has been left undefined in that Act.

14. Now if expression "father" and "son" is to be given wider interpretation, we do not see any valid reason why the expression "mother" also should not be given similar wider interpretation so as to include an "adoptive mother" as well.

15. Such an interpretation would also seem to accord with the legal status of an adopted son.

16. Before the Hindu Adoptions and Maintenance Act, 1956, (78 of 1956), came into force, under Old Hindu Law, the adoption had the effect of transferring the adopted boy from his natural family into the adoptive family. The adopted son acquired for all purposes the same rights and privileges in the family of the adoptive father as a natural born son except in few cases. These cases related to marriage and adoption. He could not marry in his natural family within prohibited degrees nor could he adopt from that family a boy, whom he could not have adopted if he had remained in that family. For all other purposes he was considered to be a son born to his adoptive parents. In other words he was as though completely transplanted from his natural family into his adoptive family with all the legal consequences flowing therefrom. A filial tie was created between him and the adoptive parents though artificially by legal fiction.

17. The same position holds good even after the passing of the Hindu Adoptions and Maintenance Act. Section 12 of the Act, provides that an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. Thus it is clear that an adopted son occupies the position of natural born son in the adoptive family. Consequently the adoptive father becomes his father and the adoptive mother becomes his mother for all purposes.

18. Mr. Sawant, however, contended that reference to personal law of the parties to determine the meaning of the word "mother" as used in Section 125 of the Code would not be warranted. According to him the Criminal Procedure Code is a piece of legislation which was applicable to all persons irrespective of their religion. It only sought to enforce a moral obligation, the object of the proceeding under that section being to prevent vagrancy by compelling the husband or the father or the child to support his wife, child or the parents as the case may be. According to him therefore it would not be proper to refer to the personal law of the parties in order to find out the true meaning to be attached to the expression "mother".

19. In this respect he relied on the following observations made by the Supreme Court in Nanak Chand Vs. Chandra Kishore Aggarwal and Others,

The scope of the two laws is different...Section 488, Cr.P.C. 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.

20. It is, however, pertinent to point out that these observations were made to refute the argument advanced on behalf of the appellant before their Lordships that Section 488 of the Criminal Procedure Code, 1898, stood impliedly repealed by Section 4 of the Hindu Adoptions and Maintenance Act, 1956, the relevant portion of which provided:

Save as otherwise expressly provided in this Act,-...

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

21. In order to avoid liability to maintain the children, it was contended in that case, on behalf of the appellant-father that the application u/s 488 was not maintainable inasmuch, so far as Hindus were concerned, that section stood repealed by the provisions of the Hindu Adoptions and Maintenance Act. Their Lordships did not accept this contention and pointed out that the scope of the two laws being different, the provisions contained in Section 488, Criminal Procedure Code had no relationship with the personal law of the parties and, therefore, both the provisions could stand together and therefore the former could not be held to have been repealed by the latter.

22. In Shri Bhagwan Dutt Vs. Smt. Kamla Devi and Another, on which also reliance was placed, the question whether the income of the wife can be taken into account while fixing the amount of maintenance in a proceeding filed by her u/s 488 of the old Code arose for consideration. Similar argument was advanced before their Lordships of the Supreme Court that Section 488 stood repealed by Section 23 of the Hindu Adoptions and Maintenance Act, 1956. But in that case also, the argument was repelled by making similar observations. Their Lordships in these two cases did not lay down that while dealing with the proceeding u/s

488 of the old Code, or u/s 125 of the new Code, the status and the legal character of the parties under the personal law is not to be considered at all. The argument of Mr. Sawant, therefore, that in the absence of the definition of the expression "mother" in the General Clauses Act, one cannot look to the personal law to find out the true meaning and scope of the expression "mother" cannot be accepted.

23. Mr. Sawant also in support of his argument that no extended meaning can be given to an expression "mother", relied upon *The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur*, . The question that arose in that case was, however, quite different. The point in that case was whether the principles of Sections 5 and 10 of the Limitation Act could be made applicable to a proceeding under the Sales Tax Act. In connection with that point, the Supreme Court observes (p. 1043):

If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation by analogy or implication, something what it thinks to be a general principle of justice and equity.

We think that these observations have no bearing on the question which we are called upon to decide in the present case.

24. Even for the sake of argument, if it is assumed that the dictionary meaning should be given to the expression "mother", in our view, Mr. Sawant is not on a stronger ground. In Webster's Third New International Dictionary, vol. II L-Z edn. 1971 at page 1474 meaning of the word "mother" has been given as a woman who has given birth to a child...a female parent: adoptive mother.

25. Thus even according to the Webster's Dictionary, the expression "mother" includes "adoptive mother" as well.

26. The Oxford English Dictionary vol. VI, L-M, edn. 1961 at pages 690 and 691 gives the meaning of "mother" as "a female parent or a woman who has given birth to a child." It also says that "mother" also means a woman who exercises control like that of a mother, or who is looked up to as a mother.

27. Now, as we have discussed above since on adoption, all the ties of an adopted son from his natural family are severed and are replaced by similar ties in the adoptive family, the adoptive parents stand in the position of the parents to the adoptive child. The adopted son after the adoption would look to his adoptive "father" as a father and to adoptive mother as a "mother".

28. Hence, the adoptive mother becomes his female parent and would therefore be a mother of the adoptive son within the meaning of that expression as given in the Oxford English Dictionary also.

29. Mr. Sawant then invited our attention to a decision of a single Judge of this Court in *Ramabai v. Dinesh* [1976] Mh. L.J. 565 in which it was held that the expression "mother" in Section 125 of the Code of Criminal Procedure, 1973, did not include "a step mother". It was argued by him that on a parity of reasoning that expression would not include an "adoptive mother".

30. The important distinction however is that that case deals with a position of a step mother and not that of an adoptive mother. There is a difference between the position of a step mother and that of an adoptive mother. Besides, the facts of that case were peculiar. The step mother claimed maintenance from her step son although she herself had a natural born son in the same family.

31. Mr. Sawant however relied on the observations made in para. 14 of the judgment, which were subsequently approved in *Smt. Saraswatibai Dattatraya Mannur v. Dattatraya Bhimrao Mannur* (1977) Criminal Application No. 2999 of 1976. These observations are (p. 574):

In my opinion, while construing Section 125 of the Code also in the absence of any definition or explanation to the effect that the word "mother" would also include a stepmother, that word will have to be given its natural meaning and if so construed, the mother will mean only a natural mother, namely, a woman who has given birth to the person from whom the maintenance is being claimed. The words used are "his mother". Therefore, the mother who can claim maintenance should be the natural mother of the person from whom the maintenance is claimed. The said person should be the offspring of her body and soul. Then alone she can be described as "his mother". The stepmother is not "his mother" in the natural sense of the term. She becomes his stepmother because she is the wife of his father. Such a vicarious relationship is not contemplated by Section 125 of the Code.

But it is necessary to emphasise that this case does not decide that the expression "mother" would not include the adoptive mother. Indeed the Court was not in that case called upon to decide the question which arises before us. The aforesaid observations were made in the context of the facts of that case. They must therefore be confined to the facts of that case only.

32. If we were to accept the contention of Mr. Sawant, it would lead to very curious result. Since the word father according to the definition in General Clauses Act includes adoptive father, it would mean that an adoptive father can claim maintenance from his adoptive son u/s 125 of the Code; but not the adoptive mother.

33. In our view, therefore, the expression "mother" in Section 125 of the Code includes an "adoptive mother".

34. In the result, the rule is discharged with costs.