

(1994) 07 MP CK 0057

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 5344 of 1992

Bharat Lal Awadhiya

APPELLANT

Vs

Bhanumati Awadhiya

RESPONDENT

Date of Decision : 29-07-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1995) 1 MPJR 126 : (1995) 40 MPLJ 319 : (1995) MPLJ 319

Hon'ble Judges : M.V. Tamaskar, J

Bench : Single Bench

Advocate : M.M. Agrawal, for the Appellant; A.K. Choubey, for the Respondent

Final Decision : Dismissed

Judgement

M.V. Tamaskar, J.

This is an application arising out of an order dated 9-10-1992 passed in Criminal Revision No. 150/92 by the Second Additional Sessions Judge, Raipur, maintaining the order dated 31-12-1991 passed in Misc. Criminal Case No. 96 of 1990 by the Judicial Magistrate, First Class, Raipur, granting maintenance in favour of Smt. Bhanumati Awadhiya.

Smt. Bhanumati Awadhiya is the mother of the applicant. She is living separately with her younger son and two daughters. Younger son runs a Pan-Thela and is not well placed in life. Out of the two daughters Mangla is a widow and a clerk in Irrigation Department, resides in the house along with her mother. Meena, the second daughter is youngest and unmarried and employed as a teacher. The present applicant elder son is employed in the Bank and gets a salary of Rs. 7,200/- per month. The non-applicant gets Rs. 100/- per month as rent from the part of the house she has given on rent and in the part she resides with her daughters. There is some civil dispute going on in respect of the house property which is pending in the lower Court. Mangla, who is a widow, has a son and she is required to maintain her and her son. The second daughter Meena is a teacher

employed in a Primary School and is not getting a sufficient salary.

The Court considered the evidence on record and the learned Judicial Magistrate First Class, Raipur, awarded Rs. 400/- per month as maintenance and directed the applicant to pay the same every month. Aggrieved by the said order he filed revision which was also dismissed and as such this present application has been filed for quashing the same.

The first submission made by the learned counsel for the applicant is that the mother of the applicant cannot claim the maintenance as she is getting rent from the house and that two daughters residing with her can maintain the non-applicant. Learned counsel submits that the application is mala fide and was filed at the instance of the younger brother and sisters. Secondly, there is a civil suit pending in respect of the house property in which the applicant resides. The applicant cannot be forced to pay the maintenance to feed for litigation. Thirdly, the last submission made was the test for grant of maintenance is vagrancy.

The learned counsel submitted that the object of the proceedings for maintenance is vagrancy but where it is found that mother has source of income, is entitled to get maintenance from her son. In *Jagir Kaur v. Jaswant Singh* AIR 1963 SC 1921, it has been held that the parents are entitled to get maintenance from their sons and daughters. True that there is some litigation going on between the parties but the applicant who is well placed and getting huge salary cannot be allowed to say that he is not in a position to pay the maintenance to his old mother. It has been held in *Radhmani v. Sonu Balaram* 1986 MPLJ 581, that in deciding cases of maintenance on merits the whole approach should be pragmatic keeping in view the status of parties, the social environment they live and their illiteracy and backwardness, if any, and the Court should not be too rigid, dogmatic and technical in evaluating the overall evidence on record. I would add one more circumstance i.e. the age of the parents and their ability to earn. In the present case there is a clear evidence that the non-applicant is an illiterate old lady and has no source of income except Rs. 100/- per month which she is getting from the rented portion of house. No doubt, the younger son and two daughters are residing with the non-applicant but they are not in a position to maintain their mother. The order directing payment of Rs. 400/- per month as maintenance to the applicant cannot be said to be on higher side.

6-7. The learned counsel also relied on judgment of the Supreme Court in *Dr (Mrs) Vijaya Manohar Arbat Vs. Kashirao Rajaram Sawai and Another*, but I am afraid the said judgment does not support the applicant. The Court stated :

"There can be no doubt that it is the moral obligation of a son or a daughter to maintain his or her 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 a 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."

In view of the above definite state of law, the applicant is bound to maintain his mother. The order passed by the lower Court does not suffer from any material illegality. The application is, therefore, dismissed.