
(1985) 10 BOM CK 0024

In the Bombay High Court

Case No : Criminal Revision Application No. 167 of 1985

Dr. Mrs. Vijaya Manohar Arbat

APPELLANT

Vs

Kashirao Rajaram Sawai and another

RESPONDENT

Date of Decision : 11-10-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 2
Penal Code, 1860 (IPC) — Section 11, 8

Citation : (1986) 1 BomCR 146 : (1986) 88 BOMLR 62 : (1986) MhLj 164

Hon'ble Judges : Dharmadhikari, J

Bench : Single Bench

Judgement

1. The short question raised in this Revision Application is : can a father, who is unable to maintain himself, claim maintenance under S. 125 of the Cr.P.C. from his married daughter ?

2. Dr. Mrs. Vijaya Manohar Arbat is the daughter of respondent 1 Kashirao Rajaram Sawai. The petitioner is a practising Medical Practitioner at Kalyan. She is the daughter of Kashirao from his first wife. Her mother died in the year 1948. Thereafter respondent 1 remarried and is living with his wife. The respondent 1 - father filed an application under S. 125 of the Cr.P.C. claiming maintenance at the rate of Rs. 500/- per month from the petitioner, his married daughter. According to respondent 1, he is unable to maintain himself and, therefore, is entitled to claim maintenance from his daughter, who is a practising Medical Practitioner at Kalyan. It is an admitted position that the petitioner is the only daughter of respondent No. 1.

3. The petitioner raised a preliminary objection to the very maintainability of the application on the ground that she being a married daughter of respondent 1, the application under S. 125 of the Cr.P.C. is not maintainable against her. By an order. D/- 22nd February 1985, the Judicial Magistrate, First Class, Kalyan, negatived the said preliminary objection. Against the said order, the present Revision Application is filed.

4. Shri Divekar, the learned Counsel appearing for the petitioner, contended before me that if the provisions of S. 125(1), sub-cl. (a) to (d) are read together harmoniously, a conclusion is inevitable that the parents cannot claim maintenance from their married daughter. According to him, cl. (d) in S. 125(1) was added by an amendment to the Code in the year 1973. Such a provision was not made in the old Cr.P.C. viz. section 488. Unless there is an obligation to maintain, there cannot be any refusal or neglect to do it. In the case of a married daughter, there is no obligation upon her to maintain her parents and, therefore, the parents cannot claim any maintenance from her under S. 125(1)(d) of the Code. According to the learned Counsel, this position is very clear from sub-cl. (c) of S. 125(1) of the Code. The Counsel has also placed reliance upon the phraseology used in the various sub-clauses of S. 125(1) of the Code and has contended that since the married daughter enters another family after her marriage, her ties with the original family are wholly snapped and, therefore, it is not open to a father to claim maintenance from his married daughter. In support of this contention, he has placed strong reliance upon decision of the Punjab and Haryana High Court in *Raj Kumari v. Yashodha Devi*, 1978 Cri LJ 600.

5. On the other hand, it is contended by Shri Angal, the learned Counsel appearing for respondent No. 1 father, that the different clauses of S. 125(1) of the Code will have to be read independently since they cover different areas and fields. The words and expressions used in the various sub-clauses will take in their import even the daughter. If the interpretation suggested by the petitioner is accepted, then an indigent father or a mother, who had only daughters and no son, could never claim maintenance from his or her daughter under S. 125 of the Code. The interpretation of this section cannot depend upon the corresponding obligation under the personal law. As a matter of fact, the provisions of the personal law are wholly irrelevant while interpreting section 125 of the Code. According to Shri Angal, sub-cl. (d) of S. 125(1) in terms confers a right upon the parents to claim maintenance from their married daughter also if they are unable to maintain themselves. In support of this contention, Shri Angal has placed reliance upon the decision of the Andhra Pradesh High Court in *Repalli Masthanamma v. Thota Sriramulu* (1982) 1 AWR 393 and the decision of the Kerala High Court in *M. Areefa Beevi Vs. Dr. K.M. Sahib*,

6. For properly appreciating the controversy raised before me, it will be worthwhile if the true nature of the provisions of S. 125 is borne in mind. The Supreme Court had an occasion to consider the true scope of this section in *Mohd. Ahmed Khan Vs. Shah Bano Begum and Others*, While considering the true scope of the section, this is what the Supreme Court has observed in para 7 of its judgment :-

"Under S. 125(1)(a), a person who, having sufficient means, neglects or refuses to maintain his wife who is unable to maintain herself, can be asked by the Court to pay a monthly maintenance to her at a rate not exceeding five hundred rupees. By cl. (b) of the Explanation to S. 125(1), "wife" includes a divorced

woman who has not remarried. These provisions are too clear and precise to admit of any doubt or refinement. The religion professed by a spouse or by the spouses has no place in the scheme of these provisions. Whether the spouses are Hindus or Muslims, Christians or Parsis, pagans or heathens, is wholly irrelevant in the application of these provisions. The reason for this is axiomatic, in the sense that section 125 is a part of the Cr.P.C. 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 Parsi 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. What difference would it then make as to what is the religion professed by the neglected wife, child or parent ? Neglect by a person of sufficient means to maintain these and the inability of these persons to maintain themselves are the objective criteria which determine the applicability of S. 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 S. 125 to maintain close relatives who are indigent is founded upon the individual's obligation to the society to prevent vagrancy and destitution. This is the moral edict of the law and morality cannot be clubbed with religion. Clause (b) of the Explanation to S. 125(1), which defines "wife" as including a divorced wife, contains no words of limitation to justify the exclusion of Muslim women from its scope. Section 125 is truly secular in character."

From these observations it is quite clear that the liability 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 law and morality cannot be clubbed with religion or personal law. Thus, the provisions of S. 125 are truly secular in character. To say the least, it may be described as a step towards the common Civil Code within the contemplation of Art. 44 of the Constitution, though in a limited sense. The maintenance of close relatives who are indigent so as to prevent vagrancy and destitution is not dependent upon the personal law of the parties, but is founded upon the individual's obligation to the society.

7. A somewhat similar question fell for the consideration of this Court in Pandurang Bhaurao Dabhade Vs. Baburao Baburao Dabhade and Another, . In that case it was contended by the petitioner, the son, that the obligation of a son to maintain his father is preceded by the fulfilment of the parental obligation to maintain and bring up the children during the childhood of the children. If the father fails to carry out this obligation, then he is not entitled to claim any maintenance even from his son under S. 125 of the Criminal Procedure Code. While negating this contention, the Division Bench of this Court had an

occasion to consider the true scope of S. 125(1) of the Code. This is what the Division Bench has observed in this context in para 9 of the judgment :-

"The provision in S. 125(1) is a very special provision enabling the Magistrate to make an order against a son or daughter for payment of a monthly allowance for the maintenance of the father or mother who is unable to maintain himself or herself. The provision in S. 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 who is unable to maintain himself or herself. The provision is really in the nature of an ameliorative provision made for the first time recognising 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 a remedy to enforce that right. It may be noted that the corresponding provisions in S. 488 of Cr.P.C. 1898, did not make any provision with regard to providing maintenance to parents."

From these observations, it is quite clear that the Division Bench has held that S. 125(1) recognises the right of the parents, who are unable to maintain themselves, to be maintained by their son or daughter, who is possessed of sufficient means. However, it was contended by Shri Divekar that these observations are obiter in nature and they are not binding upon this Court. Apart from the fact that it will not be a fair reading of the judgment, since the very interpretation of S. 125(1) fell for consideration of the Court, in my view, the view taken by the Division Bench is the only possible view of the matter.

8. For properly appreciating the contentions raised by Shri Divekar, it will be worthwhile if the relevant provisions of S. 125 are reproduced at this stage.

"125. Order for maintenance of wives, children and parents -

(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 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 :

.."

Clause (a) deals with the right of the wife who is unable to maintain herself, to claim maintenance from her husband. Clause (b) deals with the right of the children, who are minor, to get maintenance from their parents. Within the import of cl. (b) even a married daughter is included. Clause (c) deals with a disabled child who has attained majority. The bracketed portion "not being a married daughter" covers only cl. (c) and not the other sub-clauses of S. 125(1) of the Code. This is obvious from the use of specific expression "whether married or not" in sub-cl. (b) of S. 125(1). Then comes sub-cl. (d) which confers a right upon a father or mother unable to maintain himself or herself to claim maintenance. The word "person" is not defined in the Code, nor the expression "his" is defined. However, by S. 2(y) it is laid down that the words and expressions used therein and not defined but defined in the Penal Code have the meanings respectively assigned to them in that Code. Section 8 of the Penal Code reads as under :-

"Gender. The pronoun "he" and its derivatives are used of any person, whether male or female."

Section 11 defines the word "person", which includes any Company or Association, or body of persons, whether incorporated or not. The definition of the word "person" is inclusive and, therefore, obviously not exhaustive. S. 13(1) of the General Clauses Act lays down that in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females. The word "person" is defined in S. 3(42) of the General Clauses Act and the definition is akin to the definition in S. 11 of the Penal Code. Further, by S. 2(y) of the Cr.P.C. it is provided that the words and expressions used in the Code are to be understood as defined by the Penal Code. Therefore, it is quite clear that the pronoun "he" and its derivatives as used in S. 125 of the Cr.P.C. would include in its import, both a male or a female. S. 125(1)(d) contains no words of limitation to justify the exclusion of a married daughter from the scope of the said section. Therefore, it is not possible for me to accept the contention of Shri Divekar in that behalf. As observed by the Andhra Pradesh High Court in Repalli Masthanamma's case (1982) 1 AWR 393 :

"Section 125, Cr.P.C. does not contain any provision prohibiting a father from claiming maintenance from a married daughter. The submission that once a daughter is married, she belongs to a different family and has, therefore, no liability to maintain her father, has no merit in it. The daughter does not cease to be the daughter after she is married into another family. If she has sufficient means of her own, the obligation is cast on her to look after her parents who are otherwise unable to maintain themselves."

Further, the Andhra Pradesh High Court has also observed :

"It cannot be that if there are no sons but daughters, the parents have to remain destitute though the married daughters have sufficient means of their own to

provide for maintenance of their destitute parents."

I am in respectful agreement with the view taken by the Andhra Pradesh High Court.

9. A similar view is taken by the Kerala High Court in *M. Areefa Beevi Vs. Dr. K.M. Sahib*, In that case the Kerala High Court has considered the decision of the *Raj Kumari Vs. Yashodha Devi and Another*, It is quite obvious that the decision of the Punjab and Haryana High Court is based on a passage from the report of the Joint Committee of the Parliament. The said report reads as under :-

"The committee considers that the right of the parents not possessed of sufficient means, to be maintained by their son should be recognised by making a provision that where the father or mother is unable to maintain himself or herself an order for payment of maintenance may be directed to a son who is possessed of sufficient means. If there are two or more children the parents may seek the remedy against any one or more of them." After quoting this part of the report, the Kerala High Court observed :-

"Here instead of using the expression "sons", the expression used is "children". This is indicative of the intention of the legislature that no distinction was intended to be made between son and daughter. The cumulative effect of all these leads me to the conclusion that under S. 125 of the Cr.P.C. a daughter also has the liability to maintain her parents who have no ostensible means of livelihood."

It appears that the Punjab and Haryana High Court read the Joint Committee's report in part and did not notice the subsequent portion of it, which states that if there are two or more children, the parents may seek the remedy against any one or more of them. Though in the first part of the report the word used is "son", in the latter part the expression used is "children" which must take into its import a daughter whether married or unmarried. Since no other interpretation of the said provision is possible, in my view, the Division Bench of this Court in *Pandurang Bhaurao Dabhade Vs. Baburao Baburao Dabhade and Another*, rightly held that S. 125 recognises 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 already observed, no distinction can be made between a married or an unmarried daughter in that behalf, since even after the marriage the daughter continues to be the daughter and her obligation to maintain her infirm parents, who are unable to maintain themselves, does not come to an end.

10. The contention of Shri Divekar based on sup-cl. (c) of S. 125(1) and particularly on the words and expression "not being a married daughter" cannot affect or control the provisions of sub-cl. (d), since these two sub-clauses cover different areas and fields. Once it is held that the corresponding or mutual obligation either under the personal law or otherwise is not relevant for construing S. 125(1) of the Code, which is secular in nature, in my opinion, sub-

cl. (c) of S. 125(1) cannot control sub-cl. (d) which confers an independent right upon a father or mother to claim maintenance. It is pertinent to note that this clause is newly added in S. 125 of the Code and such a provision was not there in the old S. 488. The legislature in its wisdom has conferred a new right upon the indigent father and mother to claim maintenance, by enacting sub-cl. (d) in S. 125(1); hence by interpretative process what is granted by the legislature cannot be taken away. The object of the proceedings for maintenance is to prevent vagrancy by compelling a person to support his wife or child or father or mother unable to support themselves. The provisions relating to obligation to maintain are not penal in nature, but are intended for the enforcement of a social duty, a default of which may lead to destitution and vagrancy. It serves a social purpose. Therefore, it will not be fair to exclude a well-to-do married daughter, who has an independent source of income, from carrying out this social obligation. That will be against all the canons of justice, equity and good conscience. It will also be against the well-established principles of "gender justice". It will frustrate the very object of the legislation. Therefore, I do not find any substance in this Revision Application.

11. In the result, therefore, the Revision Application stands dismissed. Rule discharged.

12. Revision dismissed.