

(1997) 01 GUJ CK 0025
In the Gujarat High Court

Case No : Criminal Revision Application No. 126 of 1992

Karodiben and Others

APPELLANT

Vs

Rajubhai Mahendrasingh and Others

RESPONDENT

Date of Decision : 24-01-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1998) 1 DMC 580 : (1997) 3 GLR 480

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Advocate : D.J. Bhatt, for the Appellant; S.T. Mehta, Assistant Public Prosecutor for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—The petitioners herein are the mother and the two minor sons who have claimed maintenance u/s 125 of the Criminal Procedure Code against the step-sons of the petitioner No.1.

2. Petitioners preferred Criminal Misc. Application No. 199 of 1988 before the learned Metropolitan Magistrate, Ahmedabad u/s 125 of the Code and claimed monthly maintenance of Rs. 500/- for each of them. Learned Metropolitan Magistrate under his judgment and order dated 8th October, 1991 partially allowed the said application and awarded a monthly maintenance of Rs. 100/- to each of the petitioners. Feeling aggrieved, the respondent preferred Criminal Revision Application No. 298 of 1991 before the learned Sessions Judge, Ahmedabad. The learned Sessions Judge, Ahmedabad, under his judgment and order dated 13.2.1992 allowed the application and quashed and set aside the judgment and order of the learned Magistrate. Feeling aggrieved, the petitioners have preferred this revision application u/s 397 of the Code.

3. It is undisputed that the respondent Nos. 1 & 2 herein are the sons of the husband of the petitioner No. 1 by his first wife who is still alive. Petitioner No. 1

was the second wife of late Mahendra Singh and the petitioner Nos. 2 & 3 are the minor sons of the late Mahendra Singh and the petitioner No. 1. The question that would, therefore, arise is whether the petitioner could have a claim for maintenance u/s 125 of the Code against her step-sons and whether the petitioner Nos. 2 & 3 could have a claim for maintenance against their half brothers. This Court in earlier two judgments-one in the matter of Havaben Karimbhai Belim v. Razakbhai & Ors. 1978 GLR 237, and in the matter of Aher Devsi Natha and Others Vs. Rathiban Nathubhai and Another, had held that the word "mother" used in Section 125 would also include the word s "step-mother" and the step-mother should be entitled to claim maintenance from her step-sons. However, both these rulings have been overruled by the Hon"ble Supreme Court in the matter of Kirtikant D. Vadodaria Vs. State of Gujarat and Another, . The Court has held that the expression "mother" in Clause (d) of Section 125(1) of the Code means and is referable only to the real or natural mother who has actually given birth to the child. The Court, however, considering the benevolent purpose in enacting the above referred Section 125 of the Code carved out an exception for the step-mother who does not have a child of her own and whose husband has either died or is unable to maintain her. Such step-mother can have a claim for maintenance against the step-sons. In the present case, it is undisputed that the petitioner has two sons. In my view, therefore, the above exception carved out by the Hon"ble Supreme Court in the matter of Kirtikant D. Vadodaria (supra) cannot be applied in favour of the petitioner No. 1. The petitioner No. 1 being a step-mother cannot claim benefit of maintenance against her step-sons u/s 125 of the Code. Learned Advocate Mr. Bhatt has submitted that though the petitioner has two sons undisputedly both the sons were minor and were unable to maintain their mother, the petitioner No. 1. In the circumstances, the exception made for the childless step-mother should be extended to a step-mother who has minor children. I am afraid, I cannot accept the contention raised by Mr. Bhatt. The exception carved out by the Hon"ble Supreme Court as aforesaid cannot be given further extended meaning. The claim for maintenance made by the petitioner No. 1 against the respondent Nos. 1 & 2 is, therefore, required to be rejected. As far as the claim of the petitioner Nos. 2 & 3 is concerned, they are the half brothers of respondent Nos. 1 & 2. Section 125(1) entitles a wife to claim maintenance from her husband; a legitimate or illegitimate minor child to claim maintenance from the parent; a legitimate or illegitimate child not being a married daughter who has attained majority and by reason of any physical or mental abnormality or injury is unable to maintain itself and a parent who is unable to maintain himself or herself. Thus, a brother or a sister is not entitled to claim maintenance from his or her sibling u/ s 125 of the Code. Petitioner Nos. 2 & 3, therefore, could not have any claim for maintenance against the respondent Nos. 1 & 2 under Sec. 125 of the Code even if they were their brothers by full blood. The learned Magistrate, therefore, could not have directed the respondent Nos. 1 & 2 to pay maintenance to the petitioner Nos. 2 & 3. The claim for maintenance made by the petitioner Nos. 2 & 3 against respondent Nos. 1 & 2 is, therefore, required to be rejected.

4. In view of the above discussion, petition is dismissed. Rule is discharged.