
(1979) 04 BOM CK 0001

In the Bombay High Court

Case No : Criminal Application No. 1394 of 1978

Pandurang Bhaurao Dabhade

APPELLANT

Vs

Baburao Baburao Dabhade and Another

RESPONDENT

Date of Decision : 18-04-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(1)
Hindu Adoptions and Maintenance Act, 1956 — Section 20(3)

Citation : (1980) 82 BOMLR 116 : (1980) CriLJ 256 : (1979) MhLj 729

Hon'ble Judges : P.B. Sawant, J; M.N. Chandurkar, J

Bench : Division Bench

Advocate : S.R. Chitnis, for the Appellant; J.A. Barday, Public Prosecutor, V.V. Karmarkar, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Chandurkar, J.—This is a petition u/s 482 of the Code of Criminal Procedure challenging an order made by the Judicial Magistrate, First Class, 9th Court, Pune, directing the present petitioner in a proceeding u/s 125 of the Criminal Procedure Code, 1973, to pay an amount of Rs. 75/- per month by way of maintenance to respondent No. 1 who is the father of the petitioner.

2. The proceedings before the trial Magistrate commenced on an application by respondent No. 1, the father, claiming that he was entitled to maintenance allowance of Rs. 150/- from the present petitioner because he had no source of income and on account of old age and physical infirmity, he was not able to earn any living.

3. It is not in dispute that the petitioner is a fairly well placed person in the employment of the Central Government in the Customs Department and his total monthly salary is about Rs. 1200/- per month. The main ground on which the application was contested by the present petitioner was that the father had not cared the least about the petitioner and his other young brother after their mother had died and the petitioner father had married for the second time. The

petitioner's case is that he and his younger brother was really brought up firstly by the maternal grand father and then by their aunt, that is, the sister of respondent No. 1. In fact the application was sought to be defeated on the ground that the father having failed to fulfil his parental obligation of bringing up the petitioner and his younger brother, the father did not get any right now to claim maintenance and throw the responsibility of maintaining him on the petitioner.

4. This argument was negated by the trying Magistrate who made in order that the petitioner should pay a sum of Rs. 75/- per month as maintenance to respondent No. 1 from the date of the application, that is from 4th July, 1975.

5. This order was challenged by the present petitioner by a revision application before the Additional Sessions Judge, Pune. The learned Additional Sessions Judge also negated the argument that the application should be rejected on the ground that the father had not fulfilled his parental obligation. The learned Additional Sessions Judge found that the statutory obligation cast u/s 125(1)(d) of the Code of Criminal Procedure, 1973, to maintain parent who are unable to maintain themselves is absolute and it was not dependent on whether the parents had or had not discharged their obligation towards the son. Having found that respondent No. 1 was unable to maintain himself and that he was not getting any pension and it was not shown that he had any source of income, the order of trial Magistrate was confirmed.

6. These orders are now challenged by the petitioner in this application before this Court.

7. Mr. Chitnis appearing on behalf of the petitioner has very vehemently reiterated the stand which the petitioner had taken before the two lower Court. It is vehemently contended by him that we must read into the scheme of section 125(1) of the Code of Criminal Procedure, 1973, the implication that only that father or mother would be entitled to claim maintenance from their son, who had during the minority of the son taken proper care of the son and had brought him up. It was contended that if this requirement was implicit in section 125(1) of the Code of Criminal Procedure, then, according to the learned Counsel there was evidence on record to show that after the death of the mother of the present petitioner, the petitioner was left entirely uncared for by the father who had married for the second time and that the petitioner was brought up and educated initially by his maternal grand father and then by his aunt.

8. Now, it is not possible for us to read anything more in section 125(1) of the Code of Criminal Procedure than what is warranted by the plain meaning of the words used by the Parliament in enacting section 125. The relevant part of section 125(1) of the Code of Criminal Procedure, 1973, read as follows :

"If any person having sufficient means neglects or refuses to maintain---

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor 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 :

Provided that the Magistrate may order the father of a minor female child referred to in Clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation.---For the purposes of this chapter,---

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875, is deemed not to have attained his majority.

(b) "wife" includes a woman who has been divorced by or has obtained a divorce from, her husband and not remarried."

Giving a plain meaning to the language used in section 125(1) and to the provisions relating to the father and mother in Clause (d) thereof, the only two circumstances which have to be gone into for the purpose of deciding a claim u/s 125(1) appear to be that the father or mother must be unable to maintain himself or herself and secondly, the person against whom an order u/s 125(1) is sought must have sufficient means to maintain the father or mother and yet neglects or refuses to maintain the father or mother.

9. The provisions in section 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 section 15 is one of general application and is not related to the person 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 provision in section 488 of the Criminal Procedure Code, 1898, did not make any provision with regard to providing maintenance to parents.

10. We may usefully refer to the relevant part of report of the Joint Committee of Parliament where it was observed as follows :

"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 provision that where the father or mother is unable to maintain himself or herself, the order for payment of maintenance may be directed to a son who is possessed by sufficient means. If there are two or more children, the parents may seek the remedy against any one or more of them".

(See Taxman Publication, Code of Criminal Procedure, 1973, page 72).

11. Though section 125 is of general application, we may point out that the obligation of a Hindu to maintain his aged and infirm parents was given a statutory recognition by enacting section 20 of the Hindu Adoptions and Maintenance Act, 1956. Sub-section (3) of section 20 which is the relevant section dealing with such an obligation, reads as follows :---

"The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, unable to maintain himself or herself out of his or her own earnings or other property".

Dealing with this provisions, the learned commentator of Mulla's Hindu Law, 14th edition, has observed at page 1023 :

"A Hindu is under a legal obligation to maintain his wife, his minor sons, his unmarried daughter and his aged parents whether he possessed any property or not. The obligation to maintain these relations is personal and legal in character and arises from the very existence of the relationship between the parties The present sections gives statutory form to the legal obligation of a Hindu also to maintain his minor children and his aged or infirm parents. But the law laid down in the section goes further than that and Rules that not merely a male Hindu-as was the law previously applicable but a female Hindu as well as is now under a legal obligation to maintain legitimate or illegitimate children and aged or infirm parents".

12. Having considered the provisions of section 125(1), it is clear to us that they do not contemplate that the obligation to maintain an aged, infirm parent who is unable to maintain himself or herself can be enforced only if it is preceded by the fulfilment of the parental obligation to maintain and bring up the children during the childhood of the children.

13. The argument which is advanced before us stems more from amoral indignation at being required to maintain a father who has not cared for the children during the time when he should have done so. However, effect must be given to the intention of the legislature which must be found from the words of section 125(1) alone and the petitioner cannot ask to be relieved from the said statutory obligation on any moral considerations.

14. It appears to us, therefore, clear that since the father in the instant case has been found unable to maintain himself and the petitioner who is a son is fairly well placed and is refusing to maintain him, the father was entitled to an order for maintenance u/s 125(1) of the Code of Criminal Procedure. We may make it clear that Mr. Chitnis appearing on behalf of the petitioner has positively stated before us that it is not the case of the petitioner that the petitioner is not possessed of sufficient means to maintain the father or to pay the maintenance amount. In view of that statement, it is not necessary for us to go into the quantum which has already been determined by the trial Court.

15. In view which we have taken, this petition must fail and is rejected. There will be no order as to costs of this petition.