

**(1991) 01 GUJ CK 0007**

**Gujarat High Court**

**Case No:** None

Aher Devsi Natha and Others

APPELLANT

Vs

Rathiban Nathubhai and Another

RESPONDENT

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**Date of Decision:** Jan. 11, 1991

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 125(1)(d)

**Citation:** (1992) CivCC 105 : (1991) 2 GLR 1281 : (1992) 1 RCR(Criminal) 201

**Hon'ble Judges:** J.N. Bhatt, J

**Bench:** Single Bench

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### **Judgement**

J.N. Bhatt, J.

This Special Criminal Application raises the following two interesting question pertaining to the right to claim maintenance by the mother:

1. Whether the step mother is included within the expression of "mother" as envisaged under the provision of Section 125(1)(d) of the Code?
2. Whether the mother is entitled to have maintenance from her stepsons despite the fact that her real sons are able to maintain her?
2. In order to appreciate the aforesaid two points, it would be necessary to set out the relevant and material facts, at this stage.
3. The petitioners are the sons of one late Nathu Arjan, Respondent No. 1 Rathiben is the step mother who is the original applicant. Respondent No. 1 (mother) initiated the proceedings for maintenance by filing Cri. Misc. Application No. 285 of 1983 by invoking the aids of the provisions of Section 125 of the Criminal Procedure Code, 1973 (hereinafter referred to as "the Code") in the Court of the learned Judicial Magistrate (First Class), Junagadh against the petitioners who are her step sons. (They are, hereinafter referred to as the original applicant and opponents for the sake of convenience and brevity).

4. Original applicant (mother) Rathiben is the wife of one Vejanand Aher. Said Vejanand was the elder brother of Nathu. That the petitioners herein, original opponents are the sons of said late Nathu Arjan. On the demise of said Vejanand, original applicant Rathiben married to Nathu Arjan and Nathu Arjan is the father of the petitioners herein. There were 2 sons out of the wedlock between Rathiben and late Vejanand, viz., (1) Jagmal, (2) Devanand, and (3) Jetha. In short, the original applicant who was the original aunt of the petitioners herein, later on became their step mother. Incidentally, it may be mentioned that after re-marriage of original applicant Rathiben with late Nathu Arjan, there was only one surviving daughter, viz., Nanduben when the maintenance was claimed.

5. Original applicant-mother claimed maintenance from the original opponents-step sons, who are the petitioners in this application. Mother claimed Rs. 500/- per month by way of maintenance from her step sons. She had also served them with a notice. She contended that she had to live with her real daughter Nanduben at Junagadh as her step sons refused to maintain her. She also pleaded that she was unable to maintain her.

6. Opponents-step sons appeared and resisted the application for maintenance by filing written statement at Exh. 12. They inter alia contended that they are not bound to maintain the step mother as she has 3 able bodied affluent real sons. It was denied that the mother was staying with daughter Nanduben. Thus, right to claim maintenance was challenged.

7. On the appreciation of the evidence, the learned Magistrate was pleased to award maintenance at the rate of Rs. 20/- p.m. from each opponents u/s 125 of the Code. The learned Magistrate found that the opponents who are the step sons, are bound to maintain the step mother and each son was directed to pay maintenance at the rate of Rs. 20/- p.m. from the date of the application.

8. Being aggrieved by the said judgment and order of the learned J.M.F.C., junagadh passed on 18-4-1984, the original opponents preferred Cri. Revision Application No. 98 of 1984 and original applicant-mother preferred Cri. Revn. Appln. No. 11 of 1985 in the Sessions Court at Junagadh. Both the revision application came to be dismissed on 18-12-1985.

9. Being dissatisfied, the original opponents step sons have now come up before this Court by challenging the legality and validity of the judgment and order passed in the said Cri. Revn. Appln. No. 98 of 1984.

10. In so far as the aforesaid two points are concerned, the learned Advocate for the petitioners Mr. H.J. Nanavati has firstly contended that step mother is not entitled to claim maintenance u/s 125 of the Code. It is contended that having regard to the object and intention of the legislature and in the absence of any definition of expression "mother" in Section 125 of the Code, said expression will have to be given its natural meaning and/or construed to mean only a natural mother, and

would not include a step mother. Thus, it is contended that the step mother is not entitled to claim maintenance u/s 125 of the Code from a step son. This contention may appear to be subtle but not sustainable.

11. In construing the provisions of Section 125 of the Code, the fundamental purpose and policy of the provisions should be borne in mind. The policy behind incorporating the provisions in Section 125 of the Code is, to prevent vagrancy. It has a social facility and purpose regardless of the personal laws. The entire Section 125 is based on old maxim, aged, parents, virtuous wife and a minor child should be maintained at any cost by the person who is bound to maintain them. Keeping in mind the object and purpose with which the provision is made in Section 125 of the Code, it cannot be gain said that the expression "mother" excludes step mother. To interpret the expression "mother" exclusive of step mother would aim at defeating the fundamental underlying design and purpose of the said provision. It is a matter of common experience that a man having begotten children, marries again after the death of his first wife. The children grow up and become major. However, the father, sons, daughters and a step mother all live at times in the same family and under the same roof as one unit. The affinity brought about by the father's marriage between the step mother and step children is not lost on account of demise of father. Suppose, in a given case, a dispute arises between the step mother and a step son, could she be thrown at the mercy of the step son? In such a situation, she will be left unattended and uncared for. Such a situation or interpretation would bring about a very unfortunate position for a step mother and which would lead to vagrancy. In the result, such an interpretation or situation would destroy and dynamite the fundamental purpose and policy behind the provision to Section 125 of the Code. Therefore, the purpose and the object with which such a provision is made in Section 125 of the Code, must be taken into account so as to interpret the expression "mother". In reality, the provision in Section 125 of the Code is made so as to direct the husband and children so that they can fulfill their moral and social obligation, where they neglect or refuse to maintain the wife or parents as the case may be.

12. Section 125(1)(d) of the Code contemplates a status created by a lawful marriage. There is no dispute about the fact that the original applicant mother Rathiben was a lawful married wife of deceased Nathu Arjan. Therefore, a son whose natural mother is dead and as father entered into the lawful marriage with another woman, and she gets the status of a mother, on account of lawful marriage. Thus the word "mother" incorporated in Section 125 of the Code includes natural mother and step mother. Incidentally, it may also be mentioned that even in the absence of any specific statutory definition of the expression "mother", recourse to general grammatical meaning, is inevitable to the words "step mother". Therefore, in the opinion of this Court, the expression "mother" in Section 125(1)(d) of the Code undoubtedly includes step mother. This view is also fortified by the decision of this Court in the case of Havaben Karimbhai Belim v. Razakbhai @ Bachubhai Karimbhai

Belim and Ors. reported n (1978) XIX GLR 237. Therefore, aforesaid first contention raised by learned Advocate Mr. Nanavati that step mother is not entitled to claim maintenance u/s 125(1)(d) of the Code is totally meritless and deserves to be rejected.

13. Next it will lead to appreciation of the second aforesaid contention. It is forcefully contended by the learned Counsel Mr. Nanavati that mother who is staying with a real son, step mother could not be said to be unable to maintain herself. First of all, it is not proved from the facts of the present case that mother was staying with the real sons. Apart from that original claimant-mother is entitled to claim maintenance from all or any one of the sons of her choice. The status and financial capacity of sons will not create an impediment in the right to claim maintenance u/s 125 of the Code. It cannot be contended that the mother first should exhaust her remedy u/s 125 of the Code against the real sons. The provision u/s 125 of the Code creates legal right to claim maintenance in favour of mother. It does not create any disablement nor does it subscribe right of mother only to claim maintenance from sons having means or who are affluents. It also could not be contended that mother should stay with the real sons only or first claim maintenance from the real sons. Again, it may be mentioned that to subscribe to the second contention would mean to defeat rather than advancing the cause of benevolent provision in Section 125 of the Code. It is the right of the mother to claim maintenance from all or any one of them. It is not necessary for the mother to join all sons bound to maintain her. It is within her discretion to claim maintenance from all or any one of them, of her choice. Therefore, it cannot be contended that the mother should claim maintenance u/s 125 of the Code first, against the real sons or against affluent sons. Could she be compelled to claim from all sons or first from real sons? The obvious answer would be in the negative. Said provision u/s 125 of the Code creates unfettered right to claim maintenance in favour of mother from all or any one of them of her choice and in reality, the obligation is generated against all the sons who are legally bound to maintain the mother including the step mother. If the aforesaid two contentions are accepted, then it would destroy the fundamental object of the provisions of Section 125(1)(d). Could the mother be left at the mercy of some sons? Obviously not. It is her statutory right to claim maintenance from all or any one of them who are bound to maintain her and who are neglecting or refusing to maintain her. Therefore, it cannot be contended that the mother is obliged to claim maintenance first from the real sons and thereafter from the step sons. Such an interpretation as propounded by the learned Counsel for the petitioner herein suffers from serious infirmity and is running counter to the philosophy and policy of the provision of Section 125(1)(d) of the Code.

14. It is further contended that mother has failed to prove that she is unable to maintain herself because of the fact that she has 3 able bodied real sons. This contention is also without any substance. There is clear and cogent evidence to show that the mother who is in the December years of her life (aged about 80) was

also neglected and refused maintenance by step sons who are legally bound to maintain her. With the result, this contention also must fail.

15. In fact that findings of fact that the original applicant-step mother is entitled to maintenance u/s 125(1)(d) of the Code and she is unable to maintain herself on account of the refusal and neglect on the part of step-sons, which is confirmed by the Sessions Court cannot be agitated in a petition before this Court. Jurisdictional sweep of this Court is very much circumscribed. No illegalities are pointed out. No perversity is noticed. No misreading is indicated. Therefore, present petition is devoid of any merit. Since two interesting questions of general importance having been raised in this litigation and this Court was addressed at a marathon length. It was thought expedient and necessary to examine the said contentions in greater details.

Again, it may be mentioned that a contention is raised by the learned Counsel for the mother that despite the order of 2 Courts below, and without there being any stay order from this Court, during the pendency of this petition, the erring step sons who are legally bound to maintain the step mother have not paid even the paltry amount of maintenance awarded regularly. This is really very unfortunate situation for infirm and aged mother. Therefore, this Court has no other alternative but only to observe that it will be open for the mother to enforce the order in her favour for her maintenance by taking recourse to the provisions of law. Except that, this Court has to raise its hands in helplessness with regard to the execution of the maintenance order.

16. Unfortunately a claim of the mother who is aged about 80 and virtually whose one leg has already been in the grave is opposed by the step sons for her maintenance and again unfortunately the maintenance awarded is too small and partly amount, in the facts and circumstances of the present case. Needless to mention that the quantum in the impugned judgment and order is not further challenged by the aged, infirm, helpless and unfortunate mother. Be as it may, be contentions raised by the step sons before this Court in this matter are without any substance. With the result, present petition merits rejection. The rule is discharged accordingly.