

Kirtikant D. Vadodaria vs State Of Gujarat & Anr on 26 April, 1996

PETITIONER:
KIRTIKANT D. VADODARIA

Vs.

RESPONDENT:
STATE OF GUJARAT & ANR

DATE OF JUDGMENT: 26/04/1996

BENCH:
A.S. ANAND, FAIZAN UDDIN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Faizan Uddin.J 1 This appeal has been directed against the order dated April 12, 1993 passed by a learned single judge of Gujarat High Court in a Special Criminal Application No. 496 of 1993 dismissing the petition of the appellant, affirming the judgment dated march 23, 1993 passed by the City Sessions Judge, Ahmedabad in Criminal Revision Application No. 338 of 1992, arising out of an order dated October 16, 1992, arising out of an order dated October 16, 1992 passed by the Metropolitan magistrate. Court. No. 7, Ahmedabad in Criminal Miscellaneous Application No. 163 of 1989 awarding maintenance to respondent no. 2, Smt. Manjulaben, the step- mother of the appellant.

2) Before dealing with the rival contentions of the parties, it would be appropriate to set-out the facts briefly.

3) The appellant is the son of Danyalal Hirachand Vadodaria from his first wife. When the appellant was a child of tender age, his mother expired and after about an year, Danyalal Hirachand took respondent No.2. Smt. Manjulapen as his second wife, from whom 5 sons and 2 daughters were born. all the 5 sons and daughters from the above named wife second wife are major. first of all, Dayalal Hirachand, the father of the appellant alone made a Miscellaneous Application No. 190 of 1984 in the Court of Judicial Magistrate, Ist Class, Surendra Nagar, claiming maintenance from his

son, the appellant, contending that the appellant was serving as a Manager in Central Bank of India and was earning Rs. 5,000/- per month in addition to rental income of Rs.1,000/- per month. The appellant contested the said application by pleading that besides the 5 sons from the second wife who are all earning members, his father himself was a person of sufficient means and assets and, therefore, the appellant was not liable to pay any maintenance allowance.

4) The learned Magistrate on evaluation of evidence found that Dilip, one of the natural born sons of the respondent No. 2 herein, had contested the Municipal Election, while the other two natural born sons of respondent No. 2 - Niranjana and Bharat - were carrying on business of selling clothes and books respectively on the payments of Bombay and appellant's father Danyalal Hirachand was engaged in selling Rasna Chemicals, Detergent Powder, Cello-tape, Readymade frocks etc. and was giving Rs. 180/- per month as salary to his servant and was also getting Rs. 108/- per month as rent from tenants and that he had shown his monthly income of Rs. 550/- per month in the Ration Card. He had received 52,000/- as consideration for sale of his houses and possessed some jewellery etc. and on that basis recorded the finding that Danyalal Hirachand was a wealthy and rich person and the main dispute between them was with regard to distribution of shares in the properties and, therefore, he was not entitled for any maintenance from the appellant, The learned Magistrate consequently dismissed his maintenance petition, In the revisional Court. a settlement was arrived at between the father and the appellant.

5) Subsequently, another maintenance petition was jointly filed by appellant's father Danyalal Hirachand and his second wife Smt. Manjulaben (respondent No.2) claiming a sum of Rs. 500/- per month as maintenance from the appellant. out of which the present appeal arises. The respondent No. 2 Smt. Manjulaben and her husband Danyalal Hirachand claimed maintenance from the appellant by contending that the appellant was brought up and educated by them and was drawing a handsome salary as the Manager of the Bank and since they are not possessed of sufficient means to maintain themselves and that their 3 sons from Smt. Manjulaben, respondent No. 2 herein, have meagre income from their small business and the 2 youngest sons had recently completed their studies but were unemployed and. therefore, the appellant was liable for their maintenance. The appellant contested by denying that the natural born sons of respondent no. 2 had meagre income and were not possessed of sufficient means to maintain themselves and their parents and pleaded, inter alia, that they were well-off with sufficient means to provide maintenance. The appellant took the plea that his father Danyalal Hirachand was an expert in the formula for preparing Snuff and was earning Rs.1,500/- to Rs.2,000/- per month from the sale thereof, besides receiving the rental income from immovable properties, He also took plea that the maintenance petition against him had been filed only to harass the appellant leaving out all the 5 natural born sons of respondent No. 2 who are well-off and capable of maintaining their parents.

6) The learned Magistrate recorded the finding that Danyalal Hirachand, the father of the appellant, had agreed to receive a sum of Rs.3,250/- in full and final settlement of his future maintenance allowance in revisional court arising out of the earlier maintenance petition and that he having sufficient means to support himself was not entitled for any maintenance allowance from the appellant. However, the trial Magistrate took the view that inspite of respondent No. 2 being a step-mother of the appellant, she had right to claim maintenance from the appellant and awarded a

sum of Rs. 400/- per month as maintenance allowance to her from the date of the petition. This order has been upheld by the learned City Session Judge and the High Court as stated earlier against which this appeal by leave of this Court has been preferred. Thus, the short question that arises for consideration of this Court is whether the expression "mother" used in clause (d) of sub-section (1) of Section 125 of the Criminal Procedure Code, 1973 (in short the Code), includes "step-mother."

7) The counsel for the appellant urged that the appellant had already paid a sum Rs. 3.250/- to his father in full and final settlement of his future maintenance claim in the earlier proceedings and the subsequent application by him along with the step-mother of the appellant was filed with motive to narrate the appellant and to deter and deprive him from claiming his share in the ancestral property. He submitted that the appellant being the step-son of respondent No. 2, alone was chosen to be proceeded against for grant of maintenance despite the fact that all the 5 real and natural born sons of the respondent No.2 are earning well and possessed of sufficient means to maintain their mother, the respondent No. 2, besides her husband himself being capable of maintaining her. The learned counsel asserted with great force that the step-mother is not and cannot be included in the expression "mother" in Section 125 of the Code and relying on the decisions rendered by Bombay, Madhya Pradesh and Andhra Pradesh High Courts, submitted that the appellant cannot be fastened with the liability for the maintenance of his step-mother, respondent no. 2 herein, under Section 125 of the Code, specially when her husband Dahyalal Hirachand and 5 major natural born sons aged between 44 to 29 years are earning well and capable of maintaining respondent No.2. It was contended that the Courts below miserably failed to consider that the appellant's father Dahyalal Hirachand was possessed of jewellery and had sold out four houses for a sum of Rs.52,000/- and in addition had an independent income of his own which is sufficient to maintain himself and his wife, respondent No.2 the step-mother of the appellant, It was further contended that a person may be bound to maintain the dependents out of the estate or ancestral property inherited, in which event the right to maintenance exists against the property by virtue of which he may be held liable for the maintenance of his step-mother.

8) we have given serious thought and consideration to the submissions made above by the learned counsel for the appellant and notice that Dhayalal Hirachand, the Husband of respondent No. 2 Smt. Manjulaben, has been found to be person of sufficient means and income. It is also true that there are 5 natural born sons of respondent No. 2 besides 2 daughters, who are all major. It is also a fact that Dalio one of the sons had contested the Municipal Election and two other sons are carrying on various business, According to the Law of the Land with regard to maintenance, there is an obligation of the husband to maintain his wife which does not arise by reason of any contract - express or implied - but out of jural relationship of husband and wife consequent to the performance of marriage. Such an obligation of the husband to maintain his wife arises irrespective of the fact whether he has or has no property, as it is considered an imperative duty and a solemn obligation of the husband to maintain his wife. The husband cannot be heard saying that he is unable to maintain due to financial constraints so long as he is capable of earning. Similarly, It is obligatory on the part of son to maintain his aged father and mother by reason of personal obligation. Under the old Hindu Law. this obligation was imposed on the son alone, but now the present day Hindu Law extends this obligation both on sons and daughters, In this connection, it is relevant to point out that according to sub-section (1) of section 18 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu wife is

entitled to the maintenance from her husband so long as she is chaste subject to the conditions laid down in sub- section (2) of section 18 of the said Act. Under the present Law, as said earlier, both son and daughter are liable to maintain aged or infirm parents including childless step- mother, when the later is unable to maintain herself. It is well settled that such has to maintain his mother irrespective of the fact whether he inherits any property or not from his father, as on the basis of the relationship alone he owns a duty and an obligation, legal and moral. to maintain his mother who has given birth to him. further, according to Section 20 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu is under legal obligation to maintain his wife, minor sons, unmarried daughters and aged or infirm parents. the obligation to maintain them is personal, legal and absolute in character and arises from the very existence of the relationship between the parties. But the question before us is whether a step-mother can claim maintenance from the step-son under section 125 of the code includes within its fold the step-mother also as one of the persons to claim maintenance from her step-son.

9) There is a serious controversy and conflict of judicial decisions amongst various High Courts with regard to the status and claim of maintenance by a step-mother from her step-son and it is his conflict of judicial decision which has given rise to the present Karimbhai Beline v. Razakbhai @ Bachubhai Karimbhai Belin & Ors (1978 Gujarat Law Reporter

237); Orissa High Court in Petei Bewa v. Laxmidhar Jena (1985) Criminal Law Journal 1124) and the High Court of Allahabad in Ganga Sharan Varshney v. Smt. Shakuntala Devi & anr. (1990 Criminal law Journal 128), have taken the view that the word "mother" occurring in clause (d) of Section 125(1) of the Code includes a "step-mother" or woman who has the status of a "step-mother" by reason of her lawful marriage with the father of the person sought to be made liable for maintenance under section 125 of the Code and such a woman or a step-mother can file application for maintenance from the Step-son. However, as against the aforementioned decisions, the High Court of Bombay in Ramabai v. Dinesh (1976 Maharashtra Law Journal 565); High Court of Madhya Pradesh in Rewalal Arjun Babu & anr. v. Kamlabai Arjun Babu (1985 Madhya Pradesh Law Journal 541) and High Court of Andhra Pradesh In Ayyagari Suryanarayana Vara Prasad Rao v. Ayyagari Venkatakrishna Veni & anr. (1989 Criminal Law Journal 673), have taken a consistent view that the word "mother" in Section 125 (1)(c) of the Code will have to be given its natural meaning and so considered, it will mean only the natural mother and will not include the "Step-mother" who in common parlance is distinct and separate entity and cannot be equated with one's won mother.

10) To resolve the controversy, it would be appropriate to reproduce the relevant part of Section 125 of the Code which reads as under:-

"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 minor child, whether married or not, unable to maintain itself. or

(c) his legitimate or illegitimate child (not being 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 or 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 (9 of 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 has not remarried.

2. Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

3. xx xx xx xx

4. xx xx xx xx

5. xx xx xx xx

11) Admittedly, the expressions "mother" and "step-mother"

have not been defined either in the Code or in the General Clauses Act. These expressions have also not been defined by the Hindu Law or the Hindu Adoptions and Maintenance Act, 1956 or by any other Law. As stated earlier, all that the explanation attached to Section 20 of the Hindu Adoptions and Maintenance Act, 1956 provides is that the expression "parent" includes a childless step-mother. His being the position, we have to resort to the dictionary meaning and the meaning in which these expressions are commonly understood in the popular sense. In the

Permanent Edition or WORDS AND PHRASES, VOLUME 27A, at page 348, the word "mother" has been given the meaning to denote a woman who has borne a child or a female parent, especially one of the human race. In Volume 40 of the said Permanent Edition of WORDS AND PHRASE. at page 145. the expression "step-mother"

has been given the meaning as to be the 'wife of one's father by virtue of marriage subsequent to that of which the person spoken of is the offspring. It has been further stated that a "stem-mother" is a relative by affinity and the relationship continues after the death of the faster. BLACK'S LAW DICTIONARY, 5th Edition, at page 913, has given the meaning of "mother" as a woman who has borne a child, a female parent. Further, at page 1268, the meaning of "step- mother" is stated to mean the wife of one's father by virtue of a marriage subsequent to that of which the person spoken of is the offspring. Similarly, in THE SHORTER OXFORD ENGLISH DICTIONARY, volume II, at page 1360, the meaning of the word "mother" is given as a woman who has given birth to a child or a female parent, and at page 12122, expression "stem-mother" has been assigned the meaning as The wife of one's father by a subsequent marriage. According to Webster Dictionary (international Edition), the expression "mother" means a female parent and that which was produced or given birth to anyone. Thus. on a conspectus view of dictionary meaning of the two expressions - "mother" and "step-mother"

in various dictionaries, it clearly emerges that there is inherent distinction between the status of a mother and 'step-mother' and they are two distinct and separate entities and both could not be assigned the same meaning . The expression "mother" clearly means only the natural mother who has given birth to the child and not the one who is the wife of one's father by another marriage.

12) It may be mentioned here that in The General Clauses Act though the expression "father" has been defined in clause 20 of Section 3, out the expression "mother" has not been defined. The expression "father" as defined in the General Clauses Act, 1656 means in the case of anyone whose Personal Law permits adoption, shall include an adoptive father'. Applying the said analogy, at best. an adoptive mother may also be included in the expression mother but not a step mother. As discussed above, a step-mother is one who is taken as a wife by the father of the child other than the one from whom the child is born or who has given birth to the child from whom he is born or who has given birth to him. This clearly goes to show that the woman who gives birth to a child and another woman who is taken by the father as his other wife are two distinct and separate entities in the eye of Law and who in common balance are known and recognized as real 'mother' and step-mother. That being so, another woman who is taken as a wife by the father of the child cannot be given the status of mother to the child born from another woman as there is no blood relation between the two.

13) We may also here usefully refer to an old decision of a Division Bench of Bombay High Court in Baidaya v. Natha Govindalal [(1885) 9 Indian Law Report 279], it was held that the term 'mata' stands for 'janani' "genitrix", and sapatnamata "noverca". It has been further observed in the said decision that 'mata' and

'mata-pitrau' are Sanskrit words which are used in the text by Manu, Mitaksnara and Salamphatta and in both the cases discussion proceeds on the supposition that the primary meaning of 'mata' was 'natural mother' and that it was only in secondary and figurative sense that it could mean a "step-mother". It is, therefore, clear that even under the old Hindu Law also, the expression mother was referable only to the natural mother who has given birth to the child and not the step-mother. It would be difficult to assume that the legislature was unmindful of the social fabric and the structure of relationship in the families. The existence of various kinds of relatives in our society was not some thing of which the Parliament may be said to ignorant when it thought to enact the New Code of 1973 and for the first time not only the parents were included amongst the persons entitled to claim maintenance under Section 125 (1)(d) but even the divorced woman had been included in the expression wife to be entitle to claim maintenance, who were not so included in Section 488 of the "step-father" or "step-mother" are not included in the expression "his-father" or mother" occuring in clause

(d) of Section 125(1) of the code giving a clear indication of the legislative intent.

14) In view of the above discussion it follows that the expression mother, in clause (d) of section 125 (1) of Code, means and is referable only to the real or natural mother, who has actually given birth to the child and if that be so the view taken by the Gujarat High Court in Havaben Beline's case (supra) that the word 'mother' occuring in clause (d) of Section 125(1) includes a woman who has the status of a step-mother by reason of her lawful marriage with the father of the person sought to be made liable for maintenance under Section 125. cannot be accepted. This assumption of the meaning of the expression mother by legal fiction would mean some thing which is not so intended by the legislature. For the same reasons the view taken by the Orissa High Court in Petei Bewa's case (supra). cannot also be accepted as it adopts the reasoning of the Gujarat High Court in preference to Bombay High Court which took the view that the word 'mother' used in Section 125(1)(d) of the Code, will have to be given its natural meaning and so construed it will mean only the natural mother and will not include the step-

mother, who in common parlance is a distinct and separate entity and cannot be equated with one's own mother. The High Court of Allahabad in case of Ganga Saran Varshney (supra) was mainly concerned with the question of jurisdiction with reference to the place where maintenance petition could be filed and there is no elaborate discussion on the question whether a step-mother would include in the expression "mother' in Section 125(1)(d) of the Code is the correct view and the contrary view of the Gujarat High Court, Orissa High Court and the Allahabad High Court (supra) in not the correct view.

15) The pint in controversy before us however is whether a 'stepmother' can claim maintenance from the step-son or not, having regard to the aims and objects of Section 125 of the Code. While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in

mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation, Having regard to this social object the provisions of Section 125 of the Code have to be given a liberal construction to fulfil and achieve this intention of the Legislature. consequently, to achieve this objective, in our opinion, a childless step- mother may claim maintenance from her step-son provided she is widow or her husband, if living, is also incapable of supporting and maintaining her. The obligation of the son to maintain his father, who is unable to maintain himself, is unquestionable, When she claims maintenance from her natural born children, she does so in her status as their 'mother'. such an interpretation would be in accord with the explanation attached to Section 20 of the Hindu Adoptions and maintenance Act.1956 because to exclude altogether the personal Law applicable to the parties from consideration in matters of maintenance under Section 125 of the Code may not be wholly justified. However, no intention of Legislature can be read in Section 125 of the Code that even though a mother has her real and natural born son or sons and a husband capable of maintaining her, she could still proceed against her step-son to claim maintenance. Since, in this case we are not concerned with, we express no opinion, on the question of liability, if any, of the step-son to maintain the step-mother, out of the inherited family estate by the step-son and leave that question to be decided in an appropriate case. Our discussion is confined to the obligations under Section 125 Cr.P.C. only.

16) In the present case, as discussed above, the "step- mother' respondent No. 2 has got 5 natural born sons who are all major and atleast 3 of them are well to do and capable of maintaining their mother. This apart, as already noticed, the husband of respondent No.2 is also possessed of sufficient means and property besides the monthly income that he derives from the business of Snuff enabling him to maintain and support his second wife. yet the step-mother respondent No. 2 preferred to claim the maintenance only from the step-son. the appellant herein leaving out all her natural born sons (from whom she could claim maintenance as their mother) and husband who are well to do. Prima facie it appears that respondent No. 2 proceeded against her step-son with a view to punish and cause harassment to the appellant, which is wholly unjustified. In the facts and circumstances of this case, we are of the view that respondent No. 2 is not entitled to claim any maintenance from the step-son, appellant herein. In the result the appeal succeeds and is hereby allowed. The impugned orders of the High Court and the Courts below are set aside and the petition of respondent No.2 for maintenance is dismissed, but without any orders as to costs. We, however, wish to clarify that in the interest of justice and to balance the equities, the amount already received by respondent No. 2 from the appellant shall not be refundable by her to the appellant.