AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.836 of 2018

Order reserved on: 28-9-2018

Order delivered on: 24-10-2018

Akhilesh Kumar Jagatramka, S/o. Ganesh Jagatramka, Aged about 45 years, Occupation Business, R/o. Shyam Talkies Road, Nai Sarak, Raigarh, Tehsil & District Raigarh (C.G.)

---- Petitioner

Versus

1. Ganesh Kumar Jagatramka, Aged about 73 years, S/o. Late Banwarilal Jagatramka, Occupation Nothing, R/o. Shyam Talkies Road, Tehsil and District Raigarh (C.G.)

2. Smt. Pratibha Devi Jagatramka, Aged about 68 years, Occupation House Wife, R/o. Shyam Talkies Road, Tehsil and District Raigarh (C.G.)

---- Respondents

For Petitioner: Mr. Pawan Kesharwani, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

1. The petitioner – son, who has filed this petition against his father and mother, must be reminded of old saying as it is said that God cannot be present everywhere, therefore, he created mothers.

2. The dispute is between father and mother on the one hand and one of the sons on the other hand. The parents / respondents filed an application under Section 125 of the Code of Criminal Procedure, 1973 claiming maintenance in which the petitioner has made averment that he is not the only son, he has two more brothers who had also received property by way of gift / partition from the respondents / their father and mother, and therefore they

also be impleaded as party non-applicants in the said application, which has been turned down by the Family Court by the impugned order holding that other sons are not necessary party and relied upon a judgment of the Gauhati High Court in the matter of **Akham Ibodi Singh and another v. Akham Biradhwaja Singh and another**[1] against which this writ petition under Article 227 of the Constitution of India has been filed.

3. Mr. Pawan Kesharwani, learned counsel for the petitioner, would submit that the impugned order is unsustainable and bad in law. He would further submit that two brothers of the petitioner namely, Anant Jagatramka and Rajesh Kumar Jagatramka are necessary parties and they are also liable for maintenance and therefore they ought to have been impleaded as party non-applicants and as such, the order of the Family Court is liable to be set aside. Mr. Kesharwani has referred to a decision of the Bombay High Court in the matter of **Vasant v. Govindrao Upasrao Naik and another**[2] to support his plea.

4. The question for consideration would be, whether the respondents' two other sons namely Rajesh Kumar Jagatramka and Anant Jagatramka are necessary party in the application under Section 125 of the CrPC filed by respondents No.1 & 2.

5. Section 125(1)(d) of the CrPC states as under: -

> "**125. Order for maintenance of wives, children and parents**.—(1) If any person having sufficient means neglects or refuses to maintain—
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> (a) to (c) xxx xxx xxx

1 2006 Cri.L.J. 3366
2 2016 SCC OnLine Bom 1077

> (d) his father or mother, unable to maintain himself or herself,
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> 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, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:"

6. In the matter of **Akham Joy Kumar Singh v. Akham Ibobi Singh and others**[3], the Gauhati High Court construing the word "any person" employed in Section 125(1) of the CrPC observed as under: -

> "8. … A plain reading of the law shows that Legislature has intentionally used the word 'any person' thereby definitely meaning that any of the several persons may be chosen and it is not obligatory on the part of the claimant seeking maintenance to name all the persons 'having sufficient means' to be proceeded against, or in other words, it is optional for a claimant to seek an order of maintenance from any of the several persons, if there are more than one, having sufficient means, 'having sufficient means' is the qualifying phrase for 'any person' notwithstanding. I repeat, from the reading of the law, it appears that there is nothing obligatory either on the part of the Magistrate or on the part of the person seeking relief under Section 125 Cr.P.C. to include all sons and daughters when the parents are claimants. It appears the claimant has an option to choose."

7. The decision rendered by the Gauhati High Court in **Akham Joy Kumar Singh** (supra) was taken to the Supreme Court by way of Special Leave to Appeal (Crl.) No.3421/2004 (Akham Joykumar Singh v. Akham Ibobi Singh and others). The said Special Leave to Appeal was dismissed as having become infructuous, on 24-10-2005.

8. The Bombay High Court in **Vasant** (supra) while differing with the opinion of the Gauhati High Court in **Akham Joy Kumar Singh**

3 (2005) 3 GLR 236

(supra), held that other sons and daughters are also necessary party and observed as under: -

> "22. With due respect, I am unable to agree with the view taken by the learned single Judge of the Gowahati High Court that there is option available to the parents. The first reason is that though the Joint Committee in paragraph 5 recommended that if there are two more children the parents may seek remedy against any one or more of them, the same appear to have not been accepted by the Parliament in its infinite wisdom, and that is why the same is not inserted in the provision of Section 125 Cr.P.C. It thus remained only a recommendation and did not crystallize into law. Insofar as the present case is concerned, what is seen is that the applicant has *prima facie* shown that Rajani, the married daughter and Chandan, the younger son of the respondents have been earning lordly sums by way of income and because of the dispute with the eldest son applicant-Vasant and his wife, the parents have sought maintenance from him only, without joining the married daughter-Rajani and younger son-Chandan to the proceeding. In my opinion, allowing an option for the parents to choose any of them would be unjust and onerous only on one of the children particularly when others are also earning that too handsomely. I hasten to clarify that I have neither recorded any finding nor any inference or conclusion which would affect any of the parties on merits of the dispute since I have already said that this is my *prima facie* opinion that Rajani and Chandan are having sufficient means to maintain their parents and they should also have been asked to participate in the proceedings in question to place their side before the Family Court, with pleadings and evidences from all angles. But to say that they were not necessary parties because of the available option to the parents, would be doing severe injustice to only one son-Vasant, the revision-applicant. It will have to be further clarified that the only question decided by me is that they were the necessary parties to the Application along with applicant-Vasant and all of them are free to plead and prove before the Family Court as to the merits of the Application and claim against them for maintenance, about they having or not having sufficient means or neglect or refusal. I therefore, hold that the married daughter-Rajani and the younger son Chandan are necessary parties to the Application and answer the question accordingly."

9. The Supreme Court in the matter of **Dr. Mrs. Vijaya Manohar**

Arbat v. Kashirao Rajaram Sawai and another[4] has referred to a decision of the Kerala High Court in the matter of **Raj Kumari v. Yashodha Devi**[5] and held that married daughter is also liable to maintain her parents and observed as under: -

> "9. Much reliance has been placed by the learned Counsel for the appellant on a decision of the Kerala High Court in Raj Kumari v. Yashodha Devi, 1978 Cri LJ 600. In that case it has been held by a learned Single Judge of the Kerala High Court, mainly relying upon the report of the Joint Committee on the Criminal Procedure Code Bill, 1973, that a daughter is not liable to maintain her parents who are unable to maintain themselves. The Joint Committee in their report made the following recommendations (para 5):-
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> > "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" (Emphasis supplied)." "

Further, explaining the decision of the Kerala High Court, it has been held as under: -

> "10. The learned Judge of the Kerala High Court did not refer in his judgment to the sentence which has been underlined. It is true that in the first part of the report the word 'son' has been used, but in the later part which has been underlined the recommendation is that if there are two or more children the parents may seek the remedy against any one or more of them. If the recommendation of the Joint Committee was that the liability to maintain the parents, unable to maintain themselves, would be on the son only, in that case, in the latter portion of the report the Joint Committee would not have used the word 'children' which admittedly includes sons and daughters. In our opinion, as we read the Report of the Joint Committee, it did not place the burden of maintaining the parents only on the son, but recommended that the liability to maintain the parents

4 AIR 1987 SC 1100
5 1978 Cri LJ 600

> should be of the sons and the daughters as well. We have referred to the report of the Joint Committee inasmuch as the same has been relied upon in Raj Kumari's case (supra) by the Kerala High Court and also on behalf of the appellant in the instant case. When the statute provides that the pronoun 'his' not only denotes a male but also a female, we do not think it necessary to refer to the Report of the Joint Committee for the interpretation of Cl. (d) of Section 125(1) Cr.P.C. The father or mother, unable to maintain himself or herself, can claim maintenance from their son or daughter. The expression "his father or mother" is not confined only to the father or mother of the son but also to the father or mother of the daughter. In other words, the expression "his father or mother" should also be construed as "her father or mother".”

10. Reverting to the facts of the present case in light of the aforesaid judgments (supra), it is quite vivid that in the instant case, the parents / respondents have chosen to file application under Section 125 of the CrPC against only one son i.e. the petitioner therein, thereafter, the petitioner herein has filed an application that his two elder brothers are necessary party in the said application and they should also participate in the proceeding under Section 125 of the CrPC and the petitioner has also alleged that his parents have maliciously not impleaded his two brothers as party non-applicants which is also a conspiracy in order to damage him. It is not the case of the petitioner herein that he is not having sufficient means to maintain his parents and his brothers are having sufficient means to maintain them. Merely because the respondents have two more sons, the petitioner herein cannot be absolved of his liability to maintain his parents. I fully agree with the opinion expressed in ***Akham Joy Kumar Singh*** (supra) by the Gauhati High Court while considering Section 125(1) of the CrPC and respectfully disagree with the view taken by the Bombay High

Court in **Vasant** (supra). The liability to pay maintenance amount to his parents is not just a duty, but a dharma – a much larger behavioural aspect that encompasses duties, rights, laws, conduct, virtues and so on. The right of mother to expect the children to maintain them is not only a statutory, Constitutional, fundamental, natural or moral right, but also a basic human right. (See **P. Elangovan v. Pondevaki and others**[6].)

11. Thus, the averment throwing allegation by the petitioner son against his parents is clearly disapproved by the eminent epics like Ramayana, Mahabharata and the celebrated text of Manusmriti.

12. Finally, it is held that it is not the case that the petitioner is not having means to maintain his parents. Merely because he has two more brothers, he cannot shift his responsibility to maintain his parents, as it has already been held that to pay maintenance is not just a duty, it is dharma of the petitioner.

13. As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and is hereby dismissed affirming the order of the trial Court dismissing the application for impleadment of his two brothers as party non-applicants in the proceeding under Section 125 of the CrPC. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

6 2016(1) MLJ(Cri) 296

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.836 of 2018

Akhilesh Kumar Jagatramka

Versus

Ganesh Kumar Jagatramka and another

Head Note

Obligation of son to maintain his parents is not just a duty, it is *dharma* also.

अपने माता–पिता के पालन–पोषण का दायित्व पुत्र का सिर्फ एक कर्तव्य नहीं, धर्म भी है।