

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 2ND DAY OF MARCH, 2023
BEFORE
THE HON'BLE MR. JUSTICE K.NATARAJAN
CRIMINAL PETITION NO.3508 OF 2022
CONNECTED WITH
WRIT PETITION NO.14494 OF 2022(GM-FC)

IN CRIMINAL PETITION NO.8508 OF 2022

BETWEEN

1 . MR KHALEEL UL REHMAN

2 . MR FAZLUR REHMAN

3 . MR ATHIQUE UR REHMAN

... PETITIONERS

(BY MR. SANDESH J. CHOUTA, SENIOR COUNSEL
ALONG WITH MR. ISMAIL MUNEEB MUSBA, ADVOCATE)

AND

SHARAFFUNNISA MUNIRI @ ASHRAF UNNISA

...RESPONDENT

(BY MR. MOHAMMAD NIYAZ S., HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO A. QUASH THE ORDER DATED 19.07.2019 ISSUING NOTICE TO THE PETITIONERS IN CRL.MISC.NO.506/2019 PASSED BY THE VI ADDL. PRL. JUDGE, FAMILY COURT, BANGALORE PRODUCED AS ANNEUXRE-A.

IN WRIT PETITION NO.14494 OF 2022

BETWEEN

1 . MR KHALEEL UL REHMAN

2 . MR FAZLUR REHMAN

3 . MR ATHIQUE UR REHMAN MUNIRI

... PETITIONERS

(BY MR. SANDESH J. CHOUTA, SENIOR COUNSEL
ALONG WITH MR. ISMAIL MUNEEB MUSBA, ADVOCATE)

AND

SHARAFFUNNISA MUNIRI @ ASHRAF UNNISA

...RESPONDENT

(BY MR. MOHAMMAD NIYAZ S., HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DTD.19.4.2022 IN C.MIS NO.506/2019 PENDING BEFORE HON'BLE VI ADDITIONAL PRINCIPAL JUDGE FAMILY COURT AT BANGALORE PRODUCED AT ANNEXURE-A

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.02.2023, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The CrI.P.No.8508/2022 is filed by the petitioner under section 482 of Cr.P.C for setting aside the order passed in CrI.Misc.No.506/2019 passed by the VI Addl. PrI.

Judge, Family Court, Bengaluru on the application filed by the respondent under section 125 of Cr.P.C for quashing the entire criminal proceedings.

2. The W.P.No.14494/2022 filed by the same petitioner under Article 226 and 227 of Constitution of India for setting aside the order dated 19.04.2022 passed by the VI Additional Pri. Judge, Family Court, Bengaluru in CrI.Misc.No.506/2019 for having granted maintenance of Rs.25,000/- per month to the respondent which is under challenge.

3. Heard the arguments of learned senior counsel for the petitioners and learned counsel for respondent.

4. For convenience, rank of the parties before the Trial Court is retained.

5. The case of petitioner before the trial court is that she had married the father of the respondents before the trial court by name Moheddin Muniri on 26.08.1989 in Bhatkal on the decision of both the families after the death

of the wife of Moheddin Muniri, even though he had the children who are the petitioners before this Court. She further contended that, at the time of marriage, the father of the present petitioners had assured her that he is having landed properties apart from movable properties and that he will look after the respondent and she was living in the joint family of her husband. Her husband died on 30.08.1994 and his successors were the present petitioners, who are the children of Moheddin Muniri. The respondent herein is a senior citizen, uneducated and unemployed house wife, she has no source of income, except Rs.4000/- earning from a rent house at Bhatkal there is no other source of income or help to meet her necessities. She is having a daughter who is also a divorcee having a grand daughter who is of 3 years old. The respondent herein is paying monthly rent of Rs.12000/- at R.T. Nagar, Bengalur and she is having aged related problems and health issues. Therefore, she has prayed through an application under section 125 of Cr.P.C for granting maintenance by filing the interlocutory

application which came to be allowed by the impugned order. The family court had granted maintenance of Rs.25,000/- to the petitioner (respondent herein) at the trial court, which is under challenge in both the petitions.

6. Learned senior counsel for the petitioner has contended that the order under challenge is not sustainable under the law. The Section 125 of Cr.P.C is not application to the respondent as she was a step mother of these petitioners which is not covered under section 125 of Cr.P.C for granting maintenance under the ***Special Maintenance and Welfare of Parents and Senior Citizens Act 2007*** and as per the Section 9(2) of the maintenance payable is maximum of Rs.10,000/-, therefore in order to avoid less payment the respondent has filed this petition by suppressing the main facts and also contended that the said Act came into force in the year 2007, therefore she has to approach the Deputy Commissioner for the relief.

7. Learned counsel also relied upon the judgment of the Hon'ble Supreme Court in "***Kirikand D.Vadodaria Vs State of Gujarat and Anr***" in the case of dated 26.04.1996 and also in case of ***Dalip Singh Vs State of U.P and Ors.***, dated 03.12.2019 and also in ***Kishore Samrite Vs State of U.P*** reported in **(2013) 2 Supreme Court Cases 398** and hence prayed for allowing the petition.

8. Per contra, learned counsel for the respondent has contended that the petitioners are having landed properties, business and having huge income, therefore, they have to pay the maintenance of Rs.25,000/- per month as per ordered by the Family Court. Hence, prayed for dismissing this petition.

9. Having heard the arguments for both parties and perusal of the records, on perusal of the same, it is not in dispute the petitioner before the trial court/family court had married the father of the respondents and at the time of the marriage, these respondents were children of her

husband and subsequently she also begotten a daughter, she is also married and a divorcee who is staying with the respondent herein.

10. The husband of the present respondent (Moheddin Muniri) has died long back, leaving behind the petitioners and respondent as legal heirs of the Moheddin Muniri. Admittedly, the respondent herein is a step mother of the petitioners. It is also an admitted fact, the respondent had approached the family court for granting maintenance of Rs.50,000/- wherein the family court had granted interim maintenance of Rs.25,000/- per month based upon the documents. The respondent also objected both the petitions and interlocutory applications. The issue arises in this cases is that, as per the contention of the learned counsel for the petitioner, in this petition the petitioners' step mother is not covered under section 125 of Cr.P.C as she was not a natural/biological mother. Therefore, she is not entitled for any maintenance. On reading of the Section 125 (1) of Cr.P.C where the step

mothers are not covered under the definition in order to seek any maintenance from the step children. The Hon'ble Supreme Court in a similar case in ***Kirikand D.Vadodaria Vs State of Gujarat and Anr***" stated supra has held as at para 12 & 16 as under:-

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, but the expression 'mother' has not been defined. The expression 'father' as defined in the General Clauses Act, 1897 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 stepmother. As discussed above, a stepmother is one who is taken as a wife by the father of the child other than the one 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 parlance are known and recognized as real 'mother' and 'stepmother'. That being so, another woman who is taken as a wife by

the father of the child cannot be given the status of a mother to the child born from another woman as there is no blood relation between the two.

16. *In the present case, as discussed above, the 'stepmother' Respondent 2 has got 5 natural born sons who are all major and at least 3 of them are well-to-do and capable of maintaining their mother. This apart, as already noticed, the husband of Respondent 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 stepmother Respondent 2 preferred to claim the maintenance only from the stepson, 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 2 proceeded against her stepson 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 2 is not entitled to claim any maintenance from the stepson, 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 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 2 from the appellant shall not be refundable by her to the appellant."

11. The co-ordinate bench of this Court in the case of ***Ulleppa and Ors., Vs Smt. Gangabai*** has taken a view, even the step mother can claim maintenance from the income of the property of her husband, when she is incapable of supporting herself. On the other hand, the Special Act brought by the legislation namely the ***Maintenance and Welfare of Parents and Senior Citizens, Act, 2007 at section 9 (1)(2)*** where it is held as under.

"9. Order for maintenance.-(1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay

the same to such senior citizen as the Tribunal may, from time to time, direct."

on reading of the **section 9 (1)(2)**, of the Senior Citizens Act, the maximum limit for granting maintenance was Rs.10,000/- in the said Act and as per section 2 (d) of the definition in the said act, "**parents means, father or mother whether biological, adoptive, or step father or step mother as the case may be whether or not the father or mother of the senior citizen**". Therefore, the definition of step mother is not defined under section 125 of Cr.p.C whether and not included in the definition of mother whereas the *Maintenance And Welfare Of Parents And Senior Citizen Act, 2007*, covers the step mother in the definition. Such being the case, the petitioner requires to approach the tribunal under the Special Act for claiming maintenance. However, as per the judgment of the coordinate bench of this Court in **Ullappa's case** stated supra has held, as there are huge properties held by the husband of the step mother of this petitioners and they are

having income, therefore, the step-mother is also entitled for the maintenance.

12. Therefore, consider the circumstances of the case the order of granting maintenance of Rs.25,000/- by the Family Court as interim maintenance is not sustainable and the matter is required for evidence to be recorded, documents to be marked by the petitioner/step mother in order to show her husband is having lot of properties and they are having income. Though the respondent is receiving rent of Rs.4,000/- but she is having divorced daughter and grand daughter, therefore, the petitioner requires to agitate the same before the Family Court and also she can claim maintenance in the Senior Citizen Act. Such being the case, granting Rs.25000/- per month without recording the evidence is not sustainable. Therefore the order under challenge is liable to be set aside and modified.

Accordingly, I pass the following order;

Accordingly, both the writ petition and the criminal petitioner filed by the petitioners are ***allowed in part.***

The order of granting maintenance of Rs.25,000/- is hereby set aside and modified. The petitioners step mother is entitled for Rs.10,000/- per month until disposal of the case of the trial court. The family court is directed to record the evidence of the parties and decide the issue and dispose of the matter in accordance with the law, by taking into the note of ***Senior Citizen Act*** and ***section 125 of Cr.P.C*** by keeping the judgment of the supreme court and the judgment of co-ordinate bench of this Court while disposing of the matter.

Accordingly, both the petitions are disposed of.

**Sd/-
JUDGE**

AKV