

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.R. No.1087 of 2020

With

I.A. No. C.R.A.N.3 of 2022

SUNIL DEBSHARMA

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner : Mr. Nanigopal Sarkar, Adv.,
Mr. Devranjan Das, Adv.

Hearing concluded on : 23.06.2022

Judgment on : 30.08.2022

Kausik Chanda, J.:-

Despite notice, the opposite parties are not represented.

2. The petitioner, Sunil Debsharma, lost his father in his early childhood. When he was aged about 3 years, his mother namely, Fuldi Debsharma (opposite party no.3) married Thelu Debsharma (opposite party no.2). Thelu was also a widower, and from his first marriage, he had one son and two daughters. Sunil was, thereafter, raised by his biological mother and foster father along with his stepbrother and sisters. Sunil got married in the year 2010 and started living separately with his wife. They had two daughters.

3. In the year 2016, Thelu and Fuldi together filed an application for maintenance against Sunil under Section 125 of the Code of Criminal Procedure, 1973. By the order impugned dated August 18, 2018, the learned Magistrate in the Court below granted maintenance of Rs.2,500/- each per month in favour of Thelu and Fuldi to be paid by Sunil.

4. During the pendency of this revisional application, on April 18, 2020, Sunil's wife died an unnatural death by succumbing to burn injuries. The father-in-law of Sunil lodged an F.I.R. under Sections 498A/326/307/34 of the Indian Penal Code, 1860, implicating Thelu and Fuldi. The police, in course of the investigation, had arrested Thelu and Fuldi and upon completion of the investigation filed a charge sheet against them.

5. It had been alleged by Thelu and Fuldi in the said application for maintenance that they used to reside together with Subodh Debsharma, the son of Thelu from his first marriage, and Sunil used to reside separately with his family. Sunil was a manager of a ply mill. He owned a house with an earning of Rs.25,000/- per month as his salary. Fuldi also used to work in the same ply mill and her earnings were only Rs.100 to Rs.150 per week. It had, further, been alleged that Sunil used to reside on the land purchased by Fuldi.

6. It was the case of Sunil before the learned Magistrate that Fuldi and Thelu both worked in the same ply mill and they each had an earning of Rs.6,000/- to Rs.7,000/- per month, while the income of Sunil was only Rs.1,500/- to Rs.2,000/- per month. It was also his further case that he had two dependent daughters and wife to maintain.

7. Learned advocate for the petitioner submits that the wife of Sunil was murdered by Thelu and Fuldi, and the investigating agency upon completion of the investigation also filed a charge sheet against them. It has further been submitted that such misdoings of Thelu and Fuldi disentitled them from claiming any maintenance from Sunil. It has been further submitted that during the lockdown Sunil lost his job and as such he was not in a position to pay any maintenance to his mother and stepfather. It is submitted that from the evidence adduced by the respective parties, it is apparent that Thelu and Fuldi have independent sources of

income and therefore, Sunil is not liable to pay any maintenance to them. He has his dependent wife and two daughters to maintain.

8. From somewhat peculiar facts of this case, the points that have arisen for consideration are whether a stepfather is entitled to get maintenance from his stepson and whether a mother after her remarriage is entitled to be maintained by her son from the previous marriage.

9. The answer depends on the facts of each case and possibly no abstract law can be laid down in this regard.

10. The legal liability to pay maintenance to parents under Section 125 of the Code of Criminal Procedure, 1973, arises out of the moral obligation of children. It is in recognition of reciprocal obligation of the children towards their parents, who have made immense sacrifices for their betterment and raised them with unconditional love and affection.

11. In dealing with the issue as to whether a stepmother is entitled to get maintenance from her stepson, the Supreme Court in the judgment reported at **(1996) 4 SCC 479 (Kirtikant D. Vadodaria v. State of Gujarat)** held as follows:

“15. The point in controversy before us however is whether a ‘*stepmother*’ can claim maintenance from the stepson 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 special 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 stepmother may claim maintenance from her stepson provided she is a 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 *stepson* 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 stepson to maintain the stepmother, out of the inherited family estate by the stepson and leave that question to be decided in an appropriate case. Our discussion is confined to the obligations under Section 125 CrPC only."

12. The evidence of the case in hand suggests that at the time of the second marriage of her mother, Sunil was only aged about 3 years, and he was raised by his biological mother and stepfather. There is no case made out by Sunil that being a stepfather, Thelu has not taken due care and did not show his love and affection towards him. Sunil has not alleged that Thelu refused to take responsibility to raise him or he discriminated between his biological children and Sunil. When a stepfather fulfills the same responsibilities as the biological father, a stepson cannot deny his obligation to maintain him. For the same reason, a biological mother, who has contracted the second marriage, has always a right to claim maintenance from her son. In the factual backdrop of this case, it cannot be said that Thelu cannot claim maintenance from his stepson leaving aside his biological children.

13. Having said so, it needs to be noticed that there has been a sea change in the factual matrix of this case in which the order impugned was passed. During the pendency of this application, Thelu and Fuldi were arrested and charge sheeted in the criminal case initiated in connection with the unnatural death of Sunil's wife. It has been suggested that Sunil lost his job during the lockdown period. These subsequent events have practically rendered the order of the learned Magistrate infructuous and therefore, the same cannot be sustained.

14. Accordingly, the order dated August 18, 2018 passed by the learned Magistrate in Misc. Crl. Case No.151 of 2016 is set aside. The matter is remanded back to the learned Magistrate for hearing the case afresh. The parties will be at liberty to adduce further evidence to bring on record the subsequent events. The learned Magistrate should make an endeavour to conclude the proceeding as early as possible preferably within six months from date without being influenced by the observations made in this order.

15. Accordingly, C.R.R. No. 1087 of 2020 is allowed and the connected application being I.A. No. C.R.A.N. 3 of 2022 is disposed of.

16. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)