

(7) This petition must, therefore, fail and is accordingly dismissed with costs.

H.S.B.

CRIMINAL MISCELLANEOUS

Before Gurnam Singh, J.

RAJ KUMARI,—Petitioner

versus

YASHODHA DEVI and another,—Respondents.

Criminal Misc. No. 986-M of 1977

July 20, 1977.

Code of Criminal Procedure (2 of 1974)—Section 125—Daughter—Whether liable to maintain her parents.

Held, that the words used in section 125 of the Criminal Procedure Code 1973 show that if a person having sufficient means neglects or refuses to maintain his father or mother, he can be made liable to pay maintenance allowance to them. The words “any person” and “such person” show that the liability to provide maintenance to the father and mother is that of the son and not of the daughter. Under section 125 of the Code, it has not been specifically provided that a daughter is also liable to maintain her parents who are unable to maintain themselves. Under the Hindu Marriage Act a specific provision has been made under which a husband having no independent income sufficient for his support, has a right to claim maintenance *pendente lite* and expenses of proceedings from his wife but no such provision has been made in the Code. Under section 125 of the Code, the father or a husband or a son as the case may be, is the only person that can be proceeded against. The section does not contemplate proceedings against the mother for maintenance of her illegitimate child. Similarly a father-in-law has not been made liable to maintain the daughter-in-law. Moreover, the scheme of section 125 of the Code, for providing maintenance to the father and mother seems to be that of a son, who is possessed of sufficient means and he can be directed to maintain his father and mother, if they are unable to maintain themselves. A daughter, however, cannot be made liable to maintain her parents. (Paras 3, 4, 5 and 6).

Application under section 482 of the Code of Criminal Procedure praying that the maintenance proceedings under section 125 Cr.P.C. against the petitioner be quashed by the order of Shri Baldev Singh, J.M.I.C. Jullundur dated 15th June, 1976 and pending the decision of this application further proceedings pending in the Court of Judicial Magistrate Ist Class, Jullundur, be stayed.

H. S. Sangha, Advocate, for the Petitioner.

P. S. Teji A.A. G. Pb., for the Respondent.

JUDGMENT

Gurnam Singh, J.—(1) Smt. Yashodha Devi filed an application under section 125, Criminal Procedure Code, 1973, in the Court of Judicial Magistrate, 1st Class, Jullundur, claiming maintenance from her married daughter Raj Kumari. Mst. Raj Kumari opposed the petition and her main contention was, that Mst. Yashodha Devi had no right to claim maintenance from her. The Magistrate held that Mst. Yashodha Devi, as a mother, had a right to claim maintenance from her daughter. Mst. Raj Kumari filed a revision petition against the order of the Magistrate which was heard by the learned Additional Sessions Judge, Jullundur. The learned Additional Sessions Judge, Jullundur held that the revision petition did not lie and sent the case back to the trial Court for deciding the same according to law. Mst. Raj Kumari has filed this application under section 482, Criminal Procedure Code, for quashing the maintenance proceedings filed against her.

(2) The learned counsel for the petitioner contended that the provision for the payment of maintenance allowance to the father or the mother, who are unable to maintain himself or herself, has been made in the Criminal Procedure Code of 1973 (hereinafter called the Code) and the liability for the same is on their son and not on the daughter.

(3) The learned counsel for the respondent in reply had urged that the word "person" includes "he" and "she" and, therefore, the Magistrate was right in holding that Raj Kumari was liable to maintain her mother as the latter was unable to maintain herself.

Section 125(1) of the Code reads as under:

"125(1) If any person having sufficient means neglects or refuses to maintain—

(a) * * * *

(b) * * * *

(c) * * * *

(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 * * * ”.

The words used in the section show that if a person having sufficient means neglects or refuses to maintain his father or mother, he can be made liable to pay maintenance allowance to them. The word “any person” and “such person” show that the liability to provide maintenance to the father and mother, is that of the son and not of the daughter. The Joint Committee, in their report on the bill had made the following recommendation:

“The Committee considers that the right of the parents not possessed of sufficient means to be maintained by their son, should be recognized by making a provision that where the father or mother is unable to maintain himself or herself, the 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 anyone or more of them.”

(4) Under section 125, Criminal Procedure Code, 1973, it has not been specifically provided that a daughter is also liable to maintain her parents who are unable to maintain themselves. Under the Hindu Marriage Act a specific provision has been made under which a husband having no independent income sufficient for his support, has right to claim maintenance *pendente lite* and expenses of proceedings from his wife but no such provision has been made under section 125 of the Code.

(5) Under section 125 of the Code, the father or a husband or a son, as the case may be, is the only person that can be proceeded against. The section does not contemplate proceedings against the mother for maintenance of her illegitimate child. Similarly a

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father-in-law has not been made liable to maintain the daughter-in-law under S. 125, Criminal Procedure Code, 1973.

(6) According to section 2(y) of the Code "words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code". Under section 8 of the Indian Penal Code, the pronoun "he" and its derivatives are used of any person whether male or female and under section 11 of the Indian Penal Code, the word "person" includes any company or association or body of persons whether incorporated or not. The words used in section 125 of the Code are "any person" and "such person". The meanings of the word "he", therefore, cannot be applied to the words "any person" and "such person" as used in section 125 of the Code. Moreover, the scheme of section 125 of the Code, for providing maintenance to the father and mother seems to be that of a son, who is possessed of sufficient means and he can be directed to maintain his father and mother, if they are unable to maintain themselves. Mst. Raj Kumari, as would appear from the petition, is the wife of Jagtar Singh which shows that she is married one. After her marriage, Raj Kumari has shifted to another family and as such she cannot be held liable to maintain her parents.

(7) In view of the aforesaid facts the application of Yashodha Devi for her maintenance against her married daughter is not legally competent. Therefore, the proceedings of the case pending in the Court of Judicial Magistrate 1st Class, Jullundur, are quashed.

K.T.S.

REVISIONAL CIVIL

Before R. S. Narula, C. J. and P. C. Jain, J.

SUDARSHAN KAUR,—Petitioner.

versus

MANMOHAN SINGH DHATT,—Respondent.

Civil Revision No. 5 of 1976

July 22, 1977.

Hindu Marriage Act (XXX of 1955)—Sections 4 and 29(2)—Customary Law of Hoshiarpur District—Questions 19 to 22—Male Jat releasing his wife from marital relations under custom—Suit