

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION (MAINTAINANCE) NO. 2666 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO
5	<i>Circulate the Judgment to all the Judicial Officers across the State.</i>	

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MANJULABEN PRAKSHBHAI SARVAIYA....Applicant(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:

MS. BHAVINI H JANI, ADVOCATE for the Applicant(s) No. 1

MR ANKUR Y OZA, ADVOCATE for the Respondent(s) No. 2

MS HANSA PUNANI, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**

Date : 08/10/2015

CAV JUDGMENT

1 By this petition under Article 227 of the Constitution of India, the petitioner calls in question the legality and validity of the order dated 30.03.2015 passed below Exhibit:6 by the learned Principal Judge, Family Court, Bhavnagar in the Criminal Miscellaneous Application No.124 of 2014, by which, the learned Judge was pleased to grant interim maintenance in favour of the stepdaughter for an amount of Rs.3,000/- to be paid by the petitioner to the respondent No.2, who is the grandfather of the stepdaughter of the petitioner.

2 An interesting question of law arises in this petition. Whether a minor stepdaughter is entitled to claim maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for short, 'the Code') from her stepmother on the demise of the natural father of the stepdaughter.

3 The facts giving rise to filing of this petition may be summarized as under:

3.1 The son of the respondent No.2 herein, namely, Prakashkumar Sarvaiya married with one Ashaben Manjibhai on 09.02.1998 and in the wedlock, a baby girl, namely, Jahnvi was born. On account of marital dispute, they preferred a Hindu Marriage Petition No.32 of 2003 under Section 13 of the Hindu Marriage Act before the Court of the learned 2nd Joint Civil Judge (SD), Bhavnagar, for dissolution of the marriage with

consent, and pursuant to the decree of divorce dated 16.12.2003, the marriage was dissolved and they both got separated. However, the custody of minor daughter Jahnvi was taken by her father, namely, Prakashkumar.

3.2 After divorce, Prakashkumar married for the second time with the petitioner herein on 18.12.2005 according to the Hindu rites and rituals. Unfortunately, on 25.03.2006, the said Prakashkumar passed away and the custody of Jahnvi remained with the petitioner herein.

3.3 The respondent No.2, the father of Prakashkumar, preferred an application being the Miscellaneous Criminal Application No.75 of 2008 in the Court of the District Judge, Bhavnagar under Section 7 of the Guardian and Wards Act for the custody of Jahnvi. The learned Additional District Judge, Bhavnagar was pleased to allow the said application and handed over the custody of Jahnvi to the respondent No.2 herein (the grandfather) till she attains majority. The responsibility of her upbringing and education was agreed to be shouldered by the respondent No.2 herein.

3.4 Thus, after the order, referred to above, the custody of Jahnvi is with the respondent No.2 herein (parental grandfather).

3.5 It appears that the respondent No.2 herein filed an application on

behalf of Jahnvi being Criminal Miscellaneous Application No.124 of 2014 (Exhibit:1) before the learned Family Court at Bhavnagar under Section 125 of the Code, praying for an amount of Rs.12,500/- per month for the maintenance of Jahnvi from the petitioner. Along with the said application, the respondent No.2 herein also filed an application for interim maintenance (Exhibit:6) for an amount of Rs.11,000/- per month.

3.6 The learned Principal Judge, Family Court, Bhavnagar, vide order dated 30.03.2015, partly allowed the said application and directed the petitioner herein to pay an amount of Rs.3,000/- per month towards the interim maintenance from 05.06.2014.

3.7 Being dissatisfied with the order passed by the Court below, the petitioner has come up with this petition.

4 Ms. Bhavini Jani, the learned advocate appearing for the petitioner submitted that the learned Judge committed a serious error in passing the impugned order. She submitted that under Section 125 of the Code, a stepmother is not obliged to maintain or pay the maintenance to her stepdaughter born in the wedlock of the first marriage of her husband. Ms. Jani submitted that while handing over the custody of Jahnvi to the respondent in the proceedings under the Guardian and Wards Act, the learned Judge had observed that all the

benefits, which had accrued in favour of the deceased Son, should be given to the respondent herein, and pursuant thereto, the respondent had received an amount of Rs.23 lac from the L.I.C.

5 Ms. Jani submitted that the Biological mother of Jahnvi is still alive and she has also sought for the custody of Jahnvi. The Biological mother is ready and willing to maintain Jahnvi in all respect. For some reason or the other, Jahnvi is not ready and willing to live with her mother by consanguinity.

6 Ms. Jani placed reliance on the decision of the Supreme Court in the case of **Kirtikant D. Vadodaria vs. State of Gujarat and another** [(1996) 4 SCC 479], wherein the Supreme Court has taken the view that the expression “mother” in Section 125(1)(d) of the Code means only the real or natural mother and does not include the stepmother. The Supreme Court took the view that stepmother is a distinct and separate entity and cannot be equated with the natural mother who has given birth to the child. The Supreme Court ultimately ruled that having regard to the purpose behind the benevolent provisions of Section 125, childless stepmother is entitled to claim maintenance from her stepson provided she is a widow or her husband, if living, is also incapable of maintaining her.

7 Drawing analogy from the above, she submitted that if the

provisions of Sub-clause (a) to (d) of Section 125(1) are read together harmoniously, it is enviable that a stepdaughter cannot claim maintenance from her stepmother, after the demise of the father unless there is an obligation to maintain. In the absence of any legal obligation, there cannot be any refusal or neglect to do it. In the case of a unmarried minor daughter, there is no obligation upon her stepmother and, therefore, the stepdaughter cannot claim any maintenance from her stepmother under Section 125(1)(b) of the Code.

8 Ms. Jani submitted that since maintenance is being claimed under Section 125 of the Code of Criminal Procedure, it goes without saying that the case of the respondent No.2 must fall within the four corner of the said provisions. Reference to the Hindu Marriage Act or to the Hindu Adoption Act, 1966, therefore, will not be appropriate, particularly, when there is no ambiguity in the provisions of Sub-section(1) of Section 125 of the Code of Criminal Procedure.

9 Ms. Jani submitted that perusal of the Section 125 of the Code reveals that the legislative stress is “on his wife, his legitimate or illegitimate child or his father or mother”. When the stress is on the word “his”, it obviously means that it would include only the person who procreates, begets or brings forth offspring. It will not include a child of another father or mother of another person.

10 She submitted that the impugned order could be termed as a nullity.

11 On the other hand, this petition has been opposed by Mr. Ankur Oza, the learned advocate appearing for the respondent No.2 and Ms. Hansa Punani, the learned Additional Public Prosecutor appearing for the respondent – the State of Gujarat. They both submitted that no error, not to speak of any error law could be said to have been committed by the Court below, warranting any interference at the hands of this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. They submitted that along with the words “legitimate or illegitimate” the step minor child should be read in under Sub-clause (b) of Section 125(1) of the Code.

12 They submitted that the different Clauses of Section 125 (1) of the Code will have to be read independently since they covered different areas and fields. The expressions used in various the sub-clauses will take in their ambit even a minor stepchild, if the biological father of the child has passed away and such child is totally at the mercy of his or her stepmother. They submitted that if the interpretation suggested by the petitioner is accepted, then on the demise of the natural father, if the stepmother throws out the minor stepchildren, then they could never claim maintenance from the stepmother although the stepmother might

have inherited everything of the biological father of the stepchildren.

13 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is whether the Court below committed any error in passing the impugned order.

14 The issue falling for my consideration should also be looked into keeping in mind the Hindu Law. Of course, it is true that Section 125 should be construed strictly although the same is not penal in nature. However, in the peculiar facts of the case, I deem it necessary to look into the same.

15 In the case of **Khetramani Dasi vs. Kashinath Das, (1868) 2 Bengal Law Reporter 15**, the father-in-law was sued by a Hindu widow for maintenance. Deciding the right of a widow for maintenance, the Calcutta High Court referred to the Shastric law as under:

"The duty of maintaining one's family is, however, clearly laid down in the Dayabhaga, Chapter II, Section XXIII, in these words: "

The maintenance of the family is an indispensable obligation, as MANU positively declares.'

Sir Thomas Strange in his work on Hindu Law Vol. I page 67, says:

'Maintenance by a man of his dependants is, with the Hindus, a primary duty. They hold that he must be just, before he is generous, his charity beginning at home; and that even sacrifice is mockery, if to the injury of those whom he is bound to maintain. Nor of his duty in this respect are his children the only objects, co-extensive as it is with the family whatever be its composition, as consisting of other relations and connexions, including

(it may be) illegitimate offspring. It extends according to Manu and Yajnavalkya to the outcast, if not to the adulterous wife; not to mention such as are excluded from the inheritance, whether through their fault, or their misfortune; all being entitled to be maintained with food and raiment."

At page 21, the learned Judges have also referred to a situation where there is nothing absolutely for the Hindu widow to maintain herself from the parents-in-law's branch by referring to the following texts from NARADA:

"In Book IV, Chapter I Section I, Art. XIII of Celebrooke's Digest, are the following texts from NARADA:

'After the death of her husband, the nearest kinsman on his side has authority over a woman who has no son; in regard to the expenditure of wealth, the government of herself, and her maintenance, he has full dominion. If the husband's family be extinct, or the kinsman be unmanly, or destitute of means to support her, or if there is no Sapindas, a kinsman on the father's side shall have authority over the woman; and the comment on this passage is : "Kinsman on the husband's side; of his father's or mother's race in the order of proximity. 'Maintenance' means subsistence. Thus, without his consent, she may not give away anything to any person, nor indulge herself in matters of shape, taste, smell, or the like, and if the means of subsistence be wanting he must provide her maintenance. But if the kinsman be unmanly (deficient in manly capacity to discriminate right from wrong) or destitute of means to support her, if there be no such person able to provide the means of subsistence, or if there be no SAPINDAS, then any how, determining from her own judgment on the means of preserving life and duty, let her announce her affinity in this mode : 'I am the wife of such a man's uncle; and if that be ineffectual, let her revert to her father's kindred; or in failure of this, recourse may be had even to her mother's kindred'" (Emphasis supplied.)

In Book III, Chapter II, Section II, Art. CXXII, of Colebrooke's Digest, we have the following texts and comments:

"She who is deprived of her husband should not reside apart from her father, mother, son, or brother, from her husband's father or mother, or from her maternal uncle; else she becomes infamous."

As per the above texts and comments, a Hindu widow if the parents-in-law's branch is unmanly or destitute of means to support her is entitled to be with the father or the kinsman on the father's side."

16 In **Janki v. Nand Ram, (1889) ILR 11 All 194 (FB)**, a Hindu

widow after the death of her father-in-law sued her brother-in-law and her father-in-law's widow. The Full Bench of the Allahabad High Court held that the father-in-law was under a moral, though not legal, obligation not only to maintain his widowed daughter-in-law during his life time, but also to make provision out of his self-acquired property for her maintenance after his death; and that such moral obligation in the father became by reason of his self-acquired property having come by inheritance into the hands of his surviving son, a legal obligation enforceable by a suit against the son and against the property in question. While so deciding, the learned Judges at page 210 made a reference to a passage from Dr. Gurudas Banerjee's Tagore Law Lectures, thus:

"We have hitherto been considering the claim of a widow for maintenance against the person inheriting her husband's estate. The question next arises how far she is entitled to be maintained by the heir when her husband leaves no property and how far she can claim maintenance from other relatives. The Hindu sages emphatically enjoin upon every person the duty of maintaining the dependant members of his family. The following are a few of the many texts on the subject:--

MANU: 'The ample support of those who are entitled to maintenance is rewarded with bliss in heaven; but hell is the portion of that man whose family is afflicted with pain by his neglect: therefore let him maintain his family with the utmost care.'

NARADA: 'Even they who are born, or yet unborn and they who exist in the womb, require funds for subsistence; deprivation of the means of subsistence is reprehended.'

BRIHASPATI: 'A man may give what remains after the food and clothing of his family, the giver of more who leaves his family naked and unfed, may taste honey at first, but still afterwards find it poison.'"

The text of MANU as added reads:

"He who bestows gifts on strangers, with a view to worldly fame, while he suffers his family to live in distress, though he has power to support them, touches his lips with honey, but swallows poison; such virtue is counterfeit: even what he does for the sake of his future spiritual body, to the injury of those whom he is found to maintain, shall bring him ultimate misery both in this life and in the next."

Having so quoted the texts, the Full Bench based its judgment on the proposition:

".....under the Hindu law purely moral obligations imposed by religious precepts upon the father ripen into legally enforceable obligations as against the son who inherits his father's property."

17 In **Kamini Dassee v. Chandra Pode Handle**, (1890) ILR 17 Cal 373, it is held by the Calcutta High Court that the principle that an heir succeeding to the property takes it for the spiritual benefit of the late proprietor, and is, therefore, under a legal obligation to maintain persons whom the late proprietor was morally bound to support, has ample basis in the Hindu law of the Bengal School and accordingly decreed the suit for maintenance laid by a widowed brother against her husband's brothers.

18 In **Devi Prasad v. Gunvati Koer**, (1894) ILR 22 Cal 410, deciding an action brought for maintenance by a Hindu widow against the brothers and nephew of her deceased husband after the death of her father-in-law, the Calcutta High Court held that the plaintiff's husband had a vested interest in the ancestral property, and could have, even during his father's life time, enforced partition of that property, and as

the Hindu law provides that the surviving coparceners should maintain the widow of a deceased coparcener, the plaintiff was entitled to maintenance.

19 In Bai Mangal v. Bai Rukmini, (1899) ILR 23 Bom 291, the statement of law of MAYNE that

"After marriage, her (meaning the daughter's) maintenance is a charge upon her husband's family, but if they are unable to support her, she must be provided for by the., family of her father."

was understood to have been one of monetary character than laying down any general legal obligation. The learned Judge, Ranede, J., after examining all the authorities has broadly laid down the law, as he understood, thus:

"In fact, all the text writers appear to be in agreement on this point, namely, that it is only the unmarried daughters who have a legal claim for maintenance from the husband's family. If this provision fails, and the widowed daughter returns to live with her father or brother, there is a moral and social obligation, but not a legally enforceable right by which her maintenance can be claimed as a charge on her father's estate in the hands of his heirs." (page 295)."

20 However, the same learned Judge, Ranede, J., in a later case in Yamuna Bai v. Manubai, (1899) ILR 23 Bom 608, expressed his absolute concurrence with the law laid down by the Allahabad High Court in Janaki's case, (1889 ILR 11 All 194) (supra), as regards the right of the widow of a predeceased son to maintenance against the estate of the deceased father-in-law in the hands of his heirs.

21 The view of Ranede, J., in Bai Man-gal's case, (1899 ILR 23 Bom 291) (supra), was further conditioned by Ammer Ali, J., in Mokhoda

Dassee v. Nundo Lall Haldar, (1900) ILR 27 Cal 555, by holding that the right of maintenance is again subject to the satisfaction of the fact that the widowed sonless daughter must have been at the time of her father's death maintained by him as a dependant member of the family.

22 But, both the views of Ranede, J., in Bai Mangal's case, (1899 ILR 23 Bom 291) (supra), and Ameer Ali, J., in Mokhode Dassee's case, (1900 ILR 27 Cal 555) (supra), did not find acceptance of A. K. Sinha, J., of the Calcutta High Court in Khanta Moni v. Shyam Chand. The learned Judge held that a widowed daughter to sustain her claim for maintenance need not be a destitute nor need be actually maintained by the father during his life time... All that she is required to prove to get such maintenance, the learned Judge held, is that at the material time she is a destitute and she could not get any maintenance from her husband's family.

23 The next important case on the subject is that of the Madras High Court in Venkatrazu v. Kotayya, (1912) 23 Mad LJ 223. In this the view of Ranede, J., in Bai Mangal's case, (1899 ILR 23 Bom 291) (supra) was dissented from by holding that there is a legal obligation on the father and his family to support a destitute daughter (though she had been married away) if she could not get sufficient provision from her deceased husband's family for her maintenance. The learned Judge,

Sadasiva Aiyar, J., also noted that according to Bhattacharya under the Hindu Law Texts widowed daughters are entitled to maintenance and

'justice requires that their right should be recognised'.

Referring to the argument that 'by marriage she becomes member of another family and becomes so to say, "dead" to her own family, the learned Judge held, is merely carrying legal fictions to absurd lengths. The learned Judge illustrated this absurdity thus:

"A wife is half her husband's body but you cannot on that ground give double rations to the husband for his meals and give none to the wife; nor does the daughter lose her consan-guineness, blood relationship to her father and her right of inheritance to him and other similar rights, simply because she becomes attached by Pinda, Gotra and Sootake to her husband's family by marriage."

Adverting to the question, namely 'has not a widowed destitute daughter whose husband's family is unable to give her anything has she not a legal claim on her father for her maintenance atleast when she lives with him as a member of his family? Has she not, at least, a social and moral claim against her father which ripens into a legal right against his estate after his death just as in the case of a daughter-in-law who has only a social and moral claim against her father-in-law if he has no ancestral property and whose moral claim becomes a legal claim after his death?'

the learned Judge, Sadasiva Aiyar, J., observed:

"The authorities are all in favour of the existence of such a right in the destitute married daughter except one doubtful decision in Bai Mangal v. Bai Rukhmini, (1899 ILR 23 Bom 291), J. C. Ghose says (Hindu Law pages 295 and 296) "The law of Narada is clear, that when the husband's family is in destitute circumstances, the father's family has to maintain a female. It is difficult to see how it is only a moral duty. .. When the father's family marry a girl to a poor man... how can it be said that when she becomes helpless on account of the indigence of the husband's family the father's family can turn her out without a maintenance?.... According to the strict letter of the Hindu Law and also according to the nature of the Constitution of Hindu Society, it is a clear legal duty on the part of the father's family to maintain a woman under the circumstances noted above."

24 In Mt. Bholi Bai v. Dwarka Das, AIR 1925 Lahore 32, the Lahore

High Court held that the sister is entitled to maintenance against the properties of her deceased father in the hands of her brother.

25 In the decision of the Full Bench of the Madras High Court in *Ambu Bai v. Soni Bai*, AIR 1940 Madras 804, the daughter filed a suit against her step-mother for her maintenance from out of the property of her father inherited by her step-mother, on the ground that she is a widow with no means and that her husband's family is unable to support her. Considering the claim the Full Bench examined whether the principle laid down in *Janki v. Nand Ram's case*, (1889 ILR 11 All 194) (supra) of the Allahabad High Court could be extended to the case of a widowed daughter, who has no means of subsistence. While so examining, it recalled that the Allahabad High Court held that the father was under a moral, though not a legal, obligation to maintain his widowed daughter-in-law during his life time and to make provision out of his self-acquired property for her maintenance after his death. This moral obligation becomes legal one by reason of the fact that the son inherits the property. The basis for this change of character into legal one was that the son took the estate, not for his own benefit but for the spiritual benefit of his father as has been stated in *Khetramani Dasi's case*, (1868-2 Bengal LR 15) (supra). The Full Bench also referred to two cases reported by Strange (1830 Edition pages 83 and 90) and one case in *Macnaghten* (Vol. II pp. 117 and 118).

In one of the two cases reported by Strange:

A Hindu left two widows, a widowed sister who had lived with him after the death of her husband, and his mother. The question was to whom should his estate go. The answer given was that the mother must be maintained and so must be the sister, if left destitute by her husband.

In the second case:

A Hindu left two wives, his mother and sister. The answer was that the mother of the deceased Hindu, being otherwise unprovided for, sufficient allowance must be set apart from his estate for her maintenance, and if the deceased's sister derived nothing from her husband, the widows should jointly contribute towards her support.

In the case reported in Macnaghten:

The deceased left two sons by one wife (who died before him), and a widow and her two daughters. Subsequent to his death, one of the two sons died. There thus were (i) a son of his first wife, (ii) a widow and (iii) two daughters of the widow. The question there was if the widow received no portion of the property from her step-son, whether she is entitled to any share in the estate. The answer was that the widow was entitled to maintenance from her step-son; and if her two daughters have not been disposed of in marriage, they will also have some share of their father's wealth to defray their nuptial expenses. Should they, after marriage, be in want of maintenance, in consequence of their husband's inability to support them, they must be provided with food and raiment by their half-brother. This is conformable to Dayabhaga and other authorities.

If the sister of a deceased Hindu is entitled to maintenance from out of his estate, the Full Bench held, it is impossible to imagine on what principle maintenance can be denied to his daughter. Having also referred to the decision of Sadastva Aiyar, J., in Venka-trazu's case, (1912-23 Mad LJ 223) (supra), the Full Bench found no difficulty in extending the principle embodied in Janki v. Nand Ram's case (1889 ILR 11 All 194) (supra) to the case of a daughter. The Full Bench accordingly concluded that a Hindu widow is bound to maintain out of her husband's estate her husband's widowed daughter when the daughter is without means and her husband's family is unable to support her.

26 In Appavu Udayan v. Nallamrnl, AIR 1949 Madras 24, the Madras High Court had to deal with the rights of daughter-in-law against her father-in-law and his estate in the hands of his heirs. There it

is held that the father-in-law is under a moral obligation to maintain his widowed daughter-in-law out of his self-acquired property and that on his death if his self-acquired property descends by inheritance to his heirs, the moral liability of the father-in-law ripens into a legal one against his heirs.

27 A Full Bench of the Andhra Pradesh High Court in **T.A. Lakshmi Narasamba v. T. Sundaramma** held:

"The moral obligation of a father-in-law possessed of separate or self-acquired property to maintain the widowed daughter-in-law ripens into a legal obligation in the hands of persons to whom he has either bequeathed or made a gift of his property. Under the Hindu law there is a moral obligation on the father-in-law to maintain the daughter-in-law and the heirs who inherit the property are liable to maintain the dependants. It is the duty of the Hindu heirs to provide for the bodily and mental or spiritual needs of their immediate and nearer ancestors to relieve them from bodily and mental discomfort and to protect their souls from the consequences of sin. They should maintain the dependants of the persons of property they succeeded. Merely because the property is transferred by gift or by will in favour of the heirs the obligation is not extinct. When there is property in the hands of the heirs belonging to the deceased who had a moral duty to provide maintenance, it becomes a legal duty on the heirs. It makes no difference whether the property is received either by way of succession or by way of gift or will, the principle being common in either case." [See – Kota Varaprasada Rao vs. Kota China Venkaiah (1992 AIR (AP)1]

28 A Full Bench of the Andhra Pradesh High Court in the case of **Kota Varaprasada Rao vs. Kota China Venkaiah** [1992 AIR (AP)1]

observed as under:

[22] We must before proceeding further mention that we have been conscious that the case law mostly referred to above relates to matters pertaining to the rights of the daughter-in-law against her father-in-law and his estate. The reason, still, for their reference is the unusual paucity of case-law governing the rights of daughter against her father, brothers,

etc.'for her maintenance. This scantiness of case law is more due to the devotional character and spiritual belief of the Hindu population and also due to the fact that the law-abiding nature of the Hindus have precluded brothers from disputing the right of maintenance of their widowed sister. More over, the analogy in the case-law with reference to the daughter-in-law can be and in fact has been also extended to the destitute widowed daughter by the Full Bench of the Madras High Court in Ambu Bai's case (AIR 1940 Madras 804) (*supra*).

It is also interesting to note that MANU says:

"The support of the group of persons who should be maintained
ej.ka iks";oxZL;

is the approved means of attaining heaven, but hell is the man's portion if they suffer; therefore, he should carefully maintain them.'
(Cited in DAYABHAGA, II, 23)

MANU goes on to describe the group of persons to be maintained:

"The father, the mother, the Guru, a wife, an off-spring, poor dependents fnuk% lekfJrk%

a guest and a religious mendicant are declared to be the group of persons who are to be maintained" (cited in Sri Krishna's commentary on the DAYABHAGA.)

MANU further says:

"A father is bound to maintain his unmarried daughters. On the death of the father they are entitled to be maintained out of his estate. A daughter on marriage ceases to be a member of her father's family, and becomes a member of her husband's family..... If she is unable to obtain maintenance from her husband, or after his death from his family, her father, if he has got separate of his own, is under a moral, though not a legal, obligation to maintain her."

(MULLA's Principles of Hindu Law, 9th Edn. p. 584).

[23] KAMALAKARA, as cited by Dr. Jolly, in his VIVADATANDAVA says:

"It is incumbent on the sons and grandsons to maintain indigent widows and daughter-in-law though no wealth of the father may be in existence."

According to him :

"In reality the claim of the female family members of maintenance does not become extinct either through the absence of assets, or in the somewhat analogous case of a separation of the coparceners having taken place."

[24] Even GHOSE states that a female is entitled to be maintained by her father's family, if her husband's family is extinct, or incapable on account of extreme poverty, to support her. (Principles of Hindu Law, 10th Edn. Page 305).

[25] Again according to MEDHATITHI as cited by GHOSE at page 310, the sonless widowed daughter and grand-daughter and sister come back to the family of the father. MEDHATITHI's work as observed by M A YNE is the earliest commentary extant on MANU and is frequently referred to as of high authority.

[26] SARKAR expresses the opinion that a married daughter is ordinarily to be maintained in her husband's family, but if they are unable to maintain her, she is entitled to be maintained in her father's family. (8th Edn. p. 534).

[27] In view of the different texts cited and the case-law noted, we hold that a destitute widowed daughter has a right of maintenance against her brothers after the death of her father when she could not get sufficient provision from her deceased husband's family for her maintenance."

29 I shall now look into the decision of the Supreme Court in the case of **Kirtikant D. Vadodaria (supra)**. In this case, the appellant was a child of tender age when his mother expired and his father took the respondent No.2 as his second wife from whom five sons and two daughters were born. All of them were major and at least three of them were well-to-do and capable of maintaining their daughters. The father was also possessed of sufficient means. The respondent No.2 claimed maintenance from stepson, the appellant, living out all her natural born

sons and husband who were well-to-do. The Magistrate took the view that in spite of the respondent No.2 being a stepmother of the appellant, she had a right to claim maintenance from the appellant and awarded a sum of Rs.400/- per month as the maintenance allowance. This order was upheld by the City Sessions Judge and the High Court. The matter reached to the Supreme Court. Allowing the appeal, the Supreme Court made the following observations:

“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 maintains 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, on, if so ordered, from the date of the application for maintenance.

(3)- (5) 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.

11. 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 stepmother. 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, Mitakshara and Salampatta 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 be 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 entitled 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" occurring 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' occurring 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) is not the correct view.

15. The point 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 my 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."*

30 Thus, the Supreme Court, in the above referred decision, held that the expression "mother" in Section 125(1)(d) of the Code would only mean real or natural mother and would not include stepmother. According to the Supreme Court, the stepmother is a distinct and

separate entity and cannot be equated with the natural mother who has given birth to the child. However, an adoptive mother can be included in the expression “mother”. It further held that having regard to the purpose behind the benevolent provisions of Section 125, a childless stepmother is entitled to claim maintenance from her stepson provided she is a widow or her husband, if living, is also incapable of maintaining her. The question whether a stepson is liable to maintain his stepmother out of the inherited estate was kept open. While taking the view that a biological mother, when she claims maintenance from her natural born children, she does so in her status as their “mother”, the Supreme Court, considered the explanation attached to Section 20 of the Hindu Adoptions and Maintenance Act, 1956. The Supreme Court observed that 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. The Supreme Court ultimately concluded that no intention of the Legislature could be read in Section 125 of the Code that even though a mother has her real and natural born son or sons and her husband capable of maintaining her, she could still proceed against her stepson to claim maintenance.

31 In the case in hand, the following facts are not in dispute:

(1) The Son of the respondent No.2, late Shri Prakashkumar Sarvaiya, had married with Ashaben Manjibhai on 09.02.1998, and in the

wedlock, Jahnvi was born. Jahnvi, as on today, is fifteen years old. I am told that she is studying at Vadodara.

(2) On account of matrimonial dispute, the biological parents of Jahnvi decided to dissolve the marriage, and therefore, they filed a Hindu Marriage Petition No.32 of 2003 under Section 13 of the Hindu Marriage Act in the Court of the learned 2nd Joint Civil Judge (SD), Bhavnagar, for dissolution of marriage with consent.

(3) The marriage was dissolved and a decree of divorce was passed on 16.12.2003.

(4) Late Prakashkumar thereafter married with the petitioner herein on 18.12.2005 according to the Hindu rites and rituals. After divorce, Jahnvi remained in the care and custody of her father late Prakashkumar.

(5) On 25.03.2006, Prakashkumar i.e. the father of Jahnvi died.

(6) For a period of three years thereafter, the custody of Jahnvi remained with the petitioner.

(7) One Miscellaneous Civil Application No.75 of 2008 was filed in the Court of the learned Principal District Judge, Bhavnagar by the respondent No.2 herein under Section 7 of the Guardian and Wards Act for the custody of Jahnvi.

(8) The learned Additional District Judge, Bhavnagar, vide order dated 04.09.2010, was pleased to allow the said application and handed

over the custody of Jahnvi to the respondent No.2 i.e. her parental grandfather.

(9) The above referred events would suggest that from 2005 onwards till 2010, Jahnvi remained with the petitioner.

(10) The natural mother of Jahnvi, namely, Ashaben Manjibhai is alive as on today. She is also serving. I am told that Ashaben Manjibhai has also claimed the custody of Jahnvi being the biological mother and is ready and willing to take care of Jahnvi. For some reason or the other, Jahnvi may not be ready and willing to live with her mother, namely, Ashaben. It is also not in dispute that Jahnvi has not thought fit to claim any maintenance from her biological mother, namely, Ashaben.

(11) Jahnvi has claimed maintenance through her grandfather i.e. the respondent No.2 on the premise that the petitioner had married with her father, and at the time of marriage, she had undertaken or rather it is presumed that she had undertaken the responsibility of Jahnvi. Further, the petitioner has inherited some of the assets of late Prakashkumar, and therefore, the petitioner is duty bound to maintain Jahnvi, although Jahnvi may not be her own daughter.

32 Having regard to the above referred facts, I have no hesitation in coming to the conclusion that the petitioner should not be saddled with the responsibility of maintaining Jahnvi, more particularly, when the natural mother of Jahnvi, is very much alive and is ready and willing to

take care of Jahnvi. Besides the same, it appears that a huge amount of Rs.23 lac was received by the respondent No.2 from the L.I.C. on the demise of Prakashkumar i.e. the father of Jahnvi.

33 However, the larger issue still remains to be addressed. What would have been the position if there was none to look after and take care of Jahnvi except the petitioner being her stepmother.

34 For properly appreciating the larger controversy raised in this case, I may once again refer to the provisions of Section 125 of the Code which reads as follows:

“125 (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 a 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 of 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 is deemed not to have attained his majority (9 of 1875);

(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) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any ground of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just grounds for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an d [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be], from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

35 *Prima facie* though section 125 of the Code corresponds to section 488 of the old Code of Criminal Procedure it is obvious that it has brought about major and substantial changes. It is further clear that the said decision creates a statutory liability irrespective of the personal law of the parties. As observed by the Supreme Court in **Nanak Chand v. Chandra Kishore** [AIR 1970 SC 446] there is no inconsistency between the Maintenance Act and Section 488, Criminal Procedure Code. While dealing with this aspect of the matter under the old Code of Criminal Procedure, the Supreme Court observed as under:

“The learned Counsel says that Sec. 488, Criminal Procedure Code, in so far as it provides for the grant of maintenance to a Hindu, is inconsistent with Chapter III of the Maintenance Act, and in particular, Section 20, which provides for maintenance to children. We are unable to see any inconsistency between the Maintenance Act and Section 488, Criminal Procedure Code. Both can stand together. The Maintenance Act is an Act to amend and codify the law relating to adoptions and maintenance among Hindus. The law was substantially similar before and nobody ever suggested that Hindu Law, as in force immediately before the commencement of this Act, in so far as it dealt with the maintenance of children was in any way inconsistent with Section 488, Criminal Procedure Code. The scope of the two laws is different. Section 488 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. Recently the question came before the Allahabad High Court in Ram Singh v. State, AIR 1963 All 355, before the Calcutta High Court in Mahabir Agarwalla v. Gita Roy, 1962 (2) Cri LJ 528 (Cal), and before the Patna High Court in Nalini Ranjan v. Kiran Rani, AIR 1965 Pat 442. The three High Courts have, in our view, correctly come to the conclusion that Section 4 (b) of the Maintenance Act does not repeal or affect in any manner the provisions contained in Section 488, Criminal Procedure Code.”

36 The Supreme Court had also an occasion to consider the scope of

proceedings under section 488 of the old Code of Criminal Procedure in **Mst. Jagir Kaur v. Jaswant Singh [AIR SC 1521]**. In this context, the Supreme Court observed as follows:

"The proceedings under this section are in the nature of civil proceedings, the remedy is a summary one and the person seeking that remedy, as we have pointed out, is ordinarily a helpless person. So the words should be liberally construed without doing any violence to the language....."

To summarize: Chapter XXXVI of the Code of Criminal Procedure providing for maintenance of wives and children intends to serve a social purpose. Section 488 prescribes alternative forums to enable a deserted wife or a helpless child, legitimate or illegitimate, to get urgent relief. Proceedings under the section can be taken against the husband or the father, as the case may be, in a place where he resides, permanently or temporarily, or where he happens to be at the time the proceedings are initiated."

36.1 Therefore, it is quite obvious that the object of the proceedings is to prevent vagrancy by compelling the husband or the father to support his wife or child unable to support itself. In a sense the provisions are not penal in nature, but are only intended for enforcement of a duty, a default of which is made penal. It is also clear that such a provision has been made to serve a social purpose for providing a speedy remedy in a summary manner to a person who is ordinarily helpless. Therefore, as observed by the Supreme Court in Ms. Jagir Kaur's case the words will have to be liberally construed without doing any violence to the language, of course within the permissible limits. It is well settled that a word which is not defined in the Act, but which is a word of everyday use must be construed in its popular sense. While construing a Statute,

which is secular in nature and dealing with the matter relating to general public, the Legislature is presumed to use the words used in the Statute in the popular sense as understood in common parlance and, therefore, normally they should be their ordinary, natural and familiar meaning.

37 Let me first test the argument of the learned advocate appearing for the petitioner that the Legislature has specifically mentioned the words "his legitimate or illegitimate minor child". The question, therefore, raised by the petitioner is whether the word "his" would include "her". According to the learned advocate, having regard to the word "his" even a biological mother does not seem to have been included within Section 125 of the Code.

38 Clause (a) deals with the right of the wife who is unable to maintain herself, to claim maintenance from her husband. Clause (b) deals with the right of the children, who are minor, to get maintenance from their parents. Within the import of clause (b) even a married daughter is included. Clause (c) deals with a disabled child who has attained majority. The bracketed portion "not being a married daughter" covers only clause (c) and not the other sub-clauses of Section 125 (1) of the Code. This is obvious from the use of specific expression "whether married or not" in sub-clause (b) of Section 125(1). Then comes sub-

cause (d) which confers a right upon a father or mother unable to maintain himself or herself to claim maintenance. The word "person" is not defined in the Code, nor the expression "his" is defined. However, by Section 2(y) of the Code it is laid down that the words and expressions used therein and not defined but defined in the Penal Code have the meanings respectively assigned to them in that Code. Section 8 of the Penal Code reads as under:-

"Gender. The pronoun 'he' and its derivatives are used of any person, whether male or female."

38.1 Section 11 defines the word "person", which includes any Company or Association, or body of persons, whether incorporated or not. The definition of the word "person" is inclusive and, therefore, obviously not exhaustive. Section 13(1) of the General Clauses Act lays down that in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females. The word "person" is defined in Section 3(42) of the General Clauses Act and the definition is akin to the definition in Section 11 of the Penal Code. Further, by Section 2(y) of the Cr. P.C. it is provided that the words and expressions used in the Code are to be understood as defined by the Penal Code. Therefore, it is quite clear that the pronoun "he" and its derivatives as used in Section 125 of the Cr. P.C. would include in its import, both a male or a female.

39 In the aforesaid context, I may quote with profit the decision of the Supreme Court in the case of **Dr. Ms. Vijaya Manohar Arbat vs. Kashirao Rajaram Sawai** [AIR 1987 SC 1100]. The point involved before the Supreme Court was whether the respondent No.1 therein was entitled to claim maintenance from the appellant, his married daughter, under Section 125(1)(d) of the Cr. P.C. The Supreme Court affirming the judgment of the Bombay High Court held as under:

“8. We are unable to accept this contention. It is true that Cl. (d) has used the expression "his father or mother" but, in our opinion, the use of the word 'his' does not exclude the parents claiming maintenance from their daughter. Section 2(y), Cr. P.C. provides that words and expressions used herein and not defined but defined in the Indian Penal Code have the meanings respectively assigned to them in that Code. S. 8 of the Indian Penal Code lays down that the pronoun 'he' and its derivatives are used for any person whether male or female. Thus, in view of S. 8, IPC read with S. 2(y), Cr. P.C. the pronoun 'his' in Cl. (d) of S. 125(1), Cr. P.C. also indicates a female. Section 13(1) of the General Clauses Act lays down that in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken to include females. Therefore, the pronoun 'his' as used in Cl. (d) of S. 125(1) Cr. P.C. includes both a male and a female. In other words, the parents will be entitled to claim maintenance against their daughter provided, however, the other conditions as mentioned in the section are fulfilled. Before ordering maintenance in favour of a father or a mother against their married daughter, the Court must be satisfied that the daughter has sufficient means of her own independently of the means or income of her husband, and that the father or the mother, as the case may be, is unable to maintain himself or herself.”

40 In the case of **Rajathi vs. C. Ganeshan** [AIR 1999 SC 2374(1)], the Supreme Court made the following observations in para 8 as under:

“8. We may also have a look at the provisions of the Hindu Adoptions and Maintenance Act 1956, which provides for maintenance to a Hindu wife. Under Section 18 of this Act a Hindu wife, whether married before or after

*the commencement of this Act, shall be entitled to be maintained by her husband during her life-time. Under sub-section (2) she will be entitled to live separate from her husband without forfeiting her claim to maintenance,- (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her; (b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband; (c) if he is suffering from a virulent form of leprosy; (d) if he has any other wife living; (e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere; (f) if he has ceased to be a Hindu by conversion to another religion; and (g) if there is any other cause justifying her living separately. Under sub-section (3) a Hindu wife is not entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be Hindu by conversion to another religion. **It will be apposite to keep these provisions in view while considering the petition under Section 125 of the Code.***

41 Section 20(2) of the Hindu Adoptions and Maintenances Act 1956 reads as under:

“A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.”

42 Thus, the Act of 1956 also makes it very clear that a legitimate or illegitimate child can claim maintenance from his or her father or mother. Therefore, the maintenance can be claimed from the mother also. In such circumstances, there is no difficulty in reading Section 125(1)(b) accordingly. However, the question in the present case is with regard to the right of the stepdaughter to claim maintenance from her stepmother.

43 The present Legislation is secular in nature and is applicable to all persons belonging to all religions and has no relationship with the

personal law of the parties. The Supreme Court had again an occasion to consider this aspect of the matter in **Bhagwan Dutt vs. Smt. Kamla Devi** [AIR 1975 SC 83]. In the said decision a reference was also made to section 125 of the new Code and then it was observed by the Supreme Court as under:

“The question therefore resolves itself into the issue whether there is anything in Section 488 which is inconsistent with Section 23 or any other provisions of the Act ? This matter is no longer res integra . In Nanak Chand v. Chandra Kishore Aggarwal, this Court held that there is no inconsistency between Act 78 of 1956 and Section 488, Criminal P. C. Both could stand together. The Act of 1956 is an Act to amend and codify the law relating to adoption and maintenance among Hindus. The law was substantially similar before when it was never suggested that there was any inconsistency with Sec. 488. Criminal P. C. The scope of the two laws is different. Section 488 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties.”

44 Therefore, it is quite obvious that the provisions of Section 125 as such are neither inconsistent nor are controlled by the provisions of Hindu Adoptions and Maintenance Act, 1956. Thus, the provisions of Section 125 of the Code will have to be construed having regard to the phraseology used in the section itself.

45 The Supreme Court in the case of **Gulraj Singh vs. Mota Singh** [AIR 1965 SC 608] had the occasion to consider the import of the word “son” or “daughter” which occurred in the Punjab Pre-emption Act, 1913, as amended by Act 10 of 1960. It was contended therein that the expression “son” or “daughter” should be so construed so as to include

illegitimate children also. A further contention was also raised before the Supreme Court that the Pre-emption Act must be read in conjunction with the Hindu Succession Act, 1956 which made a provision for devolution of the property. Negating this contention the Supreme Court observed as under:

“We have, therefore, to ascertain whether by the expression son or daughter only the legitimate issue of such female is comprehended or whether the words are wide enough to include illegitimate children also. That the normal rule of construction of the words "child", "son" or "daughter" occurring in a statute would include only legitimate children i.e., born in wedlock, is too elementary, to require authority. No doubt, there might be express provision in the statute itself to give these words a more extended meaning as to include also illegitimate children and S. 3 (j) of the Hindu Succession Act (Act XXX of 1956) furnishes a goods illustration of such a provision. It might even be that without an express provision in that regard the context might indicate that the words were used in a more comprehensive sense as indicating merely a blood relationship apart from the question of legitimacy. Section 15 with which we are concerned contains no express provision and the context, so far as it goes, is not capable of lending any support to such a construction. In the first place, the words "son or daughter" occur more than once in that Section. It was fairly conceded by Mr. Bishan Narain that where the son or daughter of a male vendor is referred to as in S. 15 (1), the words mean only the legitimate issue of the vendor. If so, it cannot be that in the case of a female vendor the words could have a different connotation. Even taking the case of a female vendor herself, there is a reference in S. 15(2) (a) (i) to the brother's son of such vendor. It could hardly be open to argument that a brother's illegitimate son is comprehended within those words. The matter appears to us to be too clear for argument that when S. 15 (2) (b) (i) uses the words "son or daughter" it meant only a legitimate son and a legitimate daughter of the female vendor.”

46 In **Mallappa v. Shivappa** [AIR 1962 Mys 140] a question arose as to whether the term “son” as used in section 15(1)(a) of the Hindu Succession Act, 1956 will include a step-son. In this context a Division Bench of the Mysore High Court observed as under:

“In the absence of any definition or explanation to the effect that the word 'son' would also include a step-son, that word should be given its natural meaning; if so, a son of a deceased female would mean a male issue of the body of that deceased female. (It may also include a boy taken in adoption, who, in law, stands on the same footing as a natural son; but, with this question, we are not at present concerned). The position, therefore, is that the plaintiff who is a son of the step-son of the defendant No.4, cannot claim to be a son of the deceased 4th defendant. As the son of a step-son, he may have the right to succeed under Section 15 (1) (b) of the Hindu Succession Act, as the heir of the husband of the deceased defendant No.4; but, defendant No.1 being the son of the deceased defendant No.4, has the right to succeed under Section 15 (1) (a) and would be the preferential heir. In the 12th Edition of Mulla's 'Principles of Hindu Law', it is stated, with reference to S.15 of the Hindu Succession Act, at page 984, as follows:

"A 'step-son' is not entitled as 'son' to inherit to his stepmother as one of the heirs under this Entry. But he can succeed to her property as an heir of her husband under Entry (b)".

47 In my opinion, while construing Section 125 of the Code also, in the absence of any definition or explanation to the effect that the words “legitimate or illegitimate child” would also include a stepchild, that word will have to be given its natural meaning and if so construed, the legitimate or illegitimate child would mean only a child which has been given birth by a woman from whom the maintenance is being claimed. A stepdaughter is not an illegitimate child but a daughter of one’s spouse born through another spouse. Section 125 contemplates blood relation which gives rise to moral and legal obligation to maintain a person.

48 I am dealing with a statute which is secular in nature and is not controlled as such by the provisions of the Hindu Adoptions and Maintenance Act, 1956, although it would be apposite to keep those

provisions in view while considering the petition under Section 125 of the Code. The language used in Section 125 of the Code is plain and unambiguous. The words “legitimate or illegitimate” as used in Section 125 must, therefore, be presumed to carry its plain literal meaning in the absence of any evidence that it was intended to mean something else or include a stepchild also.

49 It is not open to this Court to supply the omission by extending the meaning of the word or the words “legitimate or illegitimate child” in the guise of interpretation by analogy or implication only because this Court feels that it will be in conformity with the principles of social justice and equity.

50 In the aforesaid context, a reference could usefully be made to the observations of the Supreme Court in **Commission of Sales Tax, Uttar Pradesh vs. M/s. Parson Tools and Plants, Kanpur** [AIR 1975 SC 1039].

“If the legislature wilfully, omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation by analogy or implication, something what it thinks to be a general principle of justice and equity. “To do so” - (at p. 65 in Prem Nath L. Ganesh v. Prem Nath L. Ram Nath AIR 1963 Punj 62. Per Tek Chand J.) “would be entrenching upon the preserves of Legislature”, the primary function of a court of law being jus dicere and not jus dare.”

51 Therefore, it is not possible for me to accept the contentions of

Ms. Punani, the learned Additional Public Prosecutor as well as Mr. Ankur Oza, the learned advocate appearing for the respondent No.2.

52 The analogy explained by the Supreme Court in the case of **Kirtikant (supra)** would apply in the present case. The children of another have not been mentioned in the entire Section 125 of the Cr. P.C. nor any right has been conferred on them to claim maintenance. There was an enactment in the United Kingdom known as the Family Relations Act, which, of course, now stands repealed and substituted with a new enactment. The provisions therein provided that where step – parent or common law partner of someone with a child had been standing in the role of parent, known as in *loco parentis*, the Court would order that person to pay child support, even though they were not biologically related to the child.

53 However, child support could also be ordered where the person was found to be a “parent”, which was defined under the Family Relations Act as under:

“A “parent” includes

(a) a guardian or guardian the person of a child, or

(b) a stepparent of a child if

(i) the stepparent contributed to the support and maintenance of the child for at least one year, and

(ii) the proceeding under this Act by or against the stepparent is commenced within one year after the date the stepparent last contributed to the support and maintenance of the child;

54 Section 1(2) of the Act stated as under:

“(2) For the purpose of paragraph (b) of the definition of “parent” in subsection (1), a person is the stepparent of a child if the person and a parent of the child

(a) are or were married, or

(b) lived together in a marriage-like relationship for a period of at least 2 years and, for the purposes of this Act, the marriage-like relationship may be between persons of the same gender.”

55 Thus, the Court could order a step-parent to pay child support in three contingencies:

“The step-parent:

was either in a marriage-like (common law) relationship with the child’s parent for at least two years OR married to the child’s parent for any length of time; AND contributed to the child’s support or maintenance for at least one year; AND last contributed to the child’s maintenance or support within one year of the date that the child support claim was filed with the court.”

56 However, it is for the Legislature to look into this issue in the interest of a helpless child who is thrown out by his stepfather or stepmother and there is none to take care of such child.

57 With the above, this petition is allowed. The impugned order dated 30.03.2015 passed by the Principal Judge, Family Court, Bhavnagar is hereby ordered to be quashed. Rule is made absolute.

(J.B.PARDIWALA, J.)

chandresh