

*** HONOURABLE SRI JUSTICE A.SANTHOSH REDDY**

+ CRIMINAL PETITION No.6395 of 2013

% 23.08.2022

O.Anjaneyulu @ Anji Babu S/o.Narayana Swamy Naidu

..PETITIONER

VS.

\$ S.Sulochana and others.

..RESPONDENTS.

! Counsel For The Petitioner: M/s.Rama Mohan Palanki

^ Counsel For Respondents: Assistant Public Prosecutor for
respondent No.4.

< Gist :

> Head Note :

? CITATIONS : --

HON'BLE SRI JUSTICE A.SANTHOSH REDDY**CRL.P.No.6395 OF 2013****ORDER:**

This criminal petition is directed under Section 482 Cr.P.C., seeking to quash the proceedings in M.C.No.15 of 2013 on the file of Judge, Family Court, Khammam, wherein the petition was filed by respondent Nos.1 to 3 under Section 125 Cr.P.C. claiming maintenance against the petitioner, who is the father-in-law of respondent No.1.

2. Heard the learned counsel for the petitioner and learned Assistant Public Prosecutor for respondent No.4. None represented respondent Nos.1 to 3. Perused the material on record.

3. Under the Code of Criminal Procedure, 1973 (Cr.P.C.), Section 125 Cr.P.C. provides separate remedy by a summary procedure, authorizes the Judicial Magistrate of First Class to order under certain circumstances payment of maintenance to wife, legitimate, illegitimate minor children, father and mother who are unable to maintain themselves. Though these provisions are not

strictly penal, yet they certainly entrust a duty, the default of which may lead to vagrancy.

4. The question that arises for consideration in the present case is, whether the daughter-in-law is entitled for maintenance under Section 125 Cr.P.C. from the father-in-law?

5. The daughter-in-law i.e. respondent No.1 and her minor children-respondent Nos.2 and 3 filed an application under Section 125 Cr.P.C. claiming maintenance stating that her husband Jitendra Kumar who is the son of petitioner herein died on 04.05.2012 intestate due to heart attack. Respondent No.1 is household lady and respondent Nos.2 and 3 are their children studying VIII and VII standard respectively. After the death of her husband, the attitude of the petitioner was changed and being head of the joint family, he totally neglected the well being of the respondents. The respondents demanded the petitioner to effect partition and allot their legitimate share in the joint family property by metes and bounds, but he was not cooperating with the respondents on one or other pretext. Respondent No.1 is not having sufficient income to maintain herself and her minor children. As such, she filed

maintenance case claiming maintenance of Rs.5,000/- to each of respondents. Being aggrieved, the petitioner filed this petition to quash the proceedings.

6. Learned counsel for the petitioner submits that a daughter-in-law is not entitled to claim maintenance from the petitioner who is her father-in-law under the provisions of Section 125 Cr.P.C. If respondent No.1 has any grievance, she has to file a petition under Section 19 of the Hindu Adoption and Maintenance Act, 1956 (for short “the Act”) before the civil Court. Therefore, he prays to allow the petition.

7. It is relevant here to contemplate on the provisions of Section 125 Cr.P.C. and Section 19 of the Hindu Adoption and Maintenance Act, 1956.

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.

8. Under Section 125 Cr.P.C., it has not been specifically provided that the father-in-law is liable to maintain his daughter-in-law and her children who are unable to maintain themselves. The provision makes it clear that 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 under Section 125 Cr.P.C.

9. Section 19 of the Hindu Adoption and Maintenance Act, 1956 reads as under:

19. Maintenance of widowed daughter-in-law-

(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law.

Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance-

(a) from the estate of her husband or her father or mother,

or (b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the remarriage of the daughter-in-law.

10. As per the ingredients of Section 19 of the Act supra, a daughter-in-law has got remedy, when she is unable to maintain herself after death of her husband, she can proceed against the father-in-law for maintenance. Adverting to the present case, respondent No.1 in her petition filed under Section 125 Cr.P.C. before the learned trial Court stated that there are joint family properties available and during life time of her husband, though he demanded the petitioner has not affected the partition of joint family property and after his death also, the petitioner herein has not affected partition of movable and immovable property of joint family. Therefore, she was constrained to file the application under Section 125 Cr.P.C. It appears she has also filed a suit for partition of the joint family properties before the Additional District Judge's Court, Narsapur, West Godavari District.

11. For the foregoing reasons, I am of the view that maintenance application of respondent No.1 being a daughter-in-law for her

maintenance and maintenance of her minor children is not maintainable against the petitioner/father-in-law under the provisions of Section 125 Cr.P.C. Therefore, the continuation of proceedings is nothing but abuse of process of law. As such, it is a fit case to invoke the powers under Section 482 Cr.P.C. to quash the proceedings.

12. In the result, the criminal petition is allowed. The proceedings in M.C.No.15 of 2013 on the file of Judge, Family Court, Khammam, are hereby quashed. Miscellaneous petitions, if any, pending shall stand closed.

A.SANTHOSH REDDY,J

23.08.2022

Note: LR copy is marked.
B/o.
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