

Gujarat High Court

Hasmukhbhai vs State on 9 February, 2011

Author: Akil Kureshi,&Nbsp;

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CR.RA/759/2009 4/ 4 JUDGMENT

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL

REVISION APPLICATION No. 759 of 2009

For

Approval and Signature: HONOURABLE

MR.JUSTICE AKIL KURESHI =====

1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To

be referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

=====

HASMUKHBHAI

NARANBHAI VIRAMIYA & 1 - Applicant(s)

Versus

STATE

OF GUJARAT & 1 - Respondent(s)

===== Appearance :

MR

PRADEEP PATEL for Applicant(s) : 1 - 2. PUBLIC PROSECUTOR for Respondent(s) : 1, RULE SERVED for Respondent(s) : 2, MR JL

HAJARE for Respondent(s) : 2,

=====

CORAM

:

HONOURABLE

MR.JUSTICE AKIL KURESHI

Date

: 09/02/2011

ORAL

JUDGMENT

1. Petitioners

are sons of respondent No.2. Respondent No.2 father had filed Criminal Miscellaneous Application No.585 of 2008 before the Family Court, Rajkot seeking maintenance from his sons contending that in old age he has no

independent source of income and he is unable to maintain himself.

2. Learned

Judge of Family Court, Rajkot by impugned order dated 9.9.2010 allowed the application partly and directed both the sons to pay Rs.600/- each per month to the father. He thus received a total of Rs.1200/- by way of maintenance from two sons.

3. In

the present case, the petitioners have opposed the order of maintenance on various grounds, namely, that the father had deserted the family many years back and has started leaving with another lady without any valid marriage. From such cohabitation he also has one son and one daughter against whom no claim is made. It is also the case of the petitioners that the petitioners are willing to look after the father if he resides with them. The case of the petitioners further is that they do not have sufficient means to pay maintenance to the father.

4. Counsel

for the petitioners drew my attention to the evidence on record to point out that the cohabitation of the father with another lady and this lady giving birth to two children out of such cohabitation are admitted by him. Counsel for the petitioners submitted that the father had not supported the family yet sold away certain immovable properties from which he has received considerable amount. He also instituted several proceedings seeking eviction of the petitioners from the residential premises occupied by them.

5.

Counsel for the respondent No.2 was absent on numerous occasions, I, therefore, had no benefit of his arguments.

6. So

far as the contention that the father has sold certain immovable properties and raised considerable amount which could be source for his sustenance is concerned, admittedly there is no evidence on record in this regard. Such oral averments, raised for the first time in the High Court, cannot be accepted.

7. In

so far liability of the petitioners to maintain their father, who has no independent source of income, flows clearly from sub-Section(1) of Section 125 of the Criminal Procedure Code. It reads as follows:-

"Section125.

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 maintenance of his wife or such child, father or mother, at such monthly rate, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

xxx xxx xxx

8. In

absence of anything on record to suggest that the father had any source of income whatsoever, the Family Court rightly believed that he was unable to maintain himself, particularly, looking to his age of about 72 years.

9. It

has also come on record that the father is not only aged but he is also infirm and suffers from sickness time and again.

10. Regarding

ability of the petitioners to pay maintenance, learned Judge though discarded the averment of the father that the sons are earning Rs.12,000/- to 20,000/- per month, on the basis of evidence on record, learned Judge believed that the petitioner No.1 would be earning approximately Rs.3000/- per month and petitioner No.2 Rs.3,500/- per month. Considering their family liabilities, he asked them to pay Rs. 600/- each to the father. With this assessment or the ultimate direction, I find no infirmity whatsoever.

11.

It is true that the father had admitted that he had entered into an agreement of friendship with one lady in the year 1990 and from such cohabitation two children were also born. However, the petitioners are currently stated to be aged 52 years and 48 years respectively. In the year 1990, therefore, they were fully grown up in the age group of 28 and 22 respectively. It, therefore, cannot be stated that the father abandoned them in their infancy. Further the fact that the father has not claimed any maintenance from other son, can hardly be a ground to absolve these petitioners from their responsibility to look after their father in his old age.

12. Under

the circumstances, the petition is dismissed. It is, however, clarified that if the petitioners have any evidence to show that the father, by virtue of sale of properties, has received considerable amount, which could be his source of income, it would be open for them to file application under Section 127 of the Criminal Procedure Code before the Family Court.

13. With

above observations, petition is dismissed. Interim relief stands vacated. Rule discharged.

(Akil

Kureshi, J.)

sudhir

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