

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Revision No.535 of 2023

Manoj Kumar @ Manoj Sao, son of Deoki Sao, resident of Village & P.O.
Jamu, P.S. Markacho, District Koderma, Jharkhand Petitioner

Versus

1. The State of Jharkhand
2. Deoki Sao, son of Late Bodhi Sao, resident of Village & P.O. Jamu, P.S.
Markacho, District Koderma, Jharkhand Opposite Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Bharat Kumar, Advocate
For the State : Mr. Shashi Kumar Verma, APP
For the O.P. No.2 : Mr. Abhilash Kumar, Advocate

C.A.V. on: 30/11/2023

Pronounced on:05/01/2024

1. This Criminal Revision has been preferred against the impugned order dated 15.03.2023 passed by the learned Principal Judge, Family Court, Koderma in Original Maintenance Case No.11 of 2022, whereby the learned Court below has allowed the application under Section 125 of the Code of Criminal Procedure directing the petitioner to pay the maintenance amount of Rs.3000/- to the opposite party No.2-father.

2. The brief facts leading to this Criminal Revision are that the maintenance application under Section 125 of the Code of Criminal Procedure was moved on behalf of the father against his younger son with these averments that he is old person having two sons, namely, Pradip Kumar and Manoj Kumar. His younger son, namely, Manoj Kumar is quarrelsome, cruel and manhandling person. Applicant i.e. Deoki Sao had transferred his land to his both sons on 21.02.1994 comprising total area of 3.983/5 acres and the same was divided to both the sons equally and both have been cultivating the same. His elder son Pradip Kumar is maintaining

him while Manoj Kumar, his younger son has not been maintaining him rather hurling abuse used to insult and assault him. His son Manoj Kumar is also carrying on a shop in the village itself and has been earning Rs.50,000/- per month and he has also income of Rs.2,00,000/- per annum from the agricultural land. On 02.11.2021, he assaulted and injured him, whereby he was treated by Dr. Daljeet Singh. Therefore, claimed the maintenance amount of Rs.10,000/- per month from the opposite party-Manoj Kumar.

3. On behalf of the opposite party-Manoj Kumar, the reply of show cause was given with these averments that the petitioner is his father. He is habitual litigant of the society and several cases are being litigated by him in different Courts of Koderma. He was going to sell his ancestral property, the same was opposed by the opposite party, whereby he become annoyed and also threatened him to teach lesson. The opposite party No.2 started to torture him in collusion with his another son Pradip Kumar and filed several cases against him. The petitioner is money minded has so many sources of income and with a view to harass the opposite party, the present maintenance application has been filed. In view of the above, prayed to dismiss the maintenance application.

4. On behalf of the petitioner in oral evidence examined **P.W.-1, Pradip Kumar; P.W.-2, Vakil Sao and; P.W.-3, Deoki Sao, the petitioner himself.**

5. On behalf of the opposite party in oral evidence examined **O.P.W.-1, Gudia Devi; O.P.W.-2, Arjun Sao and: O.P.W.-3, Manoj Kumar.**

6. The learned trial Court after hearing the rival submissions of the learned counsel for the parties passed the impugned judgment on 15.03.2023 allowed the maintenance application and directed to the opposite party No.2 to pay the maintenance amount of Rs.3000/- per month to the petitioner (his

father) from the date of application i.e. on 15.02.2022. The arrear of maintenance amount was directed to be paid within two months.

7. Aggrieved from the impugned judgment, the instant Criminal Revision has been preferred on behalf of the petitioner-younger son on the grounds that the impugned order passed by the learned Court below is bad in the eyes of law. The maintenance amount awarded by the learned Court below is not in proportion to the income of the son. No affidavit was filed on behalf of the petitioner making disclosure in regard to his assets and liabilities just to enable the Court to reach on the proper conclusion. From the deposition of the witnesses itself, it is evident that the father of the petitioner has been earning his livelihood from the agriculture and bricks kiln. The learned Court below failed to appreciate the evidence in proper perspective. In view of the above, prayed to allow this Criminal Revision and set aside the impugned judgment passed by the learned Court below.

8. I have heard the learned counsel for the parties and perused the materials available on record.

9. For disposal of this Criminal Revision following point of determination are being framed:

(1) *Whether the finding recorded by the learned Court below on the point of determination whether the father is unable to maintain himself and the son has been neglecting to maintain his father is based on proper appreciation of evidence?*

(2) *Whether the quantum of the maintenance is itself proportionate in view of the income and liability of the son, the petitioner herein?*

10. In maintenance application, the father P.W.-3, Deoki Sao has stated that he is a old age person. He has two sons, namely, Pradip Kumar (Elder son) and Manoj Kumar (Younger Son, the petitioner herein) and he has been residing

with his elder son Pradip Kumar, who looks after him while his younger son Manoj Kumar has been neglecting to maintain him. His son Manoj Sao humiliates by hurling abuse and assaulting him as well. He has no source of income of his own because the agricultural land, which was ancestral property, has been transferred by him to his both sons equally.

10.2 On behalf of the opposite party-Manoj Kumar, it has been contended that he has not been neglecting to maintain his father. His father has own independent income. He has earning from agricultural land and bricks kiln as well. He is able to maintain himself. He was bent upon to transfer the ancestral properties, on being opposed by him, he got annoyed and filed the maintenance application in order to harass.

11. On these points of determination on behalf of the petitioner, examined three witnesses, which are reproduced hereinbelow:

11.1 P.W.-1, Pradip Kumar, who is the elder son, in his examination-in-chief, says that his father Deoki Sao is a good person. His brother Manoj Kumar is quarrelsome and manhandling person. He does not maintain his father. His brother Manoj Sao also carries on a shop in the village itself, from which, he earns Rs.50-60 thousands per month and has Rs.2,00,000/- annual income from the agricultural land. In cross-examination, this witness says that he is elder of the Deoki Sao. His father had four acres of agricultural land, same has been divided by him in three parts. Less than one and half acre is with his father, which is being cultivated by his father. His father lives with him and he also maintains him. The land was divided in the year 1994 again in the year 2007. Manoj Sao is his younger brother has carries on a grocery shop in the village, from which, he earns Rs.40-50 thousands per month. He also carries on grocery shop in the village but his

income is less than to him. He earns Rs.20-25 thousands per month. Manoj Sao has one son and one daughter.

11.2 P.W.-2, Vakil Sao, in his examination-in-chief, says that Majoj Sao is quarrelsome and manhandling person. He hurls abuse and assault to his father Deoki Sao. He does not maintain his father. Majoj Sao also carries on shop in the village, from which, earns Rs.40-50 thousand per month. In cross-examination, this witness says that **two acres of land was given to Manoj Sao by his father, which is being cultivated by Manoj Sao. Deoki Sao does nothing rather resides at the house. Manoj Sao also carries on a shop.**

11.3. P.W.-3, Deoki Sao, who is the father, in his examination-in-chief, says that **his younger son Manoj Sao does not maintain him. He has two sons. In the year 1994, he had divided his agricultural land between his two sons equally, which is being cultivated by them. His son Manoj Sao also carries on grocery shop and earns Rs.50,000/- per month.** In cross-examination, this witness says that he has two sons and four daughters. **Manoj Sao has been residing separate for last 15-16 years. Two acres of agricultural land each was given to his sons by him. Some land was kept with him. His elder son has been maintaining him for last 15 years.** He has no agricultural land for him.

12. On behalf of the opposite party examined, **O.P.W.-1, Gudia Devi.** This witness in his her examination-in-chief says that Deoki Sao is her father-in-law. Her father-in-law does business of bricks kiln and earns Rs.40-50 thousand per month. He also earns Rs.5,000/- per month from the rent of the house. In cross-examination, this witness says that **her husband carries on grocery shop in the village and earns Rs.10,000/- per month.**

12.1 O.P.W.-2, Arjun Sao, in his examination-in-chief, says that Deoki Sao carries business of bricks kiln and also cultivating agricultural land. He has own business. He also gets rent from the two houses. He has good income. In cross-examination, this witness says that **Manoj Sao also drives Auto, from which, how much he earns, he is not aware. Manoj Sao also has a grocery shop in the village.** All the four daughters of Deoki Sao have got married.

12.3 O.P.W.-3, Manoj Kumar, in his examination-in-chief, says that he is younger son of Deoki Sao. His father carries business of bricks kiln and also sales vegetables. He earns Rs.50-60 thousand per month. In cross-examination, this witness says that he **does cultivating on agricultural land. He also carries on a shop in the village. His father had built a house comprising therein 24 rooms out of which, 12 rooms were given to younger son Manoj Sao and 12 rooms were given to his elder brother Pradip Sao and he resides in the very house along with his family and his shop also carries on in the very house.** It is wrong to say that he has not maintained his father.

13. From the evidence adduced on behalf of both the parties in support of the pleadings, it is proved that the father Deoki Sao is a senior citizen aged about 60 years old. He has two sons. He has been residing with his elder son Pradip Sao; while his younger son Manoj Sao has been residing separately for more than last 15 years. In the year 1994, he had given two acres of land each to his both sons equally, in which, Manoj Sao has been cultivating and earning from the same. The father and his elder son both have stated that his father does nothing rather he lives with his elder son and is being maintained by his elder son not by younger son Manoj Sao.

14. So far as the evidence adduced on behalf of the opposite parties are concerned, the same is out of the pleadings. In the reply of show cause notice, Manoj Saw has nowhere stated that his father has brick kiln rather he stated that he earns from the agricultural land. **Neither the son Manoj Kumar nor the witness adduced on his behalf has stated that Manoj Sao has been maintaining his father rather it is admitted to all the witnesses and Manoj Saw as well that his father has given two acres land to him, in which, he cultivates. The house, which fell in his share and in which, Manoj Sao resides, admittedly, as per the statement of Manoj Sao, the same was built by his father comprising therein 12 room, in which, he resides and has been running shop of grocery.**

15. From the evidence adduced on behalf of both the parties, it is found that father has given the agricultural land as well as the *Aabadi* property in equal share to his both the sons. He has been residing with his elder son and his younger son has not been maintaining him.

16. Herein, it would be relevant to give certain quotations from the scriptures to show the importance of the parents, which is reproduced hereinbelow:

“उपाध्यात् दश आचार्यः आचार्याणां शतं पिता ।
सहस्रं तु पितृन् माता गौरवेण अतिरिच्यते ॥”

“In veneration, the Preceptor excels ten Sub-teachers; the Father a hundred preceptors, and the Mother a thousand Fathers.”

16.1. In Mahabharat, the Yaksh asked to Yudhisthira:

*“What is weightier than the earth itself?
What is higher than the heavens? What is
fleeter than the wind? And what is more
numerous than grass?”*

The Yudhisthira answered:

‘the mother is weightier than the earth; the

father is higher than the heaven; the mind is fleeter than the wind; and our thoughts are more numerous than grass.'

17. The Hon'ble Supreme Court in the case of ***Badshah Vs. Urmila Badshah Godge and another*** reported in (2014) 1 SCC 188 has held at paragraph Nos.14 and 15 as under:

"14. Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

"It is, therefore, respectfully submitted that 'social context judging' is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication."

15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour."

18. Though from the evidence adduced by both the parties, it is found that the father is having some agricultural land yet is not able to cultivate the same. He also depends upon his elder son, with whom, he resides. The father has given the share in whole property to his younger son Manoj Sao equally but he has not been maintained by his younger son for more than 15 years. Even if for the sake of argument, the father earns something; it is pious duty of a son to maintain his old aged father. In Hinduism the importance of parents is shown, which is quoted as under:

“If your Parents are confident you feel confident, if they are sad you will feel sad. Father is your God and Mother is your Nature. They are the seed you are the Sapling. No whatever good or bad they have in them, even inactive, will become a tree in you. So you inherit your parent’s good and bad both. A person carries some debts due to being born and that includes debt (Spiritual) of Father and Mother which we have to repay.”

19. In view of the analysis of the evidence on record adduced on behalf of both the parties, first point of determination is being decided in favour of the father and against the son.

20. The second point of determination reads as under:

(ii) Whether the quantum of the maintenance is itself proportionate in view of the income and liability of the son, the petitioner herein?

20.1 On behalf of the father, it has been stated that his younger son Manoj Sao has been earning Rs.40-50 thousand per month from the grocery shop in the village itself and has annual income of Rs.2,00,000/- from the agricultural land. The same has been supported with the evidences of P.W.-1, Pradip Kumar, the elder son; P.W.-2, Vakil Sao and; P.W.-3, Deoki Sao, the father himself.

20.2 Per contra on behalf of the opposite party No.2, the son has examined

Manoj Sao, himself as O.P.W.-3, and O.P.W.-1, his wife Gudiya Devi. One independent witness O.P.W.-2, Arjun Sao has also been examined. All these three witnesses have stated that Manoj Sao carries a shop in the village and also cultivates two acres of land, which he has received from his father. He has his own house comprising therein 12 rooms received from his father. Out of the same, he carries a shop of grocery. The independent witness O.P.W.-2, Arjun Sao also says that Manoj Sao drives auto. As such, the income of younger son Manoj Sao though has not been assessed by the learned Court below; yet from all the sources tentatively, it can be assessed Rs.30,000/- per month and out of the same, the learned trial Court has directed only 1/10th portion i.e. Rs.3,000/- per month payable to the father, who has given birth to his son and brought up him and has also given the house, which he has built comprising therein 12 rooms, two acres of agricultural land. The maintenance amount of Rs.3000/- cannot be said to be disproportionate. Accordingly, second point of determination is also decided in favour of the father and against the son.

21. In view of the findings recorded by the learned Court below on the above point of determination, the impugned judgment passed by the learned Court below needs no interference, accordingly, this Criminal Revision deserves to be dismissed.

22. Accordingly, this Criminal Revision is, hereby, dismissed and the impugned order passed by the learned court below is hereby affirmed.

23. Let a copy of this order be communicated to the learned Court concerned through 'FAX'

(Subhash Chand, J.)

Madhav/- A.F.R.