



OPP.APMC HUBBALLI, DIST : DHARWAD

...RESPONDENT

(NOTICE TO SOLE RESPONDENT HELD SUFFICIENT)

THIS RPFC IS FILED UNDER SEC.19(4) OF THE FAMILY COURTS ACT, 1984, AGAINST THE JUDGMENT AND ORDER DATED 14.11.2018, IN CRL.MISC. NO.101/2016, ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, DHARWAD, DISMISSING THE PETITION FILED UNDER SEC.125 OF CR.P.C.

THIS RPFC, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard the learned counsel for petitioners. Notice to respondent has been held sufficient and there is no representation on behalf of the respondent.

2. Although the appeal is listed for admission, with the consent of the learned counsel, the matter is heard finally on its merits.

3. The relevant facts necessary for consideration of the present petition are that the marriage between the petitioner No.1 and the respondent was solemnized on 23.11.2009 and the petitioners No.2 and 3 are the children from the said wedlock. The petitioners instituted a petition under Section 125 of Code of Criminal Procedure,



1973 (hereinafter referred to as 'Cr.P.C.') seeking maintenance from the respondent. The said proceedings was contested by the respondent. The family Court by order dated 14.11.2018 dismissed the petition filed by the petitioners holding, *inter alia*, that PW-1 had not placed material on record to demonstrate that she was willing to join the respondent in the matrimonial home; and that the petitioners had not placed any material to demonstrate that the respondent had willfully neglected to maintain the petitioners.

4. Learned counsel for petitioners contends that the reasoning adopted by the family Court is erroneous and contrary to the statutory stipulation as provided under Section 125 of the Cr.P.C.

5. I have considered the submission made by the learned counsel and perused the material on record.

6. Section 125 of Cr.P.C. reads as follows:



125. Order for maintenance of wives, children and parents.— (1) *If any person having sufficient means neglects or refuses to maintain—*

(a) xxx

(b) xxx

(c) xxx

(d) xxx

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:

(Emphasis supplied)

7. It is clear from a plain reading of Section 125 of the Cr.P.C. that a person is entitled to initiate proceedings if they demonstrate any of the aspects stipulated therein i.e. neglects or refusal to maintain.

8. The Family Court upon a detailed appreciation of the oral and documentary evidence on record, has dismissed the petition filed by the petitioner holding *inter alia* that no attempt was made by the petitioners to join



the company of the respondent despite the respondent having issued notice at Ex.P.5. The Family Court also disbelieved the testimony of P.W.2 the father of the petitioner No.1 with regard to alleged ill treatment by the respondent. The testimony of P.W.3 i.e., a witness examined on behalf of the petitioner No.1 regarding ill treatment has been disbelieved on the ground that the same is hearsay. The Family Court has further recorded a categorical finding that the petitioner No.1 herself has voluntarily left the company of the respondent and there are no serious grounds or reasons for her to withdraw his company and in view of the same, the petitioner did not prove the material requirement of Section 125 of Cr.P.C. regarding alleged willful neglect by the respondent. The Family Court accepted the contention of the respondent regarding his responsibility and obligation to maintain the petitioners if they would reside along with him. Hence, the Family Court has recorded a categorical finding that, the petitioner No.1 has voluntarily deserted the respondent



and that they have not proved that the respondent has willfully neglected them.

9. It is clear from a clean reading of Section 125 of Cr.P.C., that the proceedings are summary in nature and it is sufficient if negligence or refusal on the part of the husband in providing maintenance to the wife is demonstrated. The proceedings do not contemplate the proof regarding sufficient cause for living separately.

10. In the present case, the matrimonial relationship between the petitioner and the respondent No.1 is undisputed as also the fact that, the petitioner Nos.2 and 3 are their children. No doubt, various allegations and counter allegations have been made by the petitioners and the respondent with regard to the reason for them to be living separately.

11. In the present proceedings, having regard to the statutory stipulation contained under Section 125 of Cr.P.C., it is beyond the scope of the same to go into the



various allegations and counter allegations and record a finding regarding the same.

12. Further the contention of the respondent which has been accepted by the Family Court that the respondent has never neglected or evaded his moral and legal obligation to maintain his wife and children, is ex-facie not liable to be accepted having regard to the fact that, admittedly the petitioners and respondent are living separately and it is not open for the respondent to put forth the contention that he is willing to maintain the petitioners, if they come and reside with him.

13. The reasons for the petitioners not to be living along with the respondent cannot be adjudicated, in the present proceedings and a finding to be recorded regarding the same. As long as the relationship between the petitioners and the respondent being undisputed and as long as the petitioners do not live /reside along with the respondent, the said aspect is sufficient to attract



statutory stipulation contained under Section 125 of Cr.P.C.

14. An order passed in an application under Section 125 of Cr.P.C. does not finally determine the rights and obligations of the parties and the said section is enacted with a view to provide a summary remedy for providing maintenance to a wife, children and parents (***Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit***¹).

15. The Hon'ble Supreme Court in the case of ***Rajanesh Vs. Neha and another***² has held as follows:

32. *Chapter IX of the Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 CrPC may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 CrPC is to provide immediate relief to an applicant. An application under Section 125 CrPC is predicated on two conditions: (i) the husband has sufficient means; and (ii) "neglects" to maintain his*

¹ (1999) 7 SCC 675

² (2021) 2 SCC 324



wife, who is unable to maintain herself. In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors.

33. The remedy provided by Section 125 is summary in nature, and the substantive disputes with respect to dissolution of marriage can be determined by a civil court/Family Court in an appropriate proceeding, such as the Hindu Marriage Act, 1956.

(Emphasis supplied)

16. Having regard to the same, there is no requirement for the Court to record a finding as to the sufficiency of cause for the wife to live separately from the husband. The said aspects would be subject matter of consideration in proceedings initiated under the relevant statutes where the validity/status of the parties in the matrimonial relationship are sought to be adjudicated. In view of the same, the finding recorded by the family Court that the wife is staying separately from the husband without any sufficient cause is erroneous, is liable to be interfered with.



17. In that view of the matter, the above finding of the family Court is liable to be set aside and the family Court is required to adjudicate the claim of the parties on merits, to adjudicate regarding quantum of maintenance payable.

18. In view of the aforementioned, I pass the following:

ORDER

- i) The above petition is allowed.
- ii) The order dated 14.11.2018 passed by the Pri. Judge, Family Court, Dharwad, is set aside.
- iii) The petitioners shall appear before the family Court on 16.08.2023.
- iv) Consequent to the appearance of the petitioners, the Family Court shall proceed further in accordance with law.

(Sd/-)
JUDGE