

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF NOVEMBER, 2022

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.22006 OF 2022 (GM-FC)

BETWEEN:

MR.UDAY NAYAK

...PETITIONER

(BY SRI.P.P.HEGDE, SR.ADVOCATE FOR
SRI.VENKATESH SOMAREDDI, ADVOCATE)

AND:

MRS.ANITA NAYAK

...RESPONDENT

(BY SRI.ANANDARAMA.K, ADVOCATE FOR C/R)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD 28.09.2022 VIDE ANNEXURE-Q PASSED BY THE PRINCIPAL JUDGE, FAMILY COURT, DK MANGALORE ON I.A.NO.V IN M.C.NO.208/2021 GRANTING MAINTENANCE.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.11.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner/husband is before this Court calling in question order dated 28-09-2022 passed by the Principal Judge, Family Court, Dakshina Kannada, Mangalore on I.A.No.V in M.C.No.208 of 2021 granting interim maintenance of Rs.30,000/- per month to be paid to his wife/respondent.

2. Brief facts that lead the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:-

The petitioner and the respondent got married on 31-12-2018 and have no children from the wedlock. On 11-12-2020 alleging harassment by the petitioner and his family members the respondent registers a crime in Crime No.32 of 2021 for offences punishable under Sections 498A, 506, 313 and 34 of the IPC. Thereafter, on 22-02-2021, the respondent files a petition under

Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for short) in Criminal Miscellaneous Case No.32 of 2021 before the Civil Judge and JMFC, Moodbidri wherein maintenance is also sought in the petition. Considering the interim application seeking maintenance, an order comes to be passed by the concerned Court, granting maintenance to the respondent/wife at Rs.20,000/- per month. Alleging that the order was passed without hearing the husband, the petitioner challenges the said order before the learned II Additional District & Sessions Judge, D.K., Mangalore in Criminal Appeal No.70 of 2021 which comes to be dismissed. Aggrieved by both the proceedings, the petitioner prefers a petition before this Court invoking Section 482 of the Cr.P.C. in Criminal Petition No.8186 of 2021 and this Court by its order dated 01-02-2022 grants an interim order of stay of all further proceedings in Criminal Miscellaneous Case No.32 of 2021 filed invoking the provisions of the DV Act.

3. During the pendency of these proceedings, the petitioner files a petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 seeking dissolution of marriage in M.C.No.208 of 2021. After

the respondent entered appearance she sought permanent alimony or maintenance to be granted. The concerned Court answering an application filed under Section 24 of the Hindu Marriage Act, 1955 allows the claim of the wife by granting maintenance of Rs.30,000/- per month from the date of filing the application i.e., 02-09-2021 which shall be inclusive of the maintenance awarded by the concerned Court in Criminal Miscellaneous Case No.32 of 2021, wherein the respondent had invoked the provisions of the DV Act. It is this order that drives the petitioner to this Court in the subject petition.

4. Heard Sri P.P.Hegde, learned senior counsel appearing for the petitioner and Sri K.Anandarama, learned counsel appearing for the respondent.

5. The learned senior counsel representing the petitioner would contend with vehemence that the order of the concerned Court directing payment of Rs.30,000/- is contrary to the guidelines issued in the case of **RAJNESH v. NEHA – (2021) 2 SCC 324** and also the fact that the wife was already in receipt of an order of

maintenance in a proceeding instituted under the DV Act. Therefore, the respondent would not be entitled to dual payment. He would further, on merits of the matter, contend that the petitioner has lost his job on account of pendency of the criminal case that is instituted by the wife and, therefore, the order granting maintenance ought to be interfered with.

6. On the other hand, the learned counsel representing the respondent/wife would contend that there is no bar in law for the respondent to seek maintenance under Section 24 of the Hindu Marriage Act, 1955 after having sought maintenance under the DV Act and would contend that the order granting maintenance under Section 24 of the Hindu Marriage Act, 1955 is not exclusive of the maintenance under the DV Act but is inclusive. Therefore, it cannot be said that there is overlapping jurisdiction or conflicting orders passed or even successive maintenance claimed under different statutes. He would contend that the Apex Court in the case of *RAJNESH (supra)* has held that granting maintenance under the DV Act is no bar to seek maintenance under the Hindu Marriage Act.

The only rider is that it shall be inclusive and not exclusive. Therefore, he would submit that the petition be dismissed.

7. The afore-narrated facts are not in dispute. The parties to the *lis* are before the Court in two proceedings one instituted by the wife under the provisions of the DV Act and the other by the husband under Section 13 of the Hindu Marriage Act seeking dissolution of marriage. The other proceeding on the criminal side that is instituted by the wife is for offences punishable under Sections 498A, 506, 313 and 34 of the IPC. This Court has granted an interim order of stay of the proceedings under the DV Act in terms of the order dated 01-02-2022 and the proceedings instituted under the provisions of the IPC. Insofar as proceedings instituted for offences punishable under the IPC is concerned, this Court has only granted stay *qua* the family members and not the husband in terms of its order dated 12-04-2022. The husband therein is the petitioner in the subject case.

8. The issue is not concerning the proceedings pending before any judicial *fora* or even before this Court. In the proceedings

instituted by the husband in M.C.No.208 of 2021 seeking dissolution of marriage, the respondent files an application under Section 24 of the Hindu Marriage Act which entitles the wife to seek interim maintenance. It is not in dispute that the said application comes to be filed after grant of maintenance in a proceeding instituted under the provisions of the DV Act. Therefore, the issue is whether the respondent can claim maintenance under two different enactments, particularly after having been granted maintenance under a particular statute.

9. The issue with regard to plurality of proceedings *qua* maintenance need not detain this Court for long or delve deep in to the matter. The Apex Court in the case of **RAJNESH**¹(*supra*) has clearly observed that in the light of overlapping of jurisdictions, the grant of maintenance under Section 20(1)(d) of the DV Act would be in addition to the maintenance granted under Section 125 of the Cr.P.C. and also further holds that there is no bar to seek maintenance both under the DV Act and under Section 125 of the Cr.P.C. or under the Hindu Marriage Act or even under the Hindu

¹ (2021) 2 SCC 324

Adoptions and Maintenance Act, 1956. The only rider would be that the amount would not overlap and it would be inclusive of maintenance under each jurisdiction and not exclusive. Therefore, there is no additional payment or overlapping payment made. The Apex Court has held as follows:

"60. It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the DV Act and Section 125 CrPC, or under HMA. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. **While deciding the quantum of maintenance in the subsequent proceeding, the civil court/Family Court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.**

61. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the court concerned in the previous proceeding. "

(Emphasis supplied)

In the light of the judgment of the Apex Court in the case of **RAJNESH** (*supra*), the jurisdictional issue that the learned senior counsel would seek to contend, thus, would become unacceptable.

10. The learned senior counsel has also submitted with regard to fact that the petitioner has lost his job and is not in a position to maintain his wife that too for a sum of Rs.30,000/-. The Apex Court in the case of **RAJNESH** (*supra*) has laid down guidelines for grant of maintenance by Courts answering applications seeking such maintenance. In terms of the guidelines, assets and liabilities of both the husband and the wife are to be placed for perusal before the Court before whom such proceedings are pending. A perusal at the order impugned in the petition would clearly indicate that liability statements were placed before the concerned Court and the income of the husband is noticed and the fact that the wife has resigned her job and is residing in Mangalore is also noticed in addition to noticing that the petitioner continues to work in a particular Company at Bangalore. On noticing all these facts maintenance is awarded. The ground that the wife has deliberately resigned the job after initiation of divorce proceedings only to

harass the petitioner is also considered, as that would be a matter of evidence and what is granted is interim maintenance.

11. The Apex Court in the case of **ANJU GARG AND ANOTHER v. DEEPAK KUMAR GARG**² has held as follows:

*"8. The learned counsel for the appellants vehemently submitted that the High Court had passed the impugned order in a very perfunctory manner without appreciating the conduct of the respondent during the proceedings before the Family Court. He submitted that the version of the appellant-wife, who had stepped into the witness box, as also the version of the other witnesses examined by her had remained unchallenged, as the Family Court had closed the right of the respondent to cross-examine the witnesses and, therefore, there was no reason for the Family Court not to believe the version of the appellant-wife which was stated by her on oath. However, the Family Court accepted all the oral submissions of the learned counsel for the respondent, without there being any evidence on record adduced by the respondent, and disallowed the Maintenance application qua the appellant-wife, and the High Court also erroneously confirmed the said order passed by the Family Court. **The learned counsel for the respondent however submitted that the appellant-wife had left the matrimonial home along with the children without any justifiable reason and had failed to prove that she was unable to maintain herself. He further submitted that though the respondent has a party plot, the same having been closed, he has no source of income. According to him, the concurrent findings of facts recorded by the two courts, should not be interfered by this Court.***

9. At the outset, it may be noted that Section 125 of Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the

² 2022 SCC OnLine SC 1314

children, as observed by this Court in *Bhuwan Mohan Singh v. Meena*¹. This Court in the said case, after referring to the earlier decisions, has reiterated the principle of law as to how the proceedings under Section 125 Cr.P.C have to be dealt with by the Court. It held as under:

"In *Dukhtar Jahan v. Mohd. Farooq* [(1987) 1 SCC 624 : 1987 SCC (Cri) 237] the Court opined that : (SCC p. 631, para 16)

16. "... Proceedings under Section 125 [of the Code], it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner."

8. A three-Judge Bench in *Vimala (K.) v. Veeraswamy (K.)* [(1991) 2 SCC 375 : 1991 SCC (Cri) 442], while discussing about the basic purpose under Section 125 of the Code, opined that : (SCC p. 378, para 3)

3. "Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife."

9. A two-Judge Bench in *Kirtikant D. Vadodaria v. State of Gujarat* [(1996) 4 SCC 479 : 1996 SCC (Cri) 762], while adverting to the dominant purpose behind Section 125 of the Code, ruled that : (SCC p. 489, para 15)

15. "... 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."

10. In Chaturbhuj v. Sita Bai [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356], reiterating the legal position the Court held : (SCC p. 320, para 6)

6. "... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Capt. Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787]."

11. Recently in Nagendrappa Natikar v. Neelamma [(2014) 14 SCC 452 : (2015) 1 SCC (Cri) 407 : (2015) 1 SCC (Civ) 346], it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children".

10. This Court had made the above observations as the Court felt that the Family Court in the said case had conducted the proceedings without being alive to the objects and reasons, and the spirit of the provisions under Section 125 of the Code. Such an impression has also been gathered by this Court in the case on hand. The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to

earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute. In *Chaturbhuj v. Sita Bai*, it has been held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India.

11. The Family Court, in the instant case had not only overlooked and disregarded the aforesaid settled legal position, but had proceeded with the proceedings in absolutely pervert manner. The very fact that the right of the respondent to cross-examine the witnesses of the appellant-original applicant was closed, as he had failed to appear before the Family Court despite the issuance of warrants, clearly established that he had no regards for his own family nor had any regards for the Court or for the law. The allegations made by the appellant-wife in her evidence before the Court had remained unchallenged and, therefore, there was no reason for the Family Court to disbelieve her version, and to believe the oral submissions made by the learned counsel appearing for the respondent which had no basis. In absence of any evidence on record adduced by the respondent disputing the evidence adduced by the appellant, the Family Court could not have passed the order believing the oral submissions of the learned counsel for the respondent. She had clearly stated as to how she was harassed and subjected to cruelty by the respondent, which had constrained her to leave the matrimonial home along with her children, and as to how the respondent had failed and neglected to maintain her and her children. She had also proved by producing the documentary evidence that her father had paid money to the respondent from time to time to help the respondent for his business. Even if the allegations of demand of dowry by the respondent were not believed, there was enough evidence to believe that money was being paid to the respondent by the father of the appellant-wife, which substantiated her allegation that the respondent was demanding money from her father and was subjecting her to harassment. The errant respondent had also gone to the extent of questioning her chastity alleging that Rachit was not his biological

son. There was nothing on record to substantiate his such baseless allegations. His application for DNA test was also rejected by the Family Court. Of course, the Family Court granted the Maintenance petition so far as the appellant no. 2-son was concerned, nonetheless had thoroughly mis-directed itself by not granting the maintenance to the appellant-wife.

12. Such an erroneous and perverse order of Family Court was unfortunately confirmed by the High Court by passing a very perfunctory impugned order. The High Court, without assigning any reasons, passed the impugned order in a very casual manner. This Court would have remanded the matter back to the High Court for considering it afresh, however considering the fact that the matter has been pending before this Court since the last four years, and remanding it back would further delay the proceedings, this Court deemed it proper to pass this order.

13. Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child. Having regard to the evidence of the appellant-wife before the Family Court, and having regard to the other evidence on record, the Court has no hesitation in holding that though the respondent had sufficient source of income and was able-bodied, had failed and neglected to maintain the appellants. Considering the totality of facts and circumstances, we deem it proper to grant maintenance allowance of Rs. 10,000/- per month to the appellant-wife, over and above the maintenance allowance of Rs. 6,000/- granted by the Family Court to the appellant no.2-son.

14. It is accordingly directed that the respondent shall pay maintenance amount of Rs. 10,000/- per month to the appellant-wife from the date of filing of her Maintenance Petition before the Family Court. The entire amount of arrears shall be deposited by the respondent in the Family Court within eight weeks from today,

after adjusting the amount, if any, already paid or deposited by him."

(Emphasis supplied)

The Apex Court holds that if the husband is an able bodied man, it is his duty to maintain his wife. If the judgment rendered by the Apex Court in the case of **ANJU GARG** (*supra*) is considered *qua* the facts obtaining in the case at hand, the petitioner continues to work is what is not in dispute as is observed in the impugned order. Therefore, it becomes necessary for the petitioner to maintain his wife, by paying interim maintenance. No fault can be found with the order passed by the concerned Court granting such maintenance to the wife.

12. In the result, the petition lacking in merits stands dismissed.

**Sd/-
JUDGE**

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