



THIS R.P.F.C., COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Miss. Kavita Jadhav representing Shri. Arun L. Neelopant, learned counsel for the revision petitioners and Shri. Prashant Mathapati, learned counsel for respondent No.1.

2. Revision Petition is filed by the respondents in Criminal Miscellaneous No.155/2021 on the file of Principal Judge, Family Court, Ballari, challenging the order dated 30.11.2021.

3. Facts in brief are as under:

3.1. Respondents herein namely Tasleem Jamela and her children claiming to be the wife and children of Late Khaja Mainuddin Agadi, filed a petition under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C. '), seeking for grant of maintenance on the ground of after the death of Khaja Mainuddin Agadi, the respondents being the parents-in-law failed to maintain the petitioners.



4. Petition on contest, came to be allowed by granting sum of Rs.20,000/- per month to the first petitioner and sum of Rs.5,000/- to the petitioner Nos.2 to 5.

5. Being aggrieved by the same, respondents who are the parents-in-law of the first petitioner in Criminal Miscellaneous No.155/2021 and first respondent in the present revision petition filed the present revision petition challenging the very validity and jurisdiction of the learned Magistrate in entertaining a petition under Section 125 of Cr.P.C.

6. Miss. Kavita Jadhav, learned counsel representing the revision petitioner reiterating the grounds urged in the petition vehemently contended that the learned Magistrate lacked jurisdiction to try the petition filed by the respondents herein under Section 125 of Cr.P.C., and sought for allowing the revision petition.

7. *Per contra*, Shri. Prashant Mathapati, learned counsel for respondent No.1 contended that after the death of Khaja Mainuddin Agadi husband of the first respondent and father of the respondent Nos.2 to 5, revision petitioner being the parents-in-law failed to take care of the welfare of the



respondents and therefore, awarding of maintenance is just and proper and sought for dismissal of the revision petition.

8. Having heard the parties in detail, this Court perused the material on record meticulously.

9. On such perusal of the material on record, it is just and necessary for this Court to cull out Section 125 of Cr.P.C to appreciate the argument put forth on behalf of the revision petitioner.

"125. 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 a 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 [* *] [The words "not exceeding five hundred rupees in the whole" omitted by Act 50 of 2001, w.e.f. 24.9.2001.], as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:*

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date



of the service of notice of the application to such person.] [Inserted by Act 50 of 2001, Section 2 (w.e.f. 24-9-2001).

Explanation. - For the purposes of this Chapter, -

a)"minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority,

(b)"wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married.

(2)[Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.] [Substituted by Act 50 of 2001, Section 2 (w.e.f. 24-9-2001).]

(3)If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] remaining unpaid after



the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4)No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.



(5)On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.”

10. On close reading of the provision under Section 125 of Cr.P.C., a daughter-in-law cannot lay a claim against her parents-in-law. Provisions of law envisage that a wife can lay a claim for maintenance.

11. Likewise, parents can maintain a petition against their major children. So also minor children can lay a claim.

12. In the absence of any power vested in the Court under Section 125 of Cr.P.C., to entertain a petition filed by the daughter-in-law against her parents in law, this Court is of the considered opinion that the entire order is honest for want of jurisdiction.

13. Accordingly, the following order is passed:

ORDER

(i) Revision Petition is allowed.

Impugned order is set aside.



(ii) Setting aside the order and dismissal of the petition under Section 125 of Cr.P.C., shall not preclude the respondents to proceeds against the revision petitioners in accordance with law for appropriate relief.

Sd/-
JUDGE

SMM
List No.: 2 SI No.: 16