

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE Dr. JUSTICE H.B.PRABHAKARA SASTRY

R.P.F.C. No. 136 OF 2013 DATED: 18-01-2021

Mr. T. Ramesh vs. Mrs. Ranjana, W/o. T. Ramesh,

ORDER

The present petitioner, who was the respondent in Cri. Misc.No.381/2007 in the Court of the learned I Additional Principal Judge, Family Court at Bengaluru (hereinafter for brevity referred as ' the Family Court '), has preferred this petition challenging the judgment dated 12.11.2013 passed by the Family Court in the said Cri. Misc.No.381/2007, wherein the present respondents No.1 & 2 were petitioners, and the Family Court directed the present petitioner (respondent before it) to pay a sum of Rs.10,000/p.m., as maintenance to the petitioners 1 & 2 from the date of filing of the petition till lifetime to the 1st petitioner or till she remarries and till the 2nd petitioner attaining the age of majority.

2. The summary of the case of the petitioners in the Family Court was that, Petitioner No.1 therein, who is Respondent No.1 herein, is the wife of the present petitioner (husband).Who were married to each other on 03.11.2000 as per Hindu rites and customs.The 2nd petitioner/daughter (Respondent No.2 herein) was born to them out of their wedlock, on 16.01.2004.Due to the act of the respondent/husband therein and his parents, the petitioners (wife and daughter) were driven away from the matrimonial home and in many settlements held between them, the respondent/husband used to agree to take care of his wife and daughter, but used to start ill-treating and harassing them after sometime.As such, the petitioners (wife and daughter), who are the respondents herein, were constrained to live separately.The petitioners (wife and daughter) in the Family Court further contend that, the respondent/husband, at the time of they filing petition.was working in M/s. B.L Kashyap and Sons Private Limited, Indiranagar, Bengaluru and drawing Gross Salary of ₹ 31,000/ p.m., and another sum of 35,000/-by way of bonus. Stating that, in spite of having sufficient income, the respondent (husband) has not been maintaining the family and he is subjecting the petitioners (wife and daughter) to mental and physical harassment, the 1st petitioner had sought for maintenance of not less than a sum of 12,000/-p.m.

After service of notice, the husband (respondent in the Family Court) appeared through his counsel and filed statement of objections, wherein, he admitted his marriage with petitioner No.1 (wife) and both of them getting the 2nd petitioner born to them as their daughter.However, he denied that he had at any point of time driven away the petitioners No.1 & 2 (wife and daughter) from the

matrimonial home and neglected to maintain them. In his statement of objections, the respondent (husband) also contended that, immovable residential property was also acquired by him in the joint name of himself and the 1st petitioner i.e., his wife and the petitioners, who are residing therein are the sole beneficiaries of the said property.

Both the parties led their evidence in the Family Court, wherein Petitioner No.1 (wife) got herself examined as PW.1 and got marked Exs.P1 to P76 and the respondent (husband) got himself examined as RW.1 and also got marked Exs. R1 to R15.

The Family Court after hearing both sides, by its judgment dated 12.11.2013 partly allowed the petition filed by the petitioners No.1 & 2 (wife and daughter) before it and directed the respondent (husband) to pay a sum of 10,000/-p.m. as maintenance to them. Challenging the said judgment, the respondent (husband) in the Family Court, has preferred this Revision Petition.

3. The respondent Nos. 1 & 2 (wife and daughter) herein are being represented by their counsel.

4. The Family Court record was called for and the same was placed before this Court.

5. Learned counsel from both sides are physically present in the Court.

6. Though this matter was listed to hear on IA No.1/2013, however, with the consent from both sides, final arguments were heard on the main matter.

7. Perused the materials placed before the Court, including the Family Court records and the impugned judgment. The only point that would arise for my consideration is, " Whether the impugned judgment passed by the Family Court suffers from any perversity, illegality or irregularity, warranting interference at the hands of this Court. "

8. Learned counsel for the petitioner (husband) has submitted that, the marital relationship between petitioner (husband) and the 1st respondent herein (wife) and also the birth of the present Respondent No.2 (daughter) to them out of their wedlock, is an admitted fact. Learned counsel mainly canvassed on one main point of argument contending that the 1st respondent (wife) is capable of working and earning her livelihood, as such, she is not entitled for maintenance payable by the present petitioner.

He submitted that the wife ought not to have resigned from her job and it is only to harass her husband (petitioner), she has resigned from her job and compelling her husband to pay maintenance to her, as such the petitioner (husband) is not liable to pay any maintenance to her. In support of his

submission, the learned counsel relied upon a judgment of the Delhi High Court in Damanpreet Kaur Vs. Indermeet Juneja and Another reported in 2013 (1) Crimes 650 (Del.).

Learned counsel further submitted that the petitioner (husband) is no more earning any salary by working in any establishment either private or public and though he is practicing as an advocate, but he has no proper source of income, as such, he cannot maintain his wife. However, the learned counsel further submitted that, despite those hurdles, the petitioner (husband) is ready and willing to maintain the 2nd respondent, who is his daughter. The learned counsel while concluding his argument and drew the attention of the Court to Paragraph No.4 of his Memorandum of Petition and submitted that, by instituting several false cases against the petitioner (husband), the 1st Respondent (wife) has revealed her conduct and such act is not appreciable and such person with such a conduct is not entitled for any maintenance even from her husband.

9. Per contra, learned counsel for the 1st respondent (wife) in his argument submitted that, the alleged ' conduct ' is attributable not against the wife, but solely and exclusively attributable to the present petitioner (husband). It is by the conduct of the present petitioner (husband), he has invited those criminal proceedings against him and for which the 1st respondent (wife) cannot be blamed. Learned counsel further submitted that the petitioner (husband) has admitted that, he has been working in a private establishment i.e, M/s. Bhandari Infra Project India Pvt. Ltd., as on the date of his cross-examination in the Family Court and admitted that he was drawing salary not less than a sum of Rs.28,000/-p.m .. Learned counsel further stated that the petitioner (husband) is also running a private company in the name of Ruchika Developers and added to that he has got house property and the agricultural property and they are standing in the name of his father. Learned counsel also submitted that the present Respondent No.1 (wife) is an educated lady and her educational qualification is Diploma in Commercial Practice, but she has resigned from her job only to take care of her minor daughter (Respondent No.2 herein), who has been suffering from Vision problem (eye problem), as could be evidenced in Ex.P45.

The learned counsel also stated that merely because the wife is capable of earning, it does not mean that she is not entitled for maintenance by her husband. Learned counsel has relied upon a judgment of the Hon'ble Apex Court in Shylaja and another Vs. Khobanna reported in AIR 2017 SC 1174 and an unreported judgment of the Co-ordinate Bench of this Court in the case of Ramesh Vs. Vs. Laxmi in RPFC No.578/2013 decided on 21.03.2014.

10. Admittedly the present Respondent No.1 is the wife of the present petitioner and present Respondent No.2 is the daughter born to them out of their wedlock. It is not in dispute that the

present Respondent Nos. 1 & 2 (wife and daughter) are living away separately from the present petitioner, who is the husband of the present Respondent No.1 as well the father of Respondent No.2. It is not at all worth to be observed that the revision petitioner does not dispute the reason for his wife living separately, but he questions her entitlement to claim any maintenance from him only on the ground that she is capable of earning her livelihood and that is the main point of his argument in this revision petition.

As such, the finding of the Family Court regarding the reason for the wife (respondent No.1 herein) living separately need not be re-visited in this revision petition. Suffice it to analyse whether the said wife (Respondent No.1) is entitled for maintenance, when she is alleged to be capable of earning her livelihood on her own.

11. Learned counsel for the petitioner (husband) drew the attention of this court to Ex.P74, which is a relieving letter shown to have been issued by one M/s. Garuda Autocraft Private Limited in favour of the present Respondent No.1 (wife). The said document shows that the alleged employer of the present Respondent No.1 had accepted the resignation letter submitted to it on 22.02.2010 by the present Respondent No.1 (wife) and it relieved her from employment as Sales Co-ordinator and her duties on 06.03.2010 at 6.30 p.m. Relying upon this document-Ex.P74, which is subsequent to the date of the wife filing the petition for maintenance in the Family Court, learned counsel for the petitioner (husband) contended that the said act of Respondent No.1 (wife) resigning from her job is an after thought only to extract some money as maintenance from her husband (present petitioner). It is in that regard, learned counsel for the petitioner (husband) has relied upon a decision of Delhi High Court in the case of Damanpreet Kaur (supra), wherein the Hon'ble Single Judge of Delhi High Court after relying upon a judgment of the High Court of Madhya Pradesh in Smt. Mamta Jaiswal Vs. Rajesh Jaiswal reported in 2000 (3) MPLJ 100 was pleased to hold that the order of the learned Additional Sessions Judge declining an interim monetary relief to the wife by holding that she was a well-educated lady earning* 50,000/-per month and had chosen not to work on her own Will, though she had the capacity to work and find a suitable job for herself, does not warrant any interference by it, since a well qualified spouse desirous of remaining idle, not making any efforts for the purpose of finding out a source of livelihood, have to be discouraged.

12. Learned counsel for the respondent Nos. 1 and 2 herein has relied upon Shylaja's case (supra), wherein the Hon'ble Apex Court was pleased to observe that, reduction of maintenance to the wife is merely because, wife was capable of earning is not a sufficient reason for such reduction of maintenance.

13. It is not in dispute that as on the date of filing of the petition under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter for brevity, referred to as " Cr.P.C ").by the present respondents in the Family Court and admittedly the wife of the respondent (husband) therein, was working in a private establishment and Ex.P74 further would go to show that she was working in M/s. Garuda Autocraft Pvt. Ltd. as a Sales Coordinator.However, the fact remains that during the pendency of the said petition, she has resigned from her job W.E.F. w.e.f. 06.03.2010 as evidenced in Ex.P74.Undisputedly, the 1st respondent (wife) herein is a Diploma Holder in Commercial Practice in her education.The point which arises in the said circumstances is that, whether such a person (wife) who is alleged to be having certain qualification, by which she can fetch a job, is entitled for maintenance.In that regard, Section 125 of Cr.P.C. is required to be seen.The said Section reads as below:

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, 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 such person]

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 remarried.

(2) [Any such allowance for the maintenance or interim maintenance and expenses of 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].

(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] 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, 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. "

14. A reading of the above section more particularly sub-section (1) (a) and 1 (b) of the said section would clearly go to show that, what the law requires is, wife's or daughters ' inability to maintain themselves.A person being unable to maintain herself cannot be equated with her capacity to earn her livelihood.

Though a person may be educationally well-qualified for any job or may be eligible to perform a particular job, or may be capable to apply for any post or job, either in private or any other nature of establishments, but still she may be unable to maintain herself.A mere possession of certain qualification by ipso facto cannot be considered that, a woman is able to maintain herself.May be in the circumstances of the case, a person's educational qualification may come to his help or rescue in applying for jobs or in his attempt to fetch some livelihood or pursuing some avocation.By mere possession of such educational qualification itself, one cannot jump to a conclusion that such a qualification holder, particularly a wife under Section 125 of Cr.P.C., is able to maintain herself.There may be several reasons for a woman even to resign from job in which she worked at one particular point of time and expect her husband to maintain her.Unless it is brought on record through cogent evidence that such an act of resigning from job or leaving avocation was only with an intention to compel her husband to pay her maintenance, which circumstances probably may warrant a different finding, otherwise it is not necessarily always, in cases where the wife is said to have possessing some educational qualification, which may fetch her some job or employment she can be denied maintenance.

15. In the instant case, the petitioner (wife) appears to have been working in a private firm as a Sales Coordinator and has resigned from her job W.E.F. 06.03.2010 as evidenced in Ex.P74.According to the learned counsel for Respondent No.1 (wife), she was constrained to resign from her job because her daughter (Respondent No.2) was suffering from Vision (eye) problem, for which the 1st Respondent consulted a Doctor, which is evident in a medical document at Ex.P45.According to the learned counsel for the petitioner (husband), the said Ex.P45 is subsequent in its date, from the date of her resignation. Her resignation letter is dated 22.02.2010 and the date of its acceptance is 06.03.2010, whereas the said medical document is at Ex.P45 is dated 09.03.2010.Learned counsel for the respondent (husband) submits that, merely because the payment made to an Ophthalmologist through Ex.P45 dated 09.03.2010, it does not mean that Respondent No.2 (daughter) did not have any eye problem prior to the said date.

He further submits that, it is only because Respondent No.2 had eye problem much earlier to the said date, she was consulted the Doctor on 09.03.2010. However, without going into the said discussion as to when the said medical document at Ex.P45 was issued and when the resignation letter was accepted, suffice it to observe that the petitioner in the Family Court was able to show that Petitioner No.2 (daughter) therein was suffering from vision (eye) problem. Still there is no direct evidence to co-relate between the said vision (eye) problem of her daughter to the alleged resignation of the wife from her employment. However, merely because the wife is said to have resigned from her job, by that itself, it cannot be inferred that, she resigned from her job only to harass her husband and compel him to pay maintenance to her. There ought to be some evidence on record to that effect. I do not find any material in the form of either oral or documentary evidence to deduce to that inference that it is only to compel her husband to pay maintenance to the wife (petitioner No.1 in the Family Court), she has resigned from her job.

Though the High Court of Madhya Pradesh in the case of Mamta Jaiswa (supra), has held that, a lady who is fighting matrimonial petition filed for divorce, cannot be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition, still it cannot be ignored that the lady in Mamta Jaiswal's case, was well-qualified woman possessing good qualification like M.Sc. M.C., M.Ed., and was serving till 1994 in Gulabnabi Azad Education College. Similarly in Damanpreet's case (supra) also the wife was shown to have been, apart from being an educated lady was earning Rs.50,000/-p.m., had chosen not to work, on her own will. It is in the said cases, since there was material for the Courts to arrive at a conclusion that despite having lucrative job, the wives in both the cases had resigned for job only to harass their respective husbands and compelling them to pay maintenance the Madhya Pradesh High Court and Delhi High Courts arrived at a conclusion that the wives were not entitled for maintenance. Since the facts and circumstances in the case on hand is entirely different from those two cases and also in view of the fact that, in the present case, the wife is holding educational qualification of only a Diploma in Commercial Practice and she has got a dependent minor girl child, who according to Ex. P45 is alleged to be suffering from Vision (eye) problem and more importantly, as observed above, by a mere possession of some educational qualification, one's ability to maintain oneself cannot be presumed always. I am of the view that the resignation of the wife (Respondent No.1) herein would not disentitle her from claiming maintenance from her husband (petitioner herein).

16. In similar circumstances, a Co-ordinate Bench of this Court in Ramesh's case (supra) referring to another judgment of another Co-ordinate Bench of this Court in Smt. Tejaswini Vs. Aravinda Tejas

Chandra reported in (2009 (3) KCCR 2245) was pleased to hold that, the fate of the petition rests mainly on the interpretation of the expression " unable to maintain herself " cannot be understood as to mean " Capable of earning ".

Thus, Respondent No.1 herein (wife) having shown herself that she is unable to maintain herself, her mere possession of education qualification like Diploma in Commercial Practice and her subsequent act of resigning from her job would not deprive her from claiming maintenance maintenance from her husband.As such, the argument of the learned counsel for the petitioner on this point is not acceptable. Learned counsel for the petitioner further argued that the petitioner now is a practicing advocate and he is no more a salaried person working in any establishment or running his own business concern, as such he cannot maintain his wife, though he is agreeable to maintain his daughter.

17. The said argument of the learned counsel for the petitioner (husband) is also not acceptable for the reason that, as on the date of his cross-examination as RW.1, the present petitioner was working in a private establishment by name M/s. Bandari Infra Project India Pvt. Ltd. and was earning monthly salary of Rs.28,000/-and he himself has stated so so in his cross examination.Though he denied that he was also running a company by name Ruchika Developers, but admitted as true that in the year 2005-06 he had issued an advertisement in the name of M/s. Ruchika Developers Private Limited and Ex.P76 is a document in that regard.Though the witness contended that the name of his establishment was wrongly shown as a ' Private limited Company ', but he has not produced any material or evidence to that effect.

But the fact remains that, he was also running an establishment shown to be a ' Private Limited Company ' in the name of Ruchika Developers, which name of Ruchika incidentally is the name of his daughter, who is Respondent No. 2 herein. Even after taking into consideration the submission of the learned counsel for the petitioner (husband), which is not denied from the respondents herein that, the petitioner (husband) is now practicing as a full time advocate, but there is nothing on record to arrive at any conclusion or opinion that his income is lesser than what he was earning while working in M/s. Bhandari Infra Project India Private Limited or running an establishment under the name of M/s. Ruchika Developers. A man is expected to venture a new profession leaving his assured income/salaried job only when he has confidence of getting more income than what he was getting previously in an employment.But nothing is placed on record to show that the present petitioner was an exception to it.Therefore, merely because the present petitioner (husband) is said to be practicing as a full time advocate, by that itself it cannot be inferred that, he has no sources of

income to pay maintenance to his wife and daughter, which is ordered by the Family Court in the impugned order.

18. Lastly, learned counsel for the petitioner also canvassed a point that the conduct of the wife disentitles her from claiming any maintenance. In that regard, he while drawing attention of this Court to the Memorandum of Revision Petition at Paragraph- 4 submitted that, four cases including three criminal cases were filed against the present petitioner (husband) by the wife or at her instance, which itself would go to show that, she is interested only in unnecessarily putting her husband in an entanglement of litigation and trouble.

The four cases referred to in the Memorandum of Petition are No.22131/2006, CC No.22705/2006, OS No.7949/2009 and CrI. Misc.No.381/2007. As narrated by the present petitioner in the Memorandum of Petition and also submitted by the learned counsel from both sides, the details with respect to those cases remain that in CC No.22131/2006, where the present Respondent No.1 (wife) was the complainant, the present petitioner (husband) was convicted for the alleged offence punishable under Section 498A of Indian Penal Code and under Section 4 of the Dowry Prohibition Act, and his appeal in Criminal Appeal No.839/2011 is said to be pending adjudication, which means, at first instance the trial Court has held the present petitioner as guilty for those alleged offences, as such, it cannot be said at this stage that the criminal case filed by the wife is a frivolous case. Similarly, the case in CC No.22705/2006 is admittedly a private complaint under Section 200 Cr.P.C. filed by one Mrs. Pankaja Thammanna against the present petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. Admittedly, the complainant in the said case was not the present Respondent No.1 (wife). But, it is stated that the complainant is the sister of the present Respondent No.1. Merely because, the sister of the present Respondent No.1 had filed a cheque dishonour case against the present petitioner, by that itself it cannot be deduced that the said case was falsely filed, that too at the instigation of the present Respondent No.1.

19. According to the learned counsels, even in the said criminal case also, the present petitioner (husband) was convicted by the trial Court, however, subsequently, acquitted by the Sessions Judge's Court in the appeal. As such, the said litigation cannot be considered as a frivolous litigation and as instituted at the instance of the present Respondent No.1.

The O.S. No.7949/2009 is admittedly filed by the present 2nd respondent through her natural guardian i.e., Respondent No.1 for a partition claiming her alleged share in the petitioner's, as well his father's alleged ancestral properties. When the said Original Suit is reaching its finality on merit, it

cannot be held that the said suit is a false or frivolous litigation initiated by the present respondents herein.

Lastly, Criminal Misc.No.381/2007, is the present litigation.It is from the said CrI. Misc.No.2007, the present revision petition has arisen, as such merely because the respondents herein have filed the said petition under Section 125 of Cr.P.C., it cannot be held that the same was a false petition filed by them only to harass the present petitioner.

As such, the argument by the learned counsel for the petitioner that the conduct of the present respondents, who were the petitioners in the Family Court, is highly questionable and the contention that, only to harass the petitioner the respondents had instituted a frivolous litigation, is also not acceptable.

The learned counsel for the petitioner while concluding his argument has also made his submission that the present petitioner (husband) is ready to take care of his daughter, who is Respondent No.2 herein.Merely because the Revision Petitioner is the father of the child and is ready to take care of his child, would not permit him to discontinue the maintenance, which is required to be paid to his wife, who is proved to be unable to maintain herself.Admittedly, the child, who is Respondent No.2 being a minor girl child and is unable to maintain herself.A mere statement in the revision petition filed by the petitioner (father) that, he is desirous to take care of his daughter would not exonerate him from giving maintenance to the said child in compliance of the order of the Family Court, which is impugned in this Revision Petition.Thus, I do not find any reasons to call the impugned judgment as suffering with any perversity, illegality or irregularity warranting interference at the hands of this Court.

On the other hand, since the Family Court after appreciating the materials placed before it and also taking into consideration all the circumstances of the case as well the financial capacity and condition of the husband before it, has passed a reasonable and considered order.I do not find any reason to interfere with the impugned judgment.Accordingly, I pass the following order:

The revision petition stands dismissed as devoid of merit.

In view of disposal of the main petition, IA No.1/2013, does not survive for consideration.