



**IN THE COURT OF THE V ADDL.SESIONS JUDGE,
BELAGAVI AT BELAGAVI**

**PRESENT: SMT.K.KATHYAYANI,
B.Com., LL.M.,
V Addl. District & Sessions Judge,
Belagavi.**

Crl.Appeal No.206/2023

Dated: This the 22nd day of February, 2024

APPELLANT:

Sri.Subhan S/o Sri.Babusab Yakoshi,
Age: 30 years, Occ: Unemployed,
R/o: M.G.Housing Colony, Bailhongal,
Taluk: Bailhongal, District: Belagavi,
Aadhar No.7444 84442 9517.
(By Sri.S.I.Ganamukhi, Advocate.)

Vs.

RESPONDENT:

Smt.Meharunnisa W/o Sri.Subhan Yakoshi,
Age: 30 years, Occ: Private Tutorials,
R/o: 3rd Cross, Azad Nagar, Bailhongal,
Taluk: Bailhongal, District: Belagavi
(By Sri.A.M.Karekazi, Advocate.)

ORDER

The appellant has filed the present appeal under Section 29 of the Protection of Women from Domestic Violence Act of 2005 (for short, "the Act") challenging the order passed by the learned Principal Civil Judge and JMFC, Bailhongal (for short, "the trial Court") in Crl.Misc.No.168/2023 on the application filed by the respondent under Section 23 of the Act seeking interim maintenance by allowing the same in part awarding

interim compensation of Rs.4,000/- p.m., from the date of petition till disposal of the main petition vide order dated 12.06.2023 (for short, “the impugned order”).

2. For the sake of convenience, the ranks of the parties are retained as they are before the trial Court.

3. The brief facts of the case as stated in the appeal memo are that;

(1) The petitioner has filed Crl.Misc.No.168/2023 on the file of the trial Court under Section 12 of the Act wherein she has filed an application under Section 23 of the Act seeking interim maintenance of Rs.15,000/- p.m. from the respondent

(2) The petitioner is the wife of the respondent. Their marriage was solemnized on 09.12.2020 as per the rites and customs prevailing in their community.

(3) The respondent and his family members started pressurizing her to bring Rs.20 lakh and gold from her father.

(4) The respondent along with his family members was assaulting and abusing her in filthy language and they were forcing her to go to job and failed to provide medical treatment whenever needed and sent her out of marital home and failed to provide anything for her maintenance.

(5) The respondent has been earning Rs.50,000/- p.m. apart from Rs.5,00,000/- from agriculture. She is

pregnant and needs financial support.

(6) On service of notice, the respondent has filed objections denying the allegations of the petitioner and after hearing both the sides, the trial Court has passed the impugned order allowing the application and ordering the respondent to pay maintenance of Rs.4,000/- p.m. from the date of petition till disposal of the main petition.

(7) The petitioner on her own left the marital home and has been over staying in her parents' house. All the efforts of the respondent to bring the petitioner back were failed. The respondent is ever ready and willing to lead marital life with the petitioner, but she made allegations and filed the petition before the trial Court and an application as well seeking interim maintenance.

(8) The said application was came to be allowed without considering all aspects of the case and directing the respondent to pay interim maintenance of Rs.4,000/- p.m. from the date of petition till further orders though the trial Court in the impugned order, has observed that at this stage, the petitioner has not produced any documents prima face to show the income of the respondent.

4. Being aggrieved by the impugned order, the respondent has come up with the present appeal on the following grounds;

(1) The order passed by the trial Court is not in accordance with law, facts and circumstances of the case,

evidence on record. Therefore, it deserves to be set aside.

(2) The trial Court has not considered the fact that the petitioner on her own accord, left his company and has been residing separately in her parents' house. At no point of time, he deserted or subjected her to any cruelty and he never demanded any type of cash or gold.

(3) The trial Court ought to have held that the petitioner without there being any reason deserted him and has been residing separately in the house of her parents and as such, she is not entitled for the interim maintenance.

(4) Though the trial Court on page No.6 of the impugned order observed that at this stage, the petitioner has not produced any document prima facie to establish his income but, not considered the same while passing the impugned order by granting the interim maintenance.

(5) The petition of the petitioner is not accompanied by any detail and correct domestic violence report. In the absence of the same, the trial Court ought to have secured the report of CDPO, but the trial Court has not called for any such report either from the CDPO or from the concerned police about the alleged domestic violence and hurriedly passed the impugned order.

(6) The trial Court failed to note that the petitioner has filed affidavit declaring her assets and liability and falsely mentioned that she is doing household work though

she is running private tutorials in her parents' house and earning handsome income.

(7) The trial Court ought not to have directed him to pay interim maintenance without considering all the aspects of the case. If the trial Court afforded an opportunity of being heard/leading evidence, it would have helped in arriving at just and correct decision of the case.

(8) The trial Court failed to observe the conduct of the petitioner in filing the petition shows her attitude and her conduct in not leading normal life with him and she is intended to make monetary gain and came to a wrong conclusion.

(9) The petitioner at the instance of her family members, pressurizing him to agree to her terms and when he refused to do so, she has filed a case colluding with other family members. The truth would have been elicited after full trial and subjecting her to cross examination, but the trial Court has chosen to grant interim maintenance and thereby, committed an error.

(10) The petitioner has filed criminal miscellaneous petition under the Act claiming monthly maintenance of Rs.15,000/- and other reliefs which shows the conduct of the petitioner in pressurizing him to yield at her terms.

(11) The petitioner has hurriedly filed the petition in order to defeat him and the trial Court without giving proper and full opportunity of being heard/leading

evidence, took cognizance under Section 12 of the Act and passed the impugned order and the petitioner taking advantage of the same, pressurizing him through different sources.

(12) Before taking cognizance of the offence under Section 12 of the Act, the trial Court ought to have afforded an opportunity of being heard/leading evidence before passing the impugned order but, it has hurriedly took cognizance and allowed the application.

(13) The trial Court failed to see that the petitioner has not led any evidence before it to substantiate or to make out a prima facie case and by simply believing and considering the allegations made in the petition and in the application, it has come to a wrong conclusion and passed the impugned order.

(14) He was doing private service at Belagavi and no lands are in his name. He is not having any control over the properties of his parents who are separately residing at Bailhongal.

(15) The petitioner is doing tutorial business and drawing handsome income. On the contrary, he is not doing work at present and his services were purely temporary basis and may be terminated at any time. Hence, he is unable to pay separate maintenance to the petitioner.

(16) The impugned order suffers from sound reasoning and it is not a speaking order. The trial Court has not assigned any reasons for taking cognizance without giving opportunity of being heard/leading evidence and the said order is passed hurriedly and mechanically without considering all aspects of the case. Accordingly, prayed to allow the appeal and to set aside the imputed order.

5. In response to the due service of notice, the petitioner appeared through her learned counsel and filed her objections denying the reasons/grounds assigned/urged by the respondent and has contended that;

(1) Only with an intention to harass her who is an innocent pregnant lady, the respondent has come up with the present appeal. She is 8 months' pregnant and it is bounden duty of the respondent to maintain his wife.

(2) The shrewd and scheming minded respondent very well has knowledge about the condition of a pregnant lady and in spite of that, in order to harass her physically, mentally and financially, has filed the present appeal.

(3) Since from the date of marriage, the respondent and his family members behaving inhumanly and pressurizing her to bring dowry.

(4) On 29.03.2023, when she was of two months' pregnant, the respondent and his family members tried to kill her. Accordingly, she admitted in the hospital and filed

the complaint before Bailhongal police station in Cr.No.80/2023 for the offences punishable under Sections 498A, 323, 504 and 506 read with Section 149 of IPC.

(5) On 06.04.2022, she has filed Crl.Misc.No.168/2023 against the respondent and his family members under Section 12 of the Act on the file of the trial Court, wherein the respondent and his family members appeared and filed their objections.

(6) After giving full and sufficient opportunities to the respondent, on 12.06.2023, after due enquiry, the trial Court has passed the impugned order allowing her application under Section 23 of the Act by directing the respondent to pay Rs.4,000/- p.m. as interim maintenance.

(7) In spite of having sufficient source of income, the respondent failed to pay the interim maintenance. Then, she was forced to file Crl.Misc.No.211/2023 and Crl.Misc.No.341/2023 under Section 128 of Cr.P.C. for recovery of arrears of maintenance. The respondent appeared in the said petitions and when he failed to pay the arrears, the trial Court has issued FLW against him.

(8) In order to harass her further and to bring illegal pressure upon her, the respondent and his mother in collusion with the police managed to file a false complaint in Bailhongal police station Cri.No.131/2023 against her who is pregnant and her two brothers for the offences

under Sections 323, 326, 341, 504 and 506 read with Section 34 of IPC.

(9) She and her two brothers applied for anticipatory bail before the Hon'ble Principal District and Sessions Judge, Belagavi in Cri.Misc.No.653/2023.

(10) The respondent in order to harass her and to put her behind the bars, personally appeared in the said petition and filed objections as well as produced concocted CD and photos and prayed to reject the bail petition and to take her into judicial custody. However, after due hearing, their above bail petition for anticipatory bail, came to be allowed. Thus, it is clear that the respondent is shrewd and scheming minded person and since the date of marriage, harassed her and even also during her pregnancy.

(11) It is clear that the story mentioned in the appeal that he is ready to lead marital life with her is a created and concocted story in order to get sympathy of this Court. If he got intention to lead happy life with her then, definitely,

(i) He would have taken legal steps to rejoin;

(ii) He would have taken steps in Crl.Misc.No.168/2023;

(iii) He would not have chosen to file the case in Cr.No.131/2023 on the file of Bailhongal police station;

(iv) He would have appeared in Crl.Misc.No.653/2023;

(v) He would not have filed objection to reject the bail petition;

(vi) He would have not prayed to take her into judicial custody during her pregnancy; and definitely

(vii) He would have paid maintenance amount to her as ordered in Crl.Misc.168/2023 and would have not approached this Court by filing the present appeal.

(12) The illegal acts of the respondent clearly show about his ill intention and the harassment given by him, since the date of marriage.

(13) She was carrying 8 months' pregnancy and does not have any source of income to maintain herself. Her parental family is also not in a position to maintain her. Due to the harassment given by the respondent and his family members, she is not in a position to work and earn money and fulfill her basic needs.

(14) Due to the illegal acts of the respondent in collusion with his family members, she is suffering from ill health. She is unable to earn livelihood with her own self-excursion due to her ill health, weakness and torture given by the respondent. Hence, she is unable to meet out her basic legal needs. She came from civilized family and require minimum Rs.25,000/- p.m. for her maintenance during the pregnancy.

(15) The respondent is M.Sc., B.Ed. graduate and working as a lecturer and also undertaking tuition classes. From his avocation, he is earning more than Rs.50,000/- p.m. His father also getting pension. He is owner of 4 acres of irrigated agricultural land situated at Savatagi Village. Out of which, he is getting income more than Rs.5,00,000/- p.a.

(16) Considering the day to day escalation of prices and cost of living, she is in need of minimum Rs.25,000/- p.m. for food, clothing, shelter, medicine and other expenses. There is no other dependent on the respondent except herself. The respondent is capable to provide maintenance to her as mentioned above.

(17) The respondent by suppressing the true material facts has filed this appeal with his ill design motive and to harass her who is pregnant lady.

(18) The present appeal is filed in the present form is not at all maintainable and liable to be dismissed with heavy costs for filing with false and baseless grounds and for harassing an innocent pregnant lady and wasting the valuable time of this Court.

(19) The respondent has not approached this Court with clean hands. If the appeal is allowed, it will give scope for further harassment of an innocent pregnant lady and she will be forced for starvation. On the other hand, the respondent will not be put to any surprise or hardship if

the appeal is dismissed with costs.

(20) The meager interim maintenance of Rs.4,000/- p.m. is not sufficient to cope up her legal necessities and medical expenses during pregnancy. The doctors stated that due to harassment given by the respondent, she is suffering physically, mentally and in need of more than Rs.50,000/- during her delivery.

(21) Therefore, it is necessary to modify the order passed by the trial Court with direction to the respondent to give Rs.15,000/- p.m. as interim maintenance and Rs.50,000/- as delivery expenses. Accordingly, prayed to modify the impugned order awarding minimum cost of Rs.25,000/- for filing the false, baseless appeal and for harassing her.

6. Since the impugned order is an order challenging award of interim maintenance, the trial Court records are not called.

7. Heard both the sides on merits and perused the record.

8. On the above noted rival contentions of the parties, the points that arise for due determination of this Court are;

- (1) Whether the respondent proves the grounds urged in support of the present appeal?
- (2) Whether the impugned order needs intervention by this court?

(3) What Order?

9. The findings of this Court on the above points are answered in;

(1) Point No.1: Negative.

(2) Point No.2: Partly affirmative.

(3) Point No.3: As per the final order for the following reasons.

REASONS

10. **POINTS Nos.1 AND 2**:- Since the findings on point No.2 is consequent to the findings on point No.1, to avoid repetitions and for the sake of convenience, these points are taken together for consideration.

11. Before proceeding to discuss on merits of the appeal, let this Court to have a look at the relevant provisions i.e., the provision under which the application seeking interim maintenance is filed and the provision under which, the petitioner has come up with this appeal for better and effective consideration of the grounds urged in support of this appeal i.e., Sections 23 and 29 of the Act which are extracted here below;

“23. Power to grant interim and *ex parte* orders.- (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that

there is likelihood that the respondent may commit an act of domestic violence, he may grant an ex-parte order on the basis of the affidavit in such form, as may be prescribed, or the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent”.

12. So, under Section 23 of the Act, the trial Court is empowered to grant interim and ex parte orders and there is no dispute so far the power of the trial Court under Section 23 of the Act to grant interim maintenance.

13. The provision under which, the present appeal is filed is admittedly Section 29 of the Act which reads;

“29. Appeal:- There shall be an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or **the respondent, as the case may be, whichever is later”.**

14. So, under Section 29 of the Act, this Court has power to entertain the present appeal challenging the impugned order passed under Section 23 of the Act.

15. The record reveals that the impugned order was passed on 12.06.2023; the certified copy of the impugned order on record reveals that the copy was applied on 04.07.2023 and it was delivered on 10.07.2023; and the present appeal is filed on 31.07.2023.

16. Hence, though, the appeal is in time from the

date of delivery of the certified copy, there is delay of 20 days in filing the present appeal from the date of order. However, the respondent has filed IA.No.1 under Section 5 of the Limitation Act of 1963 which was contested and came to be allowed vide order dated 15.11.2023.

17. As observed above, the impugned order is admittedly, an order granting interim maintenance. Hence, let this Court to have a look at the relevant portion of the provision of Section 20 of the Act which deals with monetary reliefs and it reads;

“20. Monetary reliefs.- (1) While disposing of an application under sub-section 1 of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the such aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-
....”

18. Now, let this Court to go through the provision of Section 2(a) of the Act which defines “aggrieved person” and it reads;

“2. Definitions.- In this Act, unless the context otherwise require,-

(a) **“aggrieved person”** means any woman who is, or has been, in a domestic relation with the respondent and who alleges to have

been subjected to any act of domestic violence by the respondent;

19. So, now, let this Court to have a look at the provision of Section 2(f), (q) and (g) which define the words “domestic relationship”, “respondent” and domestic violence” and they read;

“2(f) **“domestic relationship”** means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family”

(q) **“respondent”** means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act”.

20. The pleadings of the parties observed above clearly demonstrate that there is no dispute with regard to the relationship of the petitioner with the respondent and the petitioner is related to the respondent by marriage. Therefore, the petitioner is an aggrieved person subject to proof that she was subjected to an act of domestic violence by the respondent.

21. Now, let this Court to go through Section 2(g) which defines “domestic violence” and it reads;

(g) “**domestic violence**” has the same meaning as assigned to it in section 3:”

22. Hence, let this Court to go through the provision of Section 3 of the Act which defines domestic violence and it reads;

“3. Definition of domestic violence.- For the purposes of this Act, any act, omission or commission of conduct of the respondent shall constitute domestic violence in case it-

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or attends to do so and **includes causing physical abuse**, sexual abuse verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) **has the effect of threatening the aggrieved person** or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) **otherwise injures or causes harm, whether physical or mental,** to the aggrieved person.

Explanation- For the purposes of this section,-

(i) “physical abuse” means **any act or conduct which is of such a nature as to cause bodily pain, harm,** or danger to life, limb or health or impair the health or development of the aggrieved person and **includes assault, criminal intimidation** and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that **abuses, humiliates, degrades or otherwise violates the dignity of woman;**

(iii) “verbal and emotional abuse” includes-

(a) **insults**, ridicule, humiliation, name calling and **insults or ridicule** specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes-

(a) **deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise** or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and **her children**, if

any stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) **prohibition or restriction to continued access to resources or facilities** which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration”.

23. The pleadings of the parties, the documents on record in the trial Court record noted above clearly demonstrate that there are allegations by the petitioner

against the respondent and his family members i.e., the other respondents before the trial Court which attract the acts and omissions stated in Section 3 of the Act under all the heads i.e., physical abuse, sexual abuse, verbal and emotional abuse as well as economic abuse.

24. Of course, there are counter allegations as well by the respondent against the petitioner. But, they are all subject to trial.

25. For consideration of the present application i.e., the application seeking interim maintenance, the documents on the trial Court record noted above, clearly reveal that there is no dispute with regard to the relationship between the parties to the proceedings.

26. Hence, in the circumstances of the case noted above, for the disposal of the present application on hand, the points that were to be considered by the trial Court are; whether there was/is need to direct the respondent to pay interim maintenance and if so, what was/is the quantum.

27. The impugned order reveals that the reasons assigned for holding that the petitioner is entitled for interim maintenance are that;

(1) There is no dispute so far as the relationship of the parties to the petition and the petition averments revealed prima facie case of domestic violence against the respondent.

(2) The trial Court is empowered to grant interim maintenance based on the affidavit of the aggrieved person/the petitioner and the petitioner had filed affidavit in support of the application making out the prima facie case of the domestic violence.

(3) So far as quantum of maintenance, the petitioner has filed affidavit along with the application stating that she is pregnant of two months and the documents produced by the parties prima facie not evidencing income of the respondent.

(4) Hence, considering the nature of allegations and the facts of the case including the pregnancy of the petitioner, it was opined that it is just and proper to award interim maintenance at Rs.4,000/- p.m. Accordingly, the application was allowed by directing the respondent to pay the interim monthly maintenance of Rs.4,000/- from the date of petition till the disposal of the main petition.

28. The above noted reasons assigned in the impugned order i.e.,

(1) So far the reasons assigned by the trial Court with regard to relationship between the parties, it is an admitted fact.

(2) So far the reasons assigned by the trial with regard to prima facie materials of domestic violence in the petition averments, as noted above, the petition avements prima facie attract the domestic violence as defined in Section 3 of the Act.

(3) So far the reasons assigned by the trial Court with regard to its power to grant interim maintenance based on the affidavit of the aggrieved person/the petitioner, there is no dispute between the parties that Section 23 of the Act empowers the trial Court to pass interim and ex parte orders. There is also no dispute and it is evident on record that the petitioner had filed affidavit in support of the application reiterating her petition averments which attract the definition of domestic violence as detailed in Section 3 of the Act noted above.

(4) So far the reasons assigned by the trial Court in granting maintenance, admittedly there was no document produced by the petitioner evidencing income of the respondent. But, the trial Court only based on the affidavit and considering the fact that the petitioner is pregnant of two months, awarded interim maintenance. The fact that the petitioner is a pregnant is not denied by the respondent.

29. Now, let this Court to consider the grounds urged by the respondent one by one i.e.,

(1) The trial Court has not considered the fact that the petitioner on her own accord, left his company and has been residing separately in her parents' house. At no point of time, he deserted or subjected her to any cruelty and he never demanded any type of cash or gold. **But, this ground has to be considered only after full pledged trial.**

(2) The trial Court ought to have held that the petitioner without there being any reason deserted him and has been residing separately in the house of her parents **(this is also to be considered only after conclusion of trial)** and as such, she is not entitled for the interim maintenance. **Since, the first part of this ground is subject to trial, the respondent cannot contend the 2nd part i.e., the petitioner is not entitled for interim maintenance.**

(3) Though the trial Court on page No.6 of the impugned order observed that at this stage, the petitioner has not produced any document prima facie to establish his income but, not considered the same while passing the impugned order by granting the interim maintenance.

(i) As noted above, the reason assigned in the impugned order clearly reveals that though there is no evidence on record with regard to the income of the respondent, by considering the admitted relationship and the admitted fact that the petitioner was/is a pregnant lady, the interim maintenance was awarded.

(ii) It is needless to say that being the husband, it is the bounden duty of the respondent to maintain his wife irrespective of his having income unless he established that she deserted him without just cause and she is capable of maintaining herself.

(iii) In this case, those facts are to be considered at

the time of trial. At this pre-trial stage, while passing the impugned order, the trial Court has considered the admitted relationship, admitted fact that petitioner was/is a pregnant lady alleging the domestic violence supported by her affidavit.

(iv) Moreover, it is the case of the petitioner that the respondent is M.Sc., B.Ed., graduate working as a lecturer and the respondents i.e., the respondent and his family members have 4 acres of land. Though, the respondent has contended that he has not right in the lands of his parents, he has not denied the property his family has. Though, he has contended that his job is a private job may be terminated at any stage, he has not stated that he is terminated from his job and not denied his educational qualification.

(v) Hence, in the circumstances of the case, no fault can be find with the trial Court based on the admitted fact that there was no evidence in respect of the income of the respondent that too in view of the quantum of interim maintenance which is admittedly Rs.4,000/- p.m.

(vi) That apart, this Court can also take judicial notice in view of the cost of living as on date and the admitted fact that the petitioner is a pregnant lady is required at least Rs.3,000/- p.m. towards her food and Rs.3,000/- towards medicine and other incidental expenses. Thus, prima facie, the quantum of interim maintenance granted by the trial Court is on lessor side.

(4) The petition is not accompanied by any detail and correct domestic violence report. In the absence of the same, the trial Court ought to have secured the report of CDPO, but the trial Court has not called for any such report either from the CDPO or from the concerned police about the alleged domestic violence **(this fact also to be considered at the time of trial)** and hurriedly passed the impugned order.

(i) In the circumstances of the case in particular the admitted fact that the petitioner was/is a pregnant lady, it cannot be said that the interim order was passed by the trial Court hurriedly since this Court can take judicial notice that the petitioner being a pregnant lady approached the trial Court for timely need and therefore, the trial Court was expected to consider her prayer at the earliest.

(5) The trial Court failed to note that the petitioner has filed affidavit declaring her assets and liability and falsely mentioned that she is doing household work though she is running private tutorials in her parents' house and earning handsome income. **As observed above, this ground is also a matter of trial.**

(6) The trial Court ought not to have directed him to pay interim maintenance without considering all the aspects of the case. If the trial Court afforded an opportunity of being heard/leading evidence, it would have helped in arriving at just and correct decision of the case.

(i) The impugned order is admittedly an interim order. Hence, it cannot be said that an opportunity of leading evidence should have been given by the trial Court. So far the opportunity of hearing, it is evident on record that the impugned order was passed after hearing the respondents as well.

(7) The trial Court failed to observe the conduct of the petitioner in filing the petition shows her attitude and her conduct in not leading normal life with him and she is intended to make monetary gain and came to a wrong conclusion.

(8) The petitioner at the instance of her family members, pressurizing him to agree to her terms and when he refused to do so, she has filed a case colluding with other family members. The truth would have been elicited after full trial and subjecting her to cross examination, but the trial Court has chosen to grant interim maintenance and thereby, committed an error.

(9) The petitioner has filed criminal miscellaneous petition under the Act claiming monthly maintenance of Rs.15,000/- and other reliefs which shows the conduct of the petitioner in pressurizing him to yield at her terms.

(10) The petitioner has hurriedly filed the petition in order to defeat him and the trial Court without giving proper and full opportunity of being heard/leading evidence, took cognizance under Section 12 of the Act and

passed the impugned order and the petitioner taking advantage of the same, pressurizing him through different sources.

(11) Before taking cognizance of the offence under Section 12 of the Act, the trial Court ought to have afforded an opportunity of being heard/leading evidence before passing the impugned order but, it has hurriedly took cognizance and allowed the application.

(12) The trial Court failed to see that the petitioner has not led any evidence before it to substantiate or to make out a prima facie case and by simply believing and considering the allegations made in the petition and in the application, it has come to a wrong conclusion and passed the impugned order. **All the above grounds are to be concluded only after trial.**

(13) He was doing private service at Belagavi and no lands are in his name. He is not having any control over the properties of his parents who are separately residing at Bailhongal.

(14) The petitioner is doing tutorial business and drawing handsome income. On the contrary, he is not doing work at present and his services were purely temporary basis and may be terminated at any time. Hence, he is unable to pay separate maintenance to the petitioner.

(i) But, as noted above, in view of the admitted

relationship, the respondent being the husband is bound to maintain his wife/the petitioner irrespective of his having income unless he established that she deserted him without just cause and she is capable of maintaining herself and the said facts are to be established after full pledged trial and the respondent has not produced anything at this stage to show the alleged avocation and income of the petitioner.

(15) The order passed by the trial Court is not in accordance with law, facts and circumstances of the case, evidence on record. Therefore, it deserves to be set aside.

(16) The impugned order suffers from sound reasoning and it is not a speaking order. The trial Court has not assigned any reasons for taking cognizance without giving opportunity of being heard/leading evidence and the said order is passed hurriedly and mechanically without considering all aspects of the case.

30. But, in view of the above observations, it cannot said that the impugned order is not in accordance with law, facts and circumstances of the case, evidence on record and it is not a speaking order. Accordingly, the respondent has failed to prove the above grounds urged in support of the present appeal.

31. As noted above, if the cost of living as on date and the admitted fact that the petitioner is a pregnant lady and thereby she requires at least Rs.3,000/- p.m. towards her

food and Rs.3,000/- towards medicine and other incidental expenses is considered, prima facie, the quantum of interim maintenance granted by the trial Court is on lessor side.

32. Hence, it is thought just and proper to consider the prayer of the respondent to enhance the interim maintenance according to the above observations. Therefore, though point No.1 is answered in negative, point No.2 is answered partly in affirmative.

33. **POINT No.3**:- From the above discussions, this Court proceeds to pass the following order.

ORDER

The present appeal filed by the appellant under Section 29 of the Protection of Women from Domestic Violence Act of 2005 is hereby dismissed.

However, in view of the observations made in the body of the judgment, the order passed by the learned Principal Civil Judge and JMFC, Bailhongal in Crl.Misc.No.168/2023 on 12.06.2023 allowing partly the application filed by the petitioner seeking interim maintenance of Rs.15,000/- p.m. by directing the 1st respondent to pay interim maintenance of Rs.4,000/- p.m. month is hereby modified with a direction to the 1st respondent to pay interim maintenance of Rs.6,000/- p.m. to the petitioner from the date of petition during pendency of the petition.

Office is directed to send a copy of this judgment to the trial Court forthwith.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced by me in the open Court on this the 22nd day of February, 2024).

(SMT.K.KATHYAYANI),
V Addl. District & Sessions Judge,
Belagavi.