NC: 2023:KHC-D:11798
RPFC No. 100033 of 2023

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 5TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE C.M. POONACHA

REV.PET FAMILY COURT NO. 100033 OF 2023

BETWEEN:

SMT. ASMA W/O. ABUSALIM MULLA,
AGE. 30 YEARS, OCC. HOUSEHOLD WORK,
R/O. MUNAVALLI, TQ. SAUNDATTI,
DIST. BELAGAVI,
PRESENTLY RESIDING AT,
C/O. ABDUAJIJ MAHAMMADSAB YALIGER,
HEBBALLI-580112,
TQ. AND DIST. DHARWAD.

...PETITIONER

(BY SMT. SHRUTI NEELOPANT, ADV. FOR
SRI. AVINASH MALIPATIL, ADVOCATE)

AND:

ABUSALIM S/O. MABUSAB MULLA
AGE. 42 YEARS, OCC. DRIVER AND AGRICULTURE,
R/O. MULLA ONI, NEAR HOLE MUNAVALLI-591117,
TQ. SAUNDATTI, DIST. BELAGAVI.

...RESPONDENT

(BY SRI. RAJESHEKAR R. GUNJALLI, ADVOCATE)

Digitally signed by SHIVAKUMAR HIREMATH
Location: HIGH COURT OF KARNATAKA
Date: 2023.12.01 14:25:07 +0530

THIS R.P.F.C IS FILED UNDER SECTION 19(4) OF THE FAMILY COURTS ACT, 1984, PRAYING TO ALLOW THIS REVISION PETITION, SET ASIDE THE IMPUGNED ORDER DATED 08.12.2022 IN CRL. MISC. NO. 20/2021 PASSED BY THE PRINCIPAL JUDGE FAMILY COURT, DHARWAD AND ALLOW THE CRL MISC. NO.20/2021 FILED BY THE PETITIONER IN ITS ENTIRETY, IN THE INTEREST OF JUSTICE AND EQUITY.

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

ORDER

The present petition is filed by the wife challenging the order dated 08.12.2022 passed in Crl. Misc. No.20/2021 by the Prl. Judge, Family Court, Dharwad, (hereinafter referred to as 'Family Court') wherein the petition filed under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') by the wife has been dismissed.

2. The parties will also be referred to as per their status in their relationship for the sake of the convenience.

3. The relevant facts necessary for consideration of the present petition are that the marriage between the parties was solemnized on 15.04.2009 and that a son and two daughters are born to the parties from the said wedlock. Due to various reasons, the parties have been living separately.

4. Alleging that the respondent husband was not looking after the wife, she filed a petition under Section 125 of Cr.P.C. in Crl. Misc. No.20/2021. The

respondent/husband entered appearance before the Family Court and contested the proceedings. The wife examined himself as PW-1 and Exs.P-1 to P-7 were marked in evidence. The husband examined himself as RW-1 and Exs.R-1 to R-3 were marked in evidence. The Family Court upon an appreciation of the oral and documentary evidence on record by its order dated 08.12.2022, dismissed the petition. Being aggrieved, the present petition is filed.

5. Learned counsel for the petitioner vehemently contends that the Family Court has erred in dismissing the petition without noticing the fact that the petitioner/wife is living separately with her parents. She further submits that the proceedings under Section 125 of Cr.P.C. being summary in nature, the Family Court ought not to have dismissed the petition. She further submits that although the husband has stated that he is looking after the three children born from their wedlock, it is forthcoming from Ex.R-1 that the husband has left the children at a

Madarasa and he is not taking care of the children any manner. She further submits that it is forthcoming from the revenue records at Exs.P-6 and P-7 that the respondent owns 4 acres of agricultural land and that the respondent is admittedly a lorry driver and having independent source of income and hence she seeks for allowing of the petition and awarding suitable maintenance.

6. *Per contra*, learned counsel for the respondent/ husband submits that the Family Court has rightly recorded a finding that the petitioner has voluntarily gone to her parents' house and the husband has not refused or neglected to maintain her. He further submits that the children are being taken care by the respondent and he is spending adequate amount towards their upbringing. It is also submitted that the wife is living along with her parents and has not made out any ground for claiming maintenance. It is also submitted that the Family Court having adequately appreciated the oral and documentary

evidence on record and having dismissed the petition of the wife, the same is not liable to be interfered with by this Court.

7. I have considered the submissions of both the learned counsel and perused the material available on record.

8. The question that arises for consideration is,

> *"Whether the order passed by the Family Court is liable to be interfered with? If so, what is the quantum of maintenance that is to be awarded?"*

9. The essential factual matrix with regard to the relationship of the parties and 3 children born from their wedlock are undisputed. It is further undisputed that the petitioner and respondent are living separately. While various allegations and counter allegations are sought to be made vis-à-vis the cause for the parties to live separately, it is clear and forthcoming that the parties are living separately and the children are not staying along with the wife.

10. It is contended by the husband that the children are living along with him. But it is forthcoming from Ex.R-1 that he has left the children at a Madarasa due to financial reason.

11. The wife has alleged that the husband is living with another woman. However, there is no material to demonstrate the same.

12. The Family Court by noticing the fact situation that after 12 years of the marriage, allegations have been made by the wife regarding harassment and upon noticing the fact that there is no complaint or FIR filed to show that the husband has assaulted the wife and caused physical harassment in any manner, has recoded a finding that there was no cause for the wife to stay away from the husband. The Family Court has further noticed that the children are not living along with the mother.

13. It is relevant to note that, although the family Court has appreciated the oral and documentary evidence and recorded the finding as aforementioned, the scope of

enquiry under Section 125 of Cr.P.C. has been completely lost sight of by the Family Court. It is relevant to note that, admittedly, there are no proceedings pending initiated by either of the parties with regard to the status of the marital relationship.

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

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

> ***32.*** *Chapter IX of the Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 CrPC may be claimed*

[1] (1999) 7 SCC 675

[2] (2021) 2 SCC 324

by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 CrPC is to provide immediate relief to an applicant. An application under Section 125 CrPC is predicated on two conditions: (i) the husband has sufficient means; and (ii) "neglects" to maintain his wife, who is unable to maintain herself. In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors.

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

(Emphasis supplied)

16. Having regard to the settled position of law, it is clear that, the present proceeding being under Section 125 of Cr.P.C and having regard to the fact that, it is forthcoming that the parties are living separately, notwithstanding the various contentions made by both the parties regarding the cause for them to live separately, it

is just and proper that an order for maintenance be awarded in favour of the wife. As long as the status of the relationship between the petitioner and the respondent as husband and wife continues to substitute, the husband would be liable to pay maintenance to the wife. The cause for living separately is required to be adjudicated in the appropriate legal proceedings initiated by either of the parties under marital law applicable to them. Pending such decision, an award of maintenance under Section 125 of Cr.P.C. is an essential requirement when it is alleged by the wife that she is unable to maintain herself.

17. With regard to the quantum of maintenance, it is forthcoming that although the husband contends that he is taking care of the three children, having regard to Ex.P.1, wherein, it is forthcoming that, he has left the children at a Madarasa due to financial constraints, the contention of the husband is liable to be rejected. Further, with regard to the contention of the wife that the respondent owns four acres of land which is forthcoming

from Ex.P.6, it is relevant to note that Ex.P6 does not disclose that the land is held by the respondent absolutely.

18. It is forthcoming from the material on record that, the husband is a driver by profession which aspect has not been denied. It is also not denied that the husband has an independent source of income. It is a settled position of law, that as long as the husband is able bodied, it is his obligation to maintain the wife. In the present case, there is no material on record to even suggest the fact that the husband is incapable to earn and does not have any independent source of income.

19. In view of the totality of the circumstances and keeping in mind the facts and circumstances of the case, it is expedient that the respondent-husband be directed to pay the petitioner-wife a sum of ₹3,000/- as maintenance every month.

20. In view of the aforementioned, the questions framed for consideration are answered in the affirmative.

21. Hence, the following order is passed:

ORDER

(i) Petition is allowed;

(ii) The order dated 08.12.2022 passed in Criminal Miscellaneous No.20/2021 by the Court of the Principal Judge, Family Court, Dharwad, is set aside;

(iii) The application filed by the petitioner in Criminal Miscellaneous No.20/2021 on the file of the Principal Judge, Family Court, Dharwad is allowed and the respondent-husband is directed to pay maintenance of ₹3,000/- every month to the petitioner-wife from the date of the petition i.e. 16.01.2021;

(iv) The respondent-husband is also directed to pay costs of ₹5,000/- being cost of this proceeding.

Sd/-
JUDGE

NAA,SVH
List No.: 1 Sl No.: 37