



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JANUARY 2021

BEFORE

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

R.P.F.C. No.133 OF 2014

BETWEEN:

R.D. Rajeev,
S/o. Late Sri.R. Dayananda,
Aged about 46 years,
Residing at No.397, 6th Main,
Banashankari, 1st Stage,
1st Block Srinagar.
Bangalore - 560 050.

..Petitioner

(By Smt. T.G. Sudha, Advocate)

AND:

Smt. Roopa,
D/o. Late Vishvanath Rao
Presently residing at
one of her Brothers house
at Door No.38, M.I.G.I.
Kyathamaranahalli (Kalyangiri)
Mysore and also at
Arkanatha Road, K.R. Nagar,
Mysore District - 570 001.

.. Respondent

(By Smt. Archana K.M., *Amicus Curiae*)

This RPFC is filed under Section 19(4) of the Family Courts Act, 1984, praying to set aside the impugned common judgment dated 03-01-2013 passed by the learned Judge, Family Court at Mysore, in Crl.Mis.No.296/2008, by allowing the above revision petition, in the interest of justice and equity.

This RPFC coming on for Final Hearing **through Physical Hearing/Video Conferencing Hearing** this day, the Court made the following:

ORDER

The present petitioner was the respondent in C.Mis.296/2008, in the Court of the Judge, Family Court at Mysore (hereinafter for brevity referred to as the "Family Court") instituted by the present respondent as a petitioner therein under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter for brevity referred to as the "Cr.P.C."), seeking maintenance from the respondent therein, at the rate of ₹5,000/- per month.

2. It was the contention of the petitioner therein (wife) in the Family Court that the marriage with the respondent therein (husband) was held on 08-06-2003 in K.R. Nagar, Mysore, as per Hindu rites. After marriage, they resided together at Bengaluru for some period. Thereafter, they were separated and the wife continued to be residing separately in her brother's house at Mysuru.

3. According to the respondent therein (husband), after his marriage with the petitioner therein, he noticed that she had

some problem with her monthly periods and was bleeding profusely during menstrual period and that she could not lead a happy marital life with her husband. Though several Doctors were consulted in that regard, but the same was of no use. Ultimately, it was found that there was a serious problem in her uterus, which was not a curable disease.

It was his further case that his wife also underwent a surgery and uterus was removed and there was no chance of she be-getting any child. This destroyed his dreams of having a progeny, as such, he was very much depressed. It was his contention that despite the same, the wife was making several false allegations against him and had left his company.

4. In the meantime, it is worth to be noted here that, the present petitioner (husband) had also filed a matrimonial case before the same Family Court in M.C.No.489/2009, against the present respondent (wife) under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 (hereinafter for brevity referred to as the "H.M. Act"), seeking dissolution of the marriage. The Family Court tried both the matters together, wherein both parties led their evidence and got marked documents.

5. After hearing both side, the Family Court by its common judgment dated 03-01-2013 allowed the petition in M.C.No.489/2009 filed by the husband for divorce under Section 13 (1)(i-a) of the H.M. Act. It dissolved the marriage held between the parties in the petition. It also allowed-in-part the petition filed under Section 125 of the Cr.P.C. in C.Mis.296/2008 by the wife and directed the husband to pay maintenance to his wife (present respondent) @ ₹3,000/- per month from the date of the petition.

Being aggrieved by the said order regarding maintenance passed in C.Mis.No.296/2008, the respondent in the Family Court husband as preferred the present revision petition.

6. In view of the fact that the respondent wife failed to appear before this Court even after service of notice upon her and since she remained un-represented, this Court by its order dated 08-01-2021, appointed learned counsel - Smt. Archana K.M., as *Amicus Curiae* for the respondent to defend the case of the respondent (wife).

7. The Family Court records were called for and the same are placed before this Court.

8. Learned counsel for the petitioner (husband) and learned *Amicus Curiae* for the respondent (wife) are physically present in the Court.

9. Heard the arguments from both side. Perused the materials placed before this Court including the Family Court records.

10. After hearing the learned counsel for the petitioner and learned *Amicus Curiae* for the respondent, the only point that arise for my consideration in this revision petition is:

Whether the order under revision is perverse, illegal and erroneous, warranting interference at the hands of this Court?

11. Learned counsel for the petitioner in her argument submitted that the marital relationship between the parties as on the date of institution of the C.Mis.296/2008 that, the parties were husband and wife is an admitted fact. She further submitted that the husband instituted a matrimonial case for dissolution of the marriage, but in fact, the marriage was invalid in the eye of law, as such, it was a nullity. That being the case, when the marriage itself is not valid in the eye of law, the present respondent wife is not entitled for maintenance.

Learned counsel further submitted that the present petitioner (husband) has to look after his aged mother and he has got no sufficient income, as such, he is unable to give any maintenance to his wife.

She also submitted that, as on date, the petitioner appears to be more than 52 years' old in his age and the present respondent wife has ruined his life. In such a situation, the husband is not liable to pay any maintenance to his wife.

12. Learned *Amicus Curiae* for the respondent (wife) in her argument submitted that, the alleged nullity of marriage has never been canvassed by the husband either in the Family Court or in the present Court. It is for the first time they are inventing a new ground which cannot sustain for the simple reason that, it is only after admitting the validity of their marriage, the husband had instituted a suit for dissolution of their marriage.

She further contended that the husband having an established tailoring shop, at more than one place and employing large number of persons to work under him, is earning not less than a sum of ₹5,000/- a day. As such, his economic difficulty is an unfounded one.

She also submitted that, the wife, as a petitioner in the Family Court, has explained in detail as to how she was subjected to cruelty, both by her husband and also by her mother-in-law, which made her to live separately. Despite the same, the petitioner husband has neglected to maintain his wife, as such, she is entitled for maintenance.

She further submitted that though the wife is said to be a well qualified woman, but her mere educational qualification would not fetch her income for livelihood. As such, the capability to find a job cannot be equated to say that she is able to maintain herself.

13. The admitted fact remains that the parties herein were married to each other according to Hindu rites on 08-06-2003. According to the present petitioner - husband, within no span of time, after his marriage with the present respondent, he noticed that his wife was suffering with some menstrual problem, which was ultimately medically detected as she being incapable of conceiving or getting any child in the normal course. Thus, placing the said medical ground in the forefront of his petition, the present petitioner - husband instituted a matrimonial case in M.C.No.489/2009 in the Family Court, seeking dissolution of his

marriage with the respondent. The said petition for dissolution of marriage came to be allowed by the very same Family Court under its common judgment along with the present impugned judgment dated 03-01-2013, dissolving the marriage performed between the parties on 08-06-2003. Therefore, admittedly, the present petitioner, as a husband, had, at no point of time, in the Family Court, either in M.C.No.489/2009 or in C.Mis.No.296/2008, anywhere, taken a stand that the marriage with the respondent was null and void as she was suffering with some medical ailment.

On the other hand, it is only after admitting his marriage with the respondent which was performed on 08-06-2003, he has instituted a matrimonial case in M.C.No.489/2009, seeking relief of dissolution of marriage. Had the case of the petitioner been that the marriage, at its very inception, was invalid in the eye of law, then, he would have definitely filed a petition seeking the relief of declaration to declare that their marriage was null and void in the eye of law. On the other hand, as already observed, it is after admitting his marriage with the present respondent only, he has instituted a petition under Section 13 (1)(i-a) of the H.M. Act. Therefore, the first point of argument of the learned counsel for the petitioner

that, the petitioner disputed the very marriage as a valid marriage with the respondent, as such, he is not liable to pay any maintenance to the respondent, is not acceptable.

14. The second point of argument of the learned counsel for the petitioner is that, the respondent (wife) by suppressing her medical incapacity to conceive or to lead a happy marital life, has ruined the life of the petitioner, as such, he is not liable to pay any maintenance. The said argument of the learned counsel, at the threshold itself is liable to be rejected, since the said attitude of the husband if he maintains the same, is nothing but a revenge of a person against another person for no valid reason. Such a revengeful attitude finds no place in the law, rather, it diminishes the character or conduct of the petitioner who has exhibited such kind of revengeful attitude.

In addition to that, there is nothing on record to show that, she had intentionally suppressed any vital aspect from her husband only to cause any harm to him or ruin his life. In such a situation, merely because the husband thinks that his life was ruined, it cannot be a reason for depriving the wife who claims to be unable to maintain herself. As such, the said point of

argument of the learned counsel for the petitioner, is also not acceptable.

15. Thirdly, the learned counsel for the petitioner also canvassed a point that the petitioner husband is financially not sound to maintain his wife, since he is already looking after his aged mother, for which his income could be appropriated completely.

However, the said argument of the learned counsel for petitioner is strongly opposed by the learned *Amicus Curiae* for the respondent, who, while drawing the attention of the Court to some portion of the evidence of PW-1, submitted that, admittedly, the present petitioner husband is running two tailoring shops at K.R. Pura, Bangalore, having a daily earning of a sum of ₹3,000/- to ₹5,000/-. Further, he has also employed five workers to work under him. PW-1 has also stated that apart from the same, the petitioner has got immovable property also in the form of residential sites and that he has no dependents. PW-1 has further stated that, the brother of her husband is also working and their mother gets pension as her husband was a Government employee.

The present petitioner (husband) has not denied that he is pursuing his avocation as a tailor and has got two tailoring shops, where he has engaged few workers also to work under him. He has also not denied that he has got an earning brother and their mother is the wife of a retired employee, as such, she is receiving the family pension. Irrespective of the same, the present petitioner, has since once admitted his marital relationship with the present respondent, as on the date of the institution of the C.Misc.No.296/2008, and admitted that she is his wife, then, it would be his duty to maintain her, provided if it is convinced to the Court by the wife that she is unable to maintain herself. Therefore, it cannot be accepted that the petitioner himself was in financial inconvenience or difficulty, as such, he cannot maintain his wife.

16. Fourthly, it was also the argument of the learned counsel for the petitioner that the present age of the petitioner is about 52 years, as such, his future prospects about the marital life is also bleak, which also prevents him from giving any maintenance to his wife.

Learned *Amicus Curiae* for the respondent, while rebutting the said argument submitted that, it is not the pleasure of the

respondent husband that matters in a petition for maintenance, but, it is his legal obligation which requires to be considered while ordering for maintenance.

I find more force in the said argument of the learned *Amicus Curiae*.

Giving maintenance to the wife is not merely a pleasure for the husband but it is the duty of the husband to maintain his wife, who herself is unable to maintain herself. In such a situation, if the wife has satisfied that she has got a valid reason to live separately or live away from her husband and when, she is unable to maintain herself, then it would be the duty of the husband to maintain her.

17. In the instant case, the Family Court has after a detailed reasoning, given a finding that the alleged medical inconvenience being faced by the wife and the ill-treatment meted to her in the matrimonial home made her to stay away from her husband which was also not objected to by her husband. On the other hand, the husband himself volunteered to institute a petition for dissolution of marriage, which, as observed above, has resulted in deciding in his favour, dissolving

the marriage which was solemnized on 08-06-2003. Therefore, it is clearly shown that the present petitioner as husband of the respondent wife had neglected to maintain her.

18. Lastly, an attempt was also made from the learned counsel for the petitioner stating that, admittedly, the respondent wife is a double Graduate woman in her educational qualification, as such, she can fetch her livelihood on her own, without troubling the petitioner husband for maintenance.

Learned *Amicus Curiae* for the respondent wife submitted that, mere educational qualification or a person having a higher educational qualification would not by itself make that person as self-sustainable, having ability to earn her livelihood. She further submitted that, though the present respondent as wife may have capacity to earn, but she has been unable to earn her livelihood, admittedly, for various reasons including medical reasons. As such, it is the duty of the present petitioner husband to maintain her.

19. Section 125 (1) of the Code of Criminal Procedure, 1973, 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.*

Section 125 (1)(a) and (b) of the Cr.P.C. more clearly mentions that, it is not the capacity of the wife or the children which entitles them for claiming maintenance, but, it is their inability to maintain themselves.

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 be possessing some educational qualification, which may fetch her some job or employment that she can be denied maintenance.

20. Though a person may have eligibility to be appointed in a post in any public office or may have a good educational qualification, but still, he/she may be unable to earn his/her livelihood because of lack of any employment or any inability to earn. It is in that context, the facts and circumstances of each and every case has to be analysed.

21. In the facts and circumstances of the case on hand, though the present respondent is shown to be an M.A., M.Ed., graduate, but still, as observed above, and as has come out in her evidence, she could not get any job, which also has not been seriously considered by the petitioner husband. As such, it is also demonstrated by her that, she was unable to maintain herself.

It is after considering all these aspects, the learned Family Court, after analysing the materials placed before it in its proper perspective, has arrived at a finding that, the petitioner before it, i.e. the wife was entitled for maintenance and the respondent therein (petitioner herein) was liable to pay maintenance to his wife (respondent herein) at the rate of ₹3,000/- per month from the date of the said petition.

22. Considering the facts and circumstances of the case, the quantum of maintenance ordered by the Family Court also appears to be not excessive or exorbitant. I do not find any perversity, illegality or error, warranting any interference in the impugned order.

Accordingly I proceed pass the following:

ORDER

The Revision Petition is **dismissed as devoid of merits.**

The Court, while acknowledging the service rendered by the learned *Amicus Curiae* for the respondent – Smt. Archana K.M., recommends honorarium of a sum of not less than ₹4,000/- to her, payable by the Registry.

Registry to transmit the Family Court records to the concerned Court without delay.

**Sd/-
JUDGE**

BMV*