



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 1<sup>ST</sup> DAY OF FEBRUARY, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**WRIT PETITION NO. 20737 OF 2021 (GM-FC)**

**BETWEEN:**

1. SRI PUNARVASU @ VASU

...PETITIONER

(BY SRI. R. KUMAR, ADVOCATE)

**AND:**

1. SMT INDRANI S

2. AGNAY GOWDA P

Digitally signed  
by PADMAVATHI  
B K  
Location: HIGH  
COURT OF  
KARNATAKA





RESIDENT WITH 1ST PETITIONER

...RESPONDENT

(BY SRI. TRIVIKRAM S., ADVOCATE)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH OR SET ASIDE THE ORDER DT 18.09.2021 PASSED BY THE PRINCIPAL JUDGE, FAMILY COURT, MYSORE IN C.MIS.NO.319/2021 VIDE ANNEXURE-E.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner is before this Court calling in question an order dated 18.09.2021 passed by the Principal Judge, Family Court, Mysore in C.Mis.No.319/2021.

2. Heard Sri. R. Kumar, learned counsel appearing for the petitioner and Sri. Trivikram S., learned counsel appearing for the respondent.

3. Brief facts that leads the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:



The petitioner is the husband and the respondent-wife, the two get married on 24.11.2014 and the relationship turning sore, are before the concerned Court seeking annulment of marriage.

It transpires that the respondent-wife has instituted several proceedings against the husband one being setting the criminal law in motion in Crime No.62/2021 for offences punishable under Sections 504, 323, 498A read with Section 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. Later, the respondent-wife files a petition under Section 125 of the Cr.P.C. in C.Mis.No.319/2021 seeking maintenance from the hands of the husband, the petitioner. The petitioner filed his objections on 18.09.2021. The concerned Court in terms of the order impugned dated 18.09.2021 directs Rs.6,000/- maintenance to be paid to the wife and Rs.4,000/- maintenance to be paid to the child, which is born from the wedlock, who at that point in time was 2 years old.

4. This Court entertaining the petition had granted an interim order directing the petitioner to pay Rs.7,500/- as against Rs.10,000/- which would be subject to the result of the



subject petition and therefore, the petitioner has paid Rs.7,500/- to the wife from the date of the interim order.

5. Learned counsel appearing for the petitioner submits that he is not in a position to pay any maintenance to the wife as he is himself suffering from several ailments and is not earning more than Rs.15,000/- per month for him to pay maintenance of Rs.10,000/- to the wife and the child. He would submit that with great difficulty, the arrears according to him have been cleared as on date.

6. Learned counsel appearing for the respondent-wife would refute the submissions to contend that the petitioner has landed properties and those are looked into by the concerned Court by directing payment of paltry sum of Rs.6,000/- to the wife and Rs.4,000/- to the child, who was then 2 years old and he is now 4 years old and would submit that the petitioner is still in arrears of payment of maintenance as what he is paid is Rs.7,500/- from the date of the interim order and not any payment from the date of the impugned order.



7. I have given my anxious consideration to the respective submissions made by the learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. Several proceedings instituted by the wife against the husband is again not in dispute. The wife files a petition under Section 125 of the Cr.P.C. seeking maintenance for herself and the child born out of the wedlock. The concerned Court after considering the averments made in the petition and the objections, awards maintenance of Rs.6,000/- to the wife and Rs.4,000/- to the child as an interim measure.

9. The contention of the learned counsel appearing for the petitioner that he is not in a position to even pay Rs.10,000/- maintenance *sans* countenance, as the petitioner who is an able-bodied man has to take care of the wife and the child, if he has no avocation, by finding an avocation. The amount Rs.6,000/- and Rs.4,000/- to the wife and the child is not so exorbitant for the petitioner has to wash off his responsibility of taking care of the wife and his child. The submission that he is himself suffering from certain liver



diseases is without substance, as no document is produced to demonstrate that he is suffering from certain liver diseases, which does not permit him to work at all.

10. Even the document that is now handed over in the Court with regard to diagnosis of chronic liver disease would not inspire any confidence for this Court to intervene on the grant of such paltry sum of Rs.6,000/- to the wife and Rs.4,000/- to the child. The acceptance of the submissions of the petitioner would amount to rendering a finding contrary to the judgment of the Apex Court in the case of **ANJU GARG AND ANOTHER V. DEEPAK KUMAR GARG**<sup>1</sup>, wherein the Apex Court has held as follows:

***"10. This Court had made the above observations as the Court felt that the Family Court in the said case had conducted the proceedings without being alive to the objects and reasons, and the spirit of the provisions under Section 125 of the Code. Such an impression has also been gathered by this Court in the case on hand. The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute. In Chaturbhuj v. Sita Bai<sup>2</sup>, it has been held that the object of***

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<sup>1</sup> 2022 SCC OnLine SC 1314



***maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India.***

11. The Family Court, in the instant case had not only over-looked and disregarded the aforesaid settled legal position, but had proceeded with the proceedings in absolutely pervert manner. The very fact that the right of the respondent to cross-examine the witnesses of the appellant-original applicant was closed, as he had failed to appear before the Family Court despite the issuance of warrants, clearly established that he had no regards for his own family nor had any regards for the Court or for the law. The allegations made by the appellant-wife in her evidence before the Court had remained unchallenged and, therefore, there was no reason for the Family Court to disbelieve her version, and to believe the oral submissions made by the learned counsel appearing for the respondent which had no basis. ***In absence of any evidence on record adduced by the respondent disputing the evidence adduced by the appellant, the Family Court could not have passed the order believing the oral submissions of the learned counsel for the respondent. She had clearly stated as to how she was harassed and subjected to cruelty by the respondent, which had constrained her to leave the matrimonial home along with her children, and as to how the respondent had failed and neglected to maintain her and her children. She had also proved by producing the documentary evidence that her father had paid money to the respondent from time to time to help the respondent for his business. Even if the allegations of demand of dowry by the respondent were not believed, there was enough evidence to believe that money was being paid to the respondent by the father of the appellant-wife, which substantiated her allegation that the respondent was demanding money from her father and was subjecting her to harassment. The errant respondent had also gone***



**to the extent of questioning her chastity alleging that Rachit was not his biological son. There was nothing on record to substantiate his such baseless allegations. His application for DNA test was also rejected by the Family Court. Of course, the Family Court granted the Maintenance petition so far as the appellant no. 2-son was concerned, nonetheless had thoroughly mis-directed itself by not granting the maintenance to the appellant-wife.**

12. Such an erroneous and perverse order of Family Court was unfortunately confirmed by the High Court by passing a very perfunctory impugned order. The High Court, without assigning any reasons, passed the impugned order in a very casual manner. This Court would have remanded the matter back to the High Court for considering it afresh, however considering the fact that the matter has been pending before this Court since the last four years, and remanding it back would further delay the proceedings, this Court deemed it proper to pass this order.

13. Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child. **Having regard to the evidence of the appellant-wife before the Family Court, and having regard to the other evidence on record, the Court has no hesitation in holding that though the respondent had sufficient source of income and was able-bodied, had failed and neglected to maintain the appellants. Considering the totality of facts and circumstances, we deem it proper to grant maintenance allowance of Rs. 10,000/- per month to the appellant-wife, over and above the maintenance allowance of Rs. 6,000/- granted by the Family Court to the appellant no. 2-son.**

14. It is accordingly directed that the respondent shall pay maintenance amount of Rs. 10,000/- per month to the appellant-wife from the date of filing of her Maintenance Petition before the Family Court. The entire





*amount of arrears shall be deposited by the respondent in the Family Court within eight weeks from today, after adjusting the amount, if any, already paid or deposited by him."*

*(emphasis supplied)*

For the aforesaid reasons, finding no merit in the petition, the petition stands dismissed.

Any other claim with regard to arrears of maintenance shall be agitated before the concerned Court by the respondent-wife.

**SD/-  
JUDGE**

SJK  
List No.: 1 Sl No.: 6