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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 24226 OF 2022 (GM-FC)

BETWEEN:

1. SRI. N. GIRISH
S/O SRI. NARAYANASWAMY,
AGED ABOUT 27 YEARS,
R/AT SALUHUNASE VILLAGE,
UDAYAPURA POST,
KANAKAPURA MAIN ROAD,
BENGALURU SOUTH TALUK,
BENGALURU-560 082.

...PETITIONER

(BY SRI. SHIVARAJU M.K., ADVOCATE)

AND:

1. SMT. M. KUSUMA
D/O SRI. MUNIRAJU,
W/O SRI. N. GIRISH,
AGED ABOUT 24 YEARS,
R/AT NO.172, 1ST CROSS,
PUTTENAHALLI, 7TH PHASE,
J.P. NAGAR, BENGALURU-560 078.

...RESPONDENT

(BY SRI. MADHU R., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF
THE CONSTITUTION OF INDIA PRAYING TO- CALL FOR THE



ENTIRE RECORDS ON THE FILE OF THE 4TH ADDITIONAL SENIOR CIVIL JUDGE BENGALURU RURAL DISTRICT AT BENGALURU AND ETC.,

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

ORDER

The petitioner / husband is before this Court calling in question order dated 31-10-2022 rendered by the 4th Additional Senior Civil Judge, Bangalore Rural allowing I.A.No.1 filed by the respondent /wife under Section 24 of the Hindu Marriage Act ('the Act' for short) seeking maintenance and litigation expenses in M.C.No.78 of 2021.

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

The petitioner and the respondent are husband and wife who get married on 06-02-2017. On their relationship turning sour, it appears that the respondent/wife leaves the matrimonial house and begins to reside with her parents. Later the husband institutes a petition under Section 13 (1)((i-a) and (i-b) of the Act in M.C.No.78 of 2021 seeking a decree of



divorce against the wife. The wife in turn has instituted proceedings under Section 9 of the Act seeking restitution of conjugal rights. The issue in the case at hand is not with regard to merit of claims of the petitioner or the respondent qua their marriage.

3. Before the concerned Court the respondent/wife files an application in I.A.No.1 on 10-11-2021 in M.C.No.78/2021, under Section 24 of the Act, seeking grant of interim maintenance at Rs.25,000/- per month and litigation expenses at Rs.1,00,000/- from the hands of the husband. The petitioner/husband objects to the said application contending that he has no means to survive, but does not stop at that, files another application to counter the application filed by the wife, contending that he is in need of interim maintenance from the hands of the wife, to maintain himself and his parents in I.A.No.2, seeking monthly maintenance of Rs.2,00,000/- and litigation expenses at Rs.30,000/- from the wife, till the disposal of the petition. The concerned Court in terms of its common order dated 31-10-2022 allows the application in I.A.No.1 filed by the wife and rejects the application in I.A.No.2



filed by the husband and grants maintenance of Rs.10,000/- and litigation expenses at Rs.25,000/- to the wife. While so rejecting the application filed by the petitioner, the Court imposes costs upon the husband for filing the application seeking maintenance from the hands of the wife. It is this common order that drives the petitioner to this Court in the subject petition.

4. Heard Sri. M.K. Shivaraju, learned counsel appearing for the petitioner and Sri R.Madhu, learned counsel appearing for the respondent.

5. The learned counsel appearing for the petitioner/husband would contend with vehemence, that though he has challenged the order granting interim maintenance to the wife, the application filed by the husband ought to have been considered, as he has no means to maintain himself, let alone maintaining the wife. He would contend that the concerned Court has grossly erred in allowing the application filed by the wife and rejecting the application filed by the husband.



6. On other hand, the learned counsel representing the respondent/wife would refute the submissions to contend that the petitioner is working and earning close to Rs.50,000/- to Rs.60,000/- a month and also seeks to place on record photographs of the place and nature of work of the petitioner *qua* the employment of the petitioner, to contend that the Court has rightly rejected the application filed by the husband and allowed the application filed by the wife.

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

8. The afore-narrated facts are not in dispute and therefore require no reiteration. Though the challenge is to the award of maintenance to the wife, by the husband, vehement submissions are made with regard to the husband being unable to maintain his wife and requiring maintenance himself from the wife, I deem it appropriate to consider the same noticing the provision under which maintenance is claimed under the Act. Section 24 of the Hindu Marriage Act reads as follows:



"24. Maintenance pendente lite and expenses of proceedings.—Where in any proceedings under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be."

(Emphasis supplied)

Section 24 directs that in any proceeding under the Act if it appears to the Court that either the wife or the husband, as the case would be, has no independent and sufficient income to support themselves, the Court may on an application filed by the wife or the husband order payment of expenses of the proceedings and monthly maintenance as the court would deem reasonable. On a plain reading of Section 24 it depicts that the provision is gender neutral. Maintenance pending proceedings,



can be claimed either by the wife or the husband. But, whether it can be granted to the husband is what is to be considered.

9. The husband institutes proceedings seeking annulment of marriage and the respondent/wife files application under Section 24 of the Act seeking interim maintenance and litigation expenses from the husband. The husband puts up vehement opposition and later when the hearing on the application was under progress, comes up with a novel idea, to file an application under Section 24 of the Act himself claiming maintenance to counter the application of the wife.

10. It is the claim of the husband and he has become unemployed on the onset of Covid-19 and for the last two years he is not able to find a job and, therefore, no maintenance should be awarded to the wife, but in turn, should be awarded to him, from the hands of the wife. This plea is made on the ground that the parents of the wife are well off and that the wife has instituted several proceedings against the husband including registration of a crime, in Crime No.104 of 2022,



against him and his family members alleging offences punishable under Sections 498A, 323, 504, 506 of IPC and Section 3 and 4 of the DP Act and he has to meet those litigation expenses. Therefore, it is he who is in need of maintenance and not the wife is the contention.

11. The Court considers the respective affidavits filed, also notices the affidavit filed by the wife which depicts that the husband is working as a Senior Executive and earning a salary of Rs.50,000/- per month and gets monthly rent out of the properties rented out to the tune of Rs.75,000/- per month, and rejects the application of the husband and allows the application filed by the wife. The order of the concerned Court reads as follows:

"16. Both sides have filed assets and liabilities, but both sides have failed to produce documents to show that either wife or husband earns so and so rupees except bald statements and objections.

- *Both sides mentioned about fathers' properties, which cannot be considered while deciding an application filed under Section 24 of HM Act.*
- *The both husband and wife should have mentioned how much amount is required for food, cloth, medical expenses and for shelter and even for unexpected future expenditures.*



- *Based on bald statements Court cannot accept the statements of both sides.*

17. *To decide the interim applications the Court has to keep in mind the status of parties, reasonable wants of spouse, independent income and property of the claimant which are the relevant factors which are to be taken into consideration.*

18. *As per both sides statement, the husband and wife are depending upon their respective parents for their eke-out.*

19. *As per pleadings both are having able body capable to earn independently.*

20. *It is true Section 24 of HM Act is a beneficial legislation and gender neutral Act, it empowers either husband or wife can seek monthly maintenance and also litigation expenses.*

21. *The Court holds that husband's application amounts to action to re-action because the husband filed an application number 2 on 18-08-2022 seeking monthly maintenance of rupees 2,00,000/- and litigation expenses of rupees 30,000 after lapse of nearly 9 months from when the wife filed an application on 10-11-2021 seeking interim maintenance of Rs.1,00,000/- and also litigation expenses of rupees 25,000/-.*

22. *The IA No.2 filed by husband it's a kind of counter blast to interim application number one in the statement made by husband which says just because after filing this petition wife slapped criminal cases so in order to defend those cases he needs an advocate therefore, he is in dire need of litigation expenses.*



23. Regarding maintenance, he says after pandemic no job was offered to him or he could not get any job. If really these statements were true along with the petition husband should have filed IA.No.II. This petition was filed on 1-01-2021, it means on the date of petition, though pandemic was in peak he was capable to earn, there but after filing this became he became jobless person. It shows an after though application is being filed. Further, when the husband having able body, it is presumed that he has the capacity to earn and looked after his wife.

24. The learned counsel for respondent wife files the following citations **Criminal Appeal No.1693/2022 dated 28-09-2022 (Anju Garg and another v. Deepak Kumar Garg) M.F.A. No.1797 of 20221 (MC) dated 1.07.2022 (Sri T.Sadanada Pai v/s Mr. Sujatha S.Pai)** The citations speak that when the husband having able body, it is presumed that he has the capacity to earn and looked after his wife. The husband cannot say he does not have any job even by doing as bonded labour he should maintain his wife.

25. Therefore, Court holds averments made in the application by husband that he is incapable and jobless person, hence wife has to maintain him is bizarre statement and afterthought application has been filed by misusing Section 24 H.M. Act by him. Hence he should be hammered with iron rod therefore his application is rejected with cost of rupees 10,000/-. The cost to be paid to wife bye next date of hearing, otherwise his petition will be dismissed for non-payment of above said amount. **Accordingly the point No.1 is answered in the negative.**

26. **Point No.ii:** In view of point No.i is answered in the negative and even wife failed to produce any documents to show the income of her husband to claim interim maintenance of Rs.1,00,000/- and also litigation expenses of rupees 25,000/-. But being a husband his



bounded and duty to look after his wife as long as he alive and maintains hale and healthy body and as long as wife id incapable to maintain herself.

27. As per cause title of the petition, the husband is aged about to 28 years and wife is aged about 25 years by considering the present year, it means both are young couple and even on perusing the petition and counterclaim averments for small issue both failed to come to right conclusion. Even before taking up this matter, the matter was referred to mediation and even in open court may times this court as well as learned **counsel for both parties made attempt to reunion them. Though wife was eager to join husband, but husband refused, therefore, the medication was failed.**

28. Moreover there is no disability factors from husband's side and even failed to produce any materials to show that wife is capable to earn herself. At this stage, court holds there are no grounds to desert his wife when wife eager to join him and just because without his permission she attended his sister's child's birthday cannot be ground for desert. It becomes child's play.

29. As stated above it is the bounden duty of husband to look after his estranged wife. It is not his case that he assisted his wife financially. Further due to non-producing of documents to show the income of wife, at least, the minimum supporting amount is to be paid by husband till he gets the relief what he has sought. To claim Rs.1,00,000 as monthly maintenance, the wife failed to give details therefore if rupees 10,000 is ordered for food, cloth, medicine and shelter to wife, the justice will be done by considering the present living cost and also by considering the economic status of husband, because even by considering minimum rupees 1000 per day.



30. Regarding litigation expenses what the wife seeks proper and correct by considering the present litigation expenses, she is entitled to rupees 25,000/- because she has to defend and contest petition as well as counterclaim. Any observation made in this order shall not be taken granted especially wife. **Accordingly point number two is answered in party affirmative** and I proceed to pass the following:"

(Emphasis supplied)

The Court rejects the application filed by the husband imposing costs of Rs.10,000/- and allows the application filed by the wife by awarding interim maintenance at Rs.10,000/- and litigation expenses at Rs.25,000/- from December, 2021 till the disposal of the petition. The contention that the petitioner has no job and has no means to maintain himself and, therefore, is not in a position to maintain the wife and in turn wants maintenance from the wife, is unacceptable as it is fundamentally flawed.

12. It is not in dispute that the petitioner is an able bodied man and does not suffer from any disability or infirmity. That being the case, if maintenance is awarded to the husband as is claimed from the hands of the wife, merely because Section 24 of the Act is gender neutral for grant of



maintenance, it would be promoting idleness notwithstanding the fact that the husband has no impediment or handicap to earn. Merely because he has lost his job on the onset of Covid-19, it cannot be held that he is incapable of earning. Therefore, it can be irrefutably concluded that the husband by his own conduct has decided to lead a leisurely life by seeking maintenance from the hands of the wife. In the considered view of this Court, such an application cannot be granted, as the husband cannot afford to incapacitate himself and sustain an application under Section 24 of the Act to claim maintenance from the hands of the husband. This would be an anathema to the spirit of Section 24 of the Act. Therefore, the husband cannot seek any maintenance unless he would demonstrate such disability either physical or mental which incapacitates him from earning money by finding a job for himself. It is in fact the duty of an able bodied husband to maintain himself, the wife and the child, if any.

13. The aforesaid view of mine, in this regard, is fortified by the judgment rendered by the Apex Court in the case of

**ANJU GARG AND ANOTHER v. DEEPAK KUMAR GARG –**

2022 SCC OnLine SC 1314, wherein it is 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, it has been held that the object of 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)

The Apex Court holds that, if the husband is an able bodied man, he cannot project the *plea* that, he has no means to pay. It is necessary for any husband to earn by legitimate means and maintain the wife and, the children, if any.



14. Therefore, I do not find any warrant of interference with the order passed by the concerned Court directing maintenance to be paid by the husband to the wife and rejection of the claim of the petitioner/husband that he is in need of maintenance from the hands of the wife. The petitioner/husband must remember that '***it is better to wear out; than rust out'.***

15. In the result, the petition lacking in merit, stands dismissed.

**SD/-
JUDGE**

JY