

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

CRIMINAL PETITION No.7582 OF 2022

BETWEEN:

(BY SRI VIKAS M., ADVOCATE)

... PETITIONER

AND:

(BY SRI GOVINDARAJU D.J., ADVOCATE)

... RESPONDENT

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE IMPUGNED ORDER DATED 11.07.2022 PASSED IN CRL.MISC.NO.625/2021 ON THE FILE OF IV

ADDITIONAL PRINCIPAL FAMILY JUDGE, MYSURU, PARTLY ALLOWING I.A. NO.2 FILED U/S 125(1) OF CR.P.C.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.09.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order dated 11-07-2022 passed in Criminal Miscellaneous No.625 of 2021 pending before the IV Additional Principal family Judge, Mysore in an application filed under Section 125(1) of the Cr.P.C.

2. Heard Sri M. Vikas, learned counsel appearing for the petitioner and Sri D.J. Govindaraju, learned counsel appearing for the respondent.

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

The petitioner aged 66 years old and the respondent aged 60 years old got married on 13-03-2020 when they were 64 and 58 years old respectively. The averments in the petition are that the petitioner was wanting a companion and the respondent, a divorcee

was also wanting a companionship and accordingly by mutual consent got married. On 29-04-2020 the innings of the couple began and on 29-05-2020 the respondent deserted the petitioner and leaves the matrimonial home. After leaving the matrimonial home after staying for one month, the respondent institutes two proceedings – one seeking divorce from the hands of the petitioner and the other under Section 125 of the CrPC seeking maintenance. It appears that the petition seeking divorce in M.C.No.424 of 2021 was withdrawn by the complainant. The criminal miscellaneous petition so filed seeking maintenance is considered on a application filed under Section 125(1) of the CrPC and an order is passed directing payment of interim maintenance of Rs.7,000/- per month from the date of the application till disposal of the petition. The petitioner challenges the said order before this Court in the subject petition.

4. The learned counsel appearing for the petitioner submits that interim maintenance is to be paid to a wife who has been neglected and deserted by the husband, but even as on date the petitioner is ready and willing to welcome the respondent back and

lead a happy married life as both of them got married only for companionship and would submit that despite these submissions interim maintenance is granted by the trial Court and the divorce case filed is also withdrawn by the respondent.

5. On the other hand, the respondent would refute the submissions to contend that though she stayed for a month with the petitioner it becomes impossible for her to live with him as he was constantly harassing the respondent/wife and therefore, a notice was caused upon the petitioner prior to registration of the claim for divorce which was also replied to by the petitioner. The affidavit on assets and liabilities of the respondent is also filed before the concerned Court as is necessary in law. Therefore, the counsel for the respondent would submit that the subject petition be dismissed and interim maintenance so awarded be confirmed.

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

7. The factum of marriage between the petitioner and the respondent on 13-03-2020 is not in dispute and the wife/ respondent begins to live with the petitioner on 29-04-2020 and leaves the matrimonial house a month thereafter is also not in dispute. The allegation of the wife is constant torture from the hands of the husband and therefore she has left the house. Both the proceedings are instituted by the wife against the petitioner – one seeking divorce in M.C.No.424 of 2021 and the other seeking maintenance in Criminal Miscellaneous No.625 of 2021. The divorce petition being withdrawn by the wife is of no avail as the wife is still in the matrimonial fold with the husband. So long as the respondent remains a legally wedded wife of the petitioner and the fact that she has been deserted by the husband, interim maintenance is a matter of right to the wife.

8. The order of the trial Court on an application filed by the wife under Section 125(1) CrPC cannot be taken exception merely because the petitioner is ready and willing to take her back. If that be so, the petitioner could have preferred a petition for restitution conjugal rights, which he has not preferred till date. So long as the

respondent remains the wife, it is the duty of the petitioner to maintain his wife. Any other interpretation that the learned counsel for the petitioner would seek to render to the provision i.e., Section 125 of the CrPC or the order passed by the concerned Court answering the application under Section 125(1) of the CrPC would defeat the object of the provision itself. The petitioner has not placed on record his assets or liabilities. The amount of maintenance awarded is Rs.7,000/-. The Court while awarding such maintenance has taken note of the fact that the petitioner and the respondent both are senior citizens. The reason rendered by Family Court reads as follows:

*"10. It is relevant to note that the allegation made by both the parties against each other has to be looked into only after full pledged trial. At this stage, it is to be taken into consideration that the respondent is admitted that he is legally wedded husband of the petitioner and he has also admitted that the petitioner is residing separately in Bangalore with her sister. Further, it is admitted that the petitioner had filed a petition for divorce which is numbered as M.C.No.424 of 2021. No doubt, the respondent has not denied the fact that since 29-05-2020 the petitioner is living separately from the respondent and there is no contact between them. Further, the respondent has specifically stated that he is aged about 67 years and he is not having any source of income to pay interim maintenance to her. In this regard, **it is very important to note that, maintenance laws have been enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support,***

so as to prevent them from falling into destitution and vagrancy. So, the respondent, being the legally wedded husband of the petitioner, he has the bounden duty to maintain his wife. Further, the petitioner has produce documents such as certified copy of Partition Deed pertaining to the lands belonging to the respondent and mutation register extract. These documents show that during the family partition, the respondent was allotted the land of more than 5 acres to his share. On the other hand, the respondent has denied that he is an LIC agent. Further, it is to be taken into consideration that the respondent is a senior citizen, who is aged about 67 years, and the petitioner is also aged about 60 years. Hence, this Court is of the clear view that, the respondent being the legally wedded husband of the petitioner, he has the bounden duty to maintain his wife. Accordingly, if the respondent is directed to pay an interim maintenance of Rs.7,000/- per month pending disposal of the petition, then it will meet the ends of justice. Hence, I answer the above point accordingly. Consequently, I proceed to pass the following:

ORDER

I.A.No.2 filed by petitioner U/Sec.125(1) of Cr.P.C. is hereby allowed in part.

The respondent is directed to pay interim maintenance of Rs.7,000/- (Rupees seven thousand only) per month to the petitioner from the date of application pending disposal of the petition."

(Emphasis added)

A perusal at the reason so rendered would demonstrate application of mind on the part of the learned Judge to the issue before him and by balancing the right of both the petitioner and the respondent has awarded a sum of Rs.7,000/- to be paid to the respondent as interim maintenance. The reasons rendered are cogent and

coherent which would not call for any interference at the hands of this Court.

9. Finding no merit in the petition, the petition stands dismissed.

**Sd/-
JUDGE**

bkp
CT: MJ