



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 25TH DAY OF OCTOBER, 2023
BEFORE
THE HON'BLE MR JUSTICE M.NAGAPRASANNA
WRIT PETITION NO. 20801 OF 2022 (GM-FC)**

BETWEEN:

...PETITIONER

(BY SMT. NAGARATHNA S K, ADVOCATE)

AND:

...RESPONDENT

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER PASSED BY THE PRL. JUDGE, FAMILY COURT AT MYSURU IN M.C.145/2022 DATED 03.09.2022 ON I.A.II VIDE ANNEXURE-E AND ETC.,

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

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PADMAVATHI
Location: HIGH
COURT OF
KARNATAKA



ORDER

The petitioner is before this Court calling in question an order dated 03.09.2022 passed in M.C.No.145/2022 on an application filed under Section 24 of the Hindu Marriage Act, 1955 ('the Act for short) seeking interim maintenance from the hands of the husband.

2. Heard Smt. Nagarathna S.K., learned counsel appearing for the petitioner.

3. The petitioner is the husband and the respondent is wife. The two get married on 02.03.2020. It transpires that the relationship between the husband and the wife flounders and on floundering of such relationship, the parties were before the Family Court in M.C.No.145/2022. The issue in the *lis* does not concern the proceedings before the concerned Court. The wife files an application under Section 24 of the Act seeking interim maintenance at the hands of the husband and also files an affidavit of assets and liabilities, as is required in law. The concerned Court in terms of order impugned, after verification and consideration of assets and liabilities so filed, grants an



interim maintenance of Rs.10,000/- to the wife. It is this order that is called in question by the petitioner before this Court.

4. I have given my anxious consideration to the submissions made by the learned counsel appearing for the petitioner and have perused the available material on record.

5. The learned counsel appearing for the petitioner would contend that the husband has lost his job and the Court comes to conclude that an amount of Rs.50,000/- is earned by the husband erroneously and therefore, in the light of him not having a job as on date cannot be directed to be paid a maintenance of sum of Rs.10,000/-, which has become difficult for him to even consider such payment.

6. The afore-narrated facts are not in dispute. The petitioner and the respondent, husband and wife being before the concerned Court in M.C.No.145/2022 is a matter of record. The respondent - wife files an application under Section 24 of the Act seeking interim maintenance and also files an affidavit of assets and liabilities, as was required in terms of the judgment of the Apex Court in the case of **RAJNESH Vs.**



NEHA¹. The concerned Court after considering by its recent order, grants maintenance of Rs.10,000/- per month to be paid by the husband to the wife. The submission of the learned counsel that the husband has lost his job and cannot be directed to pay maintenance is noted only to be rejected, as the husband being an able bodied man is expected to work and take care of the wife. Any interference of the order that is impugned would run foul of the judgment of the Apex Court in the case of Apex Court in the case of **ANJU GARG AND ANOTHER Vs. DEEPAK KUMAR GARG**², wherein at paragraphs 10 to 14 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 Chaturbhuji v. Sita Bai**², 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*

¹ (2021)2 SCC 324

² 2022 SCC Online SC 1314



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)

7. In the light of the facts obtained in the case at hand and also the judgment rendered by the Apex Court, I do not find any merit to interfere with the order of grant of maintenance to the wife at the hands of husband. Petition stands dismissed.

**Sd/-
JUDGE**

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List No.: 1 Sl No.: 12
CT:BHK