

Ambujay @ Sagar And Ors vs The State Of Karnataka And Anr on 3 January, 2024

Author: Rajendra Badamikar

Bench: Rajendra Badamikar

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NC: 2024:KHC-K:80
CRL.P No.201709 of 2023

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 3RD DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL PETITION NO.201709 OF 2023 (482)

BETWEEN:

1. AMBUJAY @ SAGR
S/O SHRIKANT SURYAVANSHI,
AGE: 32 YEARS, OCC: DRIVER,
R/O M.B. PATIL NAGAR,
VIJAYAPURA,
TQ. AND DIST. VIJAYAPURA.
2. NANDA W/O SHRIKANT SURYAVANSHI,
AGE: 56 YEARS, OCC: HOUSEHOLD,
R/O M.B. PATIL NAGAR,
VIJAYAPURA,
TQ. AND DIST. VIJAYAPURA.
3. SHRIKANT
S/O SHIVARAM SURYAVANSHI,
AGE: 66 YEARS, OCC: RETIRED GOVT. SERVANT,
R/O M.B. PATIL NAGAR,
VIJAYAPURA,
TQ. AND DIST. VIJAYAPURA.

Digitally signed by
SHILPA R
TENIHALLI
Location: HIGH
COURT OF
KARNATAKA

4. SACHIN S/O SHRIKANT SURYAVANSHI,
AGE: 34 YEARS, OCC: DRIVER,
R/O M.B. PATIL NAGAR,
VIJAYAPURA,
TQ. AND DIST. VIJAYAPURA.

...PETITIONERS

(BY SMT. JAYASHREE P., ADVOCATE FOR
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NC: 2024:KHC-K:80
CRL.P No.201709 of 2023

SRI RATHOD SUBHASCHANDRA DESU, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH PI VIJAYAPUR WOMEN PS.,
REP. BY ADDL. SPP,
HIGH COURT OF KARNATAKA,
AT KALABURAGI BENCH-585102.
2. SMT. AKSHATA
W/O AMBUJAY @ SAGAR SURYAVANSHI,
AGE: 26 YEARS, OCC: HOUSEHOLD,
R/O M. B. PATIL NAGAR,
NOW AT SANGAMEHSWAR NAGAR,
MUDDEBIHAL,
TQ. MUDDEBIHAL,
DIST. VIJAYAPUR-586212.

...RESPONDENTS

(BY SRI JAMADAR SHAHABUDDIN, HCGP FOR R1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS OF
VIJAYAPUR WOMEN PS IN CRIME NO.153/2023 AGAINST THE
PETITIONERS FOR THE OFFENCES PUNISHABLE UNDER
SECTIONS 498-A, 323, 504, 506 R/W 34 OF IPC AND SECTION
4 OF THE D.P. ACT, PENDING ON THE FILE OF IV ADDITIONAL
CIVIL JUDGE AND JMFC, VIJAYAPUR IN C.C.NO.4482/2023.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,

THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC-K:80
CRL.P No.201709 of 2023

ORDER

This petition is filed under Section 482 of Cr.P.C. seeking to quash the entire proceedings in C.C.No.4482/2023, pending on the file of IV Additional Civil Judge and JMFC, Vijayapur arising out of Vijayapur Women Police Station, Vijayapur in Crime No.153/2023 for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC and Section 4 of the Dowry Prohibition Act.

2. Heard. Perused the records.

3. The learned counsel for the petitioners contended that the allegations of the complaint would disclose that for one year, petitioner No.1 and the complainant/respondent No.2 were lived happily and subsequently, the allegations of ill-treatment were made and admittedly, the complainant and the petitioners are residing separately from in-laws and hence, the learned NC: 2024:KHC-K:80 counsel for the petitioners sought for quashing the proceedings.

4. Per contra, learned High Court Government Pleader appearing for respondent No.1/State would oppose the petition contending that there is prima facie material evidence and even the petition under the Domestic Violence Act, 2005 is filed, wherein maintenance and compensation was also sought. Hence, he would seek for dismissal of the petition.

5. Having heard the arguments and perusing the records, it is evident that there is no serious dispute regarding the marriage between the complainant/respondent No.1 and the accused. The allegations disclose that the marriage was solemnized on 20.05.2017 and during the marriage, gold and cash were given as a dowry as per the demand. It is further alleged in the complaint that for one year, she was looked after well and thereafter, the complainant was subjected to ill-

NC: 2024:KHC-K:80 treatment on the ground that the sufficient dowry was not paid during the marriage as agreed and she does not know the household work. It is further asserted that on 24.07.2023 at 11 O' clock in the morning, she was driven out of the house which compelled her to lodge a complaint. The records further disclose that she has also filed a petition on 19.09.2023 under Section 12 of the Domestic Violence Act, 2005 claiming maintenance and compensation. The records also disclose that the statements of the witnesses were recorded by the investigating officer and there is sufficient material evidence to proceed against the petitioners at this juncture. This is not a rarest of rare case, wherein the discretion can be exercised for quashing the proceedings.

Under these circumstances, petition is devoid of any merits and no grounds are made out for admitting the matter itself. As such, the petition stands dismissed.

NC: 2024:KHC-K:80 In view of disposal of the petition, I.A.No.1/2023 filed for stay does not survive for consideration and accordingly stands disposed of.

Sd/-

JUDGE RSP

Smt. Neelamma W/O Late M Basavana Gouda vs Smt. M Nirmala Alias Rajeshwari W/O Late ... on 21 March, 2024

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NC: 2024:KHC-D:5601
CRL.RP No. 100075 of 2022

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 21ST DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE ANIL B KATTI

CRIMINAL REVISION PETITION NO. 100075 OF 2022 (397)

BETWEEN:

1. SMT. NEELAMMA W/O LATE M.BASAVANA GOUDA,
AGE: 61 YEARS, OCC: HOUSEWIFE,
R/O Y. KAGALLU VILLAGE
TQ AND DIST: BALLARI-583119.
2. MR. M.SHANTHANA GOUDA S/O LATE M.BASAVANA
GOUDA, AGE: 44 YEARS, OCC: COOLIE WORK,
R/O. Y. KAGALLU VILLAGE
TQ AND DIST: BALLARI-583119.
3. MR. M. BASAVARAJ S/O LATE M. BASAVANA GOUDA,
AGE: 38 YEARS, OCC: COOLIE WORK,
R/O Y. KAGALLU VILLAGE,
TQ AND DIS BALLARI-583119.
4. SMT. M. CHANNAMMA W/O M. SHANTHANA GOUDA,
AGE: 39 YEARS, OCC: HOUSEWIFE,
R/O Y.KAGALLU VILLAGE,
TQ AND DIS BALLARI-583119.
5. SMT. M.YERRAMMA W/O M.BASAVARAJ,
AGE: 33 YEARS, OCC: HOUSEWIFE,
R/O GENIKEHAL VILLAGE, TQ: KURUGODU,
DIST: BALLARI-583119.
6. SMT. S.SHOBHA @ HAMPAMMA W/O DODDANAGOUDA
AGE: 41 YEARS, OCC: HOUSEWIFE,

Digitally signed by
SAROJA
HANGARAKI
Location: HIGH
COURT OF
KARNATAKA
DHARWAD BENCH
DHARWAD

R/O Y KAGALLU VILLAGE,
TQ AND DIS BALLARI-583119.

...PETITIONERS

(BY SRI. SADIQ N. GOODWALA, ADVOCATE)

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NC: 2024:KHC-D:5601
CRL.RP No. 100075 of 2022

AND:

1. SMT. M.NIRMALA @ RAJESHWARI
W/O LATE M. NAGARAJA
AGE: 36 YEARS, OCC: HOUSEWIFE,
2. M.SUPRIYA D/O LATE M.NAGARAJA,
AGE: 13 YEARS, OCC: STUDENT,
3. M.MEGHANA D/O LATE M.NAGARAJA
AGE: 08 YEARS

ALL ARE R/O. GUNDIGANURU VILLAGE,
TQ: SIRAGUPPA, DIST:BALLARI-583121.

RESPONDENTS NO.2 AND 3 ABOVE ARE THE MINORS
AND THEY ARE REPRESENTED THROUGH THEIR
NEXT FRIEND AND NATURAL GUARDIAN MOTHER,
SMT. M.NIRMALA
RESPONDENT NO. 1 (AS RESPONDENTS NO.2 AND 3
WERE REPRESENTED THROUGH RESPONDENTS NO.1
BEFORE THE LOWER COURT)

...RESPONDENTS

(BY SRI. J. BASAVARAJ FOR R1, R2 & R3 ARE MINORS R/BY R1
SRI. B. JNANAYYASWAMI, ADVOCATE FOR R1)

THIS CRIMINAL REVISION PETITION IS FILED U/S.397 R/W
401 OF CR.P.C., SEEKING TO SET ASIDE THE ORDER DATED
06.01.2022 PASSED BY IV ADDITIONAL DISTRICT AND SESSIONS
JUDGE, (COMMERCIAL COURT), BALLARI IN CRL. APPEAL
NO.54/2019 WHICH HAS CONFIRMED THE ORDER DATED
24.09.2019 PASSED BY CIVIL JUDGE AND JMFC, SIRGUPPA IN CRL.
MISC NO.1053/2018 BY ALLOWING THE PETITION.

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

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NC: 2024:KHC-D:5601

ORDER

The matter was though listed for admission, on consent of both the counsels, the matter was taken for final disposal.

2. Revision petitioners/ respondents feeling aggrieved by judgment of the first appellate Court on the file of IV Addl. Dist. & Sessions Judge (Commercial Court) at Ballari in Crl. A. No. 54/2019 dated 06.01.2022 in confirming the order passed by the trial Court on the file of Civil Judge & JMFC, Siruguppa in Crl. Misc. No. 1053/2018 dated 24.09.2019 in granting interim maintenance, preferred this revision petition.

3. Parties to the revision petition are referred with their ranks as assigned in the trial Court, for the sake of convenience.

4. Heard the arguments of both sides.

5. After hearing arguments of both sides and on perusal of the impugned judgment under revision, the following points arise for consideration.

i) Whether the impugned judgment under revision petition passed by the first appellate Court in confirming the order of trial Court in granting interim maintenance to the petitioners is perverse, capacious and legally not sustainable?

NC: 2024:KHC-D:5601

ii) Whether interference of this Court is required?

6. On careful perusal of the records, it would go to show that the petitioners have filed application U/s 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'P.W.D. Act' for brevity) for seeking monetary relief. The respondent No.1 is the mother-in-law, respondents No.2 and 3 are the brothers-in-law, respondents No. 4 and 5 are the co-sisters and respondent No. 6 is the sister-in-law of petitioner No.1. The husband of first petitioner M. Nagaraj died on 30.12.2015 due to cardiac disease in Gundiganuru village. After the death of husband of first petitioner, respondents started harassing the first petitioner and driven out the petitioners from matrimonial home. The first petitioner with her children is residing in her parental house in Gundiganuru village. The first petitioner has no independent source of income. Therefore, sought for various reliefs under the provisions of P.W.D. Act.

7. The respondents have appeared and filed objections contending that the first petitioner is not interested to lead her life in the joint family and she is demanding the share of her husband in the

family properties. The respondents are ready to NC: 2024:KHC-D:5601 give her and children's share, but first petitioner is not ready to take loan equally. The respondents are ready to take back first petitioner and her children to matrimonial home and also to look after the welfare of petitioner Nos.2 and 3. Therefore, prayed for dismissal of the petition.

8. The trial Court after hearing both parties granted interim maintenance by order dated 24.09.2019 and had directed the respondents to pay Rs.4,000/- per month to the first petitioner and Rs.3,000/- each to petitioner Nos.2 and 3 until further orders.

9. The said order was challenged by the respondents before first appellate Court in Crl. A. No. 54/2019. The first appellate Court after hearing both sides dismissed the appeal and confirmed the order passed by the trial Court.

10. Learned counsel for revision petitioners/respondents has argued that the husband of first petitioner M. Nagaraj died on 30.12.2015 and the respondents are not under legal obligation to provide maintenance to the first petitioner and her children. It is only the husband of first petitioner was under legal obligation to pay the maintenance amount. If at all the petitioners have got any right of share in the properties of joint NC: 2024:KHC-D:5601 family of late Nagaraj, husband of the first petitioner, then the same has to be worked out in accordance with law before the appropriate forum.

11. Per contra, learned counsel for respondents/ petitioners has argued that the respondents have got sufficient properties and they are under legal obligation to maintain the petitioners. They have deprived the right of petitioners of their share in the properties left by the deceased husband of first petitioner. The Courts below have rightly appreciated the material placed on record and justified in granting the maintenance to the petitioners.

12. The monetary reliefs in terms of Sec. 20 of the P.W.D. Act can be directed against the respondent while disposing of an application under 12(1) of the P.W.D. Act. In terms of Section 23 of the P.W.D. Act, the Court has also got power to grant interim maintenance amount. In this context of the matter, it is useful to take note of relevant definition U/s 2 of P.W.D. Act.

"2(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the NC: 2024:KHC-D:5601 respondent and who alleges to have been subjected to any act of domestic violence by the respondent; "2(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;"

"2(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act."

On plain reading of the definition of 'aggrieved person', 'domestic relationship' and 'respondent' as defined in Sec.2(a),

(f) and (q) of P.W.D. Act respectively, it would go to show that while considering grant of relief in terms of Sec. 18 to 23 of the P.W.D. Act, the 'aggrieved person' being in domestic relationship with respondent, is to be established.

13. In the present case, the husband of the first petitioner M.Nagaraj died on 30.12.2015. It is specifically pleaded in the complaint that till the death of husband of first petitioner, she was residing in the matrimonial home along with her children. After six months of the death of husband of first petitioner, she NC: 2024:KHC-D:5601 was being ill treated and harassed by the respondents. The petitioners were driven out of the matrimonial home. On 30.12.2017 there was panchayath held in presence of Chidanandappa, Thimmana Gowda, Veerasha, Uluru Thimmappa and others at matrimonial house of first petitioner. The elders advised the respondents to take back the first petitioner and her children and not to ill treat them. The first petitioner along with her children stayed in the matrimonial home for about six months. However, they were again driven out from the matrimonial home and she temporarily took shelter in a rented house in Gundiganuru village. The joint family possesses the agricultural lands and a house property in which the first petitioner along with her children was residing with her husband. The respondents have not denied that their joint family possesses agricultural land and a house property. On the contrary, they claim that they are ready to allot the share of petitioners, provided she equally shares the loan.

14. The said material evidence placed on record would go to show that the first petitioner was having domestic relationship and the first petitioner is aggrieved person. The respondents admittedly possesses the joint family properties and a house NC: 2024:KHC-D:5601 property in which the petitioners have right of share representing the share of deceased M. Nagaraj, husband of the first petitioner. The first petitioner has pleaded that she has no any independent source of income and the respondents being the members of the joint family are in possession of the joint family properties. Therefore, the respondents are duty bound to provide reasonable maintenance amount for sustenance of the petitioners.

15. Learned counsel for the respondents in support of his contention that the respondents are under no legal obligation to provide maintenance to the petitioner, relied on the Co-ordinate Bench judgment of this Court in Abdul Khader & Another Vs. Tasleem Jameela Agadi & Ors. (R.P.F.C. No. 100026/2022 dated 21.02.2024) wherein it has been observed and held as under:

"In the absence of any power vested in the Court under Section 125 of Cr.P.C., to entertain a petition filed by the daughter in law against her parents in law, this Court is of the considered opinion that the entire order is non est for want of jurisdiction."

16. The Hon'ble Division Bench of Bombay High Court had an occasion to consider as to whether father-in-law was liable to pay the maintenance amount to his daughter-in-law in Laxmi & Ors. Vs. Santosh reported in 2021 SCC Online Bombay 359, wherein it has been observed and held at paragraph Nos.14, 15 and 16 as under:

"14. It is a settled legal position that father in law has moral responsibility to maintain the widowed daughter-in- law. In T.A. Laxminarasamba (supra) the Full Bench of Andhra Pradesh High Court held thus;

'The moral obligation of a father-in-law possessed of separate or self acquired property to maintain the widowed daughter-in-law ripens into a legal obligation in the hands of persons to whom he has either bequeathed or made a gift of his property'.

15. The Division Bench in Madhukar s/o Kishan Lokhande vs. Shalu Wd/o Narendra Lokhande reported in (2013) 6 MAH.L.J. 391 which is authored by one of us (Hon'ble Sri A.S. Chandurkar, J), it is held that to maintain the widowed daughter-in-law is a legal responsibility of father-in-law. Section 19 and 22 of the Act create first obligation to maintain a widowed daughter-in-law on the father-in-law. The obligation only

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NC: 2024:KHC-D:5601 shifts on the father of the widow, if the father-in-law proves his inability to maintain her.

16. In the light of above ratio and considering the evidence on record we are of the considered view that the appellants have proved that respondent held the estate, coparcenary property of the deceased Rarag and therefore the respondent was under obligation to provide maintenance to the appellants."

The Co-ordinate Bench judgment of this Court in Abdul Khader & Another referred supra, pertains to the proceedings U/s 125 of Cr.P.C. In view of the definition under the P.W.D. Act extracted above, it is evident that considerations for grant of monetary reliefs under P.W.D. Act is different than the one covered under the proceedings U/s 125 of Cr.P.C.

17. If the first petitioner could able to demonstrate that she is in domestic relationship with the respondents and she is aggrieved person can maintain an application U/s 12 of the P.W.D. Act. The Division Bench of Hon'ble Bombay High Court in Laxmi & Ors. referred supra, held that father-in-law has moral responsibility to maintain the widowed daughter-in-law. It is true that in the said case before the Hon'ble Bombay High

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NC: 2024:KHC-D:5601 Court, case was covered under the provisions of Sec. 19 and 22 of Hindu Adoptions & Maintenance Act, 1956. However, the principle enunciated in the said judgment regarding the responsibility of father-in-law to maintain the daughter-in-law holds good.

18. In another latest judgment of Hon'ble Apex Court in Prabha Tyagi Vs. Kamalesh devi in Criminal Appeal No. 511/2022 dated 12.05.2022, after analyzing the provisions of P.W.D. Act has held as under:

"There should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-à-vis allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. In other words, even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application U/s 12 of the D.V. Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application U/s 12 of the D.V. Act."

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NC: 2024:KHC-D:5601 In view of the principles enunciated in the aforesaid judgment of the Hon'ble Apex Court and the facts involved in the present case referred above, it would go to show that the petitioners have established their relationship with deceased M. Nagaraj, the husband of first petitioner and they were residing in the joint family house till they were driven out from the matrimonial home of first petitioner. The joint family admittedly possesses the joint family property which are now in possession of respondents are duty bound to maintain the petitioners by providing reasonable amount of maintenance.

19. The Courts below have rightly appreciated the material evidence on record in holding that the petitioners are entitled for maintenance and directing the respondents to pay the maintenance amount. Looking to the cost of living in these days and the minor children of first petitioner and deceased M.Nagaraj being looked after by the first petitioner, the quantum of maintenance awarded by the trial Court which is affirmed by the first appellate court also does not warrant any interference by this Court. Consequently, proceed to pass the following order.

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NC: 2024:KHC-D:5601 ORDER Revision petition filed by the revision petitioners/ respondents is hereby dismissed as devoid of merits.

Sd/-

JUDGE BVV CT:GSM

Smt.Priyanka Singh vs Sri.Pankaj Singh Sengar on 5 April, 2024

Author: M. Nagaprasanna

Bench: M. Nagaprasanna

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Reserved on : 18.01.2024

Pronounced on : 05.04.2024

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.48615 OF 2013 (GM - FC)

C/W

WRIT PETITION No.41607 OF 2017 (GM - FC)

WRIT PETITION No.41608 OF 2017 (GM - FC)

IN WRIT PETITION No.48615 OF 2013

BETWEEN:

SMT.PRIYANKA SINGH
W/O PANKAJ SINGH SENGAR
AGED ABOUT 32 YEARS
R/AT B-5, FLAT NO.1405
L & T SOUTH CITY APARTMENTS
AREKERE MICO LAYOUT
OFF BANNERGHATTA ROAD
BENGALURU - 560 076.

... PETITIONER

(BY SMT.RADHIKA M., ADVOCATE)

AND:

SRI.PANKAJ SINGH SENGAR
S/O R.S.SENGAR

2

AGED ABOUT 34 YEARS

R/AT. B-5, FLAT NO.1405
L & T SOUTH CITY APARTMENTS
AREKERE MICO LAYOUT
OFF BANNERGHATTA ROAD
BENGALURU - 560 076.

... RESPONDENT

(BY SRI B.V.KRISHNA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 20.9.2013 PASSED ON THE MEMO FILED BY THE PETITIONER ON THE FILE OF THE I ADDL. PRINCIPAL FAMILY JUDGE AT BANGLAORE IN M.C. NO.3014/2012 VIDE ANN-G; MODIFY THE ORDER DATED 30.11.2012 AND ENHANCE THE MAINTENANCE AMOUNT FROM RS.15,000/- TO RS.70,000/- PER MONTH BY ALLOWING I.A. NO.3 IN M.C. NO.3014/2012 ON THE FILE OF THE I ADDL. PRINCIPAL FAMILY JUDGE AT BANGALORE VIDE ANN-D.

IN WRIT PETITION No.41607 OF 2017

BETWEEN:

SRI PANKAJ SINGH SENGAR
S/O SRI R.S.SENGAR
AGED ABOUT 39 YEARS
R/A NO.A-1696
AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR
KANPUR - 209 307
REPRESENTED BY
FATHER/GUARDIAN/NEXT FRIEND

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SRI RAJENDRA SINGH SENGAR
S/O SHECRAM SINGH SENGAR
AGED ABOUT 66 YEARS,
R/A NO.A-1696
AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR
KANPUR - 282 021.

... PETITIONER

(BY SRI B.V.KRISHNA, ADVOCATE)

AND:

SMT. PRIYANKA SINGH
W/O SRI PANKAJ SINGH SENGAR
AGED ABOUT 36 YEARS
R/A NO.B-5, FLAT NO.1405
L & T SOUTH CITY APARTMENTS
AREKERE MICO LAYOUT
OFF BANNERGHATTA ROAD
BENGALURU - 560 076.

... RESPONDENT

(BY SMT.RADHIKA M., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN M.C.3014/2012 ON THE FILE OF THE HON'BLE 1ST ADDL. PRL. JUDGE, FAMILY COURT AT BANGALORE; SET ASIDE THE ORDER DATED 10.08.2017 ON I.A.8 IN M.C.3014/2012 PASSED BY THE HON'BLE 1ST ADDL. PRL. JUDGE, FAMILY COURT AT BANGALORE VIDE ANNEX-A BY ISSUING A WRIT IN THE NATURE OF CERTIORARI AND ALLOW THE SAID APPLICATION I.A.8.

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IN WRIT PETITION No.41608 OF 2017

BETWEEN:

SRI PANKAJ SINGH SENGAR
S/O SRI. R.S. SENGAR
AGED ABOUT 39 YEARS
R/A NO.A-1696, AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR,
KANPUR - 209 307
REPRESENTED BY
FATHER/GUARDIAN/NEXT FIREND
SRI RAJENDRA SINGH SENGAR
S/O SHECRAM SINGH SENGAR
AGED ABOUT 66 YEARS,
R/A NO. A-1696, AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR,
KANPUR - 208 021.

... PETITIONER

(BY SRI B.V.KRISHNA, ADVOCATE)

AND:

SMT. PRIYANKA SINGH
W/O SRI PANKAJ SINGH SENGAR
AGED ABOUT 36 YEARS
R/A NO.B-5, FLATNO.1405,

L & T SOUTH CITY APARTMENTS,
AREKERE MICO LAYOUT,
OFF BANNERGHATTA ROAD,
BENGALURU - 560 076.

... RESPONDENT

(BY SMT.RADHIKA M., ADVOCATE)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN EX.C.NO.152/2015 ON THE FILE OF THE HON'BLE I ADDL. PRINCIPAL JUDGE, FAMILY COURT AT BANGALORE; SET ASIDE THE ORDER DTD.10.8.2017 IN EX.C.NO.152/2015 PASSED BY THE HON'BLE I ADDL. PRINCIPAL JUDGE, FAMILY COURT AT BANGALORE VIDE ANNEX-A.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.01.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

These cases arise out of M.C.No.3014 of 2012 pending before the Principal Family Court, Bangalore and parties to the lis in all these cases are common; they are husband and wife. Therefore, they are taken up together and considered by this common order. For the sake of convenience, the parties are referred to as per their ranking in the matrimonial case i.e., husband is referred to as the petitioner and wife as the respondent. Writ Petition No.48615 of 2013 is preferred by the wife.

2. The facts, in brief, germane are as follows:-

The petitioner and the respondent got married on 16-05-2011 and have a daughter born from the wedlock. The marriage between the two appears to have floundered and on the floundering of the said relationship, the husband prefers M.C.No.3014 of 2012 seeking annulment of marriage that had taken place between the two. The allegation of the husband was that the wife had left the matrimonial house on her own volition. The issue in the lis does not concern merit of the claim of the husband seeking annulment of marriage or defence of the wife. In the said petition, the wife files an application seeking interim maintenance under Section 24 of the Hindu Marriage Act, 1955. The concerned Court, after hearing the parties on the application, grants the wife interim maintenance of `15,000/- per month in terms of its order dated 30-11-2012. The wife then files a memo of calculation before the concerned Court on 08-07-2013 claiming arrears to be paid by the husband towards the maintenance so awarded. The concerned Court rejects the memo. The rejection of the

memo forms the subject matter of challenge in Writ Petition No.48615 of 2013 coupled with a prayer to enhance interim maintenance. During the pendency of the said petition, the husband/petitioner suffers a stroke resulting in 75% disability, due to which, he had resigned from his work and on the ground that the husband has not paid maintenance, to recover arrears of maintenance, the wife/respondent initiates execution petition seeking execution of the order of maintenance. The concerned Court, in terms of its order dated 05-02-2016, directs the father of the husband to pay arrears of maintenance. When that is not adhered to, a fine levy warrant and arrest warrant are issued against the husband on 12-07-2017 and 10-08-2017. This forms the subject in Writ Petition No.41608 of 2017. The other writ petition in W.P.No.41607 of 2017 is again preferred by the husband calling in question the order passed on 10-08-2017 on I.A.No.8 in M.C.No.3014 of 2012 whereby the application filed by the husband to recall the order of maintenance comes to be rejected. Therefore, Writ Petition No.41607 of 2017 is preferred by the husband challenging the rejection of I.A.No.8 seeking recall of the order granting maintenance and Writ Petition No.41608 of 2017 challenges the order of issuing fine levy warrant and arrest against the husband.

3. Heard Sri B.V.Krishna, learned counsel appearing for the husband/petitioner and Smt M. Radhika, learned counsel appearing for the wife/respondent.
4. The learned counsel appearing for the wife/respondent would vehemently contend that the husband/petitioner has abandoned the wife at the time when she was carrying the child. She has maintained herself all along and the husband has refused to maintain either the wife or the child, and therefore, seeks appropriate order enhancing grant of maintenance.
5. Per-contra, the learned counsel appearing for the husband/petitioner would contend that maintenance today is a dream to be paid by the husband as he has suffered disability of 75% which does not get him any job. He is no longer an able bodied person to search for job and maintain the wife and the child.
6. In reply the counsel for the wife/respondent would submit that the father of the petitioner has several properties. Therefore, the father could maintain the wife and the child of the petitioner and they cannot be left in the lurch. Both the petitioner and the respondent have placed reliance upon certain judgments which would bear consideration in the course of the order.
7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.
8. The afore-narrated facts are not in dispute. The relationship between the two and the birth of girl child from the wedlock are all a matter of record. The genesis of the issue is on the husband filing a petition seeking annulment of marriage in M.C.No.3014 of 2012 in which the wife/respondent files an application seeking interim maintenance. The Court considering the application and submissions of both the parties, grants interim maintenance by the following order:

".....

4. Point No.1 & 2:- Main petition is of the husband seeking divorce from the respondent on the ground of cruelty (U/sec. 13 (1) (la) of the Hindu Marriage Act). On service of notice of this petition, the respondent appeared before this Court personally on 10/10/2012 and later filed application U/sec. 13 of the Family Courts Act on the adjourned date and she is represented by advocate. On the same date, this IA has been filed by the respondent. The matter came to be posted for objections to IA No.3 as well as for the parties to go to the Bangalore Mediation Centre for the purpose of mediation. However, it is submitted by the advocate for the respondent that there is urgency for the respondent for disposal of IA No.3 as she is in advanced stage of pregnancy. Advocate for the applicant/respondent has addressed oral arguments. Advocate for the opponent/petitioner apart from addressing oral arguments has filed written arguments also on this IA No.3. Opponent/petitioner has produced some documents along with the memo. The applicant/respondent admits her relationship with the opponent/petitioner as his wife. (For the sake of convenience, the petitioner is referred to as the husband and the respondent is referred to as the wife). The husband admits that the wife is in advanced stage of pregnancy. The documents and other records produced by the husband go to show that the wife has filed police complaints against the husband etc... Some of the records have been produced by the husband to show that he has concern about the health of the wife and he has spent substantial amount for her medical expenses etc., The husband has stated that his monthly salary as per the Salary Slip is Rs.76, 371/- As per the husband, he has the other liabilities to look after his aged parents and has to make payment of rent amount in respect of independent residences for the wife as well as his parents. Now it will suffice, for the sake of arriving at conclusion as to what amount the wife is entitled to interim maintenance, to take into consideration the salary income of the husband. Looking to the status of the husband and the status of the wife that was enjoyed by her during her stay with the husband, I am of the opinion that Rs.15,000/- per month will be the reasonable amount for maintenance of the wife pending final disposal of the main petition Rs. 10,000/- appears to be the reasonable amount towards litigation expenses. For the foregoing reasons, I proceed to pass the following:-

ORDER IA No. 3 of the respondent is partly allowed.

The petitioner/husband is hereby directed to pay to the respondent/wife Rs.15,000/-per month towards interim maintenance pending final disposal of the main petition. The petitioner/husband is further directed to pay the Rs.10,000/- towards litigation expenses."

(Emphasis added) The Court grants the wife `15,000/- per month as interim maintenance and `10,000/- towards one time litigation expenses. This is not paid by the husband. The wife/respondent files a memo of calculation before the concerned Court seeking huge arrears from the hands of the respondent. This comes to be rejected by the concerned Court in terms of the order dated 20-09-2013. This has driven the wife/respondent to this Court in Writ Petition No.48615 of 2013. The issue now would be, whether the husband should be directed to pay maintenance to the wife and the child, to which certain facts need to be noticed.

9. The husband was employed in a company by name Textron India Private Limited. During his employment, the petitioner suffers a stroke and the disability is identified as Chronic Neurological Condition and is assessed at 75%. The assessment is by NIMHANS, Bangalore and the husband is also issued a disability certificate based upon the assessment by NIMHANS. The disability certificate reads as follows:

"Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India Disability Certificate Issuing Medical Authority, Bengaluru Urban, Karnataka PHOTO Certificate No.: KA1891219770276312 Date: 20/01/2023 This is to certify that I/we have carefully examined Shri Pankaj Singh Sengar, Son of Shri Rajendra Singh Sengar, Date of Birth 24/09/1977, Age 45, Male, Registration No. 2918/00000/2207/1531923, resident of House No. Flat No. L1-116, Sowparnika Phase 1. Sarjapura - Attibele Road, Bidarguppe - 562107, Sub District Anekal, District Bengaluru Urban. State / UT Karnataka, whose photograph is affixed above, and I am/we are satisfied that:

(A) He is a case of Chronic Neurological Conditions (B) The diagnosis in his case is Right Hemiparesis with cognitive dysfunction and Aphasia (C) He has 75%(in figure) Seventy Five percent(in words) Permanent Disability in relation to his RIGHT UPPER LIMB, RIGHT LOWER LIMB as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under RPWD Act, 2016 notified by Government of India vide S.O. 76(E) dated 04/01/2018).

The applicant has submitted the following document(s) as proof of residence:

Nature of Document(s): Registered Sale/Lease Agreement Signature/Thumb Impression of the Person with Disability Sd/-

Signatory of notified Medical Authority Member(s)"

The condition of the husband is a Chronic Neurological disability with cognitive dysfunction and is said that he is unable to walk even.

After suffering the said disability the petitioner submits his resignation to his employment. The letter of resignation reads as follows:

"Name: Pankaj Sengar Employee ID: 1000840188 Sub: Resignation acceptance Letter This refers to the email dated 22 May 2015, sent by Priyanka Sengar (your sister) on your behalf, resigning from the services of the company and the subsequent discussions we had over phone.

We hereby inform you that your resignation, under reference, has been accepted by the management with regret and you will be relieved from the services of the

company with effect from 31 May 2015.

We draw your attention to your continuing obligation of confidentiality with respect to any proprietary and confidential information of Textron that you may have had access to during the course of your employment. As a part of the separation process, we are attaching the exit documents. Please sign on these documents and send it back to the undersigned as soon as possible to expedite the full & final and relieving process.

We thank you for your valuable contributions and wish you a speedy recovery. Do contact us in future to explore the job opportunities. Get well soon.

Wish you all the very best.

Thanking You, Yours sincerely, For Textron India Private Limited"

(Emphasis added) The petitioner is relieved from service of the Company with effect from 31-05-2015. Prior to that on account of continuous absence of the husband, he was placed on loss of pay from 16-12-2013 till 09-07-2014. This communication reads as follows:

"To Whom It May Concern Dear Sir/Madam, This is to certify that Pankaj Singh Sengar is an employee at Textron India Private Limited.

Date of Joining	:	14th March 2011
Designation	:	Technical Specialist
Employee ID	:	1000840188

Employee is on loss of pay from 16th December 2013 till date and the letter has been issued for insurance purpose.

Yours sincerely.

For Textron India Private Limited Sd/-

Reshma B S Sr.Executive - HR Ops"

(Emphasis added) Therefore, on and from the husband suffering disability he has remained outside employment. The State Government has issued a disability certificate as is required in law. Government of India has also issued such certificate which is quoted supra. Therefore, it is an admitted fact that the husband suffers from a disability which is to the tune of 75% and takes away all the badge of the husband to be an "able bodied man" as disability is admitted.

10. The husband files an application seeking recall of the order granting interim maintenance. This is rejected on the plea of the wife/respondent that the husband/petitioner has recovered from illness

and now he is an able bodied person. This is the challenge in Writ Petition No.41607 of 2017. The wife does not stop at that. She initiated execution petition against the husband contending that the father of the husband had to pay her the maintenance and to the child. The husband is projected to be represented by the father and accordingly execution is preferred. In the execution petition, the Court issues fine levy warrant against the husband for non-payment of maintenance. Therefore, all these petitions are before this Court.

11. The only issue that false for consideration is, "Whether the husband is to be directed to pay maintenance and the order passed by the concerned Court directing issuance of arrest warrant or fine levy warrant should be sustained?"

12. What is the status of the wife/respondent is also necessary to be noticed. The admitted qualification of the wife is that she has Masters in Computer Application and Pre-MCA completion. The wife is working as a teacher in several schools. The resume of the wife insofar as it is relevant reads as follows:

"....

Project Work

Completed Six months project on "Personal Information Management system"

Role: Initial role was for initial understanding of the project along with coding of the project for complete behavior and integrating it with "BAAN ERP".

Technology Used: Project coding specification:

Front End:	Oracle Developer.
Backend server:	DB2
Intermediate Development:	JSP

Education Qualification

Masters of Computer Application with 67.18%. Certificate in computing i.e.: CIC with 60%. Technical Proficiency:

Languages	:	C++/JAVA/Oracle
Web Technologies	:	JSP/HTML
Operating Systems	:	Windows 98/2000/XP
Databases	:	SQL Server
Middleware	:	Apache/Tomcat

Employment History

- Official training of six month from INDIAN TELEPHONE INDUSTRY (I.T.I MANKAPUR)

Pre MCA Completion:

- Teaching Experience as a Computer Instructor

from KENDRIYAVIDYALAYA I.T.I Mankapur.

- Teaching as a Computer Teacher in Fatima Convent School Mankapur.
- Teaching as a Computer Teacher in Fatima Convent School GONDA.

.....

The situation now is, the wife is qualified and is even working and earning certain amount of money. Whether that would be enough or not is a different circumstance. The issue is whether the husband can be directed to pay maintenance.

13. On a few occasions, this Court directed the parties to appear before the mediation centre and settle the issue. Every time it was only the father of the husband appears and the husband did not. Therefore, the husband also was directed to be present. Photographs of the husband are produced before Court. The husband walks with the help of crutches. Therefore, in the considered view of the Court, no direction can be issued to the husband to pay maintenance to the wife/respondent as he is no longer an able bodied man to search for employment and pay maintenance to maintain the wife and the child.

14. The learned counsel for the wife/respondent projects several grievances against the husband. It is the submission of the wife/respondent that the husband is a fraud and he has fraudulently projected himself to be a disabled man inter alia. These would all be in the realm of evidence. This Court, for the present, would go by the disability certificate issued by both Government of India and State Government which is based upon the assessment of disability by NIMHANS. If the husband is incapable of earning due to disability, it is highly ununderstandable as to why and how the wife is insisting on payment of maintenance looking at the admitted disability of the husband.

15. It becomes germane to notice the judgment of the Apex Court in the case of RAJNESH v. NEHA¹ which dealt with the grant of maintenance and its forms and hues. The Apex Court at paragraph 93 has held as follows:

"(e) Serious Disability and ill health:

93. Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance."

(Emphasis supplied) The Apex Court observes that serious disability or ill-health of a spouse who would require constant care and recurring expenditure (2021) 2 SCC 324 would also be a relevant consideration while quantifying maintenance. The High Court of Calcutta in a similar circumstance in a judgment rendered in INDRANIL ADHIKARI v. ARUNIMA ADHIKARY² has held as follows:

"....

12. That both the Courts failed to appreciate the fact that the petitioner is not an able bodied person and has no earning capacity.

13. The Ld. Appellate Court should have considered the disability/handicap certificate and on that basis, should have set aside the said order dated 25.04.2018 without putting any condition of payment of 25% arrears of maintenance but failed to do so.

14. The impugned order dated 25th April, 2018 passed by the Trial Court/Executing Court is illegal, bad in the eye of law, perverse and without jurisdiction and as such is liable to be set aside unconditionally.

15. The impugned order dated 25.04.2018 is also liable to be set aside and the entire proceeding of the Misc. Execution Case No. 281/2015 pending before the Court of Ld. 5th Judicial Magistrate at Howrah is liable to be quashed.

16. In spite of the opposite party being represented on earlier occasions, they have failed to appear at the time of hearing.

17. The Contention of the petitioner is that he has met with an accident and has in support filed a copy of the disability certificate dated 27.10.2018, wherein it appears that the petitioner/husband has been diagnosed with 60% 2023 SCC OnLine Cal 3318 permanent disability (left foot) and he cannot travel with assistance of escort.

18. But the present revision is against the order of the appellate court in an appeal against an order passed by the Magistrate in a Misc Execution Case in a proceeding under the Protection of Women from Domestic Violence Act.

19. An execution is filed to execute the order in a principle case. The court while taking steps to execute an order of a court only proceeds to execute the order and does not decide the validity of the order.

20. The order which was being executed is dated 25.04.2018 in an execution proceedings being Misc Execution Case No. 281/2015.

21. The disability certificate has been issued on 27.10.2018.
 22. Admittedly there is no dispute regarding the disability of the petitioner. It is also noted that till his accident, the petitioner had been paying maintenance diligently.
 23. But any prayer for modification etc. in such proceedings due to subsequent developments and change in circumstances is to be made by a separate proceedings (herein Misc 127 of 2018 filed by the petitioner praying for revocation and cancellation of the maintenance order is pending before the learned Judicial Magistrate, 5th Court, Howrah) as per the relevant provisions of law, which the court is to consider in accordance with the guidelines of the Supreme Court in such proceedings (Rajnesh v. Neha, (2021) 2 SCC 324).
 24. The order under revision is thus modified to the extent that the direction for payment of 25% of the arrear maintenance is set aside."
- (Emphasis supplied) The Calcutta High Court was considering the disability of a husband at 60%. What was challenged by the husband was a condition to pay 25% of the arrears in the execution case. The said condition was set aside on the ground that the husband is no longer an able bodied man.
16. It is trite that while considering grant of maintenance all the factors will have to be taken note of. Maintenance cannot spring in thin air. The primary factor is whether the husband is an able bodied man to maintain the wife or the child. In the teeth of the disability of the petitioner who also suffers from cognitive dysfunction, the trial Court ought to have allowed the application seeking recall of the order of maintenance and restricted the recall up to the date on which the husband became disabled. As the disability happened in the month of December, 2013, by then there was already arrears to be paid by the husband. The Court ought to have taken at least that date into consideration. Today the husband/petitioner is wanting maintenance to himself and not in a position to pay maintenance to the wife/respondent.
 17. The learned counsel for the wife/respondent has placed on record a memo of calculation. The memo depicts that as on today, the maintenance that is to be paid by the husband is a whopping sum of Rs.19,04,000/- . The duration of maintenance covers the period of disability of the husband right from its beginning till today, except for a few months prior to the husband getting disabled. If this would be directed to be paid, at the behest of the wife, it would undoubtedly leave the husband/petitioner bleeding, apart from the agony that he is living with of suffering 75% disability. By no means he can be depicted to be an able bodied man to direct that he should search for such avocation that would enable him to maintain the wife and the child. The wife is earning, even if not earning is completely qualified and is capable of earning. Therefore, the orders that are now sought to be passed by the wife cannot even be considered to be passed.
 18. It is projected that the father of the husband/petitioner has several properties and is able to pay the wife and the child maintenance. This submission cannot be accepted at this juncture. As the wife is said to be earning and maintaining herself to-day and for the last 10 years there is no maintenance

paid; obviously the wife who is qualified is working and earning. Insofar as grant of maintenance to the child is concerned, I deem it appropriate to observe that the father of the husband/petitioner should take care of the grandchild's necessities including her education and other necessities of her career and all walks of life of the grandchild. This is the only relief that the wife/respondent is entitled to, in the case at hand. The claim of the wife for enhancement of maintenance to 70% is, on the face of it, untenable and is rejected. The fine levy arrest warrant issued by the executing Court/Trial Court requires to be set aside. Likewise the application filed for recalling the order dated 30-11-2012 is to be allowed in part, up to the date when the husband/petitioner suffered disability i.e., December, 2013. Therefore, till the said date the wife/respondent is entitled to such maintenance, which the father of the husband/petitioner can pay, not to the wife but to the child.

19. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition No.48615 of 2013 stands rejected however, observing that arrears of maintenance till the date of disability, shall be fulfilled by the father of the husband/petitioner.
- (ii) Writ Petition No.41607 of 2017 is allowed in part, again restricting the order of maintenance to the date on which the husband/petitioner suffers disability.
- (iii) Writ Petition No.41608 of 2017 is allowed. The order passed in Execution Petition No.152 of 2015 in terms of its order dated 10-08-2017 stands quashed.

Consequently, pending applications, if any, also stand disposed.

Sd/-

JUDGE bkp CT:MJ

Smt Roshani Mangalore vs Sri N Vipin Suvarna on 26 June, 2024

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NC: 2024:KHC:23566-DB
MFA No.3385/2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 26TH DAY OF JUNE, 2024
PRESENT
THE HON'BLE MRS. JUSTICE K.S.MUDAGAL
AND
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
MISCELLANEOUS FIRST APPEAL NO.3385/2017 (FC)
BETWEEN:

SMT. ROSHANI MANGALORE
W/O N. VIIPIN SUVARNA
AGED ABOUT 56 YEARS
NO.12, MILLWOOD COURT
NEW ROAD, CHATHAM
ME44BD

Digitally
signed by K S

RENUKAMBA

Location: NOW TEMPORARILY RESIDING AT
High Court of PADMAPPA COMPOUND
Karnataka PANDESHWAR CROSS ROAD
MANGALORE - 575001.

...APPELLANT
(BY SRI. HEMANTH KUMAR D, ADV.,)
AND:

SRI. N. VIPIN SUVARNA
S/O LATE N.R. SUVARNA
AGED ABOUT 62 YEARS
R/AT NO.201, SCION
WINDFLOWER
NO 2 AC - 716-718 IIND A CROSS
7TH MAIN ROAD, HRBR LAYOUT
1ST BLOCK ,KALYAN NAGAR
BANGALORE - 560043.

...RESPONDENT
(BY SRI. P.P. HEGDE, SR. COUNSEL FOR
SRI. VENKATESH SOMAREDDI, ADV.,)

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NC: 2024:KHC:23566-DB
MFA No.3385/2017

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED 23.07.2007 PASSED IN M.C.NO.745/2003 ON THE FILE OF THE 1ST ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU CITY, ALLOWING THE PETITION FILED UNDER SECTION 13(1) OF THE HINDU MARRIAGE ACT, FOR DISSOLUTION OF MARRIAGE.

THIS APPEAL, COMING ON FOR DICTATION, THIS DAY,
K.S.MUDAGAL J., DELIVERED THE FOLLOWING:

JUDGMENT

Challenging the judgment and decree of divorce granted against her, the respondent in M.C.No.745/2003 on the file of I Additional Principal Judge, Family Court, Bangalore City, has preferred this appeal.

2. The appellant was the respondent and the respondent was the petitioner in M.C.No.745/2003 before the trial Court. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the trial Court.
3. The marriage of the petitioner and the respondent was solemnized on 04.05.1983 in Mangaluru. The parties are Hindus and are governed by the Hindu Marriage Act, 1955 (for short, 'the Act'). In their conjugal life, the couple are blessed with daughter by name Varsha on 27.05.1984. The petitioner NC: 2024:KHC:23566-DB was working as a Bank Manager. The respondent pursued her education in M.Phil., in Economics and completed the same in the year 1989. On Commonwealth scholarship, she went to UK for her studies in Ph.D in Economics. Later she got employment and the petitioner and the child joined the respondent in Yorkshire and lived for about six months. Then he returned to India, the child continued in the custody of the respondent. Later, the child came back to India to pursue education. Upto 1995, the child continued with the mother of the petitioner and was pursuing the education. Thereafter, the respondent took the child with her.
4. Petitioner filed M.C.No.745/2003 claiming that since November 1997, respondent stopped responding to his letters and communication and withdrew from his society without reasonable cause. His request through his advocate to the High Commission of India, India House, London, to trace the respondent and the child went in vain. He sought decree of divorce on the ground of desertion. Notice on respondent was served by paper publication and she was set ex parte. In support of the case of the petitioner, petitioner got himself examined as PW-1 and got marked Exs.P-1 to P-5.

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5. The trial Court on hearing the petitioner, allowed the petition and granted decree of divorce. The trial Court held that the petitioner's testimony that the respondent deserted him since 1997 and his attempts to trace her through the High Commission of India, London, were uncontroverted, thereby the ground of desertion is proved.

6. The respondent has challenged the said decree in the above appeal claiming that the petitioner without duly serving the petition notice on her, managed to take notice by paper publication and managed to get the ex parte decree, etc.

7. Sri.Hemanth Kumar D., learned counsel for the respondent-wife, reiterating the grounds of appeal, submits that the petitioner despite being aware that respondent is not in India, to secure ex parte decree, took notice by publication in newspaper which was in circulation only in Karnataka. He further submits that though the petitioner furnished both the addresses, initially he took notice to the address of the respondent in UK schemingly got published the notice in local newspaper. The respondent came to know about the decree only when the same was produced in Crl.Misc.42/2016 filed by NC: 2024:KHC:23566-DB the respondent and her daughter under Section 125 of Cr.P.C. He submits that considering the ground of fraud played on the wife, this Court has already condoned delay of 3530 days in filing the appeal. Therefore, this appeal also requires to be allowed and she be given opportunity.

8. Sri.P.P.Hegde, learned Senior counsel appearing for Sri.Venkatesh Somareddi, advocate on record for the petitioner- husband, submits that the respondent-wife herself in Crl.Misc.Nos.42/2016 and 116/2016, the proceedings under Section 125 Cr.P.C. and Protection of Women from Domestic Violence Act, 2005, respectively and the complaint filed by her in PCR No.26/2016, has given Mangaluru address claiming to be resident of Mangaluru. He claims that respondent-wife had no inclination to lead conjugal life, she did not even challenge the impugned decree within time. After three years of decree, on 18.12.2011 the petitioner has married another woman by name V.Saraswati. The appeal is filed in the year 2017. By such second marriage, this appeal has become infructuous and is liable to be dismissed on that ground alone. On the same ground, the petitioner-husband has filed I.A.No.2/2022 in this appeal for dismissal of the appeal.

NC: 2024:KHC:23566-DB

9. Sri.P.P.Hegde, learned Senior counsel submits that Crl.Misc.Nos.42/2016 and 116/2016 both were dismissed holding that the respondent-wife's allegations that the husband has subjected her to mental, physical and economical violence are not proved and those findings have attained finality. In support of his submission, he relies on the following judgments:

- i. Krishnaveni Rai vs. Pankaj Rai and another¹
- ii. Lemhmber Singh vs. Kuldeep Kaur²
- iii. Seema Devi vs. Ranjit Kumar Bhagat³

10. On considering the submissions and examining the material on record, the point that arises for determination is "Whether the impugned judgment and decree of divorce granted by the trial Court is sustainable in law"?

ANALYSIS

11. The parties are not at dispute that they were married on 04.05.1983 and they begot a daughter on 27.05.1984. It is also not disputed that with the consent of the petitioner himself, wife moved to UK for higher studies and she (2020) 11 SCC 253 2014 SCC OnLine P&H 25061 2023 SCC OnLine Del 2257 NC: 2024:KHC:23566-DB got employed there. According to him, from November 1997 the respondent-wife deserted him and she stopped replying to his letters and informing about her whereabouts. It is also not disputed that their daughter during her minority was staying with respondent and thereafter she was staying with the mother of the petitioner. Despite that, the petitioner in his petition gave her Mangaluru address and UK address also.

12. Initially he took notice to her UK address shown in the cause title of the petition and that was returned with the endorsement that she is not residing in the said address. Later, in Ex.P-4 his own letter addressed to the High Commission of India in London, UK, he claimed that his wife was residing at 23, West Gate Close, Canterbury, Kent CT 28JH (the same address is shown in the petition) and thereafter she is not reachable in the said address and on phone, therefore, he requested the said authorities to trace the address and inform him. That itself shows that petitioner was aware that she is not available in the said address. Despite that he took notice to the same address, which was returned un-served with the endorsement that she is not found in that address. Thereafter, he took notice to her by NC: 2024:KHC:23566-DB way of publication in Hindu English newspaper, Bengaluru edition on 28.12.2006.

13. At one breath petitioner claims that respondent was residing in UK and in next breath he claims that she was residing in Mangaluru. Admittedly, the mother of the respondent-wife was residing in Mangaluru. If notice by way of paper publication in any local newspapers which are in circulation in Mangaluru town were taken at least she could have come to know about the proceedings. Therefore, it becomes clear that petitioner-husband with full knowledge that the respondent-wife is not in India, suppressing the said fact, took notice by publication on paper of Bengaluru edition and managed to get a decree of divorce which amounts to abuse of the process of the Court. That also amounts to playing fraud on the Court.

14. The main contention of Sri.P.P.Hegde, learned Senior Counsel is that the appeal itself is not maintainable having rendered infructuous due to petitioner's second marriage and delay in filing the appeal. He submits that the petitioner married after the appeal period, therefore, such marriage is NC: 2024:KHC:23566-DB lawful and by such marriage, the appeal has become infructuous. The perusal of the judgments relied on by him show that in all those cases the appellants therein had contested the matters before the trial Court and despite that, had not preferred the appeal in time, therefore it was held that the appeals have become infructuous. Therefore, the said judgments are not applicable. Further, in this appeal, we are not called upon to decide the validity of the second marriage of the petitioner, we have to answer whether the impugned judgment and decree is sustainable?.

15. It is evident that the petitioner suppressing the fact of respondent living in UK, managed to get the notice published in the newspaper of Bengaluru edition. Secondly, Ex.P-4 shows that he was

aware that respondent-wife was not available in the UK address shown in the petition. That goes to show that he has played fraud on the Court which vitiates the entire proceedings and the impugned decree.

16. So far as the dismissal of Crl.Misc.Nos.42/2016 & 116/2016, according to Sri.Hemanth Kumar D., learned counsel, Crl.Mis.42/2016 was dismissed for non-prosecution. He submits

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NC: 2024:KHC:23566-DB that the daughter of the couple is suffering from some mental health issue and due to her old age, the respondent also could not get further employment. Being unable to maintain herself and her daughter, have taken shelter under with Social Security scheme since August 2019, they are surviving on the advance Social Security payment provided by the Government. To that effect she has filed affidavit and document. He claims that due to such condition she could not prosecute Crl.Mis.No.42/2016 & effectively prosecute Crl.Mis.No.116/2016 or prefer appeal. Moreover, in those cases, it was contended that the petitioner has subjected the respondent to various kinds of abuse and he has failed and neglected to maintain his wife and daughter. This Court accepting such submissions, by order dated 15.06.2022, has awarded interim alimony of Rs.40,000/- per month for the appellant and her unmarried daughter. The said order has attained finality.

17. Further, it is also to be noted that there was 3530 days delay in filing the appeal. To explain the delay, the wife had taken the same contention of the petitioner obtaining the ex parte decree by playing fraud in service of notice. By way of objections to the said applications, the petitioner-husband has

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NC: 2024:KHC:23566-DB taken the same contentions of his remarriage, which was claimed to be valid due to delay in filing the appeal and appeal being not maintainable. This Court, by detailed order dated 18.12.2019, rejected those contentions, allowed the application and condoned the delay. The petitioner did not challenge that order. The Hon'ble Supreme Court in para 34 of the judgment in Erach Boman Khavar vs. Tukaram Shridhar Bhat and another⁴ has held that it is well settled law that the principle of res judicata is applicable between two stages of the same litigation, if the question involved has been decided at the earlier stage of the same litigation.

18. Similarly in paragraph No.10 of the judgment in S.Ramachandra Rao vs. S.Nagabhushana Rao and others⁵, the Hon'ble Supreme Court has held as follows:

"10. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of res judicata is

attracted not only in separate subsequent proceedings but also at the subsequent stage of the same AIR 2014 SC 544 AIR 2022 SC 5317

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NC: 2024:KHC:23566-DB proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of *per incuriam* because that principle applies to the precedents and not to the doctrine of *res judicata*."

(emphasis supplied)

19. In the light of the aforesaid judgments and the fact of this Court condoning the delay and admitting the matter rejecting such contention of the petitioner, the said contention does not sustain. It is material to note that the petitioner did not bother to take care of the daughter for all these years and now he claims that by virtue of his second marriage, appeal has become infructuous. It is submitted that the petitioner has not even paid interim alimony of Rs.40,000/- per month granted by this Court in this case. Under such circumstances, if at all, the appeal has to be dismissed only on the ground of his second marriage, that not only amounts to failure of justice but incentivizing the party who secures a decree by abusing the process of the Court and playing fraud. Further, the trial Court also should have been serious when a 24 years old marriage with a daughter aged 23 years, was sought to be broken. Therefore, it is necessary to give opportunity to the appellant-

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NC: 2024:KHC:23566-DB wife to contest the petition as she cannot be thrown out of the marriage without hearing. Therefore, it is necessary to set aside the order and remand the matter for fresh consideration after giving opportunity to both the parties.

20. The trial Court records themselves show that the notice taken by the petitioner at UK address given in the petition was not served and he himself claimed that the respondent was not traceable in the said address. Despite that, the Court proceeded to hold that the service is sufficient, which was contrary to the petitioner's own document Ex.P-4. On that count also the appeal succeeds. Hence, the following:

ORDER The appeal is allowed with costs.

The impugned judgment and decree dated 23.07.2007 in M.C.No.745/2003 on the file of I Additional Principal Judge, Family Court, Bengaluru City, is hereby set aside. The matter is remanded to the trial Court for fresh consideration.

The parties shall appear before the trial Court without further notice on 12.08.2024, either personally or through their representative.

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NC: 2024:KHC:23566-DB The petitioner shall deposit the arrears of interim alimony awarded by this Court on the date of his appearance. Similarly the respondent-wife shall file her statement of objections on the date of appearance.

On such appearance, the trial Court shall give reasonable opportunity to both the parties and dispose of the matter as expeditiously as possible at any rate within six months from the date of appearance of parties.

If any of the parties fail to appear, the trial Court is at liberty to proceed in accordance with law.

Sd/-

JUDGE Sd/-

JUDGE BSR

Smt S V Shylaja vs Mr N A Anil Kumar on 30 May, 2024

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CRL.RP No. 229 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF MAY, 2024

BEFORE

THE HON'BLE MR. JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 229 OF 2022

BETWEEN:

SMT S V SHYLAJA
WIFE OF MR. N.A. ANIL KUMAR
DAUGHTER OF Y. VENKATASWAMY
AGED ABOUT 36 YEARS
RESIDING AT: NO. 1239/1
OPPOSITE POLICE QUARTERS
SARJAPURA, ANEKAL TALUK
BANGALORE - 562 125.

...PETITIONER

(BY SMT.PRAMILA NESARGI, SENIOR COUNSEL
FOR SRI. C JAGADISH, ADVOCATE)

CHANDRASHEKAR AND:

LAXMAN
KATTIMANI MR. N.A. ANIL KUMAR
S/O R. ALLAPPA
HIGH AGED ABOUT 36 YEARS
COURT OF
KARNATAKA R/O: MATHRUKRUPA, NO. 172
8TH CROSS, GANGOTRHRI ROAD
SIT EXTENSION
TUMKUR CITY - 572 102.

...RESPONDENT

(BY SRI. NANDISH GOWDA G B, ADVOCATE)

THIS CRL.RP IS FILED U/S. 397 R/W 401 CR.P.C
PRAYING TO ENHANCE THE INTERIM MAINTENANCE AMOUNT
GRANTED VIDE ORDER DATED 07-08-2020 IN
CRL.A.NO.5004/2020 BY THE III ADDITIONAL DISTRICT AND
SESSIONS JUDGE BENGALURU RURAL DISTRICT AT ANEKAL,
FROM RS. 5000/- (NOW REDUCED TO RS. 4000/- BY THIS
HON'BLE COURT) RS. 75,000/- PER MONTH AND ETC.,

THIS CRIMINAL REVISION PETITION HAVING BEEN
HEARD AND RESERVED ON 04.03.2024, COMING ON FOR
PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE
THE FOLLOWING:

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CRL.RP No. 229 of 2022

ORDER

1. This Revision Petition is filed by the petitioner, being aggrieved by the order dated 07.08.2020 in Crl.A. No.5004/2020 on the file of the III Addl. District and Sessions Judge, Bangalore Rural District sitting at Anekal.
2. The ranks of the parties in the Trial Court will be considered henceforth for convenience. Brief facts of the case:
3. The petitioner is the wife of the respondent. Their marriage was solemnized on 19.10.2014 as per Hindu rites and customs. After the marriage, the petitioner joined her husband and started living in her matrimonial home which is situated at Tumakuru. Initially, all was well and she had been treated well.
4. It is further stated that the respondent started demanding the petitioner to bring property by way of dowry from her parents and her father-in-law also joined with the respondent and started demanding the property in the form of dowry from the petitioner.
5. It is further stated that the petitioner refused to bring dowry and tried to convince the respondent and his father that they should not demand dowry as they themselves are rich enough to maintain the entire family. Further, the petitioner had also been harassed by the respondent and her in-laws that she should not go out of the house without the company of the respondent. Though, she tried to convince that she being a junior Advocate had to attend the office of her senior counsel and requested them to permit her to work as an advocate, however, it was denied.
6. It is further submitted that when the petitioner was unable to forbear the turmoil of the matrimonial home, she informed the said harassment and torture to the family members. The family members and relatives conducted panchayath to settle the issues. However, the respondent and his parents imposed certain conditions to restore her matrimonial house. The petitioner and her father were unable to fulfill their demands, consequently, she was necked out of the matrimonial home.
7. Being aggrieved by the ill-treatment and harassment meted out in her matrimonial home, she approached the Court and filed an application seeking for maintenance on 21.11.2015. Initially, the Court of first instance directed the respondent to pay the maintenance of Rs.2,000/- per month till disposal of the petition. Being aggrieved by the inadequacy of the maintenance, an appeal was preferred to the Appellate Court for enhancement. The Appellate Court enhanced the interim maintenance from Rs.2,000/- to Rs.5,000/- vide its order dated 07.08.2020 in Crl.A.No.5004/2020.
8. The respondent herein being aggrieved by the order of enhancement, filed an application for revision of the said order before this Court. This Court vide its order dated 25.08.2021, in Crl.R.P.No.629/2020 reduced the amount of interim maintenance from Rs.5,000/- to Rs.4,000/-.

9. The said order of interim maintenance attained finality and therefore, there is no dispute in that regard. The interim order passed by this Court by the Co-ordinate Bench is not the subject matter of the petition. Therefore, the petitioner restricted prayer No.3 for separate accommodation at her matrimonial home.

10. Heard Smt. Pramila Nesargi, learned Senior Counsel for Sri.C.Jagadish, learned counsel for the petitioner and Sri. Nandish Gowda G.B., learned counsel for the respondent.

11. It is the submission of the learned Senior Counsel that, the petitioner being the wife of the respondent, she is entitled to have separate accommodation in terms of the provision under Section 17 of the Protection of Women from the Domestic Violence Act, 2005 (for short, "D.V."Act).

12. It is further submitted that the respondent is the only son residing along with his parents at Tumakuru in their own house. The accommodation can be made in the same building where the respondent is residing. The law of domestic violence Act provides certain privileges to the destituted women who are thrown out of the matrimonial house without any reasons by their in-laws.

13. It is further submitted that the petitioner being a well educated and practicing advocate has been necked out of her matrimonial home without any basis. The petitioner has lost her mother recently, and she has no permanent residence to stay. The petitioner is trying to restore the matrimonial obligations and therefore, she intends to stay in the same building where the respondent is living.

14. It is further submitted that the Hon'ble Supreme Court in catena of judgments reiterated that women who approached the Court by invoking the provision under the D.V. Act are entitled to have separate residence where the respondent is living and her residential order should be protected. Further, the leaned Senior Counsel to substantiate her contention relied on the judgments of Hon'ble Supreme Court in the case of SATISH CHANDER AHUJA VS. SNEHA AHUJA¹ & PRABHA TYAGI VS. KAMALESH DEVI².

15. Per contra, learned counsel for the respondent submits that the respondent is not residing with his parents and he is residing along with his aunt at Tumakuru. Further submits that he is ready to provide rental accommodation at Tumakuru and also submits that the maintenance order passed by the Court has regularly being paid to the petitioner.

16. It is further submitted that the respondent even though did his Engineering Degree, he is unemployed and he is AIR 2020 SUPREME COURT 5397 AIR 2022 SUPREME COURT 2331 leading his life on the income of his parents. Even the respondent is facing difficulty to pay the maintenance, however, being a husband, somehow managed to adhere the order of this Court. Making such submissions, learned counsel for respondent prays to dismiss the petition.

17. After having heard learned counsel for the respective parties, it is relevant to refer the definition of "domestic relationship" as stipulated under Section 2 (f) of D.V. Act which reads thus:

"2(F) "domestic relationship" means a relationship between two persons who live or have, any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;"

18. Similarly, the word "domestic violence" has been defined under Section 3 which reads thus:

"3. Definition of domestic violence.--For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it--

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.--For the purposes of this section,--

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes--

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child;

and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) "economic abuse" includes--

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

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(c) prohibition or restriction to
continued access to resources or

facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.--For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence"

under this section, the overall facts and circumstances of the case shall be taken into consideration."

19. On conjoint reading of the above said provisions, it can be inferred that the relationship between the two persons who live or have, at any point of time, lived together in a shared household when they are related by consanguinity, or marriage, or relationship in the nature of marriage. For the purpose of defining the domestic violence, the Act itself categorized four types of abuses viz., physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.

20. Section 2(s) of the Act defines "shared household"

which means a household where the person aggrieved lives or at any stage, he has lived in a domestic relationship either singly or along with the respondent in any form of residence, the aggrieved person has right in the shared household.

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21. Section 17 of the Act defines that "every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same." Further, it defines, "the aggrieved person shall not be evicted or excluded from the shared household."

22. In the present case, the petitioner states that she was residing with her in-laws along with the respondent in the house situated at Tumakuru. It is also admitted fact that she is the wife of the respondent. It is further noticed in the averments of the petition that she has been subjected to cruelty and harassment at the hands of respondent and her in-laws. Further, it is stated in the petition that she had lodged a complaint before the Sarjapura Police, Bangalore for the offence under Section 498(A) read with 149 of IPC and Sections 3 and 4 of Dowry Prohibition Act. The jurisdictional police after conducting the investigation, submitted the charge sheet. The case is pending for adjudication.

23. Prima-facie, this Court is satisfied that the petitioner has been subjected to cruelty as defined under Section 3 of the Act and she is entitled for the protection order along with residential order. Now, it is relevant to refer the

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judgment of the Hon'ble Supreme Court in the case of Sathish Chander Ahuja as stated supra in paragraph number 43 which read thus:

"43. Further, the expression 'family members living together as a joint family' is not relatable only to relationship through consanguinity, marriage or adoption. As observed above, the expression 'joint family' does not mean a joint family as understood in Hindu Law. It would mean persons living together jointly as a family. It would include not only family members living together when they are related by consanguinity, marriage or adoption but also those persons who are living together or jointly as a joint family such as foster children who live with other members who are related by consanguinity, marriage or by adoption. Therefore, when any woman is in a domestic relationship as discussed above, is subjected to any act of domestic violence and becomes an aggrieved person, she is entitled to avail the remedies under the D.V. Act. The further question is, whether, such a domestic relationship should be subsisting between the aggrieved person and the respondent against whom relief is claimed at the time of claiming the relief. Before answering the same, it would be useful to analyse the relationships noted in the D.V. Act as under:

- (a) Any relationship by consanguinity is a lifelong relationship.
- (b) Marriage is also a lifelong relationship unless a separation by a decree of divorce is ordered by a competent authority of law.
 - (i) If there is judicial separation ordered by a court of law, that does not put an end to marriage and hence the domestic relationship continues between the spouses even though they may not be actually living together.
 - (ii) In the event of a divorce, marriage would be no longer be subsisting, but if a woman (wife) is subjected to any domestic violence either during

marriage or even subsequent to a divorce decree being passed but relatable to the period of domestic relationship, the provisions of this D.V. Act would come to the rescue of such a divorced woman also.

(iii) That is why, the expression 'domestic relationship' has been defined in an expansive manner to mean a relationship between two persons who live or have at any point of time lived together in a shared household when they are related by marriage. We have also interpreted the word 'live' or 'lived' in the context of right to reside in Sub-Section (1) of Section 17. The right to live in the shared household, even when the domestic relationship may have been severed for instance when a woman has been widowed owing to the death of her husband, entitles her to have remedies under the D.V. Act.

(iv) Therefore, even when the marital ties cease and there is no subsisting domestic relationship between the aggrieved woman and the respondent against whom relief is claimed but the acts of domestic violence are related to the period of domestic relationship, even in such circumstances, the aggrieved woman who was subjected to domestic violence has remedies under the D.V. Act.

(c) Even in the case of relationship in the nature of marriage, during which period the woman suffered domestic violence and is thus an aggrieved person can seek remedies subsequent to the cessation of the relationship, the only pre-condition is that the allegation of domestic violence must relate to the period of the subsistence of relationship in the nature of marriage.

(d) In the same way, when a girl child is fostered by family members living together as a joint family as interpreted above and lives or at any point of time has lived together in a shared household or has the right to reside in the shared household being a member living together as a joint family and has been ousted in any way or has been a victim of domestic violence has remedies under the D.V. Act.

In our view, the question raised about a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed must be interpreted in a broad and expansive way, so as to encompass not only a subsisting domestic relationship in presentia but also a past domestic relationship. Therefore, the Parliament has intentionally used the expression 'domestic relationship' to mean a relationship between two persons who not only live together in the shared household but 56 also between two persons who 'have at any point of time lived together' in a shared house hold."

24. On careful reading of the dictum of the Hon'ble Supreme Court, it can be gathered that the expression 'family members living together as a joint family' not only restricted to the definition of the joint family as stated under the Hindu Law, however, it includes the persons living together jointly as a family in a shared household at any point of time along with the aggrieved person.

25. In the present case, the petitioner has proved that she was living with the respondent and her in-laws in the matrimonial home for a considerable length of time. Therefore, she is entitled for shared household in the matrimonial home.

26. In the light of the observations made above, I proceed to pass the following:

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ORDER i. The petition is allowed in part.

ii. The petitioner is entitled to have residential order as defined under Section 17 of the Act.

iii. The Trial Court is directed to take appropriate measures to provide separate residence in her matrimonial home and it is needless to say that the order of residence to be protected in terms of Section 18 of the Act.

iv. The registry is directed to send the copy along with the documents forthwith for effective implementation of this order.

Sd/-

JUDGE JS/-

Smt. Sahana T. S vs Smt. Shilpasree T. C on 22 June, 2024

Author: N S Sanjay Gowda

Bench: N S Sanjay Gowda

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NC: 2024:KHC:22869
CRL.P No. 6225 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA
CRIMINAL PETITION NO. 6225 OF 2018 (482)

BETWEEN:

1. SMT. SAHANA T. S.
W/O KALLINATHA H D, AGED ABOUT 32 YEARS,
2. SRI. KALLINATHA H D
S/O LATE B.DODDAIAH, AGED ABOUT 35 YEARS,

BOTH PERMANENT RESIDENT OF MANOGNA,
1ST MAIN ROAD, 3RD CROSS, 1ST PARALLEL ROAD,
BEHIND DATTATREYA TEMPLE, JAYANAGAR WEST,
SHETTIHALLI, TUMKUR-572101

...PETITIONERS

(BY SRI. VINAY SINGH.M., ADVOCATE)

AND:

1. SMT. SHILPASHREE T. C.
Digitally signed by KIRAN KUMAR R Location: HIGH COURT OF KARNATAKA
W/O GIRISHA, AGED ABOUT 27 YEARS,
RESIDENT OF T.P.K.ROAD,
RAGHAVENDRA NAGARA, TUMKUR-573201.
2. THE STATE OF KARNATAKA
BY WOMEN POLICE STATION,
TUMKUR-572101
REPRESENTED BY ITS SPP,
HIGH COURT OF KARNATAKA,
BENGALURU-560001

... RESPONDENTS

(BY SMT.M.L.KRUTHIKA FOR
SRI. K.V.NARASIMHA, ADVOCATE FOR R-1;
SMT. ANITHA GIRISH, HCGP FOR R-2)

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NC: 2024:KHC:22869
CRL.P No. 6225 of 2018

THIS CRL.P IS FILED UNDER SECTION 482 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO QUASH THE PROCEEDINGS IN C.C.NO.141/2018 (CR.NO.3/2018) REGISTERED BY RESPONDENT WOMEN POLICE STATION, TUMAKURU PENDING ON THE FILE OF II ADDITIONAL SENIOR CIVIL JUDGE AND C.J.M., TUMAKURU FOR THE ALLEGED OFFENCE PUNISHABLE UNDER SECTION 498-A, 323, 504, 354 AND 307 READ WITH 34 OF IPC AND SECTION 3 AND 4 OF DOWRY PROHIBITION ACT.

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

ORDER

1. Learned counsel for the petitioners files a memo enclosing a copy of a decree of divorce granted in M.C.No.231/2019, to which the first respondent-wife is a party. In this compromise petition, it is agreed upon by the complainant-wife that she would withdraw the petition that she had filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and also for quashing of the proceedings in C.C.No.141/2018, against which this petition has been filed.
2. In view of the fact that the husband and wife have settled their differences and a decree of divorce is also granted dissolving the marriage, no useful purpose would NC: 2024:KHC:22869 be served by continuing the proceedings, which are essentially private in nature. The proceedings are, therefore, quashed.
3. In light of the fact that the wife has agreed for quashing of the entire proceedings, notwithstanding the fact that the husband and other accused are not made parties to this petition, the entire proceedings, including against the husband and other accused, shall also stand quashed.

Sd/-

JUDGE GSR

Smt. Sangeeta W/O Genappa Lakkundi vs Shri. Genappa S/O Parappa Lakkundi on 14 June, 2024

Author: M.G.S. Kamal

Bench: M.G.S. Kamal

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NC: 2024:KHC-D:7993
CP No. 100077 of 2024

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 14TH DAY OF JUNE, 2024
BEFORE
THE HON'BLE MR JUSTICE M.G.S. KAMAL
CIVIL PETITION NO.100077 OF 2024

BETWEEN:

SMT. SANGEETA W/O. GENAPPA LAKKUNDI
AGE: 39 YEARS, OCC: HOUSEHOLD WORK,
R/O: OPP. ROSTAN APARTMENT,
NEAR K.C.PARK, DHARWAD,
TQ. AND DIST. DHARWAD.

...PETITIONER
(BY SRI.MALLIKARJUN C.HIREMATH, ADVOCATE)

AND:

SHRI. GENAPPA S/O. PARAPPA LAKKUNDI
AGE: 44 YEARS, OCC: ENGINEER AT BENGALURU
NOW R/O: KHAN TOTA,
BEHIND VEERANARAYAN GUDI,
GADAG, TQ. AND DIST: GADAG-582101.

...RESPONDENT

Digitally
signed by V N (RESPONDENT SERVED)
BADIGER
Location: High
Court of
Karnataka

THIS CIVIL PETITION IS FILED U/SEC.24 OF CPC, PRAYING TO
ALLOW MY CIVIL PETITION BY WITHDRAWING THE M.C.NO.43/2024
PENDING ON THE FILE OF PRINCIPAL FAMILY COURT, GADAG AT

GADAG AND TO TRANSFER THE COURT OF PRINCIPAL FAMILY
COURT DHARWAD AT DHARWAD FOR ADJUDICATE BOTH MATTERS
WITH PERFECT AND MEANINGFUL MANNER IN THE INTEREST OF
JUSTICE AND EQUITY.

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

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NC: 2024:KHC-D:7993
CP No. 100077 of 2024

ORDER

1. Present petition is by the wife seeking transfer of the matter in M.C.No.43/2024 on the file of the Principal Family Judge, Gadag, filed by the respondent-husband against the petitioner for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955, to the Family Court in Dharwad.
2. Case of the petitioner is that her marriage with the respondent was solemnized on 09.03.2014 at Akkanabalaga Kalyan Mantap, D.C. Compound, Dharwad, as per the customs and traditions prevailing in their community. That the petitioner gave birth to a male child on 14.10.2015 at Dharwad. That due to harassment from her husband and mother-in-law, dispute arose between the petitioner and the respondent-husband. That the petitioner and the respondent are residing separately. Petitioner-wife filed Crl.Misc.No.69/2022 on the file of the Principal Civil Judge (Jr.Dn.), Dharwad under Sections 12, 18, 19, 20, 22 of Protection of Women from Domestic Violence Act, 2005. That the petitioner-wife is residing with her parents at Dharwad, NC: 2024:KHC-D:7993 which is about 85 kms away from Gadag, where the respondent-husband resides and has now filed the petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955.
3. Heard and perused the matter.
4. Section 19 of the Hindu Marriage Act, 1955 provides that petition for divorce be filed within the jurisdiction of the Court where the respondent at the time of presentation of the petition resides. That apart, petitioner- wife is residing at 85 kms away from Gadag. She has also initiated the proceeding in Crl.Misc.No.69/2022 at Dharwad and the same is pending consideration.
5. In view of the above factual and legal aspects of the matter, this Court is of the considered view that the present petition in M.C.No.43/2024 pending on the file of Principal Family Judge, Gadag be withdrawn and presented before the Court at Principal Family Court, Dharwad, where the petitioner-wife is residing.
6. Petition is accordingly allowed.

NC: 2024:KHC-D:7993

7. Since the parties are represented by their respective counsels, they shall appear before the Principal Family Court, Dharwad, on 10.07.2024 without any further notice.

8. In view of the disposal of the main petition, pending IAs. do not survive for consideration and are disposed of.

SD/-

JUDGE KGK

Smt. Soubhagya Alias Lingaraddi D/O ... vs Shri Shrinivas S/O LakshmiKant Deshi on 1 April, 2024

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NC: 2024:KHC-D:5987
CP No. 100193 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 1ST DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE VIJAYKUMAR A.PATIL
CIVIL PETITION NO. 100193 OF 2023

BETWEEN:

SMT. SOUBHAGYA LINGARADDIM,
D/O. LAXMAN LINGARADDI,
AGE: 33 YEARS, OCC: HOSUE HOLD WORK/
PRIVATE SERVICE,
R/O. 27, VIVEKANAND COLONY,
NEAR SAMUEL SCHOOL, SAI NAGAR,
MUDHOL-587311, TQ: MUDHOL,
DIST: BAGALKOT.

...PETITIONER

(BY SRI. D. M. MALLI, ADVOCATE)

AND:

SHRI. SHRINIVAS S/O. LAKSHMIKANT DESHI,
AGE: 37 YEARS, OCC: PRIVATE SERVICE,
R/O. 202, VANDANA SAROVAR,
80FT ROAD, JAKKASANDRA, 1ST BLOCK,
KORAMANGALA, BANGALORE-560034.

...RESPONDENT

Digitally signed
by ROHAN
HADIMANI T
Location: HIGH
COURT OF
KARNATAKA

(BY SMT. KAVERI KURUVATTI, ADVOCATE)

THIS CIVIL PETITION IS FILED U/SEC.24 OF CPC, 1908,
PRAYING TO ALLOW PRESENT PETITION AND TRANSFER THE
M.C.NO.6100/2023 PENDING BEFORE THE IV ADDL. PRL. JUDGE
FAMILY COURT, BANGALORE, BANGALORE SOUTH, BANGALORE
FILED BY THE RESPONDENT, TO SENIOR CIVIL JUDGE AND JMFC,
MUDHOL, IN THE INTEREST OF JUSTICE AND EQUITY.

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

ORDER

This petition is filed under Section 24 of CPC seeking to transfer M.C.No.6100/2023 pending on the file of IV Additional Principal Judge, Family Court, Bengaluru to the Senior Civil Judge and JMFC, Mudhol.

2. Heard the learned counsel Sri.D.M.Malli, for the petitioner and the learned counsel Smt.Kaveri Kuruvatti, for the respondent.

3. Learned counsel for the petitioner submits that the petitioner-wife is residing at Mudhol along with her parents due to serious marital dispute and harassment by the respondent- husband. It is submitted that the petitioner is a Software Engineer doing work-from-home from Mudhol and taking care of her aged parents. It is further submitted that the petitioner has filed Criminal Mis.No.321/2023 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and the said case is pending before the Principal Civil Judge and JMFC, Mudhol. It is also submitted that now the petitioner is residing at Mudhol along with her parents and nobody is there to take care of the aged parents and it would be difficult for her to NC: 2024:KHC-D:5987 travel from Mudhol to Bengaluru to attend the proceedings instituted by her husband hence, he seeks to allow the petition.

4. Per contra, learned counsel for the respondent submits that the petitioner has made false averments in the petition and she has not approached the Court with clean hands. It is submitted that both the petitioner and respondent are working as Software Engineers at Bengalur in different companies and the present petition is filed with ulterior motive to put the respondent into further harassment. It is further submitted that the petitioner has falsely stated that she is residing at Mudhol by suppressing the fact that her brother is a Software Engineer taking care of her parents. It is also submitted that the petitioner left the matrimonial home within a short span of time without any reason by causing harassment to the respondent-husband. It is contended that the notice issued by the Court in M.C.No.6100/2023 sent to the petitioner's address at Mudhol has been returned back with an endorsement that no one resides in the said place, which clearly establishes that the petitioner is not residing at Mudhol and subsequently the said notice was served to the office address of the petitioner. It is further contended that the NC: 2024:KHC-D:5987 petitioner is residing in Paying Guest at Bengaluru and attending the office work and it would be difficult for the respondent-husband to travel to Mudhol, hence seeks to dismiss the petition.

5. I have heard the learned counsel for the petitioner and the learned counsel for the respondent and meticulously perused the material available on record.

6. The pleadings and material available on record indicate that the marriage between the petitioner and respondent was solemnized on 12.02.2023. There are serious allegations made by the parties to

the proceedings against each other. Admittedly, the petitioner-wife has instituted the proceedings in Crl.Misc.No.321/2023 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and the said proceedings is pending before the Principal Civil Judge and JMFC, Mudhol. The pleadings and material available on record further indicate that the petitioner is a Software Engineer and doing work-from-home at Mudhol. The petition averments further indicate that the petitioner is taking care of her aged parents and residing with them at Mudhol. Insofar as the NC: 2024:KHC-D:5987 contention that the notice sent by the Family Court in M.C.No.6100/2023 was returned with a shara that the no one is residing at the address and subsequently the said notice is served on the office address of the petitioner at Bengaluru is evident from the records, however the petitioner on oath has made a statement in the petition that she is residing along with her parents at Mudhol and working from home, hence, there is no reason to disbelieve the averments of petition and the contrary contentions urged by the respondent has no merit consideration.

7. Admittedly, the respondent-husband is required to attend the Crl.Misc.321/2023 pending on the file of Prl.Civil Judge & JMFC, Mudhol. Keeping in mind the convenience of both the parties and also with an object to avoid multiplicity of proceedings, it would be just and proper to transfer M.C.No.6100/2023 pending before the Family Court, Bengaluru to the competent Court at Mudhol. This Court has kept in mind the convenience of the parties, more particularly, the convenience of the petitioner-wife as she is taking care of her aged parents and with an object of adjudication of two proceedings at one place as the issue involved in both the NC: 2024:KHC-D:5987 proceedings are interdependent, hence, it is desirable that they are tried by the competent Court at one place.

8. It would be useful to refer the decision of the Hon'ble Supreme Court in the case of N.C.V.Aishwarya v. A.S.Saravana Karthik Sha reported in AIR 2022 SC 4318 wherein the Hon'ble Supreme Court at paragraph No.9 as held as under:

"9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socio-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer."

9. In a petition under Section 24, the convenience of the parties is required to be taken into consideration. It is well settled in law that though Section 24 of the Code of Civil Procedure confers power on Court to transfer proceeding, yet NC: 2024:KHC-D:5987 this power has to be exercised with circumspection and care. Convenience of the parties has to be taken into account. In the case of 'RAJWINDER KAUR vs. BALWINDER SINGH' in (2003) 11 SCC 726, Hon'ble Supreme Court had directed transfer of proceeding taking into account the fact that wife was required to travel long distance and was required to take care of daughter aged four years. Similarly, in the case of 'SUMITA SINGH VS. KUMAR SANJAY AND ANOTHER' in AIR 2002 SC 396, Hon'ble Supreme

Court observed that it was the husband's suit against wife and, therefore, convenience of wife has to be taken into account and in the case of 'RAJANI KISHOR PARDESHI VS. KISHOR BABULAL PARDESHI' (2005) 12 SCC 237, wherein it has been held that in a matrimonial dispute, convenience of the wife is of the paramount consideration.

10. It is pertinent to state that there cannot be any straight jacket formula that can be adopted in order to determine the transfer of proceedings. Keeping in mind the likely inconvenience to be caused to the petitioner-wife, the distance from Mudhol to Bengaluru is more than 500 km., and also the fact that the proceedings instituted by the petitioner is NC: 2024:KHC-D:5987 pending before the competent Court at Mudhol, and in order to avoid any hardship to the petitioner-wife, this Court is of the considered view that it is a fit case to transfer M.C.No.6100/2023 pending on the file of IV Additional Principal Judge, Family Court, Bengaluru to the Senior Civil Judge and JMFC, Mudhol. Hence, I proceed to pass the following:

ORDER i. Civil Petition is allowed.

ii. M.C.No.6100/2023 now pending on the file of IV Additional Principal Judge, Family Court, Bengaluru is withdrawn from the said Court and made over to the Senior Civil Judge and JMFC, Mudhol for trial in accordance with law.

Sd/-

JUDGE BSR Ct-an

Smt. Sudhabai vs Smt. Rashmi V Rao on 2 April, 2024

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NC: 2024:KHC-D:6036
CRL.RP No. 100464 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 2ND DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE ANIL B KATTI

CRIMINAL REVISION PETITION NO. 100464 OF 2023 (397)

BETWEEN:

SMT. SUDHABAI W/O LATE P. SESAGIRIRAO,
AGED: 8 YEARS, OCC: NIL,
HAVING ADDRESS AT FLAT NO. 16,
"PRABHA SMRITI", PRABHA SMRITI CHS LTD.,
PLOT NO. 135, HISSA NO. 15, MULUND (E), MUMBAI-81

- PETITIONER

(BY SRI S.S. BETURMATH, ADVOCATE)

AND:

SMT. RASHMI V. RAO,
(MAIDAN NAME: RASHMI V KALLAPUR),
AGED: 45 YEARS, OCC: NIL,
PRESENTLY RESIDING AT H.NO 46 ,
ARJUNVIHAR, GOKUL ROAD, HUBBALLI-30.

- RESPONDENT

Digitally signed (BY SMT. RASHMI V. RAO (PARTY-IN-PERSON))
by SAROJA
HANGARIKI

Location: HIGH COURT OF KARNATAKA DHARWAD BENCH DHARWAD ADDL. DIST. & SESSIONS JUDGE, DHARWAD AND SPECIAL COURT FOR TRIAL OF THE OFFENCES UNDER THE POCSO ACT AND SC AND ST (POA) ACT & ETC.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER ON 19.03.2024, COMING ON FOR 'PRONOUNCEMENT OF ORDER' THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

Revision petitioner/ respondent No.3 feeling aggrieved by the judgment of first appellate Court on the file of II Addl. Dist. & Sessions Judge, Dharwad & Special Court for Trial of the offences under the P.O.C.S.O. Act and SC. & S.T. (P.O.A.) Act in Criminal Appeal No. 100/2018, preferred this revision petition.

2. Parties to the revision petition are referred with their ranks as assigned in the trial Court for the sake of convenience.

3. Heard the arguments of both sides.

4. After hearing the arguments of both sides and on perusal of trial Court records, so also the impugned judgment under appeal, the following points arise for consideration.

1) Whether the impugned order under revision passed by the first appellate Court in setting aside the order of the trial Court on the file of Prl. Civil Judge & JMFC, Dharwad in C.C. No. 123/2017 dated

05.11.2018, is perverse, capacious and legally not sustainable?

2) Whether interference of this Court is required?

NC: 2024:KHC-D:6036

5. The petitioner had filed Crl. Misc. No. 123/2017 against the respondent No.1 and others seeking monetary reliefs in terms of Section 20 and 28 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'P.W.D. Act' for brevity) read with Sec. 125 of Cr.P.C. for recovery of maintenance amount of Rs.7,05,600/- with interest which is due from 29.08.2009 to 12.04.2014 as per the order passed in Crl. Misc. No. 85/2009 on the file of JMFC-I Court, Hubballi. The marriage of petitioner with respondent No.1-Venkatesh was solemnized on 28.06.2007. The respondents No.2 and 3 are the parents of respondent No.1. The petitioner was residing with respondents at Mumbai after the marriage. After some time of marriage there was misunderstanding between the spouse and the respondents started abusing and dominating the petitioner, ultimately she was driven out from matrimonial home. The petitioner had filed Crl. Misc. No. 85/2009 on the file of JMFC-I, Hubballi. In the said case there was interim order of maintenance of Rs.10,000/- per month vide order dated 13.01.2012. Thereafter, there was compromise between the petitioner and respondent No.1 and the petitioner agreed to withdraw the petition in Crl. Misc. No. NC: 2024:KHC-D:6036 85/2009 which was closed as 'compromised' on

12.04.2014. However, the petitioner soon realized that the respondent No.1 took her back only to avoid paying arrears of maintenance and not intended to lead marital life with her. The respondents continued ill treatment to the petitioner and again she was driven out from the matrimonial home. In the meantime, the respondent No.1 passed away on 23.05.2017. He was serving as Manager in E-Clerx, Mumbai drawing salary of Rs.2,00,000/- per month. He has also made several investments in the bank as well as financial institutions for himself and also for his parents. The petitioner being widow of deceased respondent No.1, is entitled for attachment of assets of respondent No.1 for recovery of interim maintenance. Therefore, prayed for allowing the petition.

6. Respondents No.2 and 3 have appeared through their counsel and the respondent No.3 had filed objections admitting relationship of petitioner with respondent No.1 who died due to heart attack on 23.05.2017 at Singapore. It is also further admitted that maintenance amount of Rs.10,000/- was awarded in Crl. Misc. No. 85/2009. It is further contended that the compromise between the petitioner and respondent No.1 NC: 2024:KHC-D:6036 was not a conditional compromise and the petitioner did not recover arrears of maintenance during the lifetime of respondent No.1. The petitioner herself got stayed release of death benefits as per interim order dated 13.06.2017 in Crl. Misc. No. 17/2017. The recovery petition itself is not maintainable against dead respondent No.1 and in view of the compromise between the petitioner and respondent No.1, the petitioner cannot enforce recovery of maintenance amount. Therefore, prayed for dismissing the petition.

7. The trial Court by common order in Crl. Misc. No. 123/2017 and Crl. Misc. No. 124/2017 dated 05.11.2018 dismissed the petitions as not maintainable in view of the compromise between the petitioner and respondent No.1 and the arrears of maintenance cannot be enforced against a dead person. The petitioner has challenged said order before the first appellate Court in Crl. A. No. 100/2018. The first appellate Court after hearing the arguments of both sides and on appreciation of the material evidence, allowed the appeal, set aside the order of trial Court and held that petitioner is entitled to recover interim maintenance of Rs.10,000/- per month from 29.09.2009 to 12.04.2017 with interest at 12% p.a. from the NC: 2024:KHC-D:6036 date on which the said amount falls due from the assets including the service benefits left behind by the respondent No.1.

8. The genesis of dispute between the parties arose from initiation of proceedings by petitioner in Crl. Misc. No. 85/2009 U/s 12 of P.W.D. Act. The trial Court by order dated 08.09.2009 passed ex parte interim order of maintenance of Rs.15,200/- Ex.P.9. On appearance of respondent and after hearing both sides, the trial Court has modified the order of maintenance and reduced interim maintenance amount to the extent of Rs.10,000/- per month vide order dated 13.01.2012. The petitioner had also obtained the decree of Restitution of Conjugal Rights on the file of Prl. Judge, Family Court, Hubballi in M.C. No. 202/2012 vide judgment dated 20.11.2014. It is thereafter a joint memo was filed on 12.04.2014 seeking reference to the Lok Adalaath. It is stated that the claim of the parties against each other does not survive and exist and hence the petitioner and respondent No.1 intended to seek disposal of the matter. The matter was referred to Lok Adalaath and in the Lok Adalaath pursuant to the decree in M.C. No. 202/2012, petitioner and respondent No.1 agreed to live together jointly NC: 2024:KHC-D:6036 and therefore petition in Crl. Misc. No. 85/2009 was closed as settled. The records also would go to show that petitioner had filed M.C. No. 153/2016 on 25.06.2016-Ex.P.4 on the file of Family Court, Hubballi for seeking decree of divorce. In view of the

death of respondent No.1 on 23.05.2017, the said petition was closed. The petitioner has filed Crl. Misc. No. 123/2017 to recover the arrears of maintenance from 08.09.2009 to 12.04.2014 amounting to Rs.7,05,600/-.

9. Learned counsel for respondent No.3 has argued that no order can be passed against a dead person. Secondly, petitioner herself filed memo dated 16.10.2017 in Crl. Misc. No. 85/2009 'as not pressed'. Thirdly, petitioner cannot revive her claim in a closed case which is legally not permissible and lastly the testamentary petition, i.e., suit, is filed by the petitioner in O.S. No. 175/2017 before the Hon'ble Bombay High Court. Therefore, contended that recovery petition itself is not maintainable as was rightly held by the trial Court.

10. Per contra, petitioner/ party-in-person has argued that her husband-respondent No.1 persuaded her that he intended to join the company of petitioner in terms of the decree in M.C. NC: 2024:KHC-D:6036 No. 202/2012 provided she withdraw her petition in Crl. Misc. No. 85/2009. It is because of such condition put by the respondent No.1 and the petitioner who wished to lead her marital life with respondent No.1, agreed to withdraw the petition filed by her in Crl. Misc. No. 85/2009. The petitioner has not given up her accrued right of recovery of maintenance amount, since respondent No.1 was duty bound to provide maintenance amount due to the petitioner. The respondent No.1 was never intended to lead marital life with the petitioner, but only to deprive the petitioner from reaping the benefit of maintenance amount granted to the petitioner offered to join petitioner. Therefore, she has got every right to recover arrears of maintenance amount as she has no any independent source of income and she has been driven out of the matrimonial home.

11. The petitioner/party-in-person has contended that the revision petition itself is not maintainable. In support of such contention, she relied on the order of Hon'ble Rajasthan High Court, Bench at Jaipur in Vishal Kochar son of Harish Vs. Smt. Pulkit Sahni wife of Vishal Kochar (S.B. Criminal Revision Petition No. 462/2021 dated 22.04.2022). In NC: 2024:KHC-D:6036 the said case before the Rajasthan High Court, it was a case arising out of maintenance proceedings U/s 125 Cr.P.C. and therefore it was held that "grant of maintenance amount pending disposal of the maintenance petition U/s 125 Cr.P.C., the revision petition is not maintainable." Whereas the present proceeding has arisen out of the provisions under the P.W.D. Act. In Vishal Kochar (supra), it has been observed at paragraph Nos.11 and 12 as under:

"11. So far as the provisions of the Act of 2005 are concerned, under Section 12 of the Act an aggrieved person can file an application to seek various reliefs including monetary relief i.e. relief of maintenance under section 20 of the Act. Section 23 of the Act of 2005 empowers the Magistrate to pass an interim order as he deems just and proper in any proceeding pending before him. Section 29 of the Act provides for an appeal to the Court of Session against an order passed under this Act and it does not exclude an interim order from its ambit.

12. The order of interim maintenance under the provisions of Act 2005 does not terminate the proceedings finally. The matter remains sub judice and rights and liabilities of the parties are not decided in finality. Though, in such circumstances, the

interim order of maintenance is in the nature of interlocutory order, yet it is appealable as per Section 29 of the Act 2005. In the case of Amir Khan vs State of Rajasthan and Others (supra), it was held that such interim order is appealable under Section 29 of the Act of

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NC: 2024:KHC-D:6036 2005, and a criminal revision petition is maintainable against the final order of appellate Court. This judgment stands on different set of laws i.e., Act 2005 and does not deal with the question of maintainability of revision against interlocutory order, hence, it cannot be applied with regard to the orders of interim maintenance passed under Section 125(1) of Cr.P.C."

The Hon'ble Rajasthan High Court, Bench at Jaipur, having so observed has held that, in view of the appeal remedy as being provided under the P.W.D. Act, the revision is maintainable. However, as against the interim order passed U/s 125 Cr.P.C. being interlocutory order, the revision petition is not maintainable. Therefore, the contention of petitioner/ party-in- person that revision petition itself is not maintainable, cannot be legally sustained.

12. The first appellate Court by referring to the judgment of this Court in Venkatesh M. Versus Smt. Yellamma decided on 18.09.2020 (R.P.F.C. No. 37/2015), has rightly held that petition for recovery of interim maintenance amount awarded under the provisions of P.W.D. Act, is not barred by limitation.

13. The first contention of the respondent No.3 is that no order can be passed against a dead person. It is true that

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NC: 2024:KHC-D:6036 husband of the petitioner, i.e., respondent No.1, died on 23.05.2017. The order of interim maintenance was passed on 13.01.2012-Ex.P.7. However, the respondent No.1 did never bothered to pay the interim maintenance amount, instead he challenged the maintenance amount granted in Crl. Misc. No. 17/2016 against which, petition was filed by the petitioner in Crl. Misc. No. 124/2017. In appeal in Criminal Appeal No. 102/2016, the first appellate Court has enhanced the amount to Rs.25,000/-.

14. The petitioner has sought for enforcement of the order of maintenance against the assets of deceased respondent No.1 and not against respondents No.2 and 3 individually. The right of the petitioner in seeking interim maintenance has been already adjudicated and the amount of maintenance has been determined to which the petitioner is entitled. If for any reason the respondent No.1 fails to pay arrears of maintenance or in the present case in view of the death of respondent No.1, the petitioner is entitled to enforce her right to recover the arrears of maintenance to which she is entitled. The petitioner is also entitled to recover either from the service benefits of respondent No.1 or from the assets which she inherits from

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NC: 2024:KHC-D:6036 respondent No.1. Therefore, the first contention of respondent No.3 that no order can be passed against a dead person, cannot be legally sustained.

15. The second contention of the respondent No.3 is that petitioner herself has filed a memo dated 16.10.2017 in Crl. Misc. No. 85/2009 as not pressed (it should have been 11.10.2017). Indisputably, the said memo was filed by the petitioner since respondent No.1 expressed his willingness to join the company of the petitioner pursuant to the judgment- Ex.P.2 and decree-Ex.P.3 in M.C. No. 202/2012 dated 20.01.2014. On the date of filing the said memo, the order of interim maintenance dated 13.01.2012 was already in force and she did never give up her claim regarding recovery of arrears of maintenance. If at all the respondent No.1 was firm in continuing his marital relationship with the petitioner pursuant to the judgment and decree in M.C. No. 202/2012 and led marital life, then there would have been no occasion for the petitioner to file Crl. Misc. No. 123/2017 for recovery of arrears of maintenance. Indisputably, petitioner was forced to file divorce petition against respondent No.1 under M.C. No. 153/2016 on 25.06.2014-Ex.P.4. If the same is calculated

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NC: 2024:KHC-D:6036 from the date of memo, on 12.04.2014, to the date of filing of M.C. No. 153/2016 on 25.06.2016-Ex.P.4, then it would go to show that within a period of two years one month and 14 days, the petitioner was forced to file petition against respondent No.1 for seeking decree of divorce. However, in view of unfortunate death of respondent No.1, the said petition was closed. The said proceedings and the earlier conduct of respondent No.1 in not complying the interim order passed by the Court would only demonstrate the fact that respondent No.1 took the petitioner to matrimonial home pursuant to decree in M.C. No. 202/2012-Ex.P.3, only in order to escape from paying the interim maintenance amount awarded by the Court. Therefore, the said contention of respondent No.3 that in view of the memo of petitioner herself in Crl. Misc. No. 85/2009 and the petition being disposed off, the claim of petitioner for enforcement of interim maintenance is unsustainable in law and cannot be accepted.

16. The next contention of respondent No.3 is that revival of claim in closed case is not permissible. Indisputably, Crl. Misc. No. 85/2009 was closed as not pressed by order dated 16.10.2017. The petitioner/ party-in-person has submitted

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NC: 2024:KHC-D:6036 that as per the oral direction of the Presiding Officer she had filed separate petition for recovery of arrears of maintenance in Crl. Misc. No. 123/2017 and hence she filed a memo in Crl. Misc. No. 85/2009 as not pressed. If this was not to be the reason for filing the memo and simplicitor, the petitioner was to file memo as not pressed, there was no occasion or reason for the petitioner to file Crl. Misc. No. 123/2017 for enforcing her right to recover the arrears of interim maintenance amount. Therefore, the contention of respondent No.3 that revival of claim in a closed case is not permissible, also cannot be legally sustained.

17. The last contention of respondent No.3 is that petitioner has already filed testamentary petition in O.S. No. 175/2017 before the Hon'ble Bombay High Court and if the recovery petition is enforced to recover the amount from the assets of respondent No.1, then it will amount to granting double benefit to the petitioner. The subject matter involved in testamentary petition before the Hon'ble Bombay High Court with respect to the share of the parties to the said proceedings is totally a different matter than the claim of recovery of arrears of maintenance which the respondent No.1 is bound to pay. The

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NC: 2024:KHC-D:6036 petitioner is not asking for any maintenance either from the income or the property of respondent No.3. The petitioner is only seeking enforcement of accrued right to recover the arrears of maintenance as per the order in Crl. Misc. No. 85/2009 dated 13.01.2012. Therefore, the contention of respondent No.3 that petitioner is getting double benefit in the subject property in testamentary petition, i.e., suit O.S. No. 175/2017 and in the present recovery petition to get double benefit, cannot also be legally sustained.

18. The another grievance of respondent No.3 is that the first appellate Court has committed serious error in granting 12% interest on the arrears of maintenance. The petitioner/ party- in-person has argued that respondent No.1 during his lifetime did not pay the arrears of maintenance whenever it fell due and she has to incur expenses for her sustenance. Therefore, the respondent No.3 is liable to pay the interest out of the service benefits of her husband, the respondent No.1.

19. Indisputably, husband of the petitioner, i.e., respondent No.1 died on 23.05.2017. The petitioner herself got stay order in Crl. Misc. No. 124/2017 dated 13.06.2017 withholding

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NC: 2024:KHC-D:6036 disbursement of service benefits of respondent No.1. The respondent No.3 is age old mother-in-law of petitioner and she did not receive any service benefits of her son when the interim maintenance was ordered or also when the petition was closed. The first appellate Court has not assigned any valid reason for grant of interest. If 12% interest is ordered on the arrears of maintenance, then by this time it will work out to more than double of the arrears of maintenance, for no fault of respondent No.3. The mother-in-law of petitioner is now at an advanced age and lost her husband and also her son, further so far she has not received any service benefits of her deceased son. The testamentary suit between petitioner and respondent No.3 under O.S. No. 175/2017 is pending on the file of Hon'ble Bombay High Court, wherein the rights of parties in the assets including the service benefits of deceased respondent No.1 will be decided. If these factors are taken into consideration, then the grant of interest on the arrears of maintenance claimed by the petitioner cannot be legally sustained. I find sufficient force in the contention of the learned counsel for the respondent No.3 that if interest on arrears of maintenance amount is granted, then it will amount to granting double benefit to the

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NC: 2024:KHC-D:6036 petitioner out of the service benefits of her husband, respondent No.1, to which the respondent No.3 is also entitled for her right of share. Therefore, under these circumstances respondent No.3 can not be penalized to pay the interest on arrears of maintenance claimed by the petitioner. Therefore, to the extent of grant of interest on the arrears of maintenance, interference of this Court is required. Consequently, proceed to pass the following order.

ORDER The revision petition filed by the revision petition/ respondent No.3 is hereby partly allowed.

The judgment of the first appellate Court on the file of II Addl. Dist. & Sessions Judge, Dharwad & Special Court for Trial of the offences under the P.O.C.S.O. Act and S.C. & S.T. (P.O.A.) Act in Criminal Appeal No. 100/2018 is modified as under:

The grant of interest at the rate of 12% p.a. as awarded by the first appellate Court is hereby set aside.

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NC: 2024:KHC-D:6036 The order of the first appellate Court that petitioner/ party-in-person is entitled for recovery of maintenance amount of Rs.10,000/- per month from 29.08.2009 to 12.04.2014 stands confirmed.

Registry to send a copy of this order to the trial Court along with the records, for compliance of this order.

Sd/-

JUDGE BVV CT:GSM

Sri A Ramesh Babu vs Smt Dharani S on 28 June, 2024

Author: M. Nagaprasanna

Bench: M. Nagaprasanna

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Reserved on : 04.06.2024
Pronounced on : 28.06.2024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.3578 OF 2022

BETWEEN:

1. SRI. A.RAMESH BABU
S/O L.ANANTHAKRISHNAN
AGED ABOUT 68 YEARS
R/AT NO. 144, PLALANIPURAM
1ST STREET, BHAVANI - 638 301.
2. SMT.R.SHASHIKALA
W/O A.RAMESH BABU
AGED ABOUT 66 YEARS
R/AT NO. 144, PLALANIPURAM
1ST STREET, BHAVANI - 638 301.
3. MR. R.CHANDRASHEKAR
S/O RAMESH BABU
AGED ABOUT 43 YEARS
R/AT NO.303, 3RD FLOOR
MITHRA RAJI RESIDENCY
IDGAH ROAD, BEHIND GOVT. SCHOOL
VARTHUR VILLAGE, BENGALURU - 560 087

SHOWN IN THE PETITION AS:
NO. 144, PLALANIPURAM

2

1ST STREET, BHAVANI - 638 301.

... PETITIONERS

(BY SRI. AMAR CORREA, ADVOCATE)

AND :

SMT. DHARANI S.,
W/O VIJAY BABU WAGMARE
D/O SWAMI RAO SAMPATH
AGED ABOUT 30 YEARS
R/AT NO. G-3, PHASE-3
LAKE VIEW APARTMENTS
KAREGUDDAPDAHALLI
CHIKBANAWARA POST
L.MARK, GANGADHARAIH
KALYANA MANTAPA
BENGALURU - 560 090.

... RESPONDENT

(BY SRI. T. PRAKASH, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN CRL.MISC.NO.570/2021 PENDING ON THE FILE OF THE CJM RURAL COURT, BANGALORE AGAINST THESE PETITIONERS WHO ARE ARRAYED AS RESPONDENT NO.2 TO 4 IN PETITION FILED U/S 12 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, BY RESPONDENT VIDE ANNEXURE-A.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 04.06.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

3

ORDER

The petitioners who are the father-in-law, mother-in-law and brother-in-law of the respondent are before this Court calling in question proceedings initiated by the respondent in Criminal Miscellaneous No.570 of 2021 before the Chief Judicial Magistrate, Bengaluru Rural District invoking Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('the Act' for short).

2. Facts, in brief, germane are as follows:-

One R. Vijay Babu Waghmare and the respondent got married on 25-02-2021. Barely after 7 months of marriage, alleging that the husband and the in-laws or the family members have meted out torture upon the wife, the respondent/wife invoked the jurisdiction of the learned Magistrate under Section 12 of the Act seeking several reliefs, the protection order for residence and maintenance from the hands of the husband. These petitioners are arrayed as respondents 2, 3 and 4 therein alleging that they have also instigated the husband in meting out such torture upon the wife, which would become the ingredients of what would the domestic violence against the wife would mean. No order is passed by the concerned Court. The Petitioners who are respondents 2, 3 and 4 therein have called in question in this petition the very initiation and drawing up of these petitioners into the proceedings before the concerned Court. Therefore, the entire proceedings are sought to be quashed.

3. Heard Sri Amar Correa, learned counsel for the petitioners and Sri T.Prakash, learned counsel appearing for the respondent.

4. The learned counsel appearing for the petitioners would vehemently contend that the petitioners have nothing to do with the life of the husband and the wife. They are without any rhyme and reason driven into these proceedings. Though no order is passed, it is their submission that as to why the petitioners 2 and 3 who are now senior citizens should undergo the misery of appearing before the Court when they have not performed any overt act that would attract violence. It is his submission that the wife has various grievances against the husband. The proceedings should have stopped at that and not dragging every member of the family.

He would submit that the 3rd petitioner is the brother-in-law of the respondent who lives elsewhere and has no connection with the people who are now directed to face proceedings. He would seek quashment of entire proceedings.

5. Per-contra, the learned counsel for the respondent would project a threshold bar. It is his submission that the criminal petition is not maintainable. As appeal should be preferred as obtaining under Section 29 of the Act and that would be a statutory, efficacious and alternative remedy. Invoking jurisdiction of this Court is, on the face of it, erroneous is the submission of the learned counsel. He would submit, without prejudice to his contentions qua maintainability of the petition, that the 3rd petitioner has no role to play, but petitioners 1 and 2 being father-

in-law and mother-in-law, have undoubtedly a role to play in what the husband has behaved with his wife. Therefore, the proceedings must be permitted to continue. He would seek dismissal of the petition.

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

7. In the light of the aforesaid submission of the learned counsel for the respondent, I would deem it appropriate to consider the threshold bar of entertainability of the subject petition in the teeth of

existence of alternative statutory remedy of appeal provided under the Act. To answer the said issue, it would become necessary to notice certain provisions of the Act. An application under Section 12 of the Act can be preferred on various circumstances. Therefore, application is preferred by the aggrieved woman alleging domestic violence. Domestic violence is defined under Section 3 of the Act, reading:

"3. Definition of domestic violence.--For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it

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(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;

or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause

(a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.--For the purposes of this section,--

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes--

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) "economic abuse" includes--

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.--For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

Section 29 which forms the fulcrum of the lis reads as follows:

"29. Appeal.--There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."

(Emphasis supplied) Section 29 deals with the remedy of an appeal. It directs that an appeal to the Court of Sessions lie within 30 days from the date on which the order made by the learned Magistrate is served upon the aggrieved person or the respondent, as the case may be. Therefore, Section 29 permits an appeal against any order that is passed, on a bare reading of the provision. Setting aside the entire proceedings is not the power that is vested in the Court of Sessions on an appeal under Section 29 of the Act. It is the inherent power that is conferred upon this Court under Section 482 of the Cr.P.C., to consider these grievances. The learned counsel for the petitioners has placed reliance on record certain judgments, so has the learned counsel for the respondent. I deem it appropriate to notice those judgments that deal with the issue.

8. The sheet anchor of the contention of the learned counsel for the respondent is on the judgment of the Apex Court in the case of KAMATCHI v. LAKSHMI NARAYANAN¹. The said judgment relied on by the learned counsel for the respondent does not consider about entertainability of a petition under Section 482 of the Cr.P.C.. The issue before the Apex Court was whether the period of limitation as obtaining under Sections 468, 469 and 470 of the Cr.P.C. would be applicable to the proceedings under the Act.

The Apex Court answering the said issue holds as follows:

"11. Before we consider the rival submissions, the relevant provisions, namely, Sections 12, 28, 31 and 32 of the Act may be extracted:

(2022) 15 SCC 50 "12. Application to Magistrate.--(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

28. Procedure.--(1) Save as otherwise provided in this Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Criminal Procedure Code, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23.

31. Penalty for breach of protection order by respondent.--(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under Section 498-A of the Penal Code, 1860 (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

32. Cognizance and proof.--(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), the offence under sub-section (1) of Section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of Section 31 has been committed by the accused."

12. Similarly, Section 468 of the Code is also set out for facility:

"468. Bar to taking cognizance after lapse of the period of limitation.--(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be--

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

13. In terms of Section 468 of the Code, the cognizance of an offence of the categories specified in sub-section (2) can not to be taken after the expiry of the period specified therein.

14. In the following cases, the complaints alleging commission of an offence were filed well in time so that cognizance could have been taken within the prescribed period, but the matters were considered by the Magistrate after the expiry of the prescribed period, and as such the cognizance in each of the cases was taken after the expiry of the period prescribed:.....

....

17. It is, thus, clear that though Section 468 of the Code mandates that "cognizance" ought to be taken within the specified period from the commission of offence, by invoking the principles of purposive construction, this Court ruled that a complainant should not be put to prejudice, if for reasons beyond the control of the prosecuting agency or the complainant, the cognizance was taken after the period of limitation. It was observed by the Constitution Bench that if the filing of the complaint or initiation of proceedings was within the prescribed period from the date of commission of an offence, the Court would be entitled to take cognizance even after the prescribed period was over.

18. The dictum in Sarah Mathew [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] has to be understood in light of the situations which were dealt with by the Constitution Bench. If a complaint was filed within the period prescribed under Section 468 of the Code from the commission of the offence but the cognizance was taken after the expiry of such period, the terminal point for the prescribed period for the purposes of Section 468, was shifted from the date of taking cognizance to the filing of the complaint or initiation of proceedings so that a complaint ought not to be discarded for reasons beyond the control of the complainant or the prosecution.

19. Let us now consider the applicability of these principles to cases under the Act. The provisions of the Act contemplate filing of an application under Section 12 to initiate the proceedings before the Magistrate concerned. After hearing both sides and after taking into account the material on record, the Magistrate may pass an appropriate order under Section 12 of the Act. It is only the breach of such order which constitutes an offence as is clear from Section 31 of the Act. Thus, if there be any offence committed in terms of the provisions of the Act, the limitation prescribed under Section 468 of the Code will apply from the date of commission of such offence. By the time an application is preferred under Section 12 of the Act, there is no offence committed in terms of the provisions of the Act and as such there would never be a starting point for limitation from the date of application under Section 12 of the Act. Such a starting point for limitation would arise only and only after there is a breach of an order passed under Section 12 of the Act.

20. We may now deal with the case on which reliance was placed by the High Court.

21. Inderjit Singh Grewal v. State of Punjab [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] was a case where the marriage between the

parties was dissolved by judgment and decree dated 20-3-2008. Thereafter, the wife preferred an application under the provisions of the Act on 4-5-2009 alleging that the decree of divorce was sham and that even after the divorce the parties were living together as husband and wife; and that she was thereafter forced to leave the matrimonial home. It was, in these circumstances, that an application under Section 482 of the Code was filed by the husband seeking quashing of the proceedings under the Act. It was observed that a suit filed by the wife to declare the judgment and decree of divorce as a nullity was still pending consideration before the competent court.

22. The effect of the proceedings culminating in decree for divorce was considered by this Court as under : (Inderjit Singh Grewal case [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] , SCC pp. 595-96, paras 16-18) "16. The question does arise as to whether the reliefs sought in the complaint can be granted by the criminal court so long as the judgment and decree of the civil court dated 20-3-2008 subsists. Respondent 2 has prayed as under:

'It is therefore prayed that Respondent 1 be directed to hand over the custody of the minor child Gurarjit Singh Grewal forthwith. It is also prayed that Respondent 1 be directed to pay to her a sum of Rs 15,000 per month by way of rent of the premises to be hired by her at Ludhiana for her residence. It is also prayed that all the respondents be directed to restore to her all the dowry articles as detailed in Annexures A to C or in the alternative they be directed to pay to her a sum of Rs 22,95,000 as the price of the dowry articles. Affidavit attached.' Thus, the reliefs sought have been threefold : (a) custody of the minor son; (b) the right of residence; and (c) restoration of dowry articles.

17. It is a settled legal proposition that where a person gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of the law as fraud unravels everything. "Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law." It is trite that "fraud and justice never dwell together"

(*fraus et jus nunquam cohabitant*). Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud and deception are synonymous. "Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine." An act of fraud on court is always viewed seriously. (Vide Meghmala v. G. Narasimha Reddy [Meghmala v. G. Narasimha Reddy, (2010) 8 SCC 383 : (2010) 3 SCC (Civ) 368 : (2010) 3 SCC (Cri) 878] .)

18. However, the question does arise as to whether it is permissible for a party to treat the judgment and order as null and void without getting it set aside from the competent court. The issue is no more res integra and stands settled by a catena of decisions of this Court. For setting aside such an order, even if void, the party has to approach the appropriate forum. [Vide State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth [State of Kerala v. M.K. Kunhikannan Nambiar Manjeri

Manikoth, (1996) 1 SCC 435] and Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd. [Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., (1997) 3 SCC 443]]"

23. The plea based on the issue of limitation was then considered in paras 32 and 33 and it was observed : (Inderjit Singh Grewal case [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] , SCC p. 599) "32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468CrPC, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the 2005 Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of CrPC applicable and stand fortified by the judgments of this Court in Japani Sahoo v. Chandra Sekhar Mohanty [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] and Noida Entrepreneurs Assn. v. Noida [Noida Entrepreneurs Assn. v. Noida, (2011) 6 SCC 508 : (2011) 2 SCC (Cri) 1015 : (2011) 2 SCC (L&S) 717].

33. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the 2005 Act is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same."

24. Another case on which reliance was placed during the hearing was Krishna Bhattacharjee v. Sarathi Choudhury [Krishna Bhattacharjee v. Sarathi Choudhury, (2016) 2 SCC 705 : (2016) 2 SCC (Civ) 223 : (2016) 1 SCC (Cri) 810] . In that case, a decree for judicial separation was passed by a competent court. Thereafter, an application under Section 12 of the Act was preferred by the wife seeking return of stridhan articles and allied reliefs. A plea was taken by the husband that the proceedings under the Act were barred by time. The Magistrate held that as a result of decree for judicial separation, the parties ceased to be in domestic relationship and as such, no relief could be granted. The appeal arising therefrom was dismissed by the lower appellate court and finally revision preferred by the wife was also dismissed by the High Court.

25. In light of these facts, the issue of limitation was considered by this Court as under : (Krishna Bhattacharjee case [Krishna Bhattacharjee v. Sarathi Choudhury, (2016) 2 SCC 705 : (2016) 2 SCC (Civ) 223 : (2016) 1 SCC (Cri) 810] , SCC pp. 723-24, paras 32-33) "32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realisation of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of "aggrieved person" clearly postulates about the status of any woman who

has been subjected to domestic violence as defined under Section 3 of the said Act. "Economic abuse"

as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which has been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in Inderjit Singh Grewal [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] that Section 468 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.

33. In the present case, the wife had submitted the application on 22-5-2010 and the said authority had forwarded the same on 1-6-2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of "continuing offence" and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation."

26. Inderjit Singh Grewal [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 :

(2012) 2 SCC (Cri) 614] was decided before the decision of this Court in Sarah Mathew [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721].

Rather than the issue of limitation, what really weighed with this Court in Inderjit Singh Grewal [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] was the fact that the domestic violence was alleged after the decree for divorce, when any relationship between the parties had ceased to exist. It is true that the plea based on Section 468 of the Code was noted in para 32 of the said decision but the effect and interplay of Sections 12 and 31 of the Act was not noticed. In Krishna Bhattacharjee [KrishnaBhattacharjee v. Sarathi Choudhury, (2016) 2 SCC 705 : (2016) 2 SCC (Civ) 223 : (2016) 1 SCC (Cri) 810] as is evident from para 33 of the said decision, the plea of limitation was rejected as the offence was found to be continuing one and

as such there was no terminal point from which date the limitation could be reckoned. Thus, none of these decisions is material for the purposes of the instant matter.

27. The special features with regard to an application under Section 12 of the Act were noticed by a Single Judge of the High Court in P. Pathmanathan [P. Pathmanathan v. V. Monica, 2021 SCC OnLine Mad 8731] as under : (SCC OnLine Mad paras 19-20) "19. In the first instance, it is, therefore, necessary to examine the areas where the DV Act or the DV Rules have specifically set out the procedure thereby excluding the operation of CrPC as contemplated under Section 28(1) of the Act. This takes us to the DV Rules. At the outset, it may be noticed that a "complaint" as contemplated under the DV Act and the DV Rules is not the same as a "complaint" under CrPC. A complaint under Rule 2(b) of the DV Rules is defined as an allegation made orally or in writing by any person to a Protection Officer. On the other hand, a complaint, under Section 2(d)CrPC is any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence. However, the Magistrate dealing with an application under Section 12 of the Act is not called upon to take action for the commission of an offence. Hence, what is contemplated is not a complaint but an application to a Magistrate as set out in Rule 6(1) of the DV Rules. A complaint under the DV Rules is made only to a Protection Officer as contemplated under Rule 4(1) of the DV Rules.

20. Rule 6(1) sets out that an application under Section 12 of the Act shall be as per Form II appended to the Act. Thus, an application under Section 12 not being a complaint as defined under Section 2(d)CrPC, the procedure for cognizance set out under Section 190(1)(a) of the Code followed by the procedure set out in Chapter XV of the Code for taking cognizance will have no application to a proceeding under the DV Act. To reiterate, Section 190(1)(a) of the Code and the procedure set out in the subsequent Chapter XV of the Code will apply only in cases of complaints, under Section 2(d)CrPC, given to a Magistrate and not to an application under Section 12 of the Act."

28. It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence."

(Emphasis supplied) The Apex Court holds that the High Court had wrongly equated filing of an application to lodging of a complaint or initiation of proceedings to import Section 468 of the Cr.P.C., and obliterate the proceedings before the concerned Court under the Act. Therefore, the said judgment is distinguishable on its facts without much ado, as in the case at hand, there is nothing that could suggest of any kind of order having been passed by the concerned Court qua under Section 468 Cr.P.C.

9. The issue is whether a criminal petition or a writ petition invoking the jurisdiction under Section 482 of the Cr.P.C., gets controlled by Section 29, statutory appellate remedy, before the Court of Sessions. The judgment of KAMATCHI supra has been pressed into service by every respondent therein contending that the petition under Section 482 of the Cr.P.C., cannot be entertained in the light of existence of alternative remedy. The Apex Court in the case of SHYAMLAL DEVDA v.

PARIMALA2 has held as follows:

"....

8. Section 18 of the Domestic Violence Act relates to protection order. In terms of Section 18 of the Act, intention of the legislature is to provide more protection to woman. Section 20 of the Act empowers the court to order for monetary relief to the "aggrieved party". When acts of domestic violence are alleged, before issuing notice, the court has to be prima facie satisfied that there have been instances of domestic violence.

9. In the present case, the respondent has made allegations of domestic violence against fourteen appellants. Appellant 14 is the husband and Appellants 1 and 2 are the (2020) 3 SCC 14 parents-in-law of the respondent. All other appellants are relatives of parents-in-law of the respondent. Appellants 3, 5, 9, 11 and 12 are the brothers of father-in-law of the respondent. Appellants 4, 6 and 10 are the wives of Appellants 3, 5 and 9 respectively. Appellants 7 and 8 are the parents of Appellant 1. Appellants 1 to 6 and 14 are residents of Chennai. Appellants 7 to 10 are the residents of the State of Rajasthan and Appellants 11 to 13 are the residents of the State of Gujarat. Admittedly, the matrimonial house of the respondent and Appellant 1 has been at Chennai. Insofar as Appellant 14 husband of the respondent and Appellants 1 and 2 parents-in-law, there are averments of alleged domestic violence alleging that they have taken away the jewellery of the respondent gifted to her by her father during marriage and the alleged acts of harassment to the respondent. There are no specific allegations as to how other relatives of Appellant 14 have caused the acts of domestic violence. It is also not known as to how other relatives who are residents of Gujarat and Rajasthan can be held responsible for award of monetary relief to the respondent. The High Court was not right in saying that there was prima facie case against the other Appellants 3 to 13. Since there are no specific allegations against Appellants 3 to 13, the criminal case of domestic violence against them cannot be continued and is liable to be quashed.

10. Insofar as the jurisdiction of the Bengaluru Court, as pointed out by the High Court, Section 27 of the Protection of Women from Domestic Violence Act, 2005 covers the situation. Section 27 of the Act reads as under:

"27. Jurisdiction.--(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which--

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act (2) Any order made under this Act shall be enforceable throughout India."

11. A plain reading of the above provision makes it clear that the petition under the Domestic Violence Act can be filed in a court where the "person aggrieved"

permanently or temporarily resides or carries on business or is employed. In the present case, the respondent is residing with her parents within the territorial limits of Metropolitan Magistrate Court, Bengaluru. In view of Section 27(1)(a) of the Act, the Metropolitan Magistrate Court, Bengaluru has the jurisdiction to entertain the complaint and take cognizance of the offence. There is no merit in the contention raising objection as to the jurisdiction of the Metropolitan Magistrate Court at Bengaluru.

12. In the result, Crl. Misc. No. 53 of 2015 filed against Appellants 3 to 13 is quashed and this appeal is partly allowed. The learned VIth Additional Metropolitan Magistrate at Bengaluru shall proceed with Crl. Misc. No. 53 of 2015 against Appellants 1, 2 and 14 and dispose of the same in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter."

(Emphasis supplied) The Apex Court was considering who would be the person aggrieved. The Apex Court sets aside or quashed the proceedings against the appellants therein, as the High Court had rejected the petition under Section 482 of the Cr.P.C., though the issue of maintainability was not expressly considered in that case.

10. A Full Bench of the High Court of Bombay, in the case of NANDKISHOR PRALHAD VYAWAHARE v. MANGALA³ in which the issue was whether the High Court can exercise the power under Section 482 of the Cr.P.C. in respect of proceedings under the Act, answers it after considering the entire spectrum of the Act and the precedents then obtaining as follows:

"....

42. We have seen that the nature of proceeding initiated under the D.V. Act is predominantly of civil nature. But, can we say, only because the proceedings have a dominant civil flavour, the applicability of the provisions of Criminal Procedure Code to the proceedings under the D.V. Act, is excluded or to be precise inherent power of the High Court under section 482 of Criminal Procedure Code is not available to deal appropriately with these proceedings, in spite of express application of the provisions of Criminal Procedure Code by the Parliament as provided under section 28 of the D.V. Act? In other words - Would the nature of the proceedings decide the fate of section 28 or the intention of the Parliament as expressed in section 28 of the D.V. Act would? To find out an answer, as a first step, we must look into the express language of the provision of section 28 of the D.V. Act and then if required, we may look for external aids, if any, as dictated to us by the settled principles of statutory interpretation.

....

50. Coming to the second part of section 28 of the D.V. Act, which is in sub-section (2), our view is no different than what we hold for the other exceptions we have expressed our mind on. This provision also stands as an exception to the generality of the applicability of 2018 SCC OnLine Bom.923 the provisions of Criminal Procedure Code. It only enables the Court to lay down its own procedure, notwithstanding the general applicability of the provisions of Criminal Procedure Code to all the proceedings under the D.V. Act, as laid down in section 28(1). As it is only an enabling provision of law, it may or may not be put to use by the Court in a given case and everything will depend upon fact situation of each case. An enabling section, empowering the Court to make an exception to the generality of the previous section, does not by itself divest the previous section of its general character and affects the generality of the previous section only when it is actually put to use in a particular case. Whenever, such power conferred by the enabling section is used, it comes to an end the moment the proceeding is concluded. This power under section 28(2) exists for speedy and effective disposal of an application under section 12 or under sub-section (2) of section 23 and as soon as the purpose is achieved, the power extinguishes itself. In other words, the power under sub- section (2) of section 28 begins, if at all it begins, upon the decision taken by the Court on the commencement of or during the course of the proceeding under section 12 or section 23(2) and comes to an end the moment the proceeding is disposed of in accordance with law. Therefore, such power of the Court cannot be construed in a way as to confer more power than intended by the Parliament so as to exclude the applicability of the provisions of Criminal Procedure Code, forever and for all times to come after the Court has disposed of such a proceeding. If this enabling section is to be understood, even when it is not put to use, as excluding criminal remedies and measures made available under the D.V. Act to a party aggrieved by the decision of the Court, as for example, remedy of criminal revision under section 397 or invocation of High Court's inherent power under section 482 of Criminal Procedure Code, we would be doing violence to the language of entire provision of section 28 of the D.V. Act and putting into the mouth of the Parliament something not intended by it, which is not permissible under the settled rules of construction.

51. The purpose of the power given to the Court under section 28(2) of the D.V. Act is only to provide a powerful tool in the hands of the Court to provide effective and speedy remedy to the aggrieved person. Such power given to the Court is likely to come in handy for the Court dealing with section 12 D.V. Act application in a given case and especially the Courts contemplated under section 26 of the D.V. Act before whom similar applications are filed. Section 36 of the D.V. Act also lays down that the provisions of the Act are in addition to and not in derogation to the provisions of any other law, for the time being in force. The combined reading of all these provisions of law would only strengthen the conclusion so reached by us.

52. If the concept of limited applicability of the provisions of the Criminal Procedure Code, as propounded by Shri C.A. Joshi, learned Counsel for the respondent is

accepted; in our considered view, it would defeat the very object of the Act which is to provide effective protection to women against the incidence of domestic violence. If the Parliament, intended to provide for a remedy under the civil law, it also intended to make the remedy effective and meaningful by laying down for general applicability of the criminal procedure, subject to the exceptions created in the Act. It has envisaged that the job of providing effective remedy to the aggrieved person is best performed by the Courts only when the procedure adopted to do it is informed by the best of both the worlds. That is the reason why the Parliament has provided for general applicability of the criminal procedure and has also simultaneously given freedom to the Court to devise its own procedure in a particular case so as to suit the exigencies of that case. We may add here that language used in section 28(2) is significant and needs to be taken into account. The freedom to lay down "own procedure" is confined to only a particular proceeding either under section 12 or section 23(2) of the D.V. Act pending before the Court, which is clearly seen from the use of the words "for disposal of an application under section 12, sub-section (2) of section 23" after the words "nothing in sub-section (1) shall prevent the Court from laying down its own procedure".

53. This would mean that generally the provisions of Criminal Procedure Code would be applicable, to all proceedings taken under sections 12 to 23 and also in respect of the offence under section 31 of the D.V. Act, subject to the exceptions provided for in the Act including the one under sub-section (2) of section 28. It would then follow that it is not the nature of the proceeding that would be determinative of the general applicability of Criminal Procedure Code to the proceedings referred to in section 28(1) of the D.V. Act, but the intention of the Parliament as expressed by plain and clear language of the section, which would have its last word. We have already held that section 28 of the D.V. Act announces clearly and without any ambiguity the intention of the Parliament to apply the criminal procedure generally subject to the exceptions given under the Act. So, the inherent power of the High Court under section 482 of Criminal Procedure Code, subject to the self-imposed restrictions including the factor of availability of equally efficacious alternate remedy under section 29 of the D.V. Act, would be available for redressal of the grievances of the party arising from the orders passed in proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and also in respect of the offence under section 31 of the D.V. Act.

54. We are also fortified in our view by the opinion expressed by the Division Bench of the Gujarat High Court in the case of Ushaben (*supra*), wherein it is observed that a proposition that because the proceedings are of civil nature, the Criminal Procedure Code may not apply, is too general a proposition to be supported in a case where the Parliament, by express provision, has applied the provisions of Criminal Procedure Code to the proceedings under the Act (Paragraph 16). It also held that the remedy under section 482 of Criminal Procedure Code would be available to an aggrieved person, of course, subject to self-imposed restrictions on the power of the High Court in this regard. Relevant observations of the Division Bench appearing in paragraph 19 of the judgment are reproduced as under:

"19. In view of the discussion and the observations made by us herein above, once the provision of the Code has been made applicable, it cannot be said that remedy under section 482 of the Code would be unavailable to the aggrieved person. But the said aspect is again subject to self-imposed restriction of power of the High Court that when there is express remedy of appeal available under section 29 before the Court of Session or revision under section 397, the Court may decline entertainment of the petition under section 482 of the Code. But such in any case would not limit or affect the inherent power of the High Court under section 482 of the Code."

55. At this juncture, we would like to go back to the observations of the Hon'ble Apex Court made in paragraph 11 of its judgment in Kunapareddy (*supra*) wherein the Hon'ble Supreme Court finding that the petition in that case was essentially under sections 18 and 20 of the D.V. Act held that though it could not be disputed that these proceedings are predominantly of civil nature, the proceedings were to be governed by Criminal Procedure Code as provided under section 28 of the D.V. Act. These observations would also make it clear to us that at least a proceeding initiated for obtaining protection order under section 18 and monetary relief under section 20 would be governed by the provisions of Criminal Procedure Code in terms of section 28 of the D.V. Act, in spite of the fact that such proceeding is almost like a civil proceeding. If these observations apply to a proceeding taken for obtaining reliefs under sections 18 and 20 of the D.V. Act, there is no warrant for us to say that the observations would not be applicable to other proceedings, like those under sections 19, 21 and 22 of the D.V. Act. In our humble opinion, these observations would also have their applicability to the other proceedings discussed just now.

56. In the case of Sukumar Gandhi (*supra*), the Division Bench of this Court, however, held that because the proceedings under section 12(1) initiated to obtain various reliefs under the Act, mainly being of civil nature, no resort to section 482 of Criminal Procedure Code could be taken for the purpose of seeking their quashment. It was of the view that if such an inference is made, it would defeat the very object of the D.V. Act of providing for a speedy and effective remedy for enforcing an amalgamation of civil rights. Accordingly, it held that barring the prosecutions initiated for trying of the offences prescribed under the Act, inherent power of the High Court under section 482 of Criminal Procedure Code could not be invoked for quashing of the proceedings. In view of the discussion made and the conclusions drawn in the earlier paragraphs, it is not possible for us to agree with the view so taken by the Division Bench of this Court and we declare it to be an incorrect view. If we accept the opinion of the Division Bench, the result, in our view, would be quite opposite to what has been thought of by it. That apart, making section 482 of Criminal Procedure Code as not applicable may also amount to doing harm to plain and clear language of section 28 of the D.V. Act, which expresses unequivocally and clearly the intention of the Parliament, thereby excluding the possibility of resorting to external aids and other rules of construction.

57. While there is no difference of opinion about what the intention of the Parliament is, our disagreement is with the view that this very intention gets defeated by applying the provision of section 482 to the proceedings under section 12(1) of the D.V. Act and it is achieved by removing its applicability. The issue can be examined from a different angle as well.

58. A plain reading of section 482 of Criminal Procedure Code, which saves inherent power of the High Court, indicates that the power is to be exercised by the High Court not just to quash the proceedings, rather it has to be exercised for specific as well as broader purposes. The exercise of the inherent power has been delimited to such purposes as giving effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This would show that the inherent power of the High Court can be invoked not only to seek quashing of a proceeding, but also to give effect to any order under the Code or to challenge any order of the Court, which amounts to abuse of the process of the Court or generally to secure the ends of justice. This would mean that not only the respondent-man but also the aggrieved person-woman may feel like approaching the High Court to give effect to any order or to prevent abuse of the process of Court or to secure ends of justice. This would show that this power is capable of being used by either of the parties and not just by the respondent seeking quashing of the proceedings under section 12 of the D.V. Act. If this power is removed from section 28 of the D.V. Act, the affected woman may as well or equally get adversely hit, and this is how, the very object of the D.V. Act may get defeated.

59. Now, one incidental question would arise as to from what stage the provisions of the Criminal Procedure Code would become applicable and in our view, the answer could be found out from the provisions of sections 12 and 13 of the D.V. Act. A combined reading of these provisions shows that the commencement of the proceedings would take place the moment, the Magistrate applies his mind to the contents of the application and passes any judicial order including that of issuance of notice. Once, the proceeding commences, the procedure under section 28 of the D.V. Act, subject to the exceptions provided in the Act and the rules framed thereunder, would apply. In other words, save as otherwise provided in the D.V. Act and the rules framed thereunder and subject to the provisions of sub-section (2) of section 28, the provisions of the Criminal Procedure Code shall govern the proceedings under sections 12 to 23 and also those relating to an offence under section 31 of the D.V. Act on their commencement."

(Emphasis supplied) The Full Bench considers at what point in time or at what stage the Cr.P.C. would become applicable and holds that it is only where an order is passed.

11. In a later judgment, noticing the judgment of the Full Bench, the High Court of Bombay in DHANANJAY MOHAN ZOMBADE v. PRACHI⁴ has held as follows:

"....

13. Full Bench of this Court in the case of Nandkishor Pralhad Vyawahare v. Mangala w/o Pratap Bansar, (2018) 3 Mah LJ 913, has framed issue for consideration i.e. "whether or not High Court can exercise its powers under Section 482 of the Criminal Procedure Code, 1973 in respect of the proceedings under the Protection of Women from Domestic Violence Act, 2005?" While answering the said question, it is clearly held that the provision of Section 482 of the Code of Criminal Procedure has application to DV Act. Considering the law on the point of binding precedents, the Full Bench judgment of this Court binds this Court. The judgment of Full Bench of Madras High Court in the case of Arun Daniel (supra) has persuasive value but it

does not bind this Court. For the reasons recorded hereinabove, with utmost respect to the Full Bench of Madras High Court, this Court does not concur with the said judgment.

14. As far as judgments cited by learned counsel for the respondent are concerned, in case of Kunapareddy v. Kunapareddy Swarna Kumari, (2016) 11 SCC 774, the Hon'ble Apex Court was dealing with the issue as to whether amendment could be allowed in the proceedings under DV Act. In case of State of West Bengal v. Sujit Kumar Rana, (2004) 4 SCC 129, the issue before the Hon'ble Apex Court was as to whether the provisions of Section 482 of the Code of Criminal Procedure would apply to the confiscation proceeding under Section 59-G of Forest Act. In this case, it was held that Section 59-G of Forest Act confers specific power in officer appointed under Section 59(C) and District Judge to whom the appeal can be preferred under Section 59-C and 59-D. In 2023 SCC OnLine Bom. 1607 view of such specific power created by the Statute, it was held that application under Section 482 of the Code of Criminal Procedure is not tenable. In the instant case, no specific power is vested in other authority by DV Act in order to apply the said judgment to the present case. In case of Oliver Menezes v. Serita Therese Mathias, 2021 DGLS (Kar.) 304, the Karnataka High Court has no doubt held that Section 482 of the Code of Criminal Procedure is not applicable to the DV Act. However, this Court respectfully disagrees with the said view. Delhi High Court in the case of Sirisha Dinavahi Bansal v. Rajiv Bansal, 2020 SCC OnLine Del 764, was dealing with the situation when remedy of appeal under Section 29 of the DV Act was available and in such circumstances, it is held that the petition under Section 482 of the Code of Criminal Procedure is not maintainable. There is no such efficacious remedy available under DV Act for quashment of proceeding which amounts to abuse of process of Court and hence invocation of Section 482 of the Code of Criminal Procedure is fully justified."

(Emphasis supplied) Exercising its jurisdiction under Section 482 of the Cr.P.C., the complaint was quashed by the learned Judge of the High Court of Bombay. While doing so, the learned Judge considers the Full Bench judgment and all other judgments obtaining on the issue. The learned Judge holds that there is no efficacious remedy available under the Act for quashment of proceeding on account of it becoming an abuse of the process of law. I am in respectful agreement with the order passed in DHANANJAY MOHAN ZOMBADE's case supra.

12. The High Court of Andhra Pradesh, following the judgment of the Apex Court in SHYAMLAL DEVDA'S case supra, in the case of MORA v. STATE OF AP5 holds that the judgment in SHYAMLAL DEVADA'S case did not specifically decide maintainability, but there is no bar of exercise of power of a Court under Section 482 of the Cr.P.C. in a proceeding under the Act. The High Court has held as follows:

"9. On the other hand, in case of Shyamlal Devda v. Parimala, (2020) 3 SCC 14, Hon'ble Apex Court has set aside the order passed by the High Court wherein the proceedings under DV Act were not quashed under Section 482 of the Code of

Criminal Procedure. Though this judgment also does not specifically decide applicability of Section 482 of the Code of Criminal Procedure to DV Act, however, the said judgment more than sufficiently indicates that there is no bar to exercise powers under Section 482 of the Code of Criminal Procedure to the proceeding under DV Act."

(Emphasis supplied)

13. A coordinate Bench of this Court has in MRS.

ARADHANA SHARDA v. MRS. GEETHA RASTOGI⁶ after considering the judgment of the Apex Court in KAMATCHI supra has held as follows:

2024 SCC OnLine AP 1769 Criminal Petition No.7483 of 2020 & connected cases decided on 23-09-2023 "....

11. Now coming to the pivotal question whether this court can exercise jurisdiction under Section 482 of Code of Criminal Procedure, to set at naught the proceedings initiated by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005, it is apposite to refer the judgment of Hon'ble Apex Court in the case of State Of Haryana referred supra, where it was held that the Court exercising jurisdiction is not shorn of the power under Articles 226 and 227 of the Constitution of India and whenever Court is confronted with a situation where the provision of any penal law is abused, it would unhesitatingly exercise jurisdiction to set at naught such proceeding.

12. In the case on hand, though it is contended that the Hon'ble Apex Court in the case of Kamatchi supra held that under Section 482 of Code of Criminal Procedure, the High Court cannot exercise jurisdiction to quash the proceedings under Section 12 of Protection of Women from Domestic Violence Act 2005, in the instant case, the proceedings before the Trial Court has moved on from the stage of issuing notice. The consequence of non-compliance of an order under Sections 21 and 22 is provided in Section 31 of the Act of 2005, which reads as follows :

"31. Penalty for breach of protection order by respondent.--

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions."

13. Therefore, it cannot be held that the provisions under the PWDV Act 2005 are civil in nature. Therefore, when the Court is confronted with a false case or a case which does not constitute domestic violence as defined under the Protection of Women from Domestic Violence act 2005, the same cannot continue, as that would result in nuisance and harassment of the petitioner. Therefore, the proceedings against the petitioner cannot continue."

(Emphasis supplied)

14. Yet another coordinate Bench of this Court, answering an identical contention in MR. SHRIKANTH RAVINDRA v. SMT.

PADARATHY S.SOWMYA⁷ has held as follows:

"....

11. The proceedings under the Act, 2005 are the proceedings which are to governed by the Cr.P.C. as held by the Hon'ble Supreme Court in the case of Satish Chander supra, the submission of the learned counsel for the respondent that the relief sought under Sections 12 and 19 are predominantly civil in nature and as such the writ petition is not maintainable under Section 482 of Cr.P.C. is not acceptable. Even otherwise, the present petition is filed under Article 226 and 227 of the Constitution of India r/w Section 482 of Cr.P.C. Hence, the present petition is maintainable even accepting that W.P.No.5915 of 2017 decided on 29-06-2022 the proceedings under D.V. Act, 2005 are predominantly civil in nature.

12. The petitioner cannot be relegated to file an application for deleting his name by invoking Order I Rule 10(2) of the Code of Civil Procedure, 1908, since the provisions of the C.P.C. are not applicable to the proceedings under the D.V. Act, 2005. The present petition is maintainable to secure the ends of justice when prima facie it is established that the impugned proceedings are initiated with an ulterior motive for wreaking vengeance against the petitioner and with revengeful intent.

13. In view of the preceding analysis, continuation of the impugned proceedings against the petitioner will be an abuse of process of law."

(Emphasis supplied) These are the Authorities that the learned counsel for the petitioners would place reliance upon to buttress his submission that the petition under Section 482 of the Cr.P.C., would be maintainable.

15. The other line of judgments on which the learned counsel for the respondent has placed reliance upon are (i) KAMATCHI supra and (ii) OLIVER MENEZES v. SERITA THERESE MATHIAS⁸. The coordinate Bench in the judgment of OLIVER MENEZES holds that the orders passed under Sections 18 to 22 do Criminal Petition No.356 of 2019 decided on 20-05-2021 not attach any criminal liability. They are civil in nature. Therefore, a petition under Section 482 of the Cr.P.C., would not be maintainable. So goes the judgment of the learned single Judge of the High Court of Himachal Pradesh in the case of SANJEEV KUMAR v. SUSHMA DEVI⁹ which holds, a petition under Section 482 of the Cr.P.C. would not be maintainable challenging the proceedings under Section 12 of the Act and recourse has to be taken to Article 227 of the Constitution of India. I respectfully disagree with the view taken by the learned single Judge of the High Court of Himachal Pradesh, in the light of the judgments of the Apex Court and that of the coordinate Benches of this Court.

16. On a coalesce of all the judgments quoted supra and their consideration, the following would emerge. A petition under Section 482 of the Cr.P.C., be it invoking the writ jurisdiction or inherent jurisdiction under the Cr.P.C., would be maintainable and entertainable, if the entire proceedings are sought to be quashed, as the Court of Sessions is no where conferred with such power under the Act to obliterate entire proceedings, on account of it Criminal Revision Petition No.132 of 2021 decided on 01-06-2023 being abuse of the process of law. If any particular order is passed on any application filed by the aggrieved person under Sections 18, 19, 20 or 22 of the Act, those specific orders are to be agitated by the said aggrieved person before the Court of Sessions invoking Section 29 of the Act. For interlocutory orders passed by the concerned Court under the aforesaid provisions of the Act, a petition under Section 482 of the Cr.P.C., would not become entertainable. Therefore, the contention of the learned counsel for the respondent that the petition is not maintainable or entertainable is to be rejected in the light of the preceding analysis and is accordingly rejected. What is called in question, in the case at hand, is not any specific order passed by the concerned Court under Sections 18, 19, 20 or 22 of the Act. It is the entire proceeding, on the ground that it is an abuse of the process of law. Therefore, the subject petition becomes entertainable and the petition is thus entertained. Therefore, I deem it appropriate to delve into the facts of the case.

17. The complaint is registered venting out grievances against the husband. What is found in the complaint against these petitioners is instigation on the demand of dowry. In the lengthy application so filed, it is the grievance/allegation that torture and abuses are meted out by the husband against the wife. Inferences of the allegations against these petitioners are found at paragraph 10 of the application. It reads as follows:

"...

10. It is pertinent hereto state that the respondent is a puppet at the hands of his parents Sri.A.Ramesh Babu Waghmare, Smt.R.Sasikala Bai and his elder brother Sri. C.R.Chandrashekhar, who is working at Baxter International, Bangalore, who are poisoning the mind of the respondent to demand dowry and to cause ill treatment, harassment and to inflict cruelty on the petitioner."

It is alleged that the husband is a puppet in the hands of his father, mother and his elder brother who are poisoning the mind of the husband to cause ill-treatment. This in no manner would bring about any ingredients of what would mean 'domestic violence' as found in Section 3 of the Act. Section 3 of the Act reads as follows:

"3. Definition of domestic violence.--For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it--

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause

(a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person."

Section 3 has several forms and hues of domestic violence. None of these are attributable to these petitioners. It has become a norm in today's proceedings be it invoking Section 498A of the IPC or Section 12 of the Act to rope in other members of the family, while the entire grievance would be against the husband. Such proceedings under Section 482 of the Cr.P.C. are held to be an abuse of the process of law, by the Apex Court in plethora of cases.

The Apex Court in the case of KAHKASHAN KAUSAR v. STATE OF BIHAR¹⁰ has held as follows:

"Issue involved

10. Having perused the relevant facts and contentions made by the appellants and respondents, in our considered opinion, the foremost issue which requires determination in the instant case is whether allegations made against the appellant in-laws are in the nature of general omnibus allegations and therefore liable to be quashed?

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11. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of Section 498-

AIPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid State intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as Section 498-AIPC as instruments to settle personal scores against the husband and his relatives.

12. This Court in its judgment in *Rajesh Sharma v. State of U.P.* [Rajesh Sharma v. State of U.P., (2018) 10 SCC 472: (2019) 1 SCC (Cri) 301], has observed :

(SCC pp. 478-79, para 14) "14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of Act 46 of 1983. The expression "cruelty" in Section 498-A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand.

[Explanation to Section 498-A.] It is a matter of serious concern that large number of cases continue to be filed under Section 498-A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualised. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement."

13. Previously, in the landmark judgment of this Court in *Arnes Kumar v. State of Bihar* [Arnes Kumar v. State of Bihar, (2014) 8 SCC 273: (2014) 3 SCC (Cri) 449], it was also observed : (SCC p. 276, para 4) "4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-AIPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-AIPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested."

14. Further in *Preeti Gupta v. State of Jharkhand* [Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667 : (2010) 3 SCC (Cri) 473], it has also been observed :

(SCC pp. 676-77, paras 32-36) "32. It is a matter of common experience that most of these complaints under Section 498-AIPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem.

They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinised with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful."

15. In *Geeta Mehrotra v. State of U.P.* [Geeta Mehrotra v. State of U.P., (2012) 10 SCC 741; (2013) 1 SCC (Civ) 212 : (2013) 1 SCC (Cri) 120] it was observed : (SCC p. 749, para 21) "21. It would be relevant at this stage to take note of an apt observation of this Court recorded in *G.V. Rao v. L.H.V. Prasad* [G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693 : 2000 SCC (Cri) 733] wherein also in a

matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that : (SCC p. 698, para 12) '12. ... There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts.' The view taken by the Judges in this matter was that the courts would not encourage such disputes."

16. Recently, in K. Subba Rao v. State of Telangana [K. Subba Rao v. State of Telangana, (2018) 14 SCC 452 : (2019) 1 SCC (Cri) 605] , it was also observed that : (SCC p. 454, para 6) "6. ... The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that "all accused harassed her mentally and threatened her of terminating her pregnancy". Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.

19. Furthermore, regarding similar allegations of harassment and demand for car as dowry made in a previous FIR Respondent 1 i.e. the State of Bihar, contends that the present FIR pertained to offences committed in the year 2019, after assurance was given by the husband Md. Ikram before the learned Principal Judge, Purnea, to not harass the respondent wife herein for dowry, and treat her properly. However, despite the assurances, all accused continued their demands and harassment. It is thereby contended that the acts constitute a fresh cause of action and therefore the FIR in question herein dated 1-4-2019, is distinct and independent, and cannot be termed as a repetition of an earlier FIR dated 11-12-2017.

20. Here it must be borne in mind that although the two FIRs may constitute two independent instances, based on separate transactions, the present complaint fails to establish specific allegations against the in-laws of the respondent wife. Allowing prosecution in the absence of clear allegations against the appellant in-laws would simply result in an abuse of the process of law.

21. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the appellant-accused, it would be unjust if the appellants are forced to go through the tribulations of a trial i.e. general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this Court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must, therefore, be discouraged."

(Emphasis supplied) In the light of the proceedings being an abuse of the process of law, I deem it appropriate to exercise the jurisdiction under Section 482 of the Cr.P.C. and obliterate the proceedings.

SUMMARY OF THE FINDINGS:

(i) A petition under Section 482 of the Cr.P.C. calling in question the entire proceedings before the concerned Court initiated under the Protection of Women from Domestic Violence Act, 2005 would be maintainable, only if the proceedings are challenged on the ground of abuse of the process of the law, as the Court of Session is not empowered to obliterate the proceedings holding it to be an abuse of the process of the law.

(ii) Any specific order passed by the concerned Court answering applications filed under Sections 18, 19, 20 or 22 of the Act or any other interlocutory order would not be entertainable before this Court in its jurisdiction under Section 482 of the Cr.P.C. The aggrieved, by any order, has to prefer an appeal under Section 29 of the Act, as it is an alternative and statutory remedy available.

(iii) Finding the entire process initiated by the respondent against the present petitioners, the father-in-law and mother-in-law, to be an abuse of the process of the law, those proceedings are to be obliterated.

18. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is allowed.

(ii) The proceedings in Criminal Miscellaneous No.570 of 2021 pending before the Chief Judicial Magistrate, Bangalore Rural District stand quashed qua the petitioners.

(iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioners under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings pending against the other accused.

Sd/-

JUDGE bkp CT:SS

Sri B V Krishnamurthy vs Smt V D Shashikala on 19 June, 2024

Author: N S Sanjay Gowda

Bench: N S Sanjay Gowda

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NC: 2024:KHC:21831
CRL.P No. 8910 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA
CRIMINAL PETITION NO. 8910 OF 2018 (482)

BETWEEN:

1. SRI B V KRISHNAMURTHY
S/O DORAISWAMY .B
NO.120, 8TH MAIN ROAD, 19TH CROSS,
LHBS LAYOUT, VIJAYANAGAR,
BANGALORE-560 040.

...PETITIONER

(BY SRI. SATISH T S., ADVOCATE)

AND:

1. SMT V D SHASHIKALA
W/O LATE DEVARAJU V.K.
AGED ABOUT 45 YEARS,

2. V.D.GAGAN RAJ
S/O LATE DEVARAJU V.K.
AGED ABOUT 14 YEARS,

Digitally
signed by
KIRAN
KUMAR R
Location:
HIGH
COURT OF
KARNATAKA

3. V.D.CHETRAN RAJ, S/O LATE DEVARAJU V.K.
AGED ABOUT10 YEARS,

R-2 & 3 ARE MINORS,
REPRESENTED BY THEIR MOTHER
AND NATURAL GUARDIAN,
V.D.SHASHIKALA-FIRST RESPONDENT

ALL R/AT 1/4, SKYLINE APARTMENT ROAD,
CHANDRA LAYOUT, BANGALORE-560 040.

...RESPONDENTS

(BY SRI. M.R.SWAROOP., ADVOCATE
(R-2 & R-3 ARE MINORS & REPRESENTED BY R-1)

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NC: 2024:KHC:21831
CRL.P No. 8910 of 2018

THIS CRL.P IS FILED UNDER SECTION 482 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO QUASH THE IMPUGNED COMPLAINT IN CRL.MISC.NO.12/2018 PENDING BEFORE THE V A.C.M.M., (TRAFFIC COURT-5) BANGALORE AT ANNEXURE-A AND CONSEQUENTLY ALSO QUASHING THE COGNIZANCE OF THE COMPLAINT AND ISSUANCE OF SUMMONS AT ANNEXURE-B.

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

ORDER

1. The petitioner is admittedly the father-in-law of respondent No.1 and the grandfather of respondent Nos.2 and 3.

2. A reading of the complaint indicates that the daughter-in-law and the grandchildren had initiated proceedings under Section 12 of Protection of Women from Domestic Violence Act, 2005 and it indicates that the first respondent had married the son of the petitioner, but unfortunately, the son passed away in the year 2015 due to certain health issues. It is also forthcoming from the complaint that there were allegations that the husband was not looking after his family and he was an alcoholic.

NC: 2024:KHC:21831 It is also stated that the respondents were advised to leave the house for three months after the death of the husband, and heeding to said advise, they had left the matrimonial house and were staying with their parents.

3. It is therefore sought to be contended that the father-in-law did not allow the daughter-in-law and the grandchildren to reside in the house and was abusing them. It is also stated that he was getting rent of over Rs.80,000/- per month and also owned properties for which he was getting Rs.40,000/-, apart from getting pension, and despite that, he was not maintaining his daughter-in-law and grandchildren, as a consequence of which they were forced to initiate proceedings.

4. In a case of this nature where it is admitted that the husband had passed away and the

daughter-in-law and the grandchildren had started residing separately, the initiation of proceedings for maintenance against the father-in-law and for payment of maintenance and alimony would be untenable. The petitioner is a person who is NC: 2024:KHC:21831 aged about 86 years and it would be untenable for the daughter-in-law to initiate proceedings against him claiming maintenance.

5. I am, therefore, of the view that there is no justification in continuing the proceedings as against the petitioner and the proceedings is, therefore, quashed as against the petitioner. This petition is, accordingly, allowed.

6. In view of disposal of main petition, pending I.A., if any, does not survive for consideration and is accordingly disposed of.

Sd/-

JUDGE HNM

Sri D H Basavaraju vs Smt Kalpana H on 5 June, 2024

Author: Hanchate Sanjeevkumar

Bench: Hanchate Sanjeevkumar

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NC: 2024:KHC:19317
RFA No. 1003 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

REGULAR FIRST APPEAL NO. 1003 OF 2022 (DEC/PAR)

BETWEEN:

SRI. D.H. BASAVARAJU
S/O D.M HOLEYAPPA
AGED ABOUT 47 YEARS,
NOW R/AT DODDAGHATTA VILLAGE
NAGAVEDI POST
KANAKATTE HOBLI
ARASIKERE TALUK
HASSAN DISTRICT
PIN-573 103.

...APPELLANT

(BY SRI. MADHUSUDHAN M.N, ADVOCATE)

AND:

Digitally signed by
BASAVARAJU PAVITHRA
Location: HIGH COURT
OF KARNATAKA

1. SMT. KALPANA.H
W/O D.H.BASAVARAJU
D/O HANUMAPPA
AGED ABOUT 39 YEARS,
2. KUM. SHREYA
D/O D.H. BASAVARAJU
AGED ABOUT 12 YEARS,

MINOR REP. BY HER
NATURAL GUARDIAN
MOTHER RESPONDENT NO.1
BOTH RESPONDENT NOS.1 & 2 ARE
RESIDING AT DOOR NO.1722/38,
2ND CROSS, SIDDAVERAPPA EXTENSION
-2-

NC: 2024:KHC:19317
RFA No. 1003 of 2022

DAVANAGERE, PIN-577 001.

3. SRI. D.N HOLEYAPPA
S/O LATE MARIYAPPA
AGED ABOUT 73 YEARS,
RESIDING AT DODDAGHATTA VILLAGE
NAGAVEDI POST, KANNAKATTE HOBLI
ARASIKERE TALUK-573 103.
4. SMT. CHANDRAKALA
W/O D.M HOLEYAPPA
AGED ABOUT 70 YEARS,
C/O SUSHEELAMMA
KARIGOWDARA COLONY
2ND CROSS, B.M ROAD
HASSAN, PIN-573 201
5. SRI. D.H MOHAN KUMAR
S/O D.M HOLEYAPPA
AGED ABOUT 50 YEARS,
RESIDING AT DODDAGHATTA VILLAGE
NAGAVEDI POST, KANNAKATTE HOBLI
ARASIKERE TALUK
PIN-573 103.
6. SMT. D.H BHAGYAMMA
D/O D.M HOLEYAPPA
W/O KUMAR
AGED ABOUT 48 YEARS,
RESIDING AT TAMMADIHALLI VILLAGE
MASKAL POST
TUMAKUR DISTRICT
PIN-572 101.

...RESPONDENTS

(BY SRI. A.V.AMARNATHAN, ADVOCATE FOR R1 & R2;
SRI. B.HANALINGE GOWDA, ADVOCATE FOR R3-R6)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER 41
RULE 1 OF CPC AGAINST THE JUDGMENT AND DECREE DATED

05.02.2022 PASSED IN OS No.21/2019 ON THE FILE OF THE
SENIOR CIVIL JUDGE AND JMFC, ARSIKERE, DECREEEING THE

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NC: 2024:KHC:19317
RFA No. 1003 of 2022

SUIT FOR PARTITION, SEPARATE POSSESSION AND DECLARATION.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Though the appeal is listed for admission, with the consent of the learned counsel for the parties, the appeal is taken up for final disposal.

2. This appeal is filed by the appellant-Defendant No.5 under Section 96 of the Code of Civil Procedure, 1908, calling in question the judgment and decree dated 05.02.2022 passed in O.S.No.21/2019 by the Senior Civil Judge and JMFC at Arsikere.

3. For the purpose of convenience, the ranking of the parties is referred to as per their status before the trial Court.

4. Brief facts of the case are that respondent No.1/ plaintiff No.1 is the wife of the appellant/defendant No.5 and respondent No.2/plaintiff No.2 is the daughter of plaintiff No.1 and defendant No.5. Since there was difference of opinion in the family, the first plaintiff was constrained to desert 5th defendant and started to live separately along with 2nd plaintiff- minor daughter. Therefore, the plaintiffs have filed a NC: 2024:KHC:19317 suit before the trial Court seeking for partition and separate possession in respect of suit schedule properties and for maintenance. Accordingly, the trial Court decreed the suit to the effect that 2nd plaintiff is entitled to ½ (half) share in the share of defendant No.5 in the suit schedule properties and also granted maintenance amount of Rs.20,000/- per month to the plaintiffs payable by the 5th defendant.

5. The relationship between the plaintiffs and 5th defendant is admitted. 5th defendant has denied the allegations made by the 1st plaintiff in the suit. Further, it is contended that there was earlier registered partition deed dated 03.08.2018 as per Ex.P31. Hence, the plaintiffs cannot seek partition once again.

6. On the basis of the pleadings of the parties, the trial Court has framed the following:

"ISSUES

1. Whether the plaintiffs prove that they constitute the members of the joint Hindu family and that the suit schedule properties are the ancestral and joint family properties available for partition?
2. Whether the partition effected on 03.08.2018, 28.09.2018, 24.01.2014, 30.12.2013 and 19.05.2015 defendants 1 to 5 is made in order to cheat the plaintiffs behind their back NC: 2024:KHC:19317 and hence, liable to be set-aside as they are not binding upon plaintiffs' share?
3. Whether plaintiffs are entitled for the relief of partition and separate possession?
4. Whether plaintiffs are entitled for maintenance of Rs.20,000/- per month from the 5 defendant?
5. Whether plaintiffs are entitled for permanent injunction?
6. What order or decree?"
7. On behalf of the plaintiffs, 1st plaintiff got examined as PW.1 and got marked 46 documents as Ex.P1 to Ex.P46. On the other hand, on behalf of the defendants, 5th defendant got examined as DW.1 and got marked a document as Ex.D1.
8. The trial Court after considering the material evidence on record both oral and documentary, has decreed the suit of the plaintiffs and granted 1/2 (half) share to 2nd plaintiff in the share of 5th defendant in the suit schedule properties. Further, it is declared that the partitions which took place earlier do not bind on the share of 2nd plaintiff. Further, the trial Court has granted maintenance amount of Rs.20,000/- per month to the plaintiffs payable by 5th defendant. Being aggrieved by the same, 5th defendant alone has preferred the instant appeal.

NC: 2024:KHC:19317

9. Learned counsel for the appellant/defendant No.5 submitted that the suit for partition is not maintainable since three partitions were held earlier in the family. Hence, there is no joint family status to claim the partition. Hence, the suit is not maintainable. It is further submitted that the 5th defendant has taken voluntary retirement which is admitted by the plaintiffs. Therefore, 5th defendant does not have any source of income. The trial Court without considering the same, has granted maintenance amount of Rs.20,000/- per month to the plaintiffs, which is not correct. Therefore, he prays to set aside the judgment and decree by allowing the appeal.
10. On the other hand, learned counsel for the respondents/plaintiffs submitted that the earlier partitions which had taken place were just to defeat the legitimate right of 2nd plaintiff-minor daughter and those partitions were inequitable partitions. Hence, they are not binding on the plaintiffs.

11. Further, it is submitted that the plaintiffs have filed the petitions in C.Misc.No.11/2019 under Section 125 of the Code of Criminal Procedure, 1973 for maintenance and Crl.Misc.No.18/2019 under Section 12 of the Protection of NC: 2024:KHC:19317 Women from Domestic Violence Act, 2005 for protection and compensation. Both the petitions came to be dismissed on the reason that the maintenance amount of Rs.20,000/- per month was granted by the trial Court to the plaintiffs. Therefore, they would not get double claim of maintenance by 5th defendant. Hence, the same was considered by the trial Court and thus, granted the maintenance amount, which does not call for interference. Therefore, he prays for the dismissal of the appeal.

12. Upon considering the rival contentions and hearing the arguments of the learned counsel for the parties, the points that would arise for consideration are as follows:

1. Whether the plaintiffs prove that they constitute the members of the joint Hindu family and the suit schedule properties are the ancestral and joint family properties available for partition?
2. Whether the defendant proves that there were partition earlier in the family and hence, the suit filed by the plaintiffs is not maintainable?
3. Whether the judgment and decree passed by the trial Court requires any interference by this Court?

NC: 2024:KHC:19317

4. What order or decree?

13. All the above points are interlinked with each other. Therefore, in order to avoid repetition of discussion on the above questions of law and facts, they are taken up together for common consideration.

14. In the present case, upon perusing the pleadings and evidence on record, the relationship between the plaintiffs and 5th defendant is an admitted fact and there is no dispute in this regard. 1st plaintiff is the wife and 2nd plaintiff is the minor daughter of 5th defendant and amongst defendant Nos.1 to 5, the relationship is also not disputed. The suit schedule properties are ancestral properties, which are also not in dispute.

15. Upon a solemnized marriage between 1st plaintiff and 5th defendant, they lived happily for some time. Out of their wedlock, 2nd plaintiff was born. Later on, 5th defendant started ill-treating the 1st plaintiff, both physically and mentally. Therefore, 1st plaintiff was constrained to desert 5th defendant along with 2nd plaintiff and started to reside separately. Since NC: 2024:KHC:19317 the plaintiffs do not have any source of income and 2nd plaintiff is the minor daughter of 5th defendant, the plaintiffs have filed the suit for partition and maintenance.

16. It is the case of the defendants that there were partitions effected on 03.08.2018, 28.09.2018, 24.01.2014, 30.12.2013 and 19.05.2015, but to prove these partitions which were effected in the family of the defendants, the defendants have not filed any documentary evidence. Though 5th defendant got examined as DW.1, he has only produced a certified copy of the order in Crl.Misc.No.18/2019 which was filed by the plaintiffs for protection and compensation. Therefore, contentions that there were earlier partitions in the family, which are not proved. Furthermore, the registered partition deed dated 03.08.2018 as per Ex.P31 was created only for the purpose of defeating the rights of claim of the plaintiffs and the said partition was an inequitable partition. As per the said partition at Ex.P31, 1 acre of land has been given to 5th defendant as his share out of 13 acres 3 guntas of land. The rest of 12 acres 3 guntas of land was shared between defendant Nos.1 to 4. The arrangement is made to effect that out of total extent of 13 acres 3 guntas of land, 1st defendant

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NC: 2024:KHC:19317 has been given 2 acres and 25 guntas of land, 2nd defendant has been given 16 guntas of land, 3rd defendant has been given 4 acres and 26 guntas of land, 4th defendant has been given 2 acres and 20 guntas of land, but 5th defendant has been given only 1 acre of land. While considering these partition arrangements made by the defendants as per Ex.P31, this is found to be inequitable partitions and were created with an intention to defeat the legitimate claim of 2nd plaintiff-minor daughter of 5th defendant. Therefore, the trial Court is correct in disbelieving the partition deed as per Ex.P31. Therefore, the registered partition dated 03.08.2018 as per Ex.P31 is not binding on the share of the 2nd plaintiff. It is proved that the said partition deed as per Ex.P31 was created to defeat the legitimate rights of 2nd plaintiff and also the claim for the maintenance amount of the plaintiffs. Therefore, in this regard, the finding of the trial Court is correct, which does not call for interference.

17. DW.1 has admitted all these facts in his cross examination, defendant Nos.1 to 4 were given garden lands, whereas 5th defendant was given dry land to an extent of 1 acre. This manifestly proves that the partition deed as per

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NC: 2024:KHC:19317 Ex.P31 was a well-planned arrangement just to defeat the rights and claims of the plaintiffs.

18. Upon perusing the materials on record, it is noticed that 5th defendant, who was working as a Surveyor in the office of the Assistant Director, Survey Department, Hassan, has taken voluntary retirement from the service. Therefore, the plaintiffs have filed Crl.Mis.No.18/2019 and Crl.Misc.No.11/2019 for maintenance. Both petitions came to be dismissed on the reason that the trial Court has granted maintenance amount of Rs.20,000/- per month to the plaintiffs. Therefore, when the relationship between the plaintiffs and 5th defendant is admitted and the plaintiffs are residing separately, 5th defendant is liable to maintain the plaintiffs. During the course of the cross-examination of 5th defendant, admitted that he does not know the education expenses of 2nd

plaintiff, which are paid by 1st plaintiff. 5th defendant, being the father of 2nd plaintiff, has not done anything for the welfare of 2nd plaintiff- minor daughter. Therefore, 5th defendant, who is the Government Servant, has claimed that he has taken a voluntary retirement, which cannot absolve him of his responsibilities for maintaining his wife and child. Therefore,

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NC: 2024:KHC:19317 considering the expenses incurred for living peaceful or decent life for the plaintiffs and 2nd plaintiff is pursuing school education, the plaintiffs need maintenance amount and accordingly, the trial Court has granted maintenance amount of Rs.20,000/- per month to the plaintiffs payable by 5th defendant, which is justifiable and correct and the same does not call for interference by this Court.

19. Merely because, the plaintiffs and defendant No.5 have not submitted affidavit assets and liabilities, the same cannot be a reason to deny/refuse grant of maintenance to the plaintiffs. The filing of an affidavit in this regard only enables the Court to come to a conclusion to determine the quantity of maintenance amount. Even though, without the affidavit, the Court can determine as to what will be the amount required for maintaining the wife and child. On this ground, it cannot be said that the trial Court erred in granting the maintenance in this case. Therefore, I do not find any ground to interfere with the finding and observation made by the trial Court and thus, the appeal is found to be devoid of merits and is liable to be dismissed at the stage of admission itself and it is also not a fit case for admission.

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NC: 2024:KHC:19317

20. Accordingly, I proceed to pass the following:

ORDER i. The appeal is dismissed.

ii. The judgment and decree dated 05.02.2022 passed by the Trial Court in O.S.No.21/2019 is hereby confirmed.

iii. No order as to costs.

Sd/-
JUDGE

KTY

Sri. Deepak Shenoy @ Arun vs Smt. Varsha Baliga @ Aparna Shenoy on 22 April, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

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NC: 2024:KHC:16136
CRL.P No. 1650 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2024

BEFORE
THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY
CRIMINAL PETITION NO. 1650 OF 2024
BETWEEN:

SRI. DEEPAK SHENOY @ ARUN,
S/O LATE U. NARASIMHA SHENOY,
AGED ABOUT 35 YEARS,
R/AT FLAT NO.103,
DIA RESIDENCY,
BHOJA RAO LANE,
PRAGATHI SERVICE STATION,
BHAGAVATHI NAGAR,
2ND CROSS, KODIYALABAIL,
MANGALURU,
D.K. DISTRICT-575 003.

...PETITIONER

(BY SRI. K. RAVISHANKAR, ADVOCATE)

AND:

Digitally
signed by SMT. VARSHA BALIGA @ APARNA SHENOY,
PAVITHRA N W/O DEEPAK SHENOY @ ARUN,
Location:
High Court AGED ABOUT 31 YEARS,
of Karnataka R/AT NANDAGOKULA,
 SIQUEIRA LANE,
 URWA,
 MANGALURU,
 D.K.DISTRICT-575 006.

...RESPONDENT

(BY SRI. RAGHAVENDRA SHENOY M., ADVOCATE)

THIS CRL.P IS FILED U/S 482 CR.P.C PRAYING TO QUASH
THE IMPUGNED ORDER DATED 19.01.2024 PASSED IN
CRL.A.NO.12/2024, PENDING ON THE FILE OF III ADDITIONAL

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NC: 2024:KHC:16136
CRL.P No. 1650 of 2024

DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU AND
ALLOW I.A.NO.1.

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

ORDER

The petitioner is before this Court assailing the order dated 19.01.2024 passed by the Court of III Additional District and Sessions Judge, Dakshina Kannada, Mangalore rejecting his application filed under Section 389(1) of Cr.P.C., seeking stay of the interim order passed by the III JMFC Court, Mangalore dated 01.04.2022 in Crl.Misc.No.88/2019.

2. Heard learned counsel for both the parties.
3. Respondent herein had filed proceedings under the provisions of Protection of Women from Domestic Violence Act before the III JMFC Court, Mangalore in Crl.Misc.No.88/2019. In the said proceedings, the Trial Court passed an ex parte order of interim maintenance directing the petitioner herein to pay a sum of Rs.10,000/- as maintenance per month to the respondent. Application NC: 2024:KHC:16136 filed by the petitioner to vacate the said order was dismissed. Assailing the same, the petitioner had filed Crl.A.No.12/2024 before the Court of III Addl. District Judge, D.K., Mangalore. In the said appeal, he had filed applications to condone the delay caused in filing the appeal and also to stay the order dated 01.04.2022 passed by the Trial Court in Crl.Misc.No.88/2019. The appellate Court while issuing notice to the respondent has rejected the application filed by the petitioner under Section 389(1) of Cr.P.C. Being aggrieved by the same, the petitioner is before this Court.
4. Learned counsel for the petitioner submits that the Appellant Court could not have rejected the application without even issuing notice to the respondent. He submits that rejection of the application filed under Section 389 of Cr.P.C., has caused serious hardship to the petitioner.
5. Learned counsel appearing for the respondent submits that there is an inordinate delay in filing the NC: 2024:KHC:16136 criminal appeal before the Appellate Court. Without condoning the said delay, the application under Section 389(1) of Cr.P.C., could not have been entertained. Therefore, the Appellate Court was justified in dismissing the application filed under Section 389(1) of CrPC.

6. It is not in dispute that the Trial Court had initially passed an ex parte order directing the petitioner herein to pay a sum of Rs.10,000/- per month as monthly maintenance to the respondent. Petitioner herein has filed an application seeking vacation of the said ex parte interim order, contending that the respondent is gainfully employed and she is drawing monthly salary. The Trial Court had rejected the said application and being aggrieved by the same Crl.A.No.12/2024 was filed by the petitioner before the Appellate Court. It is also not in dispute that there is an ordinary delay in preferring the said appeal and therefore, application has been filed by the petitioner to condone the delay caused in filing the criminal appeal and also to stay the order dated NC: 2024:KHC:16136 01.04.2022 passed by the Court of III JMFC Court, Mangalore, D.K., in Crl.Misc.No.88/2019.

7. In my considered view, the Appellate Court has erred in dismissing the application filed under Section 389(1) of Cr.P.C. The Appellant Court ought to have issued notice on the said application to the respondent and ought not to have dismissed the same at the stage of issuing notice to the respondent. On this short, the order impugned is liable to set aside and accordingly, the following, ORDER i. The Criminal petition is 'allowed'. ii. The impugned order dated 19.01.2024 passed by the Court of III Additional District and Sessions Judge, D.K., Mangalore rejecting the interim application filed by the petitioner under Section 389(1) of CrPC is set aside.

NC: 2024:KHC:16136 iii. Since the respondent has already entered appearance before the Appellate Court in Crl.A.No.12/2024, the Appellate Court is directed to consider I.A.Nos.1 and 2 filed by the petitioner/appellant and pass appropriate orders on the merits of the application after hearing the respondent and after giving an opportunity to the respondent to file her objections to the said applications. Till then no coercive steps shall be taken against petitioner.

SD/-

JUDGE BN

Sri. Devendrappa S/O Shivappa Gudi vs Smt. Saroja W/O Devendrappa Gudi on 23 April, 2024

Author: Shivashankar Amarannavar

Bench: Shivashankar Amarannavar

- 1 -

NC: 2024:KHC-D:6707
CRL.P No. 101074 of 2024

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 23RD DAY OF APRIL, 2024
BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR
CRIMINAL PETITION NO. 101074 OF 2024

BETWEEN:

1. SRI. DEVENDRAPPA S/O SHIVAPPA GUDI,
AGED ABOUT 49 YEARS, OCC. AGRICULTURE,
R/O. MAREWAD, TQ. & DIST. DHARWAD-580201.
2. SRI. SHIVAPPA S/O BASAVANNEPPA GUDI,
AGED ABOUT 74 YEARS, OCC. AGRICULTURE,
R/O. MAREWAD, TQ. & DIST. DHARWAD-580201.
3. SMT. AKKAMMA W/O SHIVAPPA GUDI,
AGED BOUT 72 YEARS, OCC. HOUSEHOLD WORK,
R/O. MAREWAD, TQ. & DIST. DHARWAD-580201.
4. SMT. BASAMMA W/O GANGAPPA KAMATAD,
AGED ABOUT 52 YEARS, OCC. HOUSEHOLD WORK,
R/O. MAREWAD, TQ. & DIST. DHARWAD-580201.
5. SRI. SANKAPPA S/O SHIVAPPA GUDI,
AGED ABOUT 44 YEARS, OCC. AGRICULTURE,
R/O. MAREWAD, TQ. & DIST. DHARWAD-580201.

... PETITIONERS

(BY SRI. P.G. CHIKKANARAGUND, ADVOCATE)

Digitally signed

by

VIJAYALAKSHMI

M KANKUPPI AND :

Location: HIGH

COURT OF

KARNATAKA

DHARWAD

BENCH

SMT. SAROJA W/O DEVENDRAPPA GUDI,

AGED ABOUT 39 YEARS, OCC. NIL AT PRESENT,

R/O. MAREWAD, TQ. & DIST. DHARWAD-580201,
NOW R/AT. HARLAPUR, TQ. KUNDGOL,
DIST. DHARWAD-581107.

... RESPONDENT
(RESPONDENT SERVED)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C., SEEKING TO CALL FOR THE RELEVANT RECORDS AND ALLOW THIS CRIMINAL PETITION BY QUASHING THE ORDER DATED 28.02.2024 IN CRL.MISC.NO.136/2020 PASSED BY THE LEARNED CIVIL JUDGE AND JMFC, KUNDGOL, AND ALLOW THE APPLICATION FILED U/S 311 OF CRIMINAL PROCEDURE CODE, IN THE INTEREST OF JUSTICE AND EQUITY.

- 2 -

NC: 2024:KHC-D:6707
CRL.P No. 101074 of 2024

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

ORDER

The petition is filed seeking to quash the order dated 28.02.2024 passed in Crl.Misc.No.136/2020 by the learned Civil Judge and JMFC, Kundgol and prayed to allow the application filed under Section 311 of Cr.P.C.

2. Heard learned counsel for petitioners. Inspite of service notice, the respondent remained absent and unrepresented.

3. The respondent has initiated proceedings against petitioners under Section 12(1) of the Protection of Women from Domestic Violence Act, 2005 and it is pending in Crl.Misc.No.136/2020. In the said proceedings, the respondent has been examined as P.W.1 and case has been posted for cross examination of P.W.1. Petitioners counsel did not cross examined the P.W.1 on 3-4 occasions even after grant of time by imposing cost. The learned Magistrate has passed the order dated 17.08.2023 NC: 2024:KHC-D:6707 taking cross examination of P.W.1 as 'nil' and also respondent side evidence as 'nil' and posted the case for arguments in the afternoon. In the afternoon hearing the arguments of learned counsel for petitioners, taken the arguments of respondent side as 'nil' and posted the case for order. Thereafter, petitioners got advanced the case, filed an application under Section 311 of Cr.P.C seeking recall of the order dated 17.08.2023. The said application came to be rejected by impugned order dated 28.02.2024. The said order is challenged in the present petition.

4. Learned counsel for petitioners would contend that if petitioners are given an opportunity to cross examine the P.W.1, they will conduct cross examination on the same day. With this he prayed to allow the petition.

5. On perusal of the order sheet, it is clear that inspite of granting 2-3 adjournment, learned counsel for petitioners did not conducted cross examination of P.W.1. An application filed under Section 311 of Cr.P.C by learned counsel for these petitioners who are respondents indicate NC: 2024:KHC-D:6707 that due to eye problem of learned counsel for petitioners herein could not cross examine P.W.1 on 17.08.2023.

6. Considering the said aspects, petitioners should be given an opportunity to cross examine P.W.1. Petitioners are permitted to cross examine the P.W.1 and lead their side evidence. Otherwise they will be deprived of putting forth their contention. Therefore, in the ends of justice petitioners should be given an opportunity to cross examine the P.W.1 and lead their evidence by recalling the order dated 17.08.2023.

In the result, the following

ORDER

- i) The petition is allowed.
- ii) The order dated 28.02.2024 passed by learned

Civil Judge and JMFC, Kundgol is set aside. The application filed under Section 311 Cr.P.C is allowed and the order dated 17.08.2023 is recalled subject to payment of cost of NC: 2024:KHC-D:6707 Rs.1,000/- . The petitioners herein have to cross examine the P.W.1 on date fixed by learned Magistrate in the month of May-2024 positively without seeking any adjournment.

iii) Petitioners shall deposit aforesaid cost of Rs.1,000/- on or before 02.05.2024.

Sd/-

JUDGE DSP CT:BCK

Sri. Lakshmi Srinivas vs Smt. S. M. Bhagyalakshmi on 2 July, 2024

Author: N S Sanjay Gowda

Bench: N S Sanjay Gowda

-1-

NC: 2024:KHC:24705
CRL.P No. 199 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA
CRIMINAL PETITION NO. 199 OF 2018 (482)

BETWEEN:

1. SRI. LAKSHMI SRINIVAS
S/O LATE BETTASHETTY,
R/O HOUSE NO.346,
SRI LAKSHMI JANARDHANA TEMPLE STREET,
OLD TOWN MANDYA,
MANDYA CITY-571 401.

...PETITIONER

(BY SRI. CHETHAN B., ADVOCATE)

AND:

1. SMT. S. M. BHAGYALAKSHMI
W/O SRI LAKSHMI SRINIVAS,
R/AT FLAT NO.F-1,
1ST FLOOR,NO.15,
VIGNESH APARTMENT,
TEMPLE ROAD, MALLESHWARA,
BANGALORE-560 003.

Digitally
signed by

KIRAN

KUMAR R

Location:

HIGH

COURT OF

KARNATAKA

2. SUSMITHA M L
D/O SRI LAKSHMI SRINIVAS,

R/AT FLAT NO.F-1, 1ST FLOOR,
NO.15, VIGNESH APARTMENT, TEMPLE ROAD,
MALLESHWARA, BANGALORE-560 003.

...RESPONDENTS

(BY SRI. N C NARAYANA., ADVOCATE FOR R-1 & R-2)

THIS CRL.P IS FILED UNDER SECTION 482 CR.P.C BY
THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS
HON'BLE COURT MAY BE PLEASED TO QUASH THE ENTIRE
PROCEEDINGS AGAINST THE PETITIONER IN
-2-

NC: 2024:KHC:24705
CRL.P No. 199 of 2018

CRL.MISC.NO.174/2016 ON THE FILE OF III M.M.T.C.,
BENGALURU WHICH IS FILED UNDER SECTION 12 OF THE
PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT,
2005.

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

ORDER

1. This petition is filed challenging an order by which a sum of Rs.4,000/- was granted to the wife and a sum of Rs.3,000/- to the daughter as monthly maintenance.
2. The Trial Court has noticed that the wife and daughter had produced a compact disc containing the audio visuals of husband's program aired on the Television, but it has also taken note that the said fact itself would not indicate his income. The Trial Court, on consideration of the matter in its entirety, has come to the conclusion that a sum of Rs.4,000/- to the wife and Rs.3,000/- to the daughter as interim monthly maintenance is just and proper.
3. In my view, the discretion exercised by the Trial Court in awarding Rs.4,000/- and Rs.3,000/- to the wife NC: 2024:KHC:24705 and the daughter respectively as interim monthly maintenance does not warrant interference under Section 482 of the Cr.P.C. The petition is, therefore, dismissed.

Sd/-

JUDGE HNM

Sri M S Prakash vs Smt Savitha S D on 11 June, 2024

Author: V Srishananda

Bench: V Srishananda

-1-

NC: 2024:KHC:20478
CRL.RP No. 226 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JUNE, 2024

BEFORE
THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO.226 OF 2021

BETWEEN:

SRI M S PRAKASH
S/O LATE SIDDALINGAPPA
AGED ABOUT 50 YEARS,
C/O SHIVANNA
TORENAGASANDRA VILLAGE,
MATTALLI POST,
DASANAPURA HOBLI,
BANGALORE NORTH TALUK,
BANGALORE-562 162

...PETITIONER

(BY SRI VINOD KUMAR M, ADVOCATE)

Digitally AND:
signed by R
MANJUNATHA
Location: 1. SMT SAVITHA S D
HIGH COURT D/O DODDAPPA SETTY
OF AGED ABOUT 45 YEARS,
KARNATAKA
2. KUM GREESHMA
D/O PRAKASH M.S.
AGED 12 YEARS,

Sri M S Prakash vs Smt Savitha S D on 11 June, 2024

MINOR REPRESENTED BY HER
NATURAL GUARDIAN
SMT.SAVITHA S.D.

BOTH ARE RESIDENT OF

-2-

NC: 2024:KHC:20478
CRL.RP No. 226 of 2021

GENDEHALLI VILLAGE,
SHANIVARAPETE VILLAGE AND HOBLI,
BELURU TALUK,
HASSAN DISTRICT-573 121

RESPONDENTS

(BY SRI HALLUR SHIVAYOGI BASAVARAJ, ADVOCATE FOR
R1 AND R2)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401
CR.P.C PRAYING TO SET ASIDE THE JUDGMENT/ORDER
DIRECTING PAYMENT OF AMOUNT TO THE RESPONDENT
DATED 08.02.2019, PASSED IN CRL.MISC.NO.476/2014 BY
THE HONBLE CIVIL JUDGE AND JMFC BELURU UNDER
SECTION 12 OF DV ACT AND ORDER PASSED BY THE 2ND
ADDITIONAL DISTRICT AND SESSIONS JUDGE AT HASSAN
DATED 16.01.2020 IN CRL.A.NO.121/2019.

THIS CRL.RP COMING ON FOR ADMISSION, THIS
DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC:20478
CRL.RP No. 226 of 2021

ORDER

Heard Sri Vinod Kumar, learned counsel for the revision petitioner and Sri Halluru Shivayogi Basavaraj, learned counsel for respondent Nos.1 and 2.

2. This revision petition is filed by the husband, who has suffered an order before the learned Trial Magistrate in C.Mis.No.476/2014 and was directed to pay Rs.5000/- per month as the maintenance in a petition filed under Section 12 of the Protection of women from Domestic Violence Act ('D.V.Act' for short) and confirmed by the learned District Judge in the First Appellate Court.

3. Facts in brief which are utmost necessary for disposal of the petition are as under:

Wife and her minor daughter being the petitioners filed a petition under Section 12 of the D.V. Act contended that there was a domestic violence and they were pushed out of the shared residence by the revision petitioner/respondent - husband.

NC: 2024:KHC:20478

4. Based on the allegations found in the Criminal Miscellaneous Petition, learned Trial Magistrate issued notice.

5. Respondent appeared before the Court and contended that after the delivery, petitioner/wife left the matrimonial home, during the confinement period, when she was eight months pregnancy and thereafter she did not return.

6. It is also the case of the respondent/husband that the petitioner/wife has left the company of the respondent voluntarily and therefore, no orders can be passed in the petition filed by the wife under Section 12 of the D.V. Act.

7. Learned Trial Magistrate based on the rival contentions of the parties, allowed the parties to place evidence on record and raised two points, stating that there was a domestic violence and as such the petitioner/wife is entitled for relief under Section 12 of the D.V. Act. While answering the said point in affirmative, the learned Trial Judge felt that it is better to order for maintenance of NC: 2024:KHC:20478 Rs.5000/- instead of directing the wife and her minor daughter to join the husband as there was no possibility of peaceful leaving.

8. Being aggrieved by the same, revision petitioner/the husband approached the First Appellate Court.

9. Learned Judge in the First Appellate Court secured the records and after hearing the parties in detail and dismissed the appeal. While dismissing the appeal has held as under:

"Appeal filed by the appellant under Section 29 of Domestic Violence Act, is hereby dismissed.

Consequently, the impugned order passed by the learned Civil Judge and JMFC., Belur in Crl.Mis.476/2014 dated 06.02.2019 is hereby confirmed.

Office is hereby directed to send the records along with copy of this order to the trial Court."

10. Being aggrieved by the same, revision petitioner/husband is before this Court.

11. Learned counsel for the revision petitioner reiterating the grounds urged in the revision petition contended that NC: 2024:KHC:20478 after the petition under Section 12 of the D.V. Act came to be instituted, there were other proceedings between the parties and the parties are not separated by decree of divorce and during the pendency of those proceedings there was a 'Oppige Pathra', there under, the wife has received Rs.3,00,000/- and therefore, no amount is payable by the husband and sought for allowing the revision petition.

12. Per contra, counsel for the respondent under the instructions from the respondent before this Court submits that no amount has been received under the alleged 'Oppige Pathra', which is a ingenious concoction by the husband and sought for dismissal of the revision petition.

13. Having heard the parties in detail, this Court perused the material on record meticulously. On such perusal of the material on record, there is no dispute that the revision petitioner married the respondent and from the wedlock, a girl child was born.

NC: 2024:KHC:20478

14. It is the case of the wife that she has been sent out from the shared residence, whereas the husband maintained that the wife went for confinement and did not return.

15. If the contention of the husband is to be accepted and if he is interested in the wife, he would have filed a petition for conjugal rights and not for divorce.

16. Fact remains that the learned Trial Magistrate after considering the oral and documentary evidence placed on record, found that there was a Domestic Violence on the wife by the husband during her stay in the house of husband and therefore, awarded sum of Rs.5000/- as maintenance as an alternate remedy.

17. The said order was challenged before the First Appellate Court.

18. Learned Judge in the First Appellate Court also re- appreciated the material on record. In fact, both the Courts have placed reliance Ex.P.1 which is report given by the protection officer. Protection officer being a neutral NC: 2024:KHC:20478 person and a person who has been appointed under the statute did not possess any enmity or animosity against the husband/ revision petitioner nor extra affinity towards the respondent/wife. His report is to be construed as an official act which has been discharged in due course. Therefore, the contents of Ex.P.1 enjoys the

presumption as is found in Section 114 (e) of the Indian Evidence Act.

19. No doubt, it is a rebuttal presumption. To rebut the said presumption, except marking the order passed in M.C.No.119/2014, no other documents are placed on record. Till the time, the parties were separated by the decree of divorce; the petitioner is bound to pay as ordered by the learned Trial Magistrate for sending out the wife from the shared residence without there being just cause.

20. Further, so called 'Oppige Pathra' was not a part of the records, either before the trial Magistrate or before the learned Judge in the First Appellate Court. Accordingly, when the same is seriously disputed, this Court cannot countenance the 'Oppige Pathra' and take a different NC: 2024:KHC:20478 opinion than that of the Trial Magistrate and learned Judge in the First Appellate Court.

21. In view of the foregoing discussion, this Court is of the considered opinion that there is no merit in the revision petition.

Accordingly, following:

ORDER

(i) Criminal Revision Petition is hereby rejected.

(ii) Amount in deposit is ordered to be withdrawn
by the respondent/wife under due
identification.

Sd/-
JUDGE

MR

Sri. Mahadevaswamy H S vs State Of Karnataka By on 20 June, 2024

Author: V Srishananda

Bench: V Srishananda

-1-

NC: 2024:KHC:22674
CRL.RP No. 163 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JUNE, 2024

BEFORE
THE HON'BLE MR JUSTICE V SRISHANANDA
CRIMINAL REVISION PETITION NO.163 OF 2024
BETWEEN:

SRI. MAHADEVASWAMY H S
S/O LATE SHANHAVEERAPPA
AGED ABOUT 52 YEARS
R/A HAGALAHALLI VILLAGE
C A KERE HOBLI
MADDUR TLAUK
MANDYA-571428

...PETITIONER

(BY SRI GAURAV G K, ADVOCATE)
AND:

1. STATE OF KARNATAKA BY
BELAKAVADI POLICE
MANDYA-571401

(REPRESENTED BY LEARNED

Digitally signed by STATE PUBLIC PROSECUTOR

MALATESH HCK, BENGALURU-01

KC

Location: 2. SRI SRIKANTASWAMY
HIGH S/O NANJAPPA
COURT OF AGED ABOUT 63 YEARS
KARNATAKA R/AT DYAVAPATTANA VILLAGE
B.G.PURA HOBLI
MALAVALLI TALUK
MANDYA

... RESPONDENTS

(BY SRI CHANNAPPA ERAPPA, HCGP FOR R1;
R2 -SERVED)

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NC: 2024:KHC:22674
CRL.RP No. 163 of 2024

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401
CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 31.10.2023
PASSED IN S.C.NO.113/2022 ON THE FILE OF THE II
ADDITIONAL DISTRICT AND SESSIONS JUDGE AT MANDYA
FOR OFFENCE P/U/S 302, 201, 498-A, 304-B R/W SECTION 34
OF IPC AND SECTION 3, 4 OF DP ACT AND CONSEQUENTLY
DISCHARGE HIM FROM THE CASE.

THIS CRL.RP COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

Heard Sri Gaurav G.K. and Sri Channappa Erappa, learned High Court Government Pleader.

2. Petitioner/Accused No.2 being the father of accused No.1 has been charge sheeted by Belakavadi police, Halaguru Circle, Mandya District, in respect of Crime No.0117/2021 dated 17.11.2021 for the offences punishable under Sections 304B, 302, 201, 498A r/w Section 34 of the Indian Penal Code along with Sections 3 and 4 of the Protection of Women from Domestic Violence Act.

3. Facts of the case reveal that wife of accused No.1 who is daughter of the complainant-Shrikantaswamy, was married to accused No.1 during the Covid Pandemic period. Marriage did not subsist for a long and there was bickering in the matrimonial life of accused No.1 and the deceased.

NC: 2024:KHC:22674

4. The deceased often used to visit her parental house and complained about physical and mental harassment and also the demand of dowry by the accused persons. Complainant not in a position to meet the demand of dowry, somehow arranged Rs.25,000/- and got it paid through mobile transfer from his son's friend to the account of the accused persons.

5. Despite meeting out such demand, there was further demand of dowry and therefore, on two occasions, complainant somehow arranged and paid Rs.50,000/- as dowry. Despite all these demands being met, unable to bear the harassment, daughter of the complainant came back to the house of the complainant.

6. In the meantime, she was pursuing her computer education at K.M.Doddi and used to visit the said training centre from her parental house. When the matter stood thus, on 15.11.2021, accused

No.1 met the deceased enroute her visit to the computer centre and took her on his two wheeler. However, because of the breakdown of the motorcycle, she was left at that place by the accused No.1 and he went back. The NC: 2024:KHC:22674 said incident was reported by the daughter of the complainant to the complainant on the same day.

7. Again on 16.11.2021, as usual, daughter of the complainant left the house of the complainant to attend the computer class, but did not return. Being anxious father, complainant searched for his daughter in the places of acquaintance and also called the accused including the present petitioner to find out the whereabouts of his daughter.

8. No information was obtained by such a search. Immediately, complainant visited the house of the accused and requested the accused No.1 to accompany him to the police station to lodge the complaint. Accused No.1 said to have told that the complaint can be given to the police, next day. There was a passive response from the present petitioner with regard to the enquiry made by the complainant.

9. Later on, again, when the complainant called the accused persons on 17.11.2021 morning to visit police to lodge the complaint, it is the present petitioner who replied stating that accused No.1 has consumed poison and wanted to commit suicide. Left with no alternative, complainant approached the NC: 2024:KHC:22674 police and lodged the missing complaint. No information was received up to next four days with regard to missing of his daughter.

10. On 21.11.2021, police said to have informed the complainant stating that it is the accused No.1 who took the deceased on Honda Activa Scooter on 16.11.2021 and taking advantage of the flowing water in a canal, told the daughter of the complainant to wash her hands and legs so as to visit the nearby hillock. Daughter of the complainant blindly believed the instructions of accused No.1 and went near the canal for washing her hands and legs and at that juncture, it is accused No.1 who pushed the daughter of the complainant into the canal and then came back as if he did not know anything. This information was received by the police after apprehending the accused No.1.

11. Since the entire incident is based on circumstantial evidence and dead body was traced at the instance of the voluntary statement of the accused No.1, police not only registered a case against the accused No.1, taking note of the NC: 2024:KHC:22674 complaint averments, registered the case against the parents and uncle of accused No.1.

12. After thorough investigation, based on the material collected by the Investigation Agency, the Investigation Officer thought it fit to file charge sheet only against the present petitioner and his son, while dropping the case against the mother and uncle of accused No.1.

13. Presence of the accused persons was secured before the Court. When charges were to be framed, present petitioner filed an application under Section 227 of the Code of Criminal Procedure to discharge him from the case. State opposed the said application by filing detailed written objection.

14. The learned II Addl. District and Sessions Judge, Mandya, heard the parties in detail on the application and by the Order dated 31.10.2023 passed in S.C.No.113/2022, dismissed the request made by the present petitioner.

15. Being aggrieved by the same, petitioner/accused No.2 is before this Court in this revision.

NC: 2024:KHC:22674

16. Sri Gaurav, learned counsel for the revision petitioner, reiterating the grounds urged in the petition, vehemently contended that there is no material on record to show that there was physical and mental torture imparted to the deceased by the present petitioner and therefore, he cannot be held responsible for the aforesaid offence.

17. He also pointed out that the material collected by the Investigation Agency itself shows that it is the accused No.1 who nurtured the idea of taking away the life of daughter of the complainant with an intention to remarry some other person and therefore, attributing the intention to the present petitioner is totally unwarranted and sought for allowing the revision.

18. He also pointed out that the principles of law enunciated in the case of Vijayan vs. State of Kerala, reported in (2010)2 SCC 398, Amith Kapur vs. Rameshchandra reported in (2012)9 SCC 460, Dinesh Tivari vs. State of UP. reported in AIR 2014 SC 3502, State of Tamilnadu vs. N.Suresh Rajan reported in 2014 Crl.L.J 1444, State of Karnataka vs. Muniswamy and others reported in AIR 1997 SC 1489, Sangi Brothers vs. Sanjay Chowdary reported in 2008 SAR (Crl.) P.897, Shivaram NC: 2024:KHC:22674 Shetty vs. Delhi Police reported in ILR 2008 KAR 2876 has not been properly appreciated by the learned Trial Judge while dismissing the application filed by the petitioner.

19. In support of his contentions, learned counsel also placed on record the following judgments:

(i) Kahkashan Kausar alias Sonam and others vs. State of Bihar and others reported in (2022)6 SCC 599.

"16.*****

6. ... The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

(ii) Rajeev Kumar vs. State of Haryana reported in (2013)16 SCC 640.

18. From the aforesaid evidence of P.W.5, it is clear that the marriage between the appellant and the deceased took place on 28.1.1989 and the demand of dowry by the appellant and the beatings for more dowry was after the marriage. P.W.5 has also stated that on 19.2.1991 the deceased came to him at Kartarpur and told him that two days prior to NC: 2024:KHC:22674 19.2.1991, the appellant

gave her merciless beating. P.W.5 has, however, not stated that the beating the appellant gave to the deceased on 19.2.1991 was in connection with demand of dowry. One of the essential ingredients of the offence of dowry death under Section 304-B IPC is that the accused must have subjected a woman to cruelty in connection with demand of dowry soon before her death and this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the court will presume that the accused has committed the offence of dowry death under Section 113-B of the Evidence Act. As this ingredient of Section 304-B IPC has not been established by the prosecution, the trial court and the High Court were not correct in holding the appellant guilty of the offence of dowry death under Section 304-B IPC."

(iii) L.Krishna Reddy vs. State by Station House Officer and others reported in (2014)14 SCC 401.

"5. The IIIrd Additional Sessions Judge, Pondicherry favoured the position that the proceedings could continue against the respondent parents (accused 2 and 3) notwithstanding the devastating death of their son (accused 1) despite prosecution against him having abated. The learned Additional Sessions Judge specifically recorded the fact that the Public Prosecutor had conceded that there appeared to be no direct involvement of the father-in-law and mother-in-

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NC: 2024:KHC:22674 law in the murder, but that since it was a murder case the discharge may not be considered before the trial. The learned Additional Sessions Judge noted that the parents were implicated only on the basis of the statements recorded under Section 161 Cr.P.C; he was of the prima facie view that the motive behind the murder of Sujatha was dowry.

(iv) State of Karnataka vs. Dattaraj and others reported in (2016) 12 SCC 331.

"15.xxxxxxxxxxxxx "15.xxxxxxxx Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."

20. Per contra, learned High Court Government Pleader supports the impugned Order.

21. Learned High Court Government Pleader also emphasizes that the material available on record collected by the

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NC: 2024:KHC:22674 prosecution alone is to be looked into while framing the charge and not the defence that is to be taken by the accused.

22. He further points out that there is a presumption available to the prosecution under Sections 113A and 113B of the Indian Evidence Act, 1872 in respect of offence punishable under Section 304B of IPC and therefore, the material evidence available on record is sufficient enough to hold that accused No.2 has to stand for trial for the aforesaid offence and sought for dismissal of the revision petition.

23. He further emphasized that investigation is impartial and it is not perfunctory in nature inasmuch as even though the allegation were found against the mother and uncle of accused No.1, Investigation Officer after thorough investigation and collection of material evidence, thought it fit that no case is made out against the mother and uncle of accused No.1 and dropped them while filing the charge sheet.

24. Thus, role of Investigation Officer is to be appreciated that he did not find any material against the mother and uncle of the accused No.1, but has collected the material so as to

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NC: 2024:KHC:22674 proceed against the father of accused No.1 who is the present petitioner and therefore, sought for dismissal of the petition.

25. In view of the rival contentions of the parties, this Court bestowed its best attention to the material on record meticulously.

26. On such perusal of the material on record, it is seen that there is a specific allegation against the present petitioner in the charge sheet materials. Especially, with regard to the demand of dowry amount and receipt of dowry amount by the present petitioner is evidenced by the material documents collected by the petitioner.

27. In paragraphs 11 to 14, the learned Trial Judge has discussed in detail the material available on record so as to proceed against accused No.2 who is the revision petitioner. Same is culled out hereunder for ready reference.

11. After marriage accused No.1 picked up quarrel with deceased Sandhya for the reason that they did not give dowry as demanded by them, abused and gave mental torture to her. CW-1 and 3 came to know about this from deceased, CW-3 as more dowry amount from her Canara Bank Account No.04342300027128 through her mobile

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NC: 2024:KHC:22674 No.7892179249 to the friend of accused No.1, Karnataka Bank Account No.9272500101437901 to the mobile No.9964715254 sent Rs.25,000/- through Phone-pay. Accused No.1 harassed Sandhya to give more dowry from her parents house and CW-1 gave Rs.20,000/- one time and Rs.30,000/- on another time totally gave Rs.50,000/- to deceased and Accused No.1 obtained it.

12. Thereafter accused No.1 to fulfill his habits took golden necklace of Sandhya, gave it to CW-20 and obtained 9 S.C. No.113/2022 money. He pledged engagement ring in the name of his friend CW-22 in Neel Kamal Pledge Shop at Chandupura Gate. Accused No.1 went to the house of CW-1 asked to give chain of her mother, CW-2 gave it to accused No.1. He threatened that if they inform the matter to his parents, he will desert their daughter. Thereafter gave chain to CW-19 and obtained amount.

13. Deceased Sandhya used to go to computer class at Manipal Computer Education Centre, K.M. Doddi and doubting her chastity, in order to kill her on 15.11.2021 went near computer class, talked with her took her in bike, as bike stopped, he left her. On 16.11.2021 accused No.1 in order to kill Sandhya took her in Honda Activa motor bike bearing No.KA-11-R-0532 came to K.M. Doddi at 10.30 a.m. took her to various places, CW-4 and CW-5 saw accused No.1 and deceased Sandhya in scooter near Thenkahalli Gate and they were proceeding to Kunduru Betta. Accused No.1 under the guise of proceeding to Kunduru Betta, took her on canal top road at 1.00 p.m. asked Sandhya to wash her hands and legs in the Nanjapura Irrigation, Kunduru Canal water, when Sandhya was getting down in the flowing water, he strangulated the

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NC: 2024:KHC:22674 neck of Sandhya drowned her in water, suffocated her and killed her and in order to destroy evidence pushed the dead body in the water.

14. It is the contention of accused No.2 that on perusal of 2 complaints, there is no allegation made against accused No.2, accused No.2 has nothing to do with the incident, there is delay in moving criminal law into motion, due to pandemic, there was no occasion to demand dowry, there are no eye witnesses, the case is based on circumstantial evidence, if accused No.2 demanded dowry, question of deleting accused Nos.3 and 4 from charge- sheet does not arise, there is no participation of accused No.2 in committing murder of deceased, there is no material to file charge-sheet against accused No.2 and prayed to discharge accused No.2."

28. Thus, the material available on record is sufficient enough to make out a triable case as against accused No. Further, the principles of law enunciated in the decisions relied on by the learned counsel for the petitioner was also discussed by the learned Trial Judge in detail, in the impugned Order.

29. It is settled principles of law that it is the material placed on record by the prosecution alone to be looked into at the time of framing of charge and not the defence.

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NC: 2024:KHC:22674

30. In this regard, gainfully this Court places reliance on the dictum of the Hon'ble Apex Court in the case of State of Orissa vs. Debendra Nath Padhi, reported in (2005)1 SCC 568, relevant

paragraph is culled out hereunder:

17. As opposed to the aforesaid legal position, the learned counsel appearing for the accused contended that the procedure which deprives the accused to seek discharge at the initial stage by filing unimpeachable and unassailable material of sterling quality would be illegal and violative of Article 21 of the Constitution since that would result in the accused having to face the trial for a long number of years despite the fact that he is liable to be discharged if granted an opportunity to produce the material and on perusal thereof by the court. The contention is that such an interpretation of Sections 227 and 239 of the Code would run the risk of those provisions being declared ultra vires of Articles 14 and 21 of the Constitution and to save the said provisions from being declared ultra vires, the reasonable interpretation to be placed thereupon is the one which gives a right, howsoever limited that right may be, to the accused to produce unimpeachable and unassailable material to show his innocence at the stage of framing charge.

18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207

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NC: 2024:KHC:22674 and 207-A omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused"

cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At

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NC: 2024:KHC:22674 the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

19. It may also be noted that, in fact, in one of the cases under consideration (SLP No. 1912), the plea of alibi has been taken by the accused in a case under Section 302 read with other provisions of the Penal Code, 1860. We may also note that the decisions cited by learned counsel for the accused where the prosecutions under the Income Tax Act have been quashed as a result of findings in the departmental appeals have no relevance for considering the question involved in these matters.

20. Reliance placed on behalf of the accused on some observations made in *Minakshi Bala v. Sudhir Kumar* [(1994) 4 SCC 142 : 1994 SCC (Cri) 1181] to the effect that in exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence is misplaced for the purpose of considering the point in issue in these matters. If para 7 of the judgment where these observations have been made is read as a whole, it would be clear that the judgment instead of supporting the contention sought to be put forth on behalf of the accused, in fact, supports the prosecution. Para 7 of the aforesaid case reads as under: (SCC p.

145) "7. If charges are framed in accordance with Section 240 CrPC on a finding that a

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NC: 2024:KHC:22674 prima facie case has been made out -- as has been done in the instant case -- the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under Section 240 CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence."

21. It is evident from the above that this Court was considering the rare and exceptional cases where the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing under Section 482 of the Code. In the present case, however, the question

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NC: 2024:KHC:22674 involved is not about the exercise of jurisdiction under Section 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but is about the right claimed by the accused to produce material at the stage of framing of charge.

22. Reliance has also been placed on the decision in the case of P.S. Rajya v. State of Bihar [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] where this Court rejected the contention urged on behalf of the State that the points on which the accused was seeking quashing of criminal proceedings could be established by giving evidence at appropriate time and no case had been made out for quashing the charge itself. The charge was quashed by this Court. In this case too only on peculiar facts of the case, this Court came to the conclusion that the criminal proceedings initiated against the appellant-accused could not be pursued. Those peculiar facts have been noticed in paras 14, 17, 18 and 19 of the decision. The contention of the accused based on those peculiar facts has been noticed in para 15 and that of the respondent that CBI was entitled to proceed on the basis of the material available and the mere allegations made by the accused cannot take the place of proof and that had to be gone into and established in the final hearing, has been noticed in para 16. After noticing those contentions and the decision in the case of State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] laying down the guidelines relating to the exercise of extraordinary power under Article 226 or the

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NC: 2024:KHC:22674 inherent power under Section 482 of the Code for quashing an FIR or a complaint, this Court, on the peculiar facts, came to the conclusion that the case of the appellant could be brought under more than one head given in Bhajan Lal case [1992 Supp (1) SCC 335 :

1992 SCC (Cri) 426] without any difficulty so as to quash the proceedings. In this background, observations were made in para 23 on which reliance has been placed on behalf of the accused whereby rejecting the contention of the State as noticed in para 16, the Court came to the conclusion that the criminal proceedings deserve to be quashed. In this case too the question was not about the right of the accused to file material at the stage of framing charge but was about quashing of proceedings in exercise of power under Section 482 of the Code. The decision in the case of State of M.P. v. Mohanlal Soni [(2000) 6 SCC 338 : 2000 SCC (Cri) 1110] sought to be relied upon on behalf of the accused is also of no assistance because in that case an earlier order of the High Court wherein the trial court was directed to take into consideration the documents made available by the accused during investigation while framing charge had attained finality since that order was not challenged and in that view this Court came to the conclusion that the trial court was bound and governed by the said direction of the High Court which had not been followed.

23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to

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NC: 2024:KHC:22674 produce any material. Satish Mehra case [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.

24. On behalf of the accused a contention about production of documents relying upon Section 91 of the Code has also been made. Section 91 of the Code reads as under:

"91. Summons to produce document or other thing.--(1) Whenever any court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such court or officer, such court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2)-(3)***"

25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for

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NC: 2024:KHC:22674 the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right

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NC: 2024:KHC:22674 on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof."

31. In the backdrop of the aforesaid legal principles, the material on record is appreciated in the light of the arguments put forth on behalf of the parties.

32. On such perusal, it is not in dispute that daughter in law of the present petitioner who is the daughter of the complainant was married to the son of the revision petitioner.

33. Admittedly, she was found missing on and from 16.11.2011. Till up to 21.11.2011 she was not traced and her dead body was traced only on 21.11.2021 that too, at the instance of the son of the present petitioner who is accused No.1. Material on record would go to show that after the marriage, money was transferred through mobile telephone from friend of the complainant's son to the accused which prima facie shows that there was demand of dowry and same was complied with by the complainant.

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NC: 2024:KHC:22674

34. Learned counsel for the petitioner to substantiate his contentions, while referring to the decisions relied upon by him referred to supra, has drawn attention of this Court to the judgment in the case of Kakhshan Kausar, wherein, Their Lordships of the Hon'ble Supreme Court in the said case held that, if the parents of the victim have not shared the common roof, normally such person should not be proceeded with criminal prosecution, where harassment is complained of either by the wife or her parents.

35. In the case on hand, admittedly, accused Nos.1 and 2 shared the common roof. Therefore, principles of in the case Kakhshan Kausar would not be applicable to the case on hand.

36. In the case of Rajeev Kumar supra, Their Lordships were of the opinion that the medical report having regard to the nature of injury sustained by the victim where the victim died on account of burn injuries, took into consideration about the role of the accused and then decided that he had no proximity with the time or the

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NC: 2024:KHC:22674 incidence and therefore, were of the opinion that such person should not be made to stand trial.

37. Facts in the present case are altogether different. In fact, according to the prosecution, based on the voluntary statement given by accused No.1 important circumstances of the prosecution case viz., detection of crime and the place of dead body being found is recovered by the police.

38. The incident admittedly has taken place on 16.11.2021 and when there was a call made by the complainant to the present petitioner in the evening of 16.11.2021 and again in the morning of 17.11.2021, there was a passive response from the present petitioner. The deceased is none other than the daughter in law of accused No.2. If not sympathy, at least, empathy should have been there to the conduct of the present petitioner in searching the missing daughter in law. The conduct shows that he did not care to find out what has happened to his own daughter in law.

39. Further, the circumstance that the accused No.1 said to have attempted to commit suicide is intimated by

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NC: 2024:KHC:22674 accused No.2 to the complainant in a very casual manner. When there was a call made by the complainant to lodge missing complaint about his daughter, accused No.2 as a normal prudent person, should have accompanied the complainant in lodging the complaint or for that matter, accused No.1 being the husband of the deceased, should have accompanied if they are so innocent as is sought to be portrayed.

40. But accused No.2 says that his son i.e., accused No.1 has tried to commit suicide. Even that reply was in a very casual manner.

41. No details are forthcoming as to whether accused No.1 was taken to the hospital and was that a true fact. No other material is also forthcoming from the application of the accused No.2 as to what is the normal prudent person would behaved if his son has tried to commit suicide. In other words, as could be seen from the material on record, probably the accused No.1 must have revealed what has happened on 16.11.2021 to accused

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NC: 2024:KHC:22674 No.2 and therefore, they were fearing to visit the police station.

42. Anyway, this Court at this stage, by holding a mini trial, cannot form any definite opinion as it would affect the rights of the parties during trial, one way or the other.

43. Moreover, what is to be looked into at this stage is the prosecution material itself and it is for the accused to rebut the presumption available under Sections 113A and 113B of the Indian Evidence Act, 1872 after the prosecution discharges the initial burden in the trial.

44. Suffice to say that money has been received by accused No.2 from complainant's son's friend through mobile transfer, it would prima facie establish that accused No.2 is part of the crime.

45. Coming to question of decisions in L.Krishna Reddy supra learned counsel for the petitioner drew the attention of this Court to the paragraph 5 wherein, Their Lordships had an occasion to deal with the statement recorded by the Investigation Agency under Section 161 of Cr.P.C.

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NC: 2024:KHC:22674

46. In the case on hand, not only the statement recorded under Section 161 of Cr.P.C is available, but also statement recorded under Section 164 of Cr.P.C. is also available which is part of the charge sheet material.

47. Therefore, judgment of L.Krishna Reddy would not improve the case of the petitioner in accepting the request for discharge.

48. In the case of Dattraj supra, their Lordships were of the opinion that accepting of the gift would per se would not amount to dowry. It is settled principles of law and that should be decided only at the end of the trial, as in the case on hand, receipt of money that too by phone transfer cannot be treated as gift, that too after the marriage. Therefore, argument that is put forth on behalf of the petitioner that the judgment of Dattaraj supra would help his case cannot be countenanced in law.

49. In view of the foregoing discussion, having regard to the material collected by the Investigation Agency, in the light of the principles of law enunciated by the Hon'ble

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NC: 2024:KHC:22674 Apex Court in the case of Debendra Nath Padi supra, this Court is of the considered opinion that there are enough materials to frame charge and accused has to stand for trial and then discharge his burden by placing the rebuttal evidence in the trial.

50. Taking note of these aspects of the matter, this Court is of the considered opinion that grounds in the revision petition are hardly sufficient to discharge the accused.

51. Hence, the following:

ORDER

(i) Appeal is meritless and is hereby dismissed.

(ii) It is made clear that the observations made by this Court is for disposal of the revision petition, shall not influence the learned trial Judge in one way or the other during the trial.

Sd/-

JUDGE kcm

Sri Mahesh S/O Hirachand Oswal vs Smt Akshata W/O Mahesh Oswal on 21 June, 2024

Author: M.G.S. Kamal

Bench: M.G.S. Kamal

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 21ST DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE M.G.S. KAMAL

REV.PET FAMILY COURT NO.100136 OF 2023
C/W
REV.PET FAMILY COURT NO. 100191 OF 2023

IN RPFC NO.100136/2023

BETWEEN:

SRI MAHESH S/O. HIRACHAND OSWAL,
AGED ABOUT 49 YEARS,
OCC: BUSINESS AND INDUSTRIALIST,
R/AT: FLAT NO. 402, 25/1,
MEHTA COLONY, E-WARD,
SAMRAT NAGAR, KOLHAPUR CITY,
KOLHAPUR, MAHARASHTRA.

...PETITIONER

(BY SRI VAIJAYANTHIMALA B., AND
MAMATHA B.L., ADVOCATES)

Digitally
signed by V N
BADIGER
Location:
High Court of
Karnataka

AND:

1. SMT. AKSHATA

W/O. MAHESH OSWAL,
AGED ABOUT 37 YEARS,
OCC: HOUSE WIFE,
R/AT: C/O. SMT. PREMA ANIL
WAINGADE GAYATRI BUILDING,
GROUND FLOOR, SHANTI COLONY,
OPP. ASHRAY VIDYA ASHRAM,
DATTA MANDIR ROAD,
TILAKWADI, BELAGAVI,
PIN CODE - 590 001.

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

2. KUMAR MANOMAY
S/O. MAHESH OSWAL,
AGED ABOUT 8 YEARS,
OCC: STUDENT,
R/AT. C/O. SMT. PREMA ANIL,
WAINGADE GAYATRI BUILDING,
GROUND FLOOR, SHANTI COLONY,
POO. ASHRAY VIDYA ASHRAM,
DATTA MANDIR ROAD, TILAKWADI,
BELAGAVI - 590 001.

(RESPONDENT NO.2 BEING MINOR
IS REPRESENTED BY HIS NEXT FRIEND
MOTHER RESPONDENT NO.1)

... RESPONDENTS

(BY SRI NAGARATNA S. PATTAR,
SHAMSUNDAR N. PATTAR,
S.B.DEYANNAVAR, ADVOCATE FOR R1;
R2 IS MINOR R/BY R1)

THIS RPFC IS FILED UNDER SEC.19(4) OF THE FAMILY
COURT ACT, AGAINST THE JUDGMENT AND ORDER DATED
07.07.2023, IN CRL.MISC. NO.543/2018, ON THE FILE OF THE
PRINCIPAL JUDGE, FAMILY COURT, BELAGAVI, PARTLY
ALLOWING THE PETITION FILED UNDER SEC.125 OF CR.P.C.
AND ETC.,

IN RPFC NO.100191/2023

BETWEEN:

1. SMT. AKSHATA
W/O. MAHESH OSWAL,
AGE: 37 YEARS,

OCC: HOUSEWIFE,
R/O C/O: SMT. PREMA ANIL WAINGADE,
GAYATRI BUILDING, GROUND FLOOR,
SHANTI COLONY
OPP. ASHRAYA VIDYA ASHRAM,
DATTA MANDIR ROAD, TILKWADI

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

BELAGAVI.

2. KUMAR MANOMAY
S/O. MAHESH OSWAL,
AGE: 08 YEARS, OCC: STUDENT,
R/O. C/O: SMT. PREMA ANIL WAINGADE,
GAYATRI BUILDING, GROUND FLOOR,
SHANTI COLONY,
OPP. ASHRAYA VIDYA ASHRAM,
DATA MANDIR ROAD, TILAKWADI,
BELAGAVI.

(PETITIONER NO.2 BEING
MINOR IS REPRESENTED BY
HIS GAURDIAN MOTHER
PETITIONER NO. 1)

...PETITIONERS

(BY NAGARATHNA S. PATTAR AND
S.B.DEYANNAVAR, ADVOCATES)

AND:

SRI MAHESH
S/O. HIRACHAND OSWAL,
AGE: 49 YEARS,
OCC: BUSINESS AND INDUSTRIALIST,
R/O FLAT NO 402, 25/1, MEHTA COLON,
E-WARD, SAMRAT NAGAR,
KOLHAPUR CITY, KOLHAPUR,
MAHARASHTRA.

...RESPONDENT

THIS RPFC IS FILED UNDER SEC. 19(4) OF THE FAMILY
COURT ACT, 1984, PRAYING TO, THE ORDER DATED
07.07.2023 PASSED IN CRL.MISC.543/2018 BY THE PRINCIPAL
JUDGE, FAMILY COURT, BELAGAVI AND ETC.,

THESE PETITIONS, COMING ON FOR ADMISSION, THIS
DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

ORDER

1. This petition RPFC No.100136/2023 is filed by the husband aggrieved by the order dated 07.07.2023 passed in Crl.Misc.No.543/2018 on the file of the Principal Judge, Family Court, Belagavi, by which while partly allowing the petition filed under Section 125 of Cr.P.C., the Family Court has directed the petitioner herein to pay Rs.8,000/- per month to the respondent No.1 and Rs.4,000/- per month to the respondent No.2 from the date of petition.
2. The above petition for maintenance seeking grant of Rs.25,000/- per month to respondent No.1 and Rs.15,000/- per month to respondent No.2 was filed under Section 125 of Cr.P.C. contending that respondent No.1 is the legally wedded wife of the petitioner herein and their marriage was solemnized on 07.01.2014 and that the respondent No.2 was born out of the said marriage. That soon after the marriage, respondent No.1 was subjected to physical and mental harassment at the hands of the NC: 2024:KHC-D:8323 petitioner herein and his mother. Due to the ill-treatment, the respondent No.1 along with the child started staying with her parents from the year 2016 onwards. That the petitioner herein despite having sufficient income in excess of Rs.2,00,000/- from his business from Ugam Metal Industries, had neglected and refused to maintain his wife. Several other allegations of ill-treatment have been made in the petition. Respondent No.1 had also initiated proceedings under the provisions of Women Domestic Violence Act, 2005 and the petitioner herein has initiated proceedings under the Guardians and Wards Act, 1890. Under the circumstances, the above petition under Section 125 of Cr.P.C. was filed seeking maintenance.
3. Statement of objection filed by the petitioner herein admitting his relationship with the respondents, however denied all the allegations of ill-treatment and harassment. It is also denied that the petitioner herein is having income in excess of Rs.2,00,000/- and he owning a flat and two houses as contended by the respondent No.1 NC: 2024:KHC-D:8323 wife. It is contended that respondent No.1 was not interested to stay with the petitioner and his mother, which caused discord amongst them. That the respondent No.1 herself has left the matrimonial home refusing to stay with the petitioner. That he had shown all the care and concern towards the respondents. That the petitioner is working in a shop earning salary less than Rs.9,000/- per month and the said income is not sufficient to maintain them. On the other hand, respondent No.1 is a MBA graduate, capable of earning for herself, as such, she do not require any financial assistance from the petitioner.
4. Considering the pleading and evidence led in by the parties, the Family Court allowed the petition holding that there were sufficient reasons and grounds for the respondent No.1 not to stay with the petitioner. The Family Court also on assessment of the evidence produced by the parties, came to the conclusion that the petitioner be directed to pay Rs.8,000/- per month to the respondent No.1 and Rs.4,000/- per month to the respondent No.2.

NC: 2024:KHC-D:8323 Being aggrieved by the same, the petitioner-husband is before this Court seeking reduction of maintenance amount and respondent-wife and child is before this Court seeking enhancement of maintenance amount.

5. Learned counsel for the petitioner-husband reiterating the grounds urged in the memorandum of petition submitted that the Family Court grossly erred in accepting the contention of respondent wife and child of petitioner having income as claimed by them. She submits that the so called Ugam Metal Industries is running scrap business and standing in the name of the mother of the petitioner and said business is not earning amount as claimed by the respondents. She submits that the affidavit of income and expenditure of the petitioner was filed before the Family Court and the same has remained uncontested. She submits that the income being drawn by the petitioner is just about Rs.9,000/- and the impugned order directing the petitioner to pay Rs.12,000/-

NC: 2024:KHC-D:8323 in aggregate, would cause serious hardship. Hence, the petition.

6. On the other hand, learned counsel appearing for the respondent wife who has also filed petition for enhancement of maintenance, contend that the Family Court in its judgment at paragraph 29 onwards has dealt in detail with regard to income and the properties of the petitioner and has declined to accept the contention of the petitioner of he not owning the Ugam Metal Industries. She also submits that in that view of the matter, inference needs to be drawn that the petitioner himself owning Ugam Metal Industrial and earning amount in excess of Rs.2,00,000/- per month. She also submits that the petitioner is owning immovable properties, earning rental income from it. Thus, she submits that sufficient material is placed on record to justify the claim of the respondents, of the petitioner earning in excess of Rs.2,00,000/-, which eventually should be considered while determining the maintenance to be paid to the respondents. Hence, she NC: 2024:KHC-D:8323 submits that the maintenance amount as awarded by the Family Court be enhanced to Rs.25,000/- to respondent No.1 and Rs.15,000/- to respondent No.2.

7. Heard and perused the records.

8. The marriage between the petitioner and respondent No.1 and respondent No.2 being their child, is not in dispute. Petitioner and respondents staying separately from the year 2016 is also not in dispute. The petition and counter petition under different provisions of family law have been filed by the parties sufficient to infer that there is serious discord between the parties. Though the respondent wife has contended the petitioner having income in excess of Rs.2,00,000/-, the material evidence brought on record would not justify the said claim. The Family Court in the impugned judgment at paragraphs 29 to 33 has assessed and analyzed the evidence produced by the parties and has thereafter come to the conclusion that the respondents claim would be justified if they are

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NC: 2024:KHC-D:8323 paid Rs.8,000/- and Rs.4,000/- per month respectively. Accordingly, partly allowed the petition.

9. In the petition filed by the husband seeking reduction, except contending that he does not own and posses Ugam Metal Industries, nothing is being urged. Even if he is earning Rs.9,000/- as claimed, no satisfactory material in that regard is produced either. Petitioner being healthy and able bodied person cannot claim his inability to pay the amount as awarded by the Family Court. Similarly, in the absence of any acceptable material on record regarding the petitioner having income in excess of Rs.2,00,000/-, the respondents cannot be heard for enhancement of maintenance as claimed.

10. In the light of the pleadings and material evidence made available by the parties, including filing of the affidavits as required, in the considered view of this Court, the Family Court has arrived at a just and reasonable conclusion directing the petitioner herein to

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NC: 2024:KHC-D:8323 pay Rs.8,000/- to respondent No.1 and Rs.4,000/- to respondent No.2.

11. In that view of the matter, for the present, this Court do not see any reason to interfere with the order passed. Accordingly, both the petitions are dismissed confirming the order passed by the Family Court.

SD/-

JUDGE KGK/CT-ASC

Sri. Manjunatha vs Smt. K.V.Pooja on 4 January, 2024

Author: Shivashankar Amarannavar

Bench: Shivashankar Amarannavar

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NC: 2024:KHC:370
CRL.P No. 5355 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JANUARY, 2024

BEFORE
THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR
CRIMINAL PETITION NO. 5355 OF 2023
BETWEEN:

SRI MANJUNATHA
S/O SURESH @ RANGANATAHA
AGED ABOUT 34 YEARS
R/O SHREEDHARA NILAYA
B H MAIN ROAD
LOWER HUTHTHA, SHREEDHARA SWAMY ASHRAYA
BACK SIDE OF KANCHANA ICE- CAFE
BHADRAVATHI TOWN
SHIVAMOGGA DISTRICT - 577 301.

...PETITIONER

(BY SMT. SHAKUNTHALA, ADVOCATE)

AND :

SMT. K.V.POOJA
W/O SRI MANJUNATHA
AGED ABOUT 29 YEARS
R/O HOUSE No.6/693/1, WARD No.4
MANDIPETE MAIN ROAD
BACK SIDE SHREE RENUKA CLOTH STORE
DAVANGERE TOWN -577 001.

...RESPONDENT

(BY SRI S G RAJENDRA REDDY, ADVOCATE)

THIS CRL.P IS FILED U/S 407 CR.PC PRAYING TO PASS
AN ORDER TRANSFERRING THE CASE IN CR.MISC.No.172/2021
PENDING ON THE FILE OF 4TH ADDITIONAL CIVIL JUDGE
(JR.DIV.) AND JMFC, COURT AT DAVANAGERE TO THE FILE OF

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NC: 2024:KHC:370
CRL.P No. 5355 of 2023

CIVIL JUDGE (JN.DIV.) AND JMFC BHADRAVATHI COURT FOR
DISPOSAL IN ACCORDANCE WITH LAW.

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

ORDER

This petition is filed praying to transfer Crl.Misc.No.172/2021 pending on the file of the IV Additional Civil Judge (Jr.Div.) and JMFC, Davangere to the file of the Civil Judge (Jr.Div) and JMFC Court, Bhadravathi.

2. Heard, learned counsel for the petitioner and learned counsel for the respondent.
3. Respondent has initiated proceedings against the petitioner and his parents under Protection of Women from Domestic Violence Act, 2005 in Crl.Misc.No.172/2021 pending on the file of the IV Additional Civil Judge (Jr.Div.) and JMFC, Davangere. Transfer is sought on the ground that there is an untoward incident occurred on 12.03.2023 in the Court premises and the petitioner has lodged a complaint against advocates and case has been registered NC: 2024:KHC:370 in Davangere Extension Police Station in Crime No.94/2023 for the offences punishable under sections 143, 147, 504, 323, 355, 506, 149 of IPC, wherein advocates of Davangere have been arrayed as accused. The petitioner is having threat to appear in the Court at Davangere since he has filed complaint against advocates. As there is threat to the petitioner to appear in the Court at Davanagere. On being asked to learned counsel for the respondent, he submits that case can be transferred to the Court which is convenient to both parties.
5. Learned counsel for the petitioner and learned counsel for respondents both submits that case can be transferred to the Principal Civil Judge and JMFC, Harihar.
6. In view of the above, the following ORDER The petition is allowed. The Crl.Misc.No.172/2021 pending on the file of the IV Additional Civil Judge (Jr.Div.) and JMFC, Davangere is ordered to be transferred to the NC: 2024:KHC:370 Principal Civil Judge and JMFC, Harihar for disposal of the case in accordance with law.

The petitioner is directed to bear the travel and other expenses of the respondent in attending the

Court at Davangere i.e., Rs.600/- per hearing on the dates on which the respondent appears in the said case.

Sd/-

JUDGE DSP

Sri Narendra Dattathri vs State Of Karnataka on 20 June, 2024

Author: K.Somashekar

Bench: K.Somashekar

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NC: 2024:KHC:22056-DB
WPHC No. 27 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JUNE, 2024

PRESENT
THE HON'BLE MR JUSTICE K.SOMASHEKAR
AND
THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA
WRIT PETITION HABEAS CORPUS NO. 27 OF 2024

BETWEEN:

SRI. NARENDRA DATTAHRI
S/O LATE DATTAHRI SRINGERI GANESH BHAT,
AGED ABOUT 45 YEARS,
R/AT NO.7110, BREDON DRIVE
CHARLOTTE, NORTH CAROLINA-28210
UNITED STATES OF AMERICA.

...PETITIONER
(BY SRI. BHAT SHANKAR SHIVARAM, ADVOCATE)

AND:

Digitally signed by
AASEEFA PARVEEN
Location: HIGH
COURT OF
KARNATAKA

1. STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF HOME AFFAIRS,
VIDHANA SOUDHA, DR.AMBEDKAR VEEDHI,
BENGALURU-560001.
2. COMMISSIONER OF POLICE,
OFFICE OF COMMISSIONER OF POLICE,
INFANTRY ROAD, BENGALURU-560001
3. POLICE SUB - INSPECTOR
WOMEN POLICE STATION-I,

BASAVANAGUDI,
WEST ZONE, BENGALURU-560070

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NC: 2024:KHC:22056-DB
WPHC No. 27 of 2024

4. SMT. SHWETHA NAGESH RAO,
W/O NARENDRA DATTATHRI,
AGED ABOUT 43 YEARS,
R/AT NO.158/2A/20, 'LALITA RAM NIVAS'
3RD CROSS, CANARA BANK COLONY,
CHIKKALASANDRA, UTTARAHALLI MAIN ROAD,
BENGALURU-560061.
ALSO R/AT NO.12/4,
TARapore OFFICERS COLONY,
ST. JOHNS ROAD, PULKESHINAGAR,
BANGALORE NORTH,
FRAZER TOWN, BANGALORE-560005.

. . . RESPONDENTS

(BY SRI. B.A. BELLIAPPA, SPP A/W
SRI. M.V. ANOOP KUMAR, HCGP FOR R1-R3;
SRI. C.V. SRINIVASA, ADVOCATE FOR R4)

THIS WRIT PETITION HABEAS CORPUS IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF HABEAS CORPUS IN FAVOUR OF THE PETITIONER DIRECTING THE RESPONDENTS NO.1 TO 4 TO PRODUCE THE CHILD BY NAME ADVAITH AGASHE FROM ILLEGAL DETENTION OF RESPONDENT NO.4 AND HAND OVER SON TO THE PETITIONER TO FACILITATE REPATRIATION OF MINOR SON TO COUNTRY OF ORIGIN IN OBEDIENCE OF THE DIRECTION OF COMPETENT COURT VIDE ANNEXURES-G AND H ORDER DATED 02.04.2022 PASSED IN CASE NO.18-CVD-11642(JPC) ON THE FILE OF MECKLENBURG COUNTRY, NORTH CAROLINA, USA.

THIS PETITION, COMING ON FOR ORDERS,
THIS DAY, DR. CHILLAKUR SUMALATHA, J., MADE
THE FOLLOWING:

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NC: 2024:KHC:22056-DB
WPHC No. 27 of 2024

ORDER

Heard Sri.Bhat Shankar Shivaram, learned counsel for the writ petitioner as well as Sri.C.V.Srinivasa, learned counsel who is representing respondent No.4.

2. This writ petition is filed seeking a writ in the nature of habeas corpus directing respondents No.1 to 4 to produce the child by name Advaith Agashe from illegal detention of 4th respondent and hand over the said child to the petitioner facilitating repatriation of the said child to the country of origin.

3. The crux of the case as could be perceived from material available on record is that, 4th respondent is the wife of the writ petitioner. Out of their lawful wedlock, they gave birth to the child by name Advaith Agashe on 27.08.2012. The said child is a Canadian Citizen by birth.

4. Arguing in respect of merits of the matter, learned counsel Sri.Bhat Shankar Shivaram submits that the said child was kidnapped by 4th respondent. She brought him to India from United States of America without the knowledge of the writ petitioner, who is none other than the father of the child. Learned counsel states that there is an order from American NC: 2024:KHC:22056-DB Court that the child should be in the custody of the writ petitioner. Learned counsel further submits that the mother is keeping the child under her custody illegally which amounts to illegal detention and as the father is the lawful custodian of the child in the light of the order passed by the Court of United States of America, the child should be ordered to be removed from the custody of 4th respondent - mother and should be handed over to the writ petitioner, so that he can take the child to the United States of America.

5. Submitting that the child cannot be allowed to stay in India and indeed the Courts in India are required to honour and obey the orders passed by the other countries, learned counsel for the writ petitioner relied upon the decision of Hon'ble Supreme Court in the case of Mrs.Elizabeth Dinshaw Vs. Arvand M.Dinshaw and Another decided on 11.11.1986. In the said case the Hon'ble Supreme Court while dealing with the custody of a minor child observed as follows:

" It is the duty of all Courts in all countries to do all they can to ensure that the wrongdoer does not gain an advantage by his wrongdoing. The Courts in all countries ought to be careful not to do anything to encourage the tendency of NC: 2024:KHC:22056-DB sudden and unauthorised removal of children from one country to another. This substitution of self-help for due process of law in this field can only harm the interests of the wards generally, and a judge should pay due regard to the orders of the proper foreign Court unless he is satisfied beyond reasonable doubt that to do so would inflict serious harm on the child."

6. Learned counsel submits that it is the writ petitioner who has to take care of the child. Only because of the disputes that arose between the writ petitioner and 4th respondent, 4th respondent without the knowledge of the writ petitioner has brought the child to India and she has not allowed the writ petitioner to meet or converse with the child and therefore the present writ petition is filed.

7. Vehemently opposing the submission thus made, learned counsel for 4th respondent Sri.C.V.Srinivasa submits that the writ petitioner has disobeyed the laws of India. He stays at America though several proceedings are pending against him. Learned counsel submits that 4th respondent gave a complaint to police against the writ petitioner and his family NC: 2024:KHC:22056-DB members by which a criminal case was registered and after due investigation, charge sheet was also filed.

8. Learned counsel submits that a non-bailable warrant was issued against the writ petitioner and the same is pending, but without coming to India and submitting himself to the jurisdiction of Court of law in India, the writ petitioner is visiting several countries. He has thus disobeyed the laws of India and therefore the writ petitioner has no right to claim that the Courts of India are bound by the laws and the orders passed by the other countries in his favour. Learned counsel further submits that a domestic violence case is pending against the writ petitioner and equally, a petition filed for the custody of the child under Guardians and Wards Act is also pending. Learned counsel further contends that as the custody of the child is in question before the competent court which is dealing under the provisions of Guardians and Wards Act, the writ petitioner cannot through this writ petition seek for custody of the child and therefore, the writ petition is liable to be dismissed under this count alone.

NC: 2024:KHC:22056-DB

9. This Court through the orders dated 04.06.2024 directed 4th respondent to appear before this Court along with the child and equally the writ petitioner to keep present before the Court physically.

10. Though 4th respondent is present before this Court and has also produced the child in question, the writ petitioner for the reasons best known has not attended before this Court. Learned counsel for the writ petitioner Sri.Bhat Shankar Shivaram submits that, as the writ petitioner is suffering from ill-health, he could not physically appear before this Court. No satisfactory reason is given as to why he cannot at-least appear before this Court by utilizing video conferencing facility. Also no proof is produced in respect of the alleged ill health of writ petitioner. That apart, a perusal of record goes to show that the writ petitioner is well aware that the child is under the custody of 4th respondent and continues to be under her care. The 4th respondent is none other than the mother of the child in question. The writ petitioner has produced a copy of the Aadhar Card in respect of the child. A meticulous perusal of the copy of the Aadhar Card reveals that the writ petitioner is also well NC: 2024:KHC:22056-DB aware of the address particulars of 4th respondent as well as the child in question.

11. Having considered all these aspects, we are of the considered view that filing of this writ petition is nothing but abuse of the process of the Court. When proceedings before the competent court under the Guardians and Wards Act are pending in respect of the custody of the child the writ petitioner is not expected to knock the doors of this Court seeking very similar relief. Therefore, this Court holds that the writ petition wholly lacks merits and deserves dismissal.

Accordingly, the writ petition stands dismissed.

Sd/-

JUDGE Sd/-

JUDGE AP CT:TSM

Sri P Prakash vs Smt K Ashwini on 11 June, 2024

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NC: 2024:KHC:20632-DB
MFA No.7711/2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JUNE, 2024

PRESENT
THE HON'BLE MRS. JUSTICE K.S.MUDAGAL
AND
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
MISCELLANEOUS FIRST APPEAL NO.7711/2017 (MC)
BETWEEN:

SRI. P. PRAKASH
S/O P. CHANNANGOUDA
AGED ABOUT 32 YEARS
OCC: UN-EMPLOYEE
R/O. N. CHEERANAHALLI VILLAGE
HARAPANAHALLI TALUK
DAVANAGERE DIST.

...APPELLANT
(BY SRI. JAGADEESH GOUD PATIL, ADV.,)

Digitally signed AND:
by RUPA V
Location: HIGH SMT. K. ASHWINI
COURT OF W/O P. PRAKASH
KARNATAKA AGED ABOUT 30 YEARS
OCC: STAFF NURSE
R/O. N. CHEERANAHALLI VILLAGE
HARAPANAHALLI TALUK
DAVANAGERE DIST 583212.

...RESPONDENT
(BY SRI. S.G. RAJENDRA REDDY, ADV.,)

THIS MFA IS FILED U/S.28(1) OF THE HINDU MARRIAGE ACT,
AGAINST THE JUDGMENT AND DECREE DATED:27.07.2017 PASSED
IN MC NO.18/2015 ON THE FILE OF THE SENIOR CIVIL JUDGE &
JMFC, HARAPANAHALLI, DISMISSING THE PETITION FILED
U/S.13(1)(1A) OF HINDU MARRIAGE ACT.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY,
VIJAYKUMAR A. PATIL J., DELIVERED THE FOLLOWING:

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NC: 2024:KHC:20632-DB

JUDGMENT

Challenging the judgment and decree of rejection of the petition filed by the appellant for dissolution of marriage in M.C.No.18/2015 dated 27.07.2017 on the file of Sr. Civil Judge and JMFC, Harapanahalli, the present appeal is preferred.

2. The appellant was the petitioner and the respondent in this appeal was the respondent before the Trial Court. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the Trial Court.

3. The marriage of the petitioner and the respondent was solemnized on 15.02.2008 at Nandigudi Temple, Harihara as per Hindu rites. Their marriage was registered on 06.03.2008 before the Registrar of Marriage, Harapanahalli. It is averred that the parents and relatives of the respondent were not in good terms with the parents of the petitioner. Hence, without the consent of the petitioner's parents, marriage was performed and none of the family members of the petitioner attended the marriage. It is further averred that the petitioner and the respondent lived together at the respondent's house for two months. At that time, respondent NC: 2024:KHC:20632-DB and her parents threatened the petitioner to take share of the property from his father. However, there was already a partition between the father of the petitioner and his brothers as per the judgment and decree in O.S.No.91/2008. Knowing fully well about the partition, the respondent and her parents insisted the petitioner for fresh partition of the joint family property. Due to the same, the relationship between the petitioner and the respondent became strained.

4. It is also averred that the respondent filed a complaint before the CDPO, Harapanahlli, under the provisions of the Protection of Women from Domestic Violence Act, 2005 against the petitioner, his aged old parents, brothers and pregnant sister. In the said complaint, a false accusation was made against the petitioner and his family members with regard to receiving Rs.70,000/- in cash, Rs.20,000/- worth of utensils, 5 thola gold and cloth worth Rs.5,000/- by way of dowry. The said complaint was referred to the jurisdictional Court and after enquiry, the jurisdictional Court passed an order directing the petitioner to pay Rs.1,000/- p.m. as maintenance to the respondent. The respondent initiated NC: 2024:KHC:20632-DB proceedings for recovery of the maintenance amount and the petitioner paid the maintenance amount regularly.

5. It is pleaded that the petitioner and the respondent led the married life only for a period of two months between 15.02.2008 and 20.04.2008. On 20.04.2008, the respondent and his brother started quarrelling with the petitioner, insisted him for fresh partition and drove him out of the respondent's house. Thereafter, the petitioner started living alone and he filed M.C.No.15/2009 for declaration that the marriage solemnized between him and the respondent is null and void. The said proceeding, after contest, was dismissed.

6. It is further pleaded that the respondent was a quarrelsome women, used to abuse the petitioner in filthy language, used to assault him along with her brother on the streets and on two occasions, the brother of the respondent attempted to murder him. Therefore, the petitioner lodged a complaint against the respondent before the police. The police officer and elders of the village compromised the matter. However, the respondent was not ready to obey the advice of the elders and used to humiliate the petitioner before the NC: 2024:KHC:20632-DB neighbours. It is also pleaded that the respondent used to hurl the utensils on the petitioner and threaten him with dire consequences and caused cruelty. After the filing of M.C.No.15/2009 as a counter blast, the respondent filed a false criminal case against him. The petitioner and the respondent are living separately for the last more than 7 years and thereafter, without conjugal relationship. Hence, seeks to grant a decree of divorce.

7. The respondent entered appearance and filed objections by denying the allegation of cruelty. It is specifically denied that the respondent had insisted for partition of the petitioner's property. It is averred that the proceedings under the provisions of the Protection of Women from Domestic Violence Act were initiated as the petitioner failed to discharge his duty and neglected her. It is further averred that after the marriage, the respondent lived with the petitioner in the matrimonial house and led married life for about 3 to 4 months. The parents of the petitioner, his brothers and other family members started abusing the respondent in filthy language. They subjected her to physical and mental cruelty, used to lock her in the room and attempted to set fire by pouring kerosene NC: 2024:KHC:20632-DB on her body. It is also averred that the petitioner and his family members intimidated her of her life and forced her to give suo-motto divorce. It is pleaded that the petitioner and his family members used to torture her everyday and ultimately drove her out of the matrimonial home with a direction to bring Rs.2,00,000/- dowry otherwise they would not allow her to continue the married life. It is further pleaded that the respondent is ready to lead married life with the petitioner by discharging her marital obligation. However, the petitioner, at the instigation of his family members, unsuccessfully filed M.C.No.15/2009 and after dismissal of the same on 11.08.2010 on merits, on the same grounds the present petition is filed. Hence, she sought dismissal of the petition.

8. The Trial Court recorded the evidence of the parties. The petitioner examined himself as PW-1 and produced 13 documents which were marked as Exs.P-1 to P-13. The respondent examined herself as RW-1, two other witnesses as RW-2 and RW-3 and produced 3 documents which were marked as Exs.R-1 to R-3. The Trial Court has recorded the finding that the petitioner failed to prove the grounds of cruelty as well as desertion and dismissed the petition filed by the petitioner.

NC: 2024:KHC:20632-DB Challenging the said judgment and decree, the above appeal is filed by the petitioner-husband.

9. Sri.Jagadeesh Goud Patil, learned counsel for the appellant, reiterating the grounds of appeal, referring to the evidence and judgment submits that the Trial Court has failed to appreciate the evidence judiciously and apply the law properly. He submits that impugned judgment is erroneous and liable to be reversed.

10. Per contra, Sri.S.G.Rajendra Reddy, learned counsel for the respondent supports the impugned judgment of the Trial Court and submits that the allegations of cruelty are very vague and no evidence is placed to substantiate the allegations of cruelty. Hence, the Trial Court is justified in dismissing the petition. He submits that the petitioner himself was guilty of cruelty and negligence which was evident from records.

11. Considering the submissions of both sides and examining the materials on record, the point that arises for consideration is "Whether the impugned judgment and decree of the Trial Court calls for any interference"?

NC: 2024:KHC:20632-DB ANALYSIS Reg. cruelty:

12. There is no dispute with regard to the solemnization of marriage on 15.02.2008. It is not in dispute that the petitioner and the respondent led married life approximately for a period of 2 to 4 months. It is also not in dispute that the petitioner filed M.C.No.15/2009 seeking a decree of judicial separation which came to be dismissed on 11.08.2010. A perusal of the finding recorded by the Trial Court in M.C.No.15/2009 indicates that the grounds urged in the said petition were similar to that of the present grounds. In addition to present allegations, it was alleged that the petitioner had refused to marry the respondent in the absence of his parents, but the parents of the respondent, under the life threat, took him to Nandigudi Temple, Harihara, performed the marriage and to legalise the said marriage, took him to the Registrar of Marriages, Harapanahalli and got the marriage registered. If the pleadings in the present petition and the allegations made in M.C.No.15/2009 are read together, it can be fairly inferred that the petitioner is taking different stand in both the proceedings. The petitioner has specifically pleaded in the previous proceedings that he was not willing to marry the NC: 2024:KHC:20632-DB respondent and he has been living separately from the respondent from the date of marriage. However, quite contrary to the said stand, he has pleaded in the present petition that the respondent caused cruelty and she stayed in the matrimonial home only for a period of two months. Hence, he is seeking the decree of divorce which clearly goes to show that the petitioner has not approached the Court with clean hands.

13. The affidavit evidence of PW-1 / petitioner is nothing but reiteration of the averments made in the petition. On perusal of the petition averments and the affidavit of PW-1, it is evident that the respondent led married life for a period of two months and thereafter, started residing separately. The allegation that the respondent and her family members used to insist him for partition of the property is not supported by any cogent and acceptable evidence. The respondent, in her statement of objections, specifically denied the assertion of the petitioner. With regard to the allegations of respondent quarreling with the petitioner and his family members and using filthy language against them are nothing but self-serving statements of the petitioner. The petitioner has not examined any independent witness to substantiate the allegation of

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NC: 2024:KHC:20632-DB cruelty. It is alleged that the respondent and her brother on two occasions assaulted the petitioner and therefore, he has filed police complaint against the

respondent which has resulted in compromise. Admittedly, the petitioner has not produced the copies of the complaints nor examined any panchas who have compromised the dispute between the parties and in the absence of any such evidence, the assertion of assault by the respondent and her brother cannot be accepted. The allegations of cruelty are very vague, stray instances of cruelty are pleaded and reiterated in the evidence by the petitioner. Those allegations cannot be termed as cruelty of such degree of enormity making it perilous to the petitioner to lead the married life with the respondent. The Trial Court, considering the evidence available on record, has come to the conclusion that the petitioner failed to prove the grounds of cruelty. The said finding is neither perverse nor contrary to the evidence on record calling for interference in the present appeal. Reg. desertion:

14. The petitioner pleaded that the respondent has led married life for a period of two months. It is averred that the petitioner was driven out of the respondent's house on

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NC: 2024:KHC:20632-DB 20.04.2008 and from that date, he is living alone. The said pleading has been reiterated in the evidence of PW-1 with regard to desertion. Section 13(1)(i-b) of the Hindu Marriage Act, 1955 mandates that one party should desert the another party for a continuous period of not less than two years immediately preceding the presentation of the petition. The word 'desertion' has been explained in Section 13(1) Explanation which means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage. In the instant case, there is no material whatsoever on record to come to the conclusion that the respondent has deserted the petitioner voluntarily and without any justifiable cause. The respondent, in her statement of objection as well as in evidence has clearly stated that the petitioner was not willing to continue the married life with the respondent and they had started torturing the respondent which had resulted in respondent residing at her parent's house. Petitioner himself says that in D.V. Act proceedings Court has awarded maintenance. That goes to show that he

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NC: 2024:KHC:20632-DB was held guilty of abuse. The desertion in the context of matrimonial dispute should be gathered based on the pleading and evidence available on record. If a party claims that another party has deserted, the same is required to be proved by proper pleading supported with cogent and acceptable evidence. The petitioner is required to prove the factum of separation by proving the intention of another party to bring the cohabitation permanently to an end, 'animus deserendi'. In the instant case, the petitioner has failed to prove the desertion as a ground to dissolve the marriage. Hence, on this ground also appeal fails.

15. For the aforementioned reasons, we proceed to pass the following:

ORDER The appeal is devoid of merits and is dismissed.

Sd/-

JUDGE Sd/-

JUDGE RV

Sri Pankaj Singh Sengar vs Smt Priyanka Singh on 5 April, 2024

Author: M. Nagaprasanna

Bench: M. Nagaprasanna

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Reserved on : 18.01.2024

Pronounced on : 05.04.2024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.48615 OF 2013 (GM - FC)

C/W

WRIT PETITION No.41607 OF 2017 (GM - FC)

WRIT PETITION No.41608 OF 2017 (GM - FC)

IN WRIT PETITION No.48615 OF 2013

BETWEEN:

SMT.PRIYANKA SINGH
W/O PANKAJ SINGH SENGAR
AGED ABOUT 32 YEARS
R/AT B-5, FLAT NO.1405
L & T SOUTH CITY APARTMENTS
AREKERE MICO LAYOUT
OFF BANNERGHATTA ROAD
BENGALURU - 560 076.

... PETITIONER

(BY SMT.RADHIKA M., ADVOCATE)

AND:

SRI.PANKAJ SINGH SENGAR
S/O R.S.SENGAR

2

AGED ABOUT 34 YEARS

R/AT. B-5, FLAT NO.1405
L & T SOUTH CITY APARTMENTS
AREKERE MICO LAYOUT
OFF BANNERGHATTA ROAD
BENGALURU - 560 076.

... RESPONDENT

(BY SRI B.V.KRISHNA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 20.9.2013 PASSED ON THE MEMO FILED BY THE PETITIONER ON THE FILE OF THE I ADDL. PRINCIPAL FAMILY JUDGE AT BANGLAORE IN M.C. NO.3014/2012 VIDE ANN-G; MODIFY THE ORDER DATED 30.11.2012 AND ENHANCE THE MAINTENANCE AMOUNT FROM RS.15,000/- TO RS.70,000/- PER MONTH BY ALLOWING I.A. NO.3 IN M.C. NO.3014/2012 ON THE FILE OF THE I ADDL. PRINCIPAL FAMILY JUDGE AT BANGALORE VIDE ANN-D.

IN WRIT PETITION No.41607 OF 2017

BETWEEN:

SRI PANKAJ SINGH SENGAR
S/O SRI R.S.SENGAR
AGED ABOUT 39 YEARS
R/A NO.A-1696
AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR
KANPUR - 209 307
REPRESENTED BY
FATHER/GUARDIAN/NEXT FRIEND

3

SRI RAJENDRA SINGH SENGAR
S/O SHECRAM SINGH SENGAR
AGED ABOUT 66 YEARS,
R/A NO.A-1696
AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR
KANPUR - 282 021.

... PETITIONER

(BY SRI B.V.KRISHNA, ADVOCATE)

AND:

SMT. PRIYANKA SINGH
W/O SRI PANKAJ SINGH SENGAR
AGED ABOUT 36 YEARS
R/A NO.B-5, FLAT NO.1405
L & T SOUTH CITY APARTMENTS
AREKERE MICO LAYOUT
OFF BANNERGHATTA ROAD
BENGALURU - 560 076.

... RESPONDENT

(BY SMT.RADHIKA M., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN M.C.3014/2012 ON THE FILE OF THE HON'BLE 1ST ADDL. PRL. JUDGE, FAMILY COURT AT BANGALORE; SET ASIDE THE ORDER DATED 10.08.2017 ON I.A.8 IN M.C.3014/2012 PASSED BY THE HON'BLE 1ST ADDL. PRL. JUDGE, FAMILY COURT AT BANGALORE VIDE ANNEX-A BY ISSUING A WRIT IN THE NATURE OF CERTIORARI AND ALLOW THE SAID APPLICATION I.A.8.

4

IN WRIT PETITION No.41608 OF 2017

BETWEEN:

SRI PANKAJ SINGH SENGAR
S/O SRI. R.S. SENGAR
AGED ABOUT 39 YEARS
R/A NO.A-1696, AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR,
KANPUR - 209 307
REPRESENTED BY
FATHER/GUARDIAN/NEXT FIREND
SRI RAJENDRA SINGH SENGAR
S/O SHECRAM SINGH SENGAR
AGED ABOUT 66 YEARS,
R/A NO. A-1696, AWAS VIKAS COLONY
HANSPURAM NAUBASTA, KANPUR,
KANPUR - 208 021.

... PETITIONER

(BY SRI B.V.KRISHNA, ADVOCATE)

AND:

SMT. PRIYANKA SINGH
W/O SRI PANKAJ SINGH SENGAR
AGED ABOUT 36 YEARS
R/A NO.B-5, FLATNO.1405,

L & T SOUTH CITY APARTMENTS,
AREKERE MICO LAYOUT,
OFF BANNERGHATTA ROAD,
BENGALURU - 560 076.

... RESPONDENT

(BY SMT.RADHIKA M., ADVOCATE)

5

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN EX.C.NO.152/2015 ON THE FILE OF THE HON'BLE I ADDL. PRINCIPAL JUDGE, FAMILY COURT AT BANGALORE; SET ASIDE THE ORDER DTD.10.8.2017 IN EX.C.NO.152/2015 PASSED BY THE HON'BLE I ADDL. PRINCIPAL JUDGE, FAMILY COURT AT BANGALORE VIDE ANNEX-A.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.01.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

These cases arise out of M.C.No.3014 of 2012 pending before the Principal Family Court, Bangalore and parties to the lis in all these cases are common; they are husband and wife. Therefore, they are taken up together and considered by this common order. For the sake of convenience, the parties are referred to as per their ranking in the matrimonial case i.e., husband is referred to as the petitioner and wife as the respondent. Writ Petition No.48615 of 2013 is preferred by the wife.

2. The facts, in brief, germane are as follows:-

The petitioner and the respondent got married on 16-05-2011 and have a daughter born from the wedlock. The marriage between the two appears to have floundered and on the floundering of the said relationship, the husband prefers M.C.No.3014 of 2012 seeking annulment of marriage that had taken place between the two. The allegation of the husband was that the wife had left the matrimonial house on her own volition. The issue in the lis does not concern merit of the claim of the husband seeking annulment of marriage or defence of the wife. In the said petition, the wife files an application seeking interim maintenance under Section 24 of the Hindu Marriage Act, 1955. The concerned Court, after hearing the parties on the application, grants the wife interim maintenance of `15,000/- per month in terms of its order dated 30-11-2012. The wife then files a memo of calculation before the concerned Court on 08-07-2013 claiming arrears to be paid by the husband towards the maintenance so awarded. The concerned Court rejects the memo. The rejection of the

memo forms the subject matter of challenge in Writ Petition No.48615 of 2013 coupled with a prayer to enhance interim maintenance. During the pendency of the said petition, the husband/petitioner suffers a stroke resulting in 75% disability, due to which, he had resigned from his work and on the ground that the husband has not paid maintenance, to recover arrears of maintenance, the wife/respondent initiates execution petition seeking execution of the order of maintenance. The concerned Court, in terms of its order dated 05-02-2016, directs the father of the husband to pay arrears of maintenance. When that is not adhered to, a fine levy warrant and arrest warrant are issued against the husband on 12-07-2017 and 10-08-2017. This forms the subject in Writ Petition No.41608 of 2017. The other writ petition in W.P.No.41607 of 2017 is again preferred by the husband calling in question the order passed on 10-08-2017 on I.A.No.8 in M.C.No.3014 of 2012 whereby the application filed by the husband to recall the order of maintenance comes to be rejected. Therefore, Writ Petition No.41607 of 2017 is preferred by the husband challenging the rejection of I.A.No.8 seeking recall of the order granting maintenance and Writ Petition No.41608 of 2017 challenges the order of issuing fine levy warrant and arrest against the husband.

3. Heard Sri B.V.Krishna, learned counsel appearing for the husband/petitioner and Smt M. Radhika, learned counsel appearing for the wife/respondent.
4. The learned counsel appearing for the wife/respondent would vehemently contend that the husband/petitioner has abandoned the wife at the time when she was carrying the child. She has maintained herself all along and the husband has refused to maintain either the wife or the child, and therefore, seeks appropriate order enhancing grant of maintenance.
5. Per-contra, the learned counsel appearing for the husband/petitioner would contend that maintenance today is a dream to be paid by the husband as he has suffered disability of 75% which does not get him any job. He is no longer an able bodied person to search for job and maintain the wife and the child.
6. In reply the counsel for the wife/respondent would submit that the father of the petitioner has several properties. Therefore, the father could maintain the wife and the child of the petitioner and they cannot be left in the lurch. Both the petitioner and the respondent have placed reliance upon certain judgments which would bear consideration in the course of the order.
7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.
8. The afore-narrated facts are not in dispute. The relationship between the two and the birth of girl child from the wedlock are all a matter of record. The genesis of the issue is on the husband filing a petition seeking annulment of marriage in M.C.No.3014 of 2012 in which the wife/respondent files an application seeking interim maintenance. The Court considering the application and submissions of both the parties, grants interim maintenance by the following order:

".....

4. Point No.1 & 2:- Main petition is of the husband seeking divorce from the respondent on the ground of cruelty (U/sec. 13 (1) (la) of the Hindu Marriage Act). On service of notice of this petition, the respondent appeared before this Court personally on 10/10/2012 and later filed application U/sec. 13 of the Family Courts Act on the adjourned date and she is represented by advocate. On the same date, this IA has been filed by the respondent. The matter came to be posted for objections to IA No.3 as well as for the parties to go to the Bangalore Mediation Centre for the purpose of mediation. However, it is submitted by the advocate for the respondent that there is urgency for the respondent for disposal of IA No.3 as she is in advanced stage of pregnancy. Advocate for the applicant/respondent has addressed oral arguments. Advocate for the opponent/petitioner apart from addressing oral arguments has filed written arguments also on this IA No.3. Opponent/petitioner has produced some documents along with the memo. The applicant/respondent admits her relationship with the opponent/petitioner as his wife. (For the sake of convenience, the petitioner is referred to as the husband and the respondent is referred to as the wife). The husband admits that the wife is in advanced stage of pregnancy. The documents and other records produced by the husband go to show that the wife has filed police complaints against the husband etc... Some of the records have been produced by the husband to show that he has concern about the health of the wife and he has spent substantial amount for her medical expenses etc., The husband has stated that his monthly salary as per the Salary Slip is Rs.76, 371/- As per the husband, he has the other liabilities to look after his aged parents and has to make payment of rent amount in respect of independent residences for the wife as well as his parents. Now it will suffice, for the sake of arriving at conclusion as to what amount the wife is entitled to interim maintenance, to take into consideration the salary income of the husband. Looking to the status of the husband and the status of the wife that was enjoyed by her during her stay with the husband, I am of the opinion that Rs.15,000/- per month will be the reasonable amount for maintenance of the wife pending final disposal of the main petition Rs. 10,000/- appears to be the reasonable amount towards litigation expenses. For the foregoing reasons, I proceed to pass the following:-

ORDER IA No. 3 of the respondent is partly allowed.

The petitioner/husband is hereby directed to pay to the respondent/wife Rs.15,000/-per month towards interim maintenance pending final disposal of the main petition. The petitioner/husband is further directed to pay the Rs.10,000/- towards litigation expenses."

(Emphasis added) The Court grants the wife `15,000/- per month as interim maintenance and `10,000/- towards one time litigation expenses. This is not paid by the husband. The wife/respondent files a memo of calculation before the concerned Court seeking huge arrears from the hands of the respondent. This comes to be rejected by the concerned Court in terms of the order dated 20-09-2013. This has driven the wife/respondent to this Court in Writ Petition No.48615 of 2013. The issue now would be, whether the husband should be directed to pay maintenance to the wife and the child, to which certain facts need to be noticed.

9. The husband was employed in a company by name Textron India Private Limited. During his employment, the petitioner suffers a stroke and the disability is identified as Chronic Neurological Condition and is assessed at 75%. The assessment is by NIMHANS, Bangalore and the husband is also issued a disability certificate based upon the assessment by NIMHANS. The disability certificate reads as follows:

"Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India Disability Certificate Issuing Medical Authority, Bengaluru Urban, Karnataka PHOTO Certificate No.: KA1891219770276312 Date: 20/01/2023 This is to certify that I/we have carefully examined Shri Pankaj Singh Sengar, Son of Shri Rajendra Singh Sengar, Date of Birth 24/09/1977, Age 45, Male, Registration No. 2918/00000/2207/1531923, resident of House No. Flat No. L1-116, Sowparnika Phase 1. Sarjapura - Attibele Road, Bidarguppe - 562107, Sub District Anekal, District Bengaluru Urban. State / UT Karnataka, whose photograph is affixed above, and I am/we are satisfied that:

(A) He is a case of Chronic Neurological Conditions (B) The diagnosis in his case is Right Hemiparesis with cognitive dysfunction and Aphasia (C) He has 75%(in figure) Seventy Five percent(in words) Permanent Disability in relation to his RIGHT UPPER LIMB, RIGHT LOWER LIMB as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under RPWD Act, 2016 notified by Government of India vide S.O. 76(E) dated 04/01/2018).

The applicant has submitted the following document(s) as proof of residence:

Nature of Document(s): Registered Sale/Lease Agreement Signature/Thumb Impression of the Person with Disability Sd/-

Signatory of notified Medical Authority Member(s)"

The condition of the husband is a Chronic Neurological disability with cognitive dysfunction and is said that he is unable to walk even.

After suffering the said disability the petitioner submits his resignation to his employment. The letter of resignation reads as follows:

"Name: Pankaj Sengar Employee ID: 1000840188 Sub: Resignation acceptance Letter This refers to the email dated 22 May 2015, sent by Priyanka Sengar (your sister) on your behalf, resigning from the services of the company and the subsequent discussions we had over phone.

We hereby inform you that your resignation, under reference, has been accepted by the management with regret and you will be relieved from the services of the

company with effect from 31 May 2015.

We draw your attention to your continuing obligation of confidentiality with respect to any proprietary and confidential information of Textron that you may have had access to during the course of your employment. As a part of the separation process, we are attaching the exit documents. Please sign on these documents and send it back to the undersigned as soon as possible to expedite the full & final and relieving process.

We thank you for your valuable contributions and wish you a speedy recovery. Do contact us in future to explore the job opportunities. Get well soon.

Wish you all the very best.

Thanking You, Yours sincerely, For Textron India Private Limited"

(Emphasis added) The petitioner is relieved from service of the Company with effect from 31-05-2015. Prior to that on account of continuous absence of the husband, he was placed on loss of pay from 16-12-2013 till 09-07-2014. This communication reads as follows:

"To Whom It May Concern Dear Sir/Madam, This is to certify that Pankaj Singh Sengar is an employee at Textron India Private Limited.

Date of Joining	:	14th March 2011
Designation	:	Technical Specialist
Employee ID	:	1000840188

Employee is on loss of pay from 16th December 2013 till date and the letter has been issued for insurance purpose.

Yours sincerely.

For Textron India Private Limited Sd/-

Reshma B S Sr.Executive - HR Ops"

(Emphasis added) Therefore, on and from the husband suffering disability he has remained outside employment. The State Government has issued a disability certificate as is required in law. Government of India has also issued such certificate which is quoted supra. Therefore, it is an admitted fact that the husband suffers from a disability which is to the tune of 75% and takes away all the badge of the husband to be an "able bodied man" as disability is admitted.

10. The husband files an application seeking recall of the order granting interim maintenance. This is rejected on the plea of the wife/respondent that the husband/petitioner has recovered from illness

and now he is an able bodied person. This is the challenge in Writ Petition No.41607 of 2017. The wife does not stop at that. She initiated execution petition against the husband contending that the father of the husband had to pay her the maintenance and to the child. The husband is projected to be represented by the father and accordingly execution is preferred. In the execution petition, the Court issues fine levy warrant against the husband for non-payment of maintenance. Therefore, all these petitions are before this Court.

11. The only issue that false for consideration is, "Whether the husband is to be directed to pay maintenance and the order passed by the concerned Court directing issuance of arrest warrant or fine levy warrant should be sustained?"

12. What is the status of the wife/respondent is also necessary to be noticed. The admitted qualification of the wife is that she has Masters in Computer Application and Pre-MCA completion. The wife is working as a teacher in several schools. The resume of the wife insofar as it is relevant reads as follows:

"....

Project Work

Completed Six months project on "Personal Information Management system"

Role: Initial role was for initial understanding of the project along with coding of the project for complete behavior and integrating it with "BAAN ERP".

Technology Used: Project coding specification:

Front End:	Oracle Developer.
Backend server:	DB2
Intermediate Development:	JSP

Education Qualification

Masters of Computer Application with 67.18%. Certificate in computing i.e.: CIC with 60%. Technical Proficiency:

Languages	:	C++/JAVA/Oracle
Web Technologies	:	JSP/HTML
Operating Systems	:	Windows 98/2000/XP
Databases	:	SQL Server
Middleware	:	Apache/Tomcat

Employment History

- Official training of six month from INDIAN TELEPHONE INDUSTRY (I.T.I MANKAPUR)

Pre MCA Completion:

- Teaching Experience as a Computer Instructor

from KENDRIYAVIDYALAYA I.T.I Mankapur.

- Teaching as a Computer Teacher in Fatima Convent School Mankapur.
- Teaching as a Computer Teacher in Fatima Convent School GONDA.

....."

The situation now is, the wife is qualified and is even working and earning certain amount of money. Whether that would be enough or not is a different circumstance. The issue is whether the husband can be directed to pay maintenance.

13. On a few occasions, this Court directed the parties to appear before the mediation centre and settle the issue. Every time it was only the father of the husband appears and the husband did not. Therefore, the husband also was directed to be present. Photographs of the husband are produced before Court. The husband walks with the help of crutches. Therefore, in the considered view of the Court, no direction can be issued to the husband to pay maintenance to the wife/respondent as he is no longer an able bodied man to search for employment and pay maintenance to maintain the wife and the child.

14. The learned counsel for the wife/respondent projects several grievances against the husband. It is the submission of the wife/respondent that the husband is a fraud and he has fraudulently projected himself to be a disabled man inter alia. These would all be in the realm of evidence. This Court, for the present, would go by the disability certificate issued by both Government of India and State Government which is based upon the assessment of disability by NIMHANS. If the husband is incapable of earning due to disability, it is highly ununderstandable as to why and how the wife is insisting on payment of maintenance looking at the admitted disability of the husband.

15. It becomes germane to notice the judgment of the Apex Court in the case of RAJNESH v. NEHA¹ which dealt with the grant of maintenance and its forms and hues. The Apex Court at paragraph 93 has held as follows:

"(e) Serious Disability and ill health:

93. Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance."

(Emphasis supplied) The Apex Court observes that serious disability or ill-health of a spouse who would require constant care and recurring expenditure (2021) 2 SCC 324 would also be a relevant consideration while quantifying maintenance. The High Court of Calcutta in a similar circumstance in a judgment rendered in INDRANIL ADHIKARI v. ARUNIMA ADHIKARY² has held as follows:

"....

12. That both the Courts failed to appreciate the fact that the petitioner is not an able bodied person and has no earning capacity.

13. The Ld. Appellate Court should have considered the disability/handicap certificate and on that basis, should have set aside the said order dated 25.04.2018 without putting any condition of payment of 25% arrears of maintenance but failed to do so.

14. The impugned order dated 25th April, 2018 passed by the Trial Court/Executing Court is illegal, bad in the eye of law, perverse and without jurisdiction and as such is liable to be set aside unconditionally.

15. The impugned order dated 25.04.2018 is also liable to be set aside and the entire proceeding of the Misc. Execution Case No. 281/2015 pending before the Court of Ld. 5th Judicial Magistrate at Howrah is liable to be quashed.

16. In spite of the opposite party being represented on earlier occasions, they have failed to appear at the time of hearing.

17. The Contention of the petitioner is that he has met with an accident and has in support filed a copy of the disability certificate dated 27.10.2018, wherein it appears that the petitioner/husband has been diagnosed with 60% 2023 SCC OnLine Cal 3318 permanent disability (left foot) and he cannot travel with assistance of escort.

18. But the present revision is against the order of the appellate court in an appeal against an order passed by the Magistrate in a Misc Execution Case in a proceeding under the Protection of Women from Domestic Violence Act.

19. An execution is filed to execute the order in a principle case. The court while taking steps to execute an order of a court only proceeds to execute the order and does not decide the validity of the order.

20. The order which was being executed is dated 25.04.2018 in an execution proceedings being Misc Execution Case No. 281/2015.

21. The disability certificate has been issued on 27.10.2018.
 22. Admittedly there is no dispute regarding the disability of the petitioner. It is also noted that till his accident, the petitioner had been paying maintenance diligently.
 23. But any prayer for modification etc. in such proceedings due to subsequent developments and change in circumstances is to be made by a separate proceedings (herein Misc 127 of 2018 filed by the petitioner praying for revocation and cancellation of the maintenance order is pending before the learned Judicial Magistrate, 5th Court, Howrah) as per the relevant provisions of law, which the court is to consider in accordance with the guidelines of the Supreme Court in such proceedings (Rajnesh v. Neha, (2021) 2 SCC 324).
 24. The order under revision is thus modified to the extent that the direction for payment of 25% of the arrear maintenance is set aside."
- (Emphasis supplied) The Calcutta High Court was considering the disability of a husband at 60%. What was challenged by the husband was a condition to pay 25% of the arrears in the execution case. The said condition was set aside on the ground that the husband is no longer an able bodied man.
16. It is trite that while considering grant of maintenance all the factors will have to be taken note of. Maintenance cannot spring in thin air. The primary factor is whether the husband is an able bodied man to maintain the wife or the child. In the teeth of the disability of the petitioner who also suffers from cognitive dysfunction, the trial Court ought to have allowed the application seeking recall of the order of maintenance and restricted the recall up to the date on which the husband became disabled. As the disability happened in the month of December, 2013, by then there was already arrears to be paid by the husband. The Court ought to have taken at least that date into consideration. Today the husband/petitioner is wanting maintenance to himself and not in a position to pay maintenance to the wife/respondent.
 17. The learned counsel for the wife/respondent has placed on record a memo of calculation. The memo depicts that as on today, the maintenance that is to be paid by the husband is a whopping sum of Rs.19,04,000/- . The duration of maintenance covers the period of disability of the husband right from its beginning till today, except for a few months prior to the husband getting disabled. If this would be directed to be paid, at the behest of the wife, it would undoubtedly leave the husband/petitioner bleeding, apart from the agony that he is living with of suffering 75% disability. By no means he can be depicted to be an able bodied man to direct that he should search for such avocation that would enable him to maintain the wife and the child. The wife is earning, even if not earning is completely qualified and is capable of earning. Therefore, the orders that are now sought to be passed by the wife cannot even be considered to be passed.
 18. It is projected that the father of the husband/petitioner has several properties and is able to pay the wife and the child maintenance. This submission cannot be accepted at this juncture. As the wife is said to be earning and maintaining herself to-day and for the last 10 years there is no maintenance

paid; obviously the wife who is qualified is working and earning. Insofar as grant of maintenance to the child is concerned, I deem it appropriate to observe that the father of the husband/petitioner should take care of the grandchild's necessities including her education and other necessities of her career and all walks of life of the grandchild. This is the only relief that the wife/respondent is entitled to, in the case at hand. The claim of the wife for enhancement of maintenance to 70% is, on the face of it, untenable and is rejected. The fine levy arrest warrant issued by the executing Court/Trial Court requires to be set aside. Likewise the application filed for recalling the order dated 30-11-2012 is to be allowed in part, up to the date when the husband/petitioner suffered disability i.e., December, 2013. Therefore, till the said date the wife/respondent is entitled to such maintenance, which the father of the husband/petitioner can pay, not to the wife but to the child.

19. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition No.48615 of 2013 stands rejected however, observing that arrears of maintenance till the date of disability, shall be fulfilled by the father of the husband/petitioner.
- (ii) Writ Petition No.41607 of 2017 is allowed in part, again restricting the order of maintenance to the date on which the husband/petitioner suffers disability.
- (iii) Writ Petition No.41608 of 2017 is allowed. The order passed in Execution Petition No.152 of 2015 in terms of its order dated 10-08-2017 stands quashed.

Consequently, pending applications, if any, also stand disposed.

Sd/-

JUDGE bkp CT:MJ

Sri Sunil Kumar H S vs Smt Prathima Y V on 2 July, 2024

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NC: 2024:KHC:24613-DB
MFA No.1172/2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2024

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL No.1172/2018 (GW)

BETWEEN:

SRI SUNIL KUMAR H S
AGED ABOUT 44 YEARS
S/O SHIVANANDA S.R.
R/AT NO.503, E.W.S.
13TH CROSS, KUVEMPU NAGAR
HASSAN - 573 201

...APPELLANT

(BY SRI P.P.HEGDE, SENIOR COUNSEL FOR
SRI VENKATESH SOMAREDDI, ADVOCATE)

AND:

SMT PRATHIMA Y V

Digitally
signed by K S DIVORCED WIFE OF SUNIL KUMAR H.S.
RENUKAMBA AGED ABOUT 38 YEARS
Location: ASSISTANT TEACHER
High Court of GOVT. P.U.COLLEGE (HIGH SCHOOL)
Karnataka CHAANNAITHODY, VAMADAPADAVU POST
BANTWAL TALUK
D.K.DISTRICT - 574 324 ...RESPONDENT

(BY SRI SANJEEV RAO.S., ADVOCATE [ABSENT])

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 47(A) OF THE GUARDIANS & WARDS ACT, 1890 PRAYING

TO SET ASIDE THE JUDGMENT AND DECREE DATED 07.11.2017
PASSED BY THE PRINCIPAL JUDGE, FAMILY COURT, HASSAN IN
G & W.NO.02/2015 DISMISSING THE PETITION FILED UNDER
SECTION 12 OF THE GUARDIAN ANDWARDS ACT.

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NC: 2024:KHC:24613-DB
MFA No.1172/2018

THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR
FURTHER HEARING, THIS DAY, K.S.MUDAGAL.J, DELIVERED THE
FOLLOWING:

JUDGMENT

Challenging dismissal of his petition under Section 12 of the Guardian and Wards Act, 1890 ('G & W Act' for short) for custody of his son Rohan, the petitioner in G & W.No.2/2015 on the file of the Principal Judge, Family Court, Hassan has preferred this appeal.

2. The appellant was the petitioner and the respondent was the respondent in G & W.No.2/2015. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the Trial Court.

3. The petitioner and the respondent are Hindus and governed by Hindu Laws. Their marriage was solemnized on 07.05.2006 at Dharmasthala. In their conjugal life, on 02.01.2008, the couple are blessed with son Rohan. There were some disturbances in the marriage. The couple filed M.C.No.2/2015 before the Senior Civil Judge & JMFC, Bantwal under Section 13B of the Hindu Marriage Act, 1955 ('the Act' for short) seeking dissolution of the marriage by mutual NC: 2024:KHC:24613-DB consent. However, due to differences, they did not reach consensus. Therefore, the said petition was withdrawn.

4. Before that M.C.No.49/2014 was filed by the respondent against the petitioner seeking divorce on the ground of cruelty. On hearing the parties, the petition was allowed on 01.06.2017. The respondent had also filed the petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for short) in Crl.Misc.No.1021/2014.

5. The petitioner and the respondent are working. The petitioner filed G & W No.2/2015 alleging that the respondent has illicit relationship with one Girish Ithal. For that reason, she has deserted him. He contended that the respondent is working as Teacher in a school which is situated 40 kilometers away from her residence. In her absence, the child will be unmonitored and that may affect the welfare of the child. He further claimed that he is residing with his parents, financially well off and the child's interest will be better protected in his custody. Therefore he sought custody of the child.

NC: 2024:KHC:24613-DB

6. The respondent contested the petition denying the allegations made against her. She contended that the petitioner himself was an abuser, which forced her to stay separately and initiate proceedings against him under DV Act and for divorce on the ground of cruelty. She seeks dismissal of the petition.

7. In support of his case, the petitioner got examined himself as PW.1 and got marked Exs.P1 to P27. The respondent was examined as RW.1 and on her behalf, Exs.R1 to R8 were marked.

8. The Trial Court on hearing the parties, by the impugned judgment and order dismissed the petition holding that the allegations of the respondent leading adulterous life was not proved. The Trial Court further held that the couple are financially independent. The Trial Court appreciating the evidence found and on interaction with child found that the child is spending its time with both, his father and mother, though he stays with his mother. The Trial Court further held that the petitioner has migrated to Chennai for pursuing higher studies and his parents are aged. Therefore the child NC: 2024:KHC:24613-DB continuing in the custody of the mother serves the welfare of the child and ultimately dismissed the petition.

9. Sri P.P.Hegde, learned Senior Counsel appearing for Sri Venkatesh Somareddi, learned Counsel on record for the appellant/petitioner submits that the child is now aged 16½ years and he is in PUC which is a crucial period. He further submits that the petitioner is meeting the educational expenses of the child. He submits that though the trial Court observed in the body of the judgment that the petitioner is enjoying the visitation rights, the same is not reflected in the final order and the petitioner will be satisfied if specific order is passed for visitation rights.

10. The respondent though served did not turn up. Sri Sanjeev Rao.S., learned Counsel though undertook to appear on her behalf, subsequently he failed to appear.

11. The records show that custody of the child was sought on the ground that the respondent mother is leading adulterous life, therefore it is injurious for the child to continue with the custody of the mother. The respondent filed M.C.No.49/2014 against the petitioner for decree of divorce on the ground that petitioner is making unfounded and false NC: 2024:KHC:24613-DB allegations of adultery and that amounts to cruelty. Ex.P27 the certified copy of the judgment in M.C.No.49/2014 passed by the Principal Senior Civil Judge and J.M.F.C., Bantwal, D.K. shows that the said Court accepting her contention granted decree of divorce in her favour.

12. Further Ex.P26 the certified copy of the order dated 08.05.2017 in Crl.M.C.No.1021/2014 passed by the Principal Senior Civil Judge and J.M.F.C., Bantwal, D.K. shows that the respondent herein filed the said case under Section 12 of the DV Act against the petitioner alleging that he subjected her to domestic violence suspecting her fidelity and failed and neglected to maintain her and her son etc. The said Court partly allowed Crl.M.C.No.1021/2014 restraining the petitioner from subjecting her to domestic violence and awarded Rs.4,000/- per month as maintenance to their son Rohan. Those orders have attained finality. Now the child is aged 16½ years. Once he attains majority he can stay with either of the parents of his choice. Further the evidence on record shows that though the petitioner was in Hassan at the time of filing of the petition, subsequently he shifted to Chennai

for pursuing higher studies and his parents were in Hassan. The Trial Court NC: 2024:KHC:24613-DB took that aspect also into consideration and rejected the petition.

13. Moreover, the petition was filed in the year 2015. Now ten years have elapsed and the parents of the petitioner by this time should have advanced in age. Taking into consideration all these aspects, the Trial Court was justified in holding that continuation of the custody of the child with the mother serves welfare of the child. However, the Trial Court though observed that the petitioner is enjoying the visitation rights and the child is happy in the company of both parents, did not pass any orders regarding visitation rights. Therefore the order requires to be modified only to that extent. The appeal deserves to be allowed in part only to that extent. Hence the following:

ORDER The appeal is partly allowed. The impugned judgment and order dated 07.11.2017 in G & W.No.2/2015 passed by the Principal Judge, Family Court, Hassan so far it relates to rejection of the petition for permanent custody of the child is confirmed.

It is further directed that the petitioner is entitled to temporary custody of the ward Rohan during weekly holidays NC: 2024:KHC:24613-DB and half part of the vacations subject to the consent of both the parties and without disturbing his academics.

No order as to costs.

In view of disposal of the appeal, pending IAs stood disposed of.

Sd/-

JUDGE Sd/-

JUDGE KSR

Sri XXXX vs State Of Karnataka on 28 June, 2024

Author: M. Nagaprasanna

Bench: M. Nagaprasanna

1

Reserved on :28.05.2024

Pronounced on :28.06.2024

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JUNE 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.1803 OF 2023

BETWEEN:

SRI. XXXXXXXXXX

... PETITIONER

(BY SRI C.V.SRINIVASA, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY STATION HOUSE OFFICER
BASAVANAGUDI WOMEN P.S.,
BENGALURU - 560 070
REPRESENTED BY
LEARNED PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

2 . SMT. XXXXXXXXXX

... RESPONDENTS

(BY SRI HARISH GANAPATHI, HCGP FOR R-1;
SMT.XXXXXX, R-2 IN-PERSON)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN
C.C.NO.19072/2022 ON THE FILE OF THE HONBLE XXXVIITH ADDL.
CHIEF METROPOLITAN MAGISTRATE, BANGALORE REGISTERED
AGAINST THE PETITIONERS ARISING OUT OF CRIME NO.35/2022
REGISTERED AT THE FIRST RESPONDENT POLICE STATION FOR
THE OFFENCES P/U/S 498A INDIAN PENAL CODE AND U/S 4 OF
DOWRY PROHIBITION ACT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 28.05.2024, COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question the proceedings in C.C.No.19072 of 2022 pending before the XXXVII Additional Chief Metropolitan Magistrate at Bangalore arising out of Crime No.35 of 2022 registered for offences punishable under Section 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961 ('the Act' for short).

2. Facts adumbrated are as follows:-

The 2nd respondent/wife is the complainant and the petitioner/husband is accused No.1. The two get married on 29-05-2020. After about two months, the petitioner had to get back to United States of America as his H1B visa was to expire on 19-07-2020. Therefore, the petitioner leaves India to USA. It is the averment in the petition that on 21-01-2021, the complainant leaves the matrimonial house and then began to stay in a relatives' house. The petitioner further avers in the petition that efforts were made by the petitioner to get a visa so that the complainant could travel to USA. The first appointment that the petitioner took was on 13-10-2020. The complainant does not go to visa office for processing visa formalities. The second appointment was taken on 02-03-2021; again the complainant misses the same. On 07-05-2021 the 3rd appointment was taken. The complainant again misses the same. The 4th appointment was taken on 24-05-2021, the complainant misses the same too. The 5th appointment then emerges and visa is granted to the complainant on 22-09-2021.

When the relationship between the two, according to the averment, turned irreconcilable, the petitioner/husband comes to India and files a petition seeking divorce in M.C.No. 6838 of 2021 before the Family Court and later, on 22-12-2021 also files a complaint before the jurisdictional Police against the wife alleging several acts. It is then on 03-02-2022 the impugned complaint is registered by the 2nd respondent/wife against the petitioner which becomes a crime in Crime No.35 of 2022 for offences punishable under Section 498A of the IPC and Sections 3 and 4 of the Act. The Police, after investigation, file a charge sheet before the concerned Court. The concerned Court, on the charge sheet, takes cognizance of the offences against the petitioner for the aforesaid offences and registers C.C. No. 19072 of 2022 in terms of its order dated 14-06-2022. It is the registration of criminal case is what has driven the petitioner to this Court in the subject petition.

3. Heard Sri C V Srinivasa, learned counsel appearing for the petitioner, Sri Harish Ganapathi, learned High Court Government Pleader appearing for respondent No.1 and Smt xxxx, respondent No.2 in person.

4. The learned counsel for the petitioner would contend that the petitioner and the complainant get to know each other through an online matrimony website, as the petitioner was residing in USA and the complainant in Bangalore. After approval of both the families, the two get married. The petitioner travels to USA for renewal of visa purposes. Five attempts were made by the petitioner by seeking appointments to get the complainant to USA.

It is his averment that she refused to go to USA. The learned counsel would vehemently submit that the wife has left no stone unturned in painting the petitioner black by getting him tested for all the parts of the body, which all went in vain, as the petitioner was clean and had suffered no problem. The wife was never intending to live with the husband and all that she wanted is his money. All efforts of conciliation failed between the two, as the wife demanded `3/- crores in lieu of settlement. He would submit that nowhere in the complaint there is any indication of demand of dowry. Therefore, Section 498A of the IPC or even Sections 3 and 4 of the Act can spring into action in the case at hand is his emphatic submission.

5. Per contra, the 2nd complainant/wife who appears in person vehemently contends that the petitioner/husband suffers from Sexually Transmitted Disease ('STD'). It is her case that right from the beginning he had that problem and unless he would rectify it, she would not join him. Even before this court the complainant is candid in submitting that his rectal parts have some boils and, therefore, it is a case of some problem and the complainant projects it to be contagious. It is her further submission that the petitioner had blocked all channels of communication once he went to USA and he was never interested in taking her with him to USA.

Even when she suffered an accident, the petitioner did not bother to get her treated or take her to USA later. He only comes back and registers a petition seeking annulment of marriage before the Family Court and tries to register a crime against the complainant.

It is then the complainant had to resist by registering the impugned complaint. It is her submission that the husband earns more than `2/- crores annually and is not wanting to part with the amount on settlement. On all these counts the respondent/wife in person would submit that the husband should face trial for what he has done and it is for him to come out clean therein. The interim order that is subsisting should be vacated or the petition itself be dismissed is her submission.

6. I have given my anxious consideration to the submissions made by the learned counsel for petitioner and the 2nd respondent in person and have perused the material on record.

7. The factum of marriage between the petitioner and the 2nd respondent is a matter of record. Immediately after the marriage the husband travelling to USA for the purpose of renewal of H1B visa is again a matter of record. The relationship between the two appears to have turned sore. The husband comes to the shores of the nation and seeks to register a petition seeking annulment of marriage before the Family Court on 23-12-2021 in M.C.No.6838 of 2021. Prior to registration of the said petition, a complaint before the Commissioner of Police is also said to have been filed by the husband against the complainant/wife. The complaint is appended as document No.2 to the I.A. seeking vacation of the interim order.

The complaint is said to be closed after the statement of the wife.

Then emerges the impugned complaint. Since the entire issue is now triggered from the impugned complaint, I deem it appropriate to notice the said complaint. It reads:

"Women's Police Station 3806, Thyagaraja Nagar, Banashankari, Bengaluru, Karnataka 560070 Respected Sir/Madam, I, XXXXX(Age-30 years) and residing at-Address: #171, Srinivasan layout, BSK 3rd stage T.G.layout, 4th cross road, Near VBB Bakery Ittamatadu, Bangalore 560085 Contact-9900110806.

I have married in 29-May-2020 to XXXX, age 33 years, Son of RaghavendraBhat B(father) and SukanyaBhat(mother), who belongs to Address: # 72/1, 3rd floor, 8th main road, Dattatreyanagar, Hosakerehalli, Banashankari 3rd stage, Bangalore -560085. Contact-9686932594. He is working in cummins Inc- USA as Product Engineer-Address:Cummins Inc, Box 3005, Columbus, IN 47202-3005, United States.

XXXX had come to India for marriage on March -2020. Last visit was Dec-2019 for marriage discussions (3 months back). He told Due to covid first wave lockdown he visited early for marriage. There was an immediate lockdown after his visit (first wave). He was in quarantine in Bangalore - Hosakerehalli (dad's House). The marriage took place on May 29th 2020 at my grandmother's house Mundya-Ishwaramangala (Initially it was arranged in Hanumagirisabhabhavan-Ishwaramangala, Because of lockdown it was closed). We have arranged their stay for the night a day before the marriage in Hanumagiri-

Ishwaramangala lodge.

After the marriage, we were staying in XXX's uncle- his dad's younger brother's house in udupi, There was a reception on June 3rd 2020 at UdupikodavoorShankaranarayana Temple, It's almost a week from the date of marriage. They have told because of covid temple is closed and waiting for the date. So it's late.

XXX behavioural changes- Initially he was pretending to be normal, in the first night, we were tired & both decided not to go sexual. First night was arranged in Udupi-at XXX's uncles house by them. From the second day, we were asked to stay in a room which had not proper latch to lock thereby not giving for privacy which is usually expected by the newly-wed couples. His behavior was neutral, not bothered about the privacy. He was accepting the situations without any second options, never thought of having a private stay in lodge. (That time lodges were open could have done the first night and the stay there if he is really wanting). He was not taking any responsibility. He was telling there is no option. I have given my anxious consideration to the submissions made by the learned Senior Counsel and other respective learned counsel and have perused the material on record. questioned, whether he is interested in me and also suggested to go for a mutual consent divorce if interested in the marriage, to which no response was forthcoming. I have observed that he has no interest to engage in sexual intercourse and trying to hide the problems. I have seen some infections on his genital areas and that resembles an STD (sexually transmitted disease).

I am hereby lodging a complaint against my Husband, for causing-Mental Harassment, dishonesty concealed his medical condition, & cheating and breaching the trust of me and had an Intention to insult and abuse me mentally & financially.

Details as below-

1. After the marriage, we stayed for 2 weeks in XXX's uncle's house. There was a naming ceremony of uncle's grandson June 10th 2020. Soon after that owing to the constant requests, he finally decided to leave Udupi and shift to Bangalore and while doing so, he constantly blamed me for this action.

2. On reaching Bangalore, he continued to do work from home, his US timing was different, he used to work till 3 am at night and will be up at 11am in the morning. He was giving that excuse, telling me it's all my fault, and it's my drama, which makes him upset everyday & never interest to engage in sexual intercourse from the ver inception of the marriage and has always been able to avoid the same under the pretext of work or some other irrelevant situations marriage ha not been consummated. He was forcing me to enlarge my vagina by fingering by myself (unnatural act). He told the same statement to my mother (Sandhya Rao)

3. XXXX had forcefully made me vacate my rented house where I was staying before marriage while working, and made me stay in his father's house. After shifting there, be again told me to move to Whitefield, telling his dad is not comfortable and no peace. But I was not wishing to move to his father's house where there is no mother in law. It's naturally not easy for any girl.

4. They have also taken the streedhan from me - A pearl gold necklace weighing 8 grams, a green stone gold necklace weighing 10 grams, a long gold chain with pendent weighing 32.510 gram three pairs of gold bangles weighing 74 grams in total, three gold rings totally weighing 11.32 grams and his dad had asked all the savings of me to give to xxx while I leave India. They have made me to leave my job thereby putting me under financial pressure as well. I had been subjected to constant harassment and abuse from xxx and his father when I stayed in their house.

5. I had asked him what made him to get angry with me and let me know if there are any physical problems, for that he got offended and avoided me and decided to leave for America. xxx left India from 40th Day of marriage on July 6th 2020, He was behaving like I did something wrong to him, and he was upset while leaving & there was no proper good bye, there by putting me under immense stress and pain.

6. After that I was trying to get Visa in India to join him, but due to covid it was getting postponed. During this period, he was normal and was talking to me and asking the update on visa.

7. I stayed in his Dad's house for almost 8 months, but I was not comfortable to stay there. I had told xxx that I am planning to shift to rented house. There was no appointments showing for visa and the earliest date was Nov 2021, I had conveyed the same to xxx and told that I will shift to rented house in Jan 2021 and shifted.

8. After Shifting. There was a change in his behavior & initial 5 months he denied to help me financially. Then later on asking multiple times he had agreed to pay 20k as monthly expense till December- 2021. During this time, I had asked him in good faith requested to get himself tested and treated so that we could live as normal couple but he refused that. I told him to visit India to solve things, He had explicitly stated that he will not be coming back to India & won't be having any discussions with elders on the same.

9. I was trying to get visa slots & got on-May-2021, conveyed the same to xxx, but once again it got cancelled due to covid, xxx had shown no interest to book the slots for visa interview. He was angry with me and giving silent treatment for long have asked xxx, to go couple therapy with me. But he was not interested in online session telling there is no time even on weekends. There is no changes has to be made with him. He told he doesn't need a therapy, telling me to go for individual therapy.

10. Me & my brother met with a bike accident in Aug-

2021 and had some face injuries, was admitted to hospital PragathiPuttur along with my Brother, Brother had jaw displacement. I conveyed this to xxx, He was texting me for a day and from the next day there was no response, it was a weekend, His mobile data was off, and he told he had gone for hiking. There was no support from him financially.

11. He was constantly blaming me for not trying to book visa slots. Slots will be immediately booked once its open in India. I have told him to book because of the time difference, it's easy for him to book from US. But he had no interest to book, told me to book on my convenience. I got the slots for

Sep-2021 and conveyed him. He had done all the arrangements for accommodation & flight booking to Kolkata & I got my visa on October 2nd week.

12. Nov-2021 I had communicated with XXX That My relatives are coming to India from US on Dec-2021 and planning to go back on Jan-2022. Since it's the first time for me to travel to the US, my family wants me to go with my relatives. This I have communicated with XXX on whatsapp and it has been delivered to him. After that there is no response from him on any communication channel and there is an internet issue.

My relatives who came to India from US - Indiana in the month Dec-2021, had again approached XXX through a message and phone calls before they come to India. But there was no response from him. He had completely ignored text messages and calls made by me & blocked me.

13. I have approached his dad initially and visited his house with mom to solve this. Even tried contacting his uncle in udupi. But he spoke to us rudely, and told it's all my fault, & I got married for their property and money. The effect was worse.

XXX was blaming for my behavior that I don't know how to behave with others, don't know how to talk and no common sense from the day of marriage. This caused me mental stress and I am trying, come out of that. I had seen he has some Infections that resembles STD (sexually transmitted disease) because of which he is not physical with me and trying to avoid sex.

He made me to leave my job immediately after marriage and made me dependent on him. Now I am living on my savings, since he doesn't support me financially I am suffering from past 1 and half years, because of his unpredictable behavior and negligence. I was not treated as a wife right from the beginning of marriage. He is trying to manipulate every incident & had abused me emotionally, tried to have a control over me which caused depression and self-doubt.

I humbly request you to investigate this matter, protect and help me to come out of this to live life peacefully.

you're sincerely, XXXXXXXX."

A perusal at the complaint would indicate that the complainant laid emphasis upon infections of the husband on his genital areas which resembled as STD. Therefore, the husband is guilty of mental harassment dishonestly concealing his mental condition and breaching the trust of the wife. Minute details of certain allegations are made which are found in the complaint. The crux of the complaint was STD on him, making her leave her job after marriage and therefore, she would be dependent upon him. There is not a single sentence about the petitioner demanding dowry and indulging in cruelty for the purpose of demand of dowry. All the harassments that the complainant narrates are minor skirmishes between the husband and the wife. The Police after investigation file a charge sheet. Column No.17 of the charge sheet reads as follows:

" , ÁA Që ¥À Ú , Ág ÁA ± Á , ÁQë -1 gÀ a Ág ÁA J1 Dg ÉÆ Á | Ai ÁA È Á Ä ß ¢ £ ÁA PÀ : 29 / 05 / 2020 gÀ Az ÁÄ UÀ Äg ÁÄ » jAi ÁA gÀ , Á a ÁÄ Ää Rz Á° è , ÁA YÀ æz ÁAi ÁÄ z ÁAv É F± Áég À a ÁÄ AU Á® UÁ æ a Áii YÀ Äv ÁÆ Úg ÁÄ E° è a ÁÄ z ÁÄ a ÉAi Ái ÁVz ÁÄY a ÁÄ z ÁÄ a ÉAi ÁÄ ° è , ÁA YÀ æz ÁAi ÁÄ z ÁAv É , ÁQë -4 gÀ a Ág ÁÄ J1 Dg ÉÆ Á | UÉ 614 UÁ æ A " É 1/2 i , Á a Ái ÁE ÁÄ UÀ 1/4 ÁE ÁÄß o ÁU ÁÄE , ÁQë -1 gÀ a Áj UÉ 160 UÁ æ A a E ÁB " sÀ g Át UÀ 1/4 ÁE ÁÄß PÉ ÁE I ÄÖ a ÁÄ z ÁÄ a ÉAi ÁÄ E ÁÄß a Ái Ár PÉ ÁE n Ög ÁÄ v ÁÜg É . a ÁÄ z ÁÄ a ÉAi Ái Áz Á¢ £ Á J1 Dg ÉÆ Á | a ÁÄ v ÁÄ Ú , ÁQë -1 E s Ág ÁÄ Gq ÁÄ | Ai ÁÄ ° è g ÁÄ a Á J1 Dg ÉÆ Á | Ai ÁÄ a PÀ I Y ÁÄ E Á a ÁÄ E ÁU E ° E ÁE ÁVg ÁÄ v ÁÜg É , ¢ £ ÁA PÀ : 03 / 06 / 2020 gÀ Az ÁÄ Gq ÁÄ | Ai ÁÄ ° è Dg Áv ÁP Áe v E £ Áq E¢ g ÁÄ v ÁÜz E a ÁÄ v ÁÄ Ú Gq ÁÄ | Ai ÁÄ ° è , ÁQë -1 a ÁÄ v ÁÄ Ú J1 Dg ÉÆ Á | Ai ÁÄ a E ÁE z Á® g Áw æ P ÁAi ÁÄ ð P Áe a ÁÄ a ÁE ÁÄß K Y Áð r 1 z ÁÄ Y J1 Dg ÉÆ Á | Ai Ái Á a ÁÄ z ÁE Á MAZ ÁÄ P Ág Át ° E Á 1/2 a E Áz Á® g Áw æ P ÁAi ÁÄ ð P Áe a ÁÄ a ÁE ÁÄß a ÁÄ ÄAz ÁÄ erg ÁÄ v ÁÜg É . 2 a Ág ÁU Á 1/4 ÁE ÁAv Ág Á J1 Dg ÉÆ Á | , ÁQë -1 gÀ a Ág Áf ÁÄß P Ág Áz ÁÄ P E Áq ÁÄ " EAU Á 1/4 ÁE j £ Á v Á a ÁÄ a ÁÄ E ÁU E § Az ÁÄ a Á , Á a ÁVz ÁÄ Y , £ ÁAv Ág Á a ÁC J1 Dg ÉÆ Á | , ÁQë -1 gÀ a Ág E Ác U E z E E » P Á , ÁA Y ÁP Á ð a ÁE ÁÄß o E ÁE A c g ÁÄ a ÁÄ c ® è F « Z Ág Á a ÁE ÁÄß , ÁQë -1 gÀ a Ág ÁÄ s , ÁQë -4 gÀ a Áj UÉ w 1/2 1 z ÁÄ Y j Az Á , ÁQë -4 gÀ a Ág ÁÄ F « Z Ág Á a ÁE ÁÄß J1 Dg ÉÆ Á | Ai ÁÄ E ÁÄß P E Á 1/2 z ÁÄ Y P E Í J1 Dg ÉÆ Á | , ÁQë -1 gÀ a Áj UÉ Ai E ÁE Á x Ai ÁÄ E ÁÄß » V Í P E Á 1/4 Ái ® Á o E Á 1/2 JAz ÁÄ , ÁQë -4 gÀ a Ág Á o Áw Üg Á o E Á 1/2 g ÁÄ v ÁÜg É . J1 Dg ÉÆ Á | U E E ÁVP Á g E ÁE Á U Á « z ÁÄ Y E z ÁE f Á Á B a ÁÄ g E a Ái Á a , ÁQë -1 gÀ a Ág Áf ÁÄß a ÁÄ z ÁÄ a E Ái Ái ÁVg ÁÄ v ÁÜg É . a ÁÄ z ÁÄ a E Ái Ái Áz Á 40 ¢ £ ÁP E Í J1 Dg ÉÆ Á | a ÁY Á , ÁÄ i Ai ÁÄ ÄJ , iJ U E o E ÁE ÁVz ÁÄ Y , ÁQë -1 gÀ a Ág ÁÄ , ÁÄ a Ái Ág ÁÄ 8 wAU Á 1/4 ÁÄ J1 Dg ÉÆ Á | Ai ÁÄ v ÁAz E Ái ÁÄ e E ÁE v E Ái ÁÄ ° è a Á , Á a ÁVz ÁÄ Y £ ÁAv Ág Áz Á° è , ÁQë -1 gÀ a Ág ÁÄ Ai ÁÄ ÄJ , iJ U E o E ÁE ÁU Á ® Á J1 Dg ÉÆ Á | U E n P E Ám i § ÁP i a Ái Áq ÁÄ a ÁAv E o E Á 1/2 z ÁÄ Y Cz ÁP Ái J1 Dg ÉÆ Á | , ÁQë -1 gÀ a Ág Á o Áw Üg Á Eg ÁÄ a Á , E Á « AU ii o Át a ÁE ÁÄ Á B m Áæ f ii Ys Ág i a Ái Ár z Ág E Á P Ág Áz ÁÄ P E Áq ÁÄ o E ÁE ÁU ÁÄ a ÁÄ z ÁV w 1/2 1 g ÁÄ v ÁÜ f E , £ ÁAv Ág Á , ÁQë -1 gÀ a Áj U E C Y ÁW Áv Á a ÁVz ÁÄ Y F « µ ÁAi ÁÄ a ÁE ÁÄß J1 Dg ÉÆ Á | U E w 1/2 1 z Ág ÁÄ , Á o Á J1 Dg ÉÆ Á | " s Ág Áv ÁP Í E § A c g ÁÄ a ÁÄ c ® è o ÁU ÁÄ , ÁQë -1 gÀ a Ág Áf ÁÄß Ai ÁÄ ÄJ , iJ P Ág Áz ÁÄ P E Áq ÁÄ o E ÁE ÁVg ÁÄ a ÁÄ c ® è o ÁU ÁÄ J1 Dg ÉÆ Á | , ÁQë -1 gÀ a Ág Á £ ÁA § g ÁÄ E ÁÄß " Áe P i a Ái Árg ÁÄ v ÁÜg É , F j Áw Ai Ái ÁV , ÁQë -1 gÀ a Áj U E J1 Dg ÉÆ Á | Qg ÁÄ P ÁÄ 1/4 Á x Ár g ÁÄ a ÁÄ z ÁÄ v Á x S Á P Á ® z Á° è ® " s Á Á Áz Á , ÁQë a ÁÄ v ÁÄ Ú , ÁP Áe öö Ázs Ág ÁU Á 1/2 z Áz Á z ÁE q s ÁY Án Ög ÁÄ a ÁÄ z Áj Az Á J1 Dg ÉÆ Á | Ai ÁÄ « g ÁÄ z ÁÄ P Á ® A : 498 (J) L 1 o ÁU ÁÄ 4 r | DP i Ö j Áv Á a a Ái ÁE Á a £ ÁÄ a Ái Á ® Ai ÁÄ P E Í z ÁE Áu Ág E ÁÄ Y Áu Á Y Án ÖAi ÁÄ E ÁÄß , Á o è 1 g ÁÄ v ÁÜ . "

A perusal at the summary of the charge sheet would also not indicate any demand of dowry or cruelty on the part of the husband. Prior to filing of the charge sheet by the Police, statements were recorded of the family members of the complainant. The statement of her mother assumes certain significance, relevant portion of which reads as follows:

".....

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(Emphasis added) The mother herself in her statement speaks that at the time of discussions about the marriage, the parents of the petitioner and the petitioner had clearly indicated that they do not want any dowry and they are not demanding anything. The same goes with the statements of others. The statement of one Karthik Rao, brother of the complainant is as follows:

“£À£ÀÄ ªÉÄ”í É w½¹zÀ «¼À ,ÀzÀ°è ,ÀA ,ÀgÀ ,ÀªÉÄÄvÀªÀV ªÀ ,ÀªÁVzÀÄÝ ,PÀljlAUï ©¹£É ,i ªÀiÁrPÉÆArgÀÄvÉÛÄ£É ,£ÀªÀÄä vÀAzÉ vÀÄUÉ £ÀªÀÄ E§gÀÄ ªÀÄPÀl½zÀÄÝ vÀªÀÄä oÁuÉAiÀÄ°è zÀÄgÀÄ »ÄrgÀÄªÀ ²æÀªÀÄw XXXX gÀªÀgÀÄ £À£Àß ,ÀéAvÀ CPAÌ .

£À£Àß CPAÌ£À «zÀª”sÀª ,ÀªÀÄÄVzÀªÉ ÄÄ”í É “EAUÀ¼ÀÆj£À°è PÉ®,ÀªÀiÁqÀÄwÛÄgÀÄªÀUÀ £À£Àß CPAÌ»UÉ ªÀÄzÀÄªÉ ªÀiÁqÀ “ÉÄPÉAzÀÄ “Áæ»ät ªÀÄÄnæªÉÆÄ»AiÀiÁzÀ°è £À£Àß CPAÌ£À °É ,ÀgÀ£ÀÄß £ÉÆÄÄzÀ¬Ä¹gÀÄvÉÀÛ ªÉ ,£ÀAvÀgÀzÀ°è £À£Àß CPAÌ£À YÉÆYÉ”í C£ÀÄß °ÀÄqÀÄUÀ JPÉìoÈYiÖ ªÀiÁrgÀÄvÀÛ£É °ÁUÀÆ °ÀÄqÀÄUÀ£À vÀAzÉ £À£Àß CPAÌ»UÉ YÉÆÄ£À ªÀiÁrzÀÄÝ £À£Àß CPAÌ £À£Àß vÀÄ£À YÉÆÄ£À £ÀÀsÀ PÉÆnÖzÀÄÝ °ÀÄqÀÄUÀ£À vÀAzÉ £À£Àß vÀÄUÉ YÉÆÄ£À ªÀiÁr ªÀÄä °ÀÄqÀÄV £ÀªÀÄUÉ M|àUÉAiÀiÁVzÀY¹/₄É ,ªÀÄzÀÄªÉ ªÀiÁvÀÄPÀvÉ ªÀiÁqÀ®À »ªÀÄä ªÀÄ£ÉUÉ §gÀÄªÀÄzÀV w½¹gÀÄvÀÛgÉ ,£ÀAvÀgÀ ªÀÄqÀÄUÀ ªÀÄvÀÄÛ CªÀgÀ ,ÀÀsÀ¢üPÀgÀÄ £ÀªÀÄä ªÀÄ£ÉUÉ ªÀÄzÀÄªÉ ªÀiÁvÀÄPÀvÉUÉ §A¢zÀÄÝ £ÀªÀÄä ,ÀÀsÀ¢üPÀgÀÄ ªÀÄvÀÄÛ ªÀÄqÀÄUÀ£À ,ÀÀsÀ¢üPÀgÀÄ £ÀªÀÄä ªÀÄ£ÉAiÀÄ°è ªÀÄzÀÄªÉ ªÀiÁvÀÄPÀvÉ ªÀiÁrzÀÄÝ ªÀiÁvÀÄPÀvÉAiÀÄ°è ªÀÄqÀÄUÀ ªÀÄvÀÄÛ CªÀgÀ ,ÀÀsÀ¢üPÀgÀÄ £ÀªÀÄUÉ AiÀiÁªÀÄzÉÀªÀgÀzÀQëuÉ “ÉÄqÀªÉzÀÄ °ÉÄ½gÀÄvÀÛgÉ °ÁUÀÆ AiÀiÁªÀÄzÉÀªÀiÁåAqÀ ªÀiÁrgÀÄªÀÅ¢®è .¢£ÄAPÀ:29/05/2020 F±ÀégÀ ªÀÄAUÀ”í UÀæªÀÄ YÀÄvÀÆÛgÀÄ E°è UÀÄgÀÄ »jAiÀÄgÀ ,ÀªÀÄÄäRzÀ°è ,ÀAYÀæzÀAiÀÄzÀAvÉ PÉÆÄ«qÀ EzÀÄÝzÀYjAzÀ ,ÀgÀ¼ÀªÀV £À£Àß CPAÌ XXXX¹/₄À£ÀÄß ªÀÄqÀÄUÀ XXXX gÀªÀjuÉ PÉÆlÄÖ ªÀÄzÀÄªÉ ªÀiÁrPÉÆnÖgÀÄvÉÛÄ£É ,ªÀÄzÀÄªÉAiÀÄ°è ,ÀAYÀæzÀAiÀÄzÀAvÉ

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(Emphasis added) What is given to the complainant, according to the complainant's tradition, is 614 grams of silver and 160 grams of gold, not as demand but as a tradition of her family which at best be said to be 'Stridhana'. Such statements galore. If the statements recorded of the mother and the brother of the complainant, the complaint, the charge sheet and summary of the charge sheet are red in tandem, what would unmistakably emerge is that, no demand for dowry was made and no cruelty that would become ingredients of Section 498A of the IPC would get attracted in the case at hand. Section 498A reads as follows:

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--For the purposes of this section, "cruelty"

means--

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

(Emphasis supplied) Section 498A has two circumstances, which can draw an accused into its web. Husband or relative of husband of a woman subjecting her to cruelty which is likely to drive the woman to suicide or the harassment should be such that they would coerce the woman for meeting any unlawful demand for any property or valuable security, and on failure to fulfill the demand, indulge in cruelty. If the contents of the complaint, summary of the charge and the statements are considered on the bedrock of necessary ingredients of Section 498A of the IPC, the allegation of the offence would tumble down like a pack of cards, as, nowhere it is indicative, of the fact that there is dowry harassment and cruelty by the husband or the members of the family of the petitioner. This Court, entertaining the petition grants an interim order of stay on 01-09- 2023. The same is subsisting even today. The complainant has filed application seeking vacation of the interim order. It is germane to notice the affidavit filed by the respondent/complainant for the said purpose. It reads as follows:

"1. "I state that I am the Respondent No. 2 in the above case. I am, conversant with the facts and circumstances of the above case.

2. I state that I am the wife of Petitioner No.1 and Petitioner No.1 from the 40th day of the marriage have been living in USA and never bothered to take me with him. He has abandoned & cheated me immediately after the marriage.

3. I state that the Petitioner No.1 was never interested to engage in sexual intercourse from the very inception of the marriage. So, the marriage is not consummated. I suspect that the Petitioner No.1 is suffering from HPV infection (Sexually transmitted disease) and I have seen some rashes in his buttock. When I questioned the Petitioner No.1 as to what the infection was, the Petitioner No.1 got offended and avoided me and decided to leave for America and blamed and abused me for the unfortunate situation thereby putting me under immense stress and pain.

4. I state that the Petitioner No.1 is working in USA on H1B visa while I got my H4-Dependent visa. On several occasions, I had requested the Petitioner No.1 to make the travel arrangements, so that I can join him in USA. But the Petitioner No.1 was not reachable and blocked me in all communication channels. So, as a last resort to reach him I had sent emails to the Petitioner No.1. In the said email I had clearly mentioned what I have been going through and asked him to respond and also inform me about the travel plans, but I never got any response to any of my emails from the Petitioner No.1. The said conduct of the Petitioner No.1 after making, my tie knot and now is purposely avoiding me for no reasons and have clearly done so only with the purpose of harassing me and has left the companionship without any means. The copy of the emails sent to the Petitioner No.1 on 05/12/2021 is produced herewith as Document No.1.

5. I state that I am unable to bear the torture & abuse inflicted upon me by the Petitioner No.1. He asked me to transfer all my savings to his bank account through his father while I stayed in his father's house in hosakerehalli, so after that he can take me to USA and tried to abuse me financially. Petitioner No.1 had already taken the Stridhan from me against my will and made me to leave my job and thereby economically abusing me and putting under extensive financial pressure as well. I was subject to constant harassment and abuse by my father-in-

law and eventually made to leave my matrimonial home by the Petitioner No.1 in collusion with his father. I have lodged a police complaint against Petitioner No.1 under section 498 IPC on 25/01/2022.

6. I state that to the shock and dismay of me, I received a summons from the court to appear on 30.03.2022 with respect to a DIVORCE petition filed by the Petitioner No.1 through GPA and got a call from police on 26/03/2022, false police complaint was lodged against me. As I mentioned in the Email (Document No.1), the Petitioner No.1 was expecting me to take legal recourse against him and in order to take the upper hand in legal proceedings and harass me, the Petitioner No.1 got filed a false complaint against me and FIR has not been registered against me as the complainant

did not have any substance. The RTI copy of the NCR and My statement is enclosed as Document No. 2.

7. I state that the Petitioner No.1 has absolutely no love warmth or affection for me, and never bothered to care for me. I met with a bike accident in the month of Aug 2021 and was severely injured and was admitted to hospital. I was injured badly and also had some face abrasions and when I communicated this to the Petitioner No.1, he completely neglected, switched off his mobile on weekends, and denied to help financially. He did not lend any moral or financial support as a responsible husband would ordinarily do. His behavior has been very depressing to me, and it has affected my career and health. The copy of the pictures of the injuries incurred on me and hospital bills are enclosed Document No.3.

8. I state that the I had suffered restlessly in the hands of the Petitioner No.1, My marriage is completely ruined although I made efforts to save the marriage, and this has put me to great suffering, pain, tension and loss. I had undergone cruelty, harassment and torture during my matrimonial life with the Petitioner No.1 and it has affected me both mentally and physically.

9. I submit that if the above application is not allowed, I will be put to great hardship, loss and inconvenience, on the other hand no hardship and injury would be caused to the Petitioner No.1."

(Emphasis added) The application seeking vacation of the interim order appends a mail to the husband. The mail dated 05-12-2021 reads as follows:

"Sun, Dec 5. 2021 at 5:59 PM Hi xxx,, I have been trying to contact you on whatsapp but it seems the internet is disconnected, messages undelivered. Let me know the issue. So contacting you here.

As communicated, in the what's app my relatives are coming to India on Dec 2nd week-2021 and planning to leave on Jan 1st 2022.

Let me know if you want me to come with them. If not, communicate what your plans are.

I have been waiting to contact you from so long. But there is no response.

I am still contacting you after going through many abuse from your family.

-you had forcefully made me vacate my rented house where I was staying before marriage while working, and made me stay in your father's house. After shifting there, you again told me to move to Whitefiled, telling your dad is not comfortable and no peace. If this is the case, you could have told me before vacating my rented

house.

-You and your dad had taken the gold which you gave as a gift at the time of marriage-Streedhan. That time you have also asked me for my gold. I refused to give mine. After multiple discussions you told me to give the gold which you gifted me. I have agreed to that and it is with you.

- You are not interested in sex and avoiding that from the day of marriage. You have some infections on your butt and back. You started avoiding me after asking what it is. Marriage is still not consummated.

You are telling me it's all my fault, and it's my drama, which makes you upset everyday. I have recorded the conversation before you fly back to the US, which covers everything. I had gone through emotional abuse in the first month of marriage itself.

-Your dad was giving me verbal abuse and had misbehaved with me. And this happened in front of you but you still told me to stay there. I was not OK to move to your father's house where there is no mother in law. It's naturally not easy for any girl.

-he was commenting on my stuff, telling me how to behave. I was not comfortable coming out of the room. Most of the time, I was inside my room. For that also he scolded me for not talking to him.

-So I thought let me take a rented house. So I did in the month of Jan 2021, I have told you, there is a minimum 6 months I have to stay there which means Jan - June 2021 initial 5 months you denied to help me financially. Then later on asking multiple times you have agreed to pay 20k as monthly expense till December-2021.

-My visa was getting cancelled everytime. But in the month of Aug-21 limited slots are getting opened. I met with a bike accident in Aug-2021, it was not possible to book slots at that time. I was able to get the slots for Sep-2021 and got a visa on Oct-2021.

Since it's the first time for me to travel to the US, my family wants me to come with my relatives, This I have communicated with you on whatsapp and it has been delivered to you. After that there is no response from you on any communication channel and there is an internet issue.

If you want to communicate anything, please do that here. I have to consider you are not interested in me coming there if you are not responding.

If so, I will cancel all my plans to come to the US since I have approached elders and they are not taking any responsibilities- including your father.

From next year it will be a fresh start, I can wait till December- 2021, still if I am not getting any response from you, I will take the legal proceedings in India.

Regards, xxxx Mob-9900110806"

(Emphasis added) The mail appears to be the foundation for registering the impugned complaint. The husband after receipt of the mail files a petition for divorce in M.C.No.6838 of 2021 on 23-12-2021. Notice is issued by the concerned Court and said the notice is received by the complainant. It is then the aforesaid complaint emerges for the aforesaid offences. It becomes germane to notice the grievance of the 2nd respondent with regard to the problem of the husband.

8. The learned counsel for the petitioner submits that every time the petitioner was accused of suffering from STD. In the aforesaid affidavit, it is clearly indicated by the wife that the petitioner is suffering from HPV infection as he has some rashes on his buttock. The petitioner gets himself tested at the Victoria Hospital and several hospitals. The Hepatitis B test is undergone and the report reads as follows:

"SEROLOGY & IMMUNOLOGY HEPATITIS B SURFACE ANTIGEN (HBSAG)
Sample Collected On:11-APR-23 12.05.21 PM Certified On:11-APR-23 01.23.54 PM
Result: The given sample is Negative Method: RAPID CARD TEST
(IMMUNOCHROMATOGRAPHIC ASSAY) HBsAg"

HIV test is also done on 30-04-2023 which shows it to be non-

reactive. The report is as follows:

"Integrated Counselling & Testing Centre (ICTC) No. 7655 HIV TEST REPORT
FORM Name: Surname ----- Middle Name B. First Name xxx
GOSAICTCKABL01521 Gender: M 33 Years PID # 03260 Lab ID # 03260 Date and
Time blood drawn 11/4/23 (DD/MM/YY) 12.50 P.M(HH:MM) Test Details:

Specimen type used for testing: Serum / Plasm / Whole Blood Date and Time
specimen tested 11/4/23 (DD/MM/YY) 2PM(HH:MM) Note:

- Column 2 and 3 to be filled by only when HIV 1 & 2 antibody discriminatory test(s) used
- No cells have to be left blank, indicate as NA where not applicable.

Column 1	Column 2	Column 3	Column 4
Name of HIV Test Kit	Reactive/Non Reactive (R/NR) for	Reactive/Non Reactive (R/NR) for HIV-2	Reactive/Non Reactive (R/NR) for

HIV-1 Antibodies	Antibodies	HIV Antibodies
Test I combaids		NON REACTIVE
Test II		
Test III"		

VDRL test also was done, the report of which is as follows:

"Name :MR.XXX Bill/IP No. :BMJHG/23-24/OPB276 Age & Gender : 33 Years, Male
Consultant :Dr. ER DOCTOR Name UHID No :BMJHG000037462 Report Date
:11/04/2023 8:04 pm Time Class OPD Sample :11/04/2023 7:28 pm Collection Date
Time Test Name Patient Value Reference Value Unit VDRL MICROBIOLOGY
NEGATIVE"

Since the wife went on complaining that the petitioner has HPV, he gets it tested in the USA. The report of HPV is as follows:

"CUMMINS LIVE WELL CENTER CUMMINS LIVEWELL CENTER 806 JACKSON
STREET COLUMBUS IN 47201-6264 812-748-3412 October 9, 2023 XXXXX 3781
Sitka Circle Apt #1135 Columbus IN 47201 Concerning Mr. Bhat:

XXX was seen in office.

History and Physical Exam was done.

XXX has no physical signs. And no history of concern. for HPV or any other infection on body.

There is no test available for testing HPV in males. Diagnosis is almost exclusively done by physical findings (when there are findings.) There are none in this case.

Quote from N.C.B.I (National Institute for Biomedical Technology). >"No HPV test for men has been approved by the FDA, nor has any test been approved for detection of the virus in areas other than the cervix."

If you have any questions or concerns, please don't hesitate to call."

(Emphasis added) The diagnostic centre at Columbus, USA observes that history and physical

examination of the petitioner was done. He has no physical signs and no history of concern for HPV or any other infection in the body. Therefore, the bogey that is projected by the complainant/wife that the husband has some physical problem appears to be a white lie.

9. The other bogey projected by the wife is that the petitioner has closed all channels of communications and had never shown any interest in getting the complainant to the USA, this is completely belied by the documents appended to the petition itself, as not one but four appointments were taken by the petitioner for VISA purposes of the wife. The first appointment after the petitioner left to the USA was on 13-10-2020. There are four appointments, confirmation acknowledgments of which are produced by the petitioner as annexures to the petition. They are dated 13-10-2020, 02-03-2021, 07-05-2021 and 24-05-2021; the latest of which reads as follows:

"APPOINTMENT CONFIRMATION APPLICANT DETAILS Applicant Name: xxxx
Visa Class: H - 4 Passport Number: P5705962 Visa H&L Category: visas
Appointment Made By: xxxx Visa Priority: English Number of Applicants: 1 VAC
APPOINTMENT DETAILS Date: Tuesday March 2, 2021 CHENNAI VAC Time:
09.30 (1413) No.82, Kodambakkam High Road,, Nungambakkam,, Chennai, 600034
CONSULAR APPOINTMENT DETAILS Date: Monday March 15, 2021 HYDERABAD
Time: 10:45 (770) 1-8-323, Chiran Fort Lane Begumpet, Secunderabad Andhra
Pradesh, 500003 DOCUMENT DELIVERY INFORMATION Document Delivery Type:
Pick Up Bengaluru Prestige Atrium 2nd floor Unit No."

It is on the 5th appointment, the complainant goes before the visa office and Visa is granted to the complainant, which is also appended as document to the petition. These are documents which speak for themselves. A mail communication on 05-12-2021 is quoted hereinabove. The complainant seeks confirmation regarding her travel to USA. Therefore, it is clearly a bogey projected by the complainant that the petitioner was not interested in getting her to the USA and had blocked all channels; but the documents speak otherwise. The attitude of the complainant also speaks for itself.

Therefore, it is not a case where there is an iota of ingredient against the petitioner/husband for the offences punishable under Section 498A of the IPC or Sections 3 and 4 of the Act. It is misuse and abuse of criminal justice system by the complainant right from the word go. It is in such circumstances the Apex Court in the case of ACHIN GUPTA v. STATE OF HARYANA¹, has held as follows:

"ANALYSIS

15. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the criminal proceedings should be quashed?

16. The Appellant and the Respondent No. 2 got married in October 2008. The couple lived together for more than a decade and in the wedlock a child was born in March 2012.

17. We take notice of the fact that the Appellant filed a divorce petition in July 2019 on the ground of cruelty. The divorce petition was withdrawn as the Appellant was finding it difficult to take care of his child, while travelling all the way to Hisar on the dates fixed by the Court. The Appellant's mother had to file a domestic violence case against the First Informant in October 2020 under the provisions of the Protection of Women from Domestic Violence Act, 2005.

18. The plain reading of the FIR and the chargesheet papers indicate that the allegations levelled by the First Informant are quite vague, general and sweeping, specifying no instances of criminal conduct. It is also pertinent to note that in the FIR no specific date or time of the alleged offence/offences has been disclosed. Even the police thought fit to drop the proceedings against the other members of the Appellant's family. Thus, we are of the view that the FIR lodged by the Respondent No. 2 was nothing but a counterblast to the divorce petition & also the domestic violence case.

19. It is also pertinent to note that the Respondent No. 2 lodged the FIR on 09.04.2021, i.e., nearly 2 years after the filing of the divorce petition by the Appellant and 6 months after the filing of the domestic violence case by her mother-in-law. Thus, the First Informant remained silent for nearly 2 years after the divorce petition was filed. With such an unexplained delay in filing the FIR, we find that the same was filed only to harass the Appellant and his family members.

20. It is now well settled that the power under Section 482 of the Cr. P.C. has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr. P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

21. The investigation of an offence is the field exclusively reserved for the Police Officers, whose powers in that field are unfettered, so long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII of the Cr. P.C.. While exercising powers under Section 482 of the Cr. P.C., the court does not function as a Court of appeal or revision. As noted above, the inherent jurisdiction under the Section, although wide, yet should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex

debito justitiae to do real and substantial justice for the administration of which alone courts exist. The authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

22. Once the investigation is over and chargesheet is filed, the FIR pales into insignificance. The court, thereafter, owes a duty to look into all the materials collected by the investigating agency in the form of chargesheet. There is nothing in the words of Section 482 of the Cr. P.C. which restricts the exercise of the power of the court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It would be a travesty of justice to hold that the proceedings initiated against a person can be interfered with at the stage of FIR but not if it has materialized into a chargesheet.

23. In R.P. Kapur v. State of Punjab, AIR 1960 SC 866, this Court summarised some categories of cases where inherent power can, and should be exercised to quash the proceedings:--

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

24. This Court, in the case of State of A.P. v. Vangaveeti Nagaiah, (2009) 12 SCC 466 : AIR 2009 SC 2646, interpreted clause (iii) referred to above, observing thus:--

"6. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not

or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.

The illustrative categories indicated by this Court are as follows:

- "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontested allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(Emphasis Supplied)

25. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, *prima facie*, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute.

26. In Preeti Gupta v. State of Jharkhand, reported in 2010 Criminal Law Journal 4303 (1), this Court observed the following:--

"28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

29. The courts are receiving a large number of cases emanating from section 498-A of the Penal Code, 1860 which reads as under:

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purposes of this section, 'cruelty' means:

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

30. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At

the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.

We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society."

(Emphasis supplied)

27. In the aforesaid context, we may refer to and rely upon the decision of this Court in the case of Arnesh Kumar v. State of Bihar, (Criminal Appeal No. 1277 of 2014, decided on 2nd July, 2014). In the said case, the petitioner, apprehending arrest in a case under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961, prayed for anticipatory bail before this Court, having failed to obtain the same from the High Court. In that context, the observations made by this Court in paras 6, 7 and 8 respectively are worth taking note of. They are reproduced below:--

"6. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. Crime in India 2012 Statistics published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Penal Code, 1860. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

7. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr. P.C. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative

sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

8. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non- bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short Cr. P.C.), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. ..."

(Emphasis Supplied)

28. In the case of Geeta Mehrotra v. State of U.P., (2012) 10 SCC 741, this Court observed as under:--

"19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

20. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

"there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their young days in chasing their cases in different courts."

The view taken by the judges in this matter was that the courts would not encourage such disputes.

21. In yet another case reported in (2003) 4 SCC 675 : AIR 2003 SC 1386 in the matter of B.S. Joshi v. State of Haryana it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Penal Code, 1860 was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr. P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power."

(Emphasis supplied)

29. The learned counsel appearing for the Respondent No. 2 as well as the learned counsel appearing for the State submitted that the High Court was justified in not embarking upon an enquiry as regards the truthfulness or reliability of the allegations in exercise of its inherent power under Section 482 of the Cr. P.C. as once there are allegations disclosing the commission of a cognizable offence then whether they are true or false should be left to the trial court to decide.

30. In the aforesaid context, we should look into the category 7 as indicated by this Court in the case of Bhajan Lal (supra). The category 7 as laid reads thus:--

"(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

31. We are of the view that the category 7 referred to above should be taken into consideration and applied in a case like the one on hand a bit liberally. If the Court is convinced by the fact that the involvement by the complainant of her husband and his close relatives is with an oblique motive then even if the FIR and the chargesheet disclose the commission of a cognizable offence the Court with a view to doing substantial justice should read in between the lines the oblique motive of the complainant and take a pragmatic view of the matter. If the submission canvassed by the counsel appearing for the Respondent No. 2 and the State is to be accepted mechanically then in our opinion the very conferment of the inherent power by the Cr. P.C. upon the High Court would be rendered otiose. We are saying so for the simple reason that if the wife on account of matrimonial disputes decides to harass her husband and his family members then the first thing, she would ensure is to see that proper allegations are levelled in the First Information Report. Many times the services of professionals are availed for the same and once the complaint is drafted by a legal mind, it would be very difficult thereafter to weed out any loopholes or other deficiencies in the same. However, that does not mean that the Court should shut its eyes and raise its hands in helplessness, saying that whether true or false, there are allegations in the First Information Report and the chargesheet papers disclose the commission of a cognizable offence. If the allegations alone as levelled, more particularly in the case like the one on hand, are to be looked into or considered then why the investigating agency thought fit to file a closure report against the other co-accused? There is no answer to this at the end of the learned counsel appearing for the State. We say so, because allegations have been levelled not only against the Appellant herein but even against his parents, brother & sister. If that be so, then why the police did not deem fit to file chargesheet against the other co-accused? It appears that even the investigating agency was convinced that the FIR was nothing but an outburst arising from a matrimonial dispute.

32. Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage. In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned. The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the

husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. In all cases, where wife complains of harassment or ill-treatment, Section 498A of the IPC cannot be applied mechanically. No FIR is complete without Sections 506(2) and 323 of the IPC. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.

33. Lord Denning, in Kaslefsky v. Kaslefsky, [1950] 2 All ER 398 observed as under:--

"When the conduct consists of direct action by one against the other, it can then properly be said to be aimed at the other, even though there is no desire to injure the other or to inflict misery on him. Thus, it may consist of a display of temperament, emotion, or perversion whereby the one gives vent to his or her own feelings, not intending to injure the other, but making the other the object-the butt-at whose expense the emotion is relieved."

When there is no intent to injure, they are not to be regarded as cruelty unless they are plainly and distinctly proved to cause injury to health.....when the conduct does not consist of direct action against the other, but only of misconduct indirectly affecting him or her, such as drunkenness, gambling, or crime, then it can only properly be said to be aimed at the other when it is done, not only for the gratification of the selfish desires of the one who does it, but also in some part with an intention to injure the other or to inflict misery on him or her. Such an intention may readily be inferred from the fact that it is the natural consequence of his conduct, especially when the one spouse knows, or it has already been brought to his notice, what the consequences will be, and nevertheless he does it, careless and indifferent whether it distresses the other spouse or not. The Court is, however not bound to draw the inference. The presumption that a person intends the natural consequences of his acts is one that may not must-be drawn. If in all the circumstances it is not the correct inference, then it should not be drawn. In cases of this kind, if there is no desire to injure or inflict misery on the other, the conduct only becomes cruelty when the justifiable remonstrances of the innocent party provoke resentment on the part of the other, which evinces itself in actions or words actually or physically directed at the innocent party."

34. What constitutes cruelty in matrimonial matters has been well explained in American Jurisprudence 2nd edition Vol. 24 page 206. It reads thus:--

"The question whether the misconduct complained of constitute cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual

under one set of circumstances may be extreme cruelty under another set of circumstances."

(Emphasis supplied)

35. In one of the recent pronouncements of this Court in *Mahmood Ali v. State of U.P.*, 2023 SCC OnLine SC 950, authored by one of us (J.B. Pardiwala, J.), the legal principle applicable apropos Section 482 of the CrPC was examined. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 CrPC or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

36. For the foregoing reasons, we have reached to the conclusion that if the criminal proceedings are allowed to continue against the Appellant, the same will be nothing short of abuse of process of law & travesty of justice. This is a fit case wherein, the High Court should have exercised its inherent power under Section 482 of the Cr. P.C. for the purpose of quashing the criminal proceedings.

37. Before we close the matter, we would like to invite the attention of the Legislature to the observations made by this Court almost 14 years ago in *Preeti Gupta* (supra) as referred to in para 26 of this judgment. We once again reproduce paras 34 and 35 respectively as under:

"34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who

may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society."

38. In the aforesaid context, we looked into Sections 85 and 86 respectively of the Bharatiya Nyaya Sanhita, 2023, which is to come into force with effect from 1st July, 2024 so as to ascertain whether the Legislature has seriously looked into the suggestions of this Court as made in Preeti Gupta (*supra*). Sections 85 and 86 respectively are reproduced herein below:

"Husband or relative of husband of a woman subjecting her to cruelty.

85. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Cruelty defined.

86. For the purposes of section 85, "cruelty"

means--

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

39. The aforesaid is nothing but verbatim reproduction of Section 498A of the IPC. The only difference is that the Explanation to Section 498A of the IPC, is now by way of a separate provision, i.e., Section 86 of the Bhartiya Nyaya Sanhita, 2023.

40. We request the Legislature to look into the issue as highlighted above taking into consideration the pragmatic realities and consider making necessary changes in Sections 85 and 86 respectively of the Bharatiya Nyaya Sanhita, 2023, before both the new provisions come into force."

(Emphasis supplied) The Apex Court considers the entire spectrum of law and holds that the act of the complainant was in gross misuse and abuse of the process of law. The Apex Court further holds that it is the duty of the High Court to look into the FIR with care and little more closely and ascertain whether necessary ingredients to constitute the offence is disclosed or not, as many a time frivolous and vexatious proceedings are permitted to continue. The Court exercising jurisdiction under Section 482 of the Cr.P.C., has a duty to look into not only the complaint but all other attendant circumstances emerging from the record and if need be due care and circumspection be done, to read between the lines. This is exactly what this Court has undertaken in the case at hand.

10. This Court has completely considered the complaint, summary of the charge sheet, the statements recorded and the law as laid down by the Apex Court in the aforesaid judgment. All this exercise is undertaken only to arrive at a conclusion as to any of the ingredients of the offences are met or otherwise. The unmistakable conclusion is that, the complainant in gross misuse and abuse of law has set the criminal law into motion. Such frivolous cases registered by the wife have taken enormous judicial time, be it before the concerned Court or before this Court, and has led to enormous civil unrest, destruction of harmony and happiness in the society. It may not be that these would be the facts in every given case. The Court is only concerned about frivolous and vexatious litigations clogging the criminal justice delivery system, where genuine cases lie in cold storage. If the facts narrated hereinabove are noticed and as observed, the complainant has, in gross misuse and abuse of the process of the law, has set the criminal law into motion. Therefore, it becomes a fit case where the husband must be given liberty to initiate proceedings for malicious prosecution or initiate proceedings under Section 211 of the IPC. Liberty is thus reserved to the husband, for such action to be initiated in accordance with law, if he so desires.

11. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is allowed.

(ii) Proceedings in C.C. No.19072 of 2022 pending before the XXXVII Additional Chief Metropolitan Magistrate, Bangalore arising out of Crime No.35 of 2022 stand quashed qua the petitioner.

(iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against any other accused pending before any other fora.

Consequently, pending applications also stand disposed.

Sd/-

JUDGE Bkp CT:MJ

Yogananda D V vs Smt Likitha P B on 28 March, 2024

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CRL.RP No. 6 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 28TH DAY OF MARCH, 2024
BEFORE
THE HON'BLE MR. JUSTICE S RACHAIAH
CRIMINAL REVISION PETITION NO. 6 OF 2024

BETWEEN:

YOGANANDA D V
S/O VENKATESH D K
AGED 32 YEARS
R/O DESHAHALLI VILLAGE AND POST
MADDUR TALUK, MADDUR
MANDYA DISTRICT - 571 429.

...PETITIONER

(BY SRI. SHIVA PRASAD M., ADVOCATE)

AND:

SMT. LIKITHA P B
W/O YOGANANDA D V
D/O PARIVARA
LATE BHARATH
AGED 29 YEARS
R/O CHERANGALA VILLAGE
MADIKERI TALUK
KODAGU DISTRICT

...RESPONDENT

THIS CRL.RP IS FILED U/S.397 R/W S.401 CR.P.C
PRAYING TO SET ASIDE THE ORDER PASSED ON 13.01.2023
IN CRL.MISC.68/2022 BY ADDITIONAL CIVIL JUDGE AND JMFC,
MADIKERI AND ORDER PASSED ON 02.11.2023 IN CRIMINAL
REVISION PETITION NO.82/2023 BEFORE 1ST ADDITIONAL
DISTRICT AND SESSIONS JUDGE, KODAGU AT MADIKERI AND
ETC.,

THIS CRIMINAL REVISION PETITION HAVING BEEN
HEARD AND RESERVED ON 16.01.2024, COMING ON FOR
PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE
THE FOLLOWING:-

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CRL.RP No. 6 of 2024

ORDER

1. This revision petition is filed by the petitioner, who is the husband of the respondent herein. The respondent herein filed a criminal miscellaneous case before the Trial Court seeking for maintenance and also for an order of protection in terms of Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'Act'). She has contended that her marriage was solemnized on 23.02.2018 at Sri Dharmasthala Manjunatha Swamy Temple, Dharmasthala, as per Hindu customs and traditions. After the marriage, she left her job and started residing with her husband for 2-3 years. Due to the said wedlock, a boy baby was born to them. The petitioner herein was addicted to alcohol and he used to consume alcohol everyday. In addition to drinking alcohol, it is alleged that, he was demanding dowry from the respondent herein. It is stated that the mother of the respondent herein had paid Rs.1,00,000/- to the petitioner herein through the bank account. After having received the said amount, the petitioner and the respondent were living at Desahalli, Mandya, for four months. On 01.05.2022, the petitioner herein abused the respondent in a filthy language and assaulted her. It is further stated that the respondent herein was neglected by not only the petitioner herein, but also by her in-laws too. She approached Mahila Sangha on several occasions and the members of the said Mahila Sangha advised the petitioner and his parents to take care of the respondent herein properly. Despite the instructions or advice, the petitioner herein and his parents used to harass the respondent in one or other pretext and the petitioner herein failed to provide food, clothing and shelter to the respondent. She being a female and not able to maintain herself and her child, has approached the Court by seeking maintenance of Rs.25,000/- per month.

2. The Trial Court after having considered the evidence on record and also the documents available on record, directed the petitioner herein to pay maintenance of Rs.3,000/- per month to the respondent herein from the date of filing of the said petition. Being aggrieved by the same, the respondent herein had approached the I Additional District and Sessions Judge, Kodagu, at Madikeri by filing a revision petition, seeking enhancement of maintenance awarded by the Trial Court. The Appellate Court allowed the revision petition and set aside the order passed by the Trial Court. The Appellate Court directed the petitioner herein to pay maintenance of Rs.20,000/- per month to the respondent from the date of the petition. Hence, the petitioner has approached this Court seeking to set aside the order passed by the Appellate Court.

3. Admittedly, the Trial Court passed an order on the interim application filed by the respondent herein. The provision under Section 23 of the said Act provides the Court to pass interim and ex parte orders. Section 23 of the Act reads thus:

"23. Power to grant interim and ex parte orders.-- (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent."

As against any such order, the aggrieved party shall file an appeal before the Appellate Court in terms of Section 29 of the said Act. Section 29 of the Act reads thus:

"29. Appeal.--There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."

4. On careful reading of the above two provisions, it makes it clear that if any order passed by the Trial Court, the aggrieved party has to approach the Appellate Court by filing an appeal as stated supra. However, the respondent had filed a revision petition, which is not maintainable. Such being the fact, the Sessions Court entertained the revision and passed an order, which is considered to be non-est in law. Notwithstanding any such order being passed, the revision petition before this court by unsuccessful person is also not maintainable.

5. Learned counsel for petitioner has produced the copy of the judgment of the Co-ordinate Bench of this Court in the case of B.A.Harish Gowda v. P.Lankesh¹ and copy of the judgment of the Bombay High Court in the case of Inayatullah Rizwi v. Rahimatullah & Ors.,² and tried to convince the Court that the revision is maintainable before this Court.

6. On careful reading of the judgment of the Co-ordinate Bench of this Court in B.A.Harish Gowda case, ILR 2000 Karnataka 2657 1981 CrLLJ 1398 referred to supra, it is observed in paragraph No.9 that, the revision is maintainable even though there is a bar under Section 397(2) of the Code of Criminal Procedure. Similarly, the High Court of Bombay has opined that the second revision to the High Court, even at the instance of the unsuccessful opponents before the Sessions Court, the revision is maintainable. The said observations are made in paragraph Nos.19 and 20, which read thus:

"19. We are, therefore, of the view that a revision to the High Court would be tenable at the instance of a party who is unsuccessful before the Sessions Judge, or who is aggrieved by his order. In other words, a concurrent finding of the Sessions Judge and of the Courts below becomes final, but when the Sessions Judge reverses the order of the Court below in revision the defeated party is not precluded from moving the High Court. The consensus of judicial opinion as can be seen supports only this view.

20. We, therefore, hold that these two criminal applications filed here by the persons who were non- applicants before the Sessions Judge in the Criminal Revisions and who are aggrieved by the decisions of the Sessions Judge are tenable and competent. There is no need to convert these petitions into applications under Section 482 of the Code. These criminal revisions shall be dealt with and disposed of by the learned single Judge according to law."

On careful reading of the judgment of the Bombay High Court, the facts of the case are not forthcoming. Therefore, the ratio of the judgment is not applicable to the present case.

7. On careful reading of the facts of the present case, I am of the considered opinion that the revision petition is not maintainable. Without advertizing to the merit of the case, the revision petition stands disposed of. Ordered accordingly.

The liberty is reserved to the petitioner herein to approach the appropriate forum to seek remedy in accordance with law and all contentions are kept open.

Sd/-

JUDGE Bss

Anup Harkuni vs Savita on 28 March, 2024

Author: H.B.Prabhakara Sastry

Bench: H.B.Prabhakara Sastry

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NC: 2024:KHC:12904-DB
MFA No. 3231 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MARCH, 2024

PRESENT

THE HON'BLE DR. JUSTICE H.B.PRABHAKARA SASTRY
AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR
MISCELLANEOUS FIRST APPEAL NO. 3231 OF 2021 (FC)
BETWEEN:

ANUP HARKUNI S/O. BASAVARAJ HARKUNI,
AGE: 35 YEARS,
RESIDING AT # 251/A, 1 FLOOR,
18TH C MAIN, KORAMANGALA,
6TH BLOCK, BANGALORE-560095.

...APPELLANT

(BY SRI. BASAVARAJ R. BANNUR, ADVOCATE)

AND:

SAVITA D/O. BASAVANTRAYGOUDAA S. MUDNUR,
AGE: 31 YEARS, NOW RESIDING AT # 2081,
SAI SADAN, HIGH STREET, GANESHPUR,
BELAGAVI-591108.

...RESPONDENT

(BY SRI. VASANTH KUMAR H.T., ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL FILED UNDER SECTION

Digitally
signed by
SHAKAMBARI
19(1) OF FAMILY COURT, PRAYING TO CALL THE RECORDS AND SET

Location:
HIGH COURT
OF ASIDE THE JUDGMENT AND DECREE DATED 22.03.2021 PASSED IN

M.C.NO.3411/2016 PASSED BY THE VI ADDITIONAL PRINCIPAL,

KARNATAKA JUDGE, FAMILY, BANGALORE IN PART ONLY IN SO FAR AS
DIRECTING THE APPELLANT TO PAY THE MAINTENANCE OF
40,000/- PER MONTH TO THE RESPONDENT.

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN HEARD
AND RESERVED ON 15.02.2024, COMING ON FOR PRONOUNCEMENT
OF JUDGMENT, THIS DAY, RAMACHANDRA D. HUDDAR, J.,
DELIVERED THE FOLLOWING:

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NC: 2024:KHC:12904-DB
MFA No. 3231 of 2021

JUDGMENT

The appellant-husband has preferred this appeal being aggrieved by the judgment and decree dated 22.03.2021 passed in M.C. No.3411/2016 by the VI Additional Principal Judge, Family Court, Bengaluru (hereinafter referred to as the 'Trial Court') directing the appellant to pay, the monthly maintenance of `40,000/- per month to the respondent. So far as the decree so granted for dissolution of the marriage between the appellant and respondent is not challenged by him by preferring any separate appeal. So also the respondent has not challenged the said decree of dissolution of her marriage with the appellant. Thus, the decree of dissolution of marriage between the appellant and respondent granted by the Trial Court has attained finality.

2. This appeal is restricted only with regard to the permanent alimony granted by the Trial Court directing the appellant to pay the maintenance of `40,000/- per month to the respondent. The Trial Court has directed the NC: 2024:KHC:12904-DB appellant to pay the same till respondent becomes disentitled for the same. Therefore, the brief facts germane towards the decision of this appeal are as under:

2.1. That, the marriage of the appellant and respondent was solemnized on 27.01.2015 at Dharmanath Bhavan, Dharmanath Circle, Belagavi as per the rights, rituals and customs prevailing in their community. After marriage, both the appellant and the respondent resided together for a period of eight months only.

2.2. It is alleged that, because of the behaviour of the respondent, misunderstanding between them arose.

Respondent used to pickup quarrels for silly reasons. Though elderly members of the family intervened and tried to reconcile the matrimonial dispute between them, it was not reconciled. The appellant is Graduate in B.E., in Electronics and Communication and employed in Intel Technology India Private Limited and was earning `1,70,000/- per month in the year 2016. Besides that, his parents owned an apartment and three sites at Belagavi.

NC: 2024:KHC:12904-DB Whereas, respondent is a BE Graduate in Computer Science with M.B.A. in H.R. and Marketing subject.

3. When the matter was pending before the Family Court (Trial Court), the respondent-wife filed I.A.No.6 under Order VII Rule 7 of Code of Civil Procedure, 1908 (for short 'CPC'), praying to mould the relief so claimed in her petition in M.C.No.900/2016 and grant permanent alimony in the interest of justice and equity. So also filed I.A.No.7 under Section 24 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955') to direct the appellant-husband to pay the litigation expenses. She also filed I.A.No.8 under Section 25 of the Act, 1955 seeking direction to the husband to pay the permanent alimony amounting to ` 2(two) crores to her.

4. Along with these applications, she filed her affidavits reiterating the allegations made against her husband so also the capacity of the husband to pay the said maintenance and litigation expenses which are pleaded by her in her petition as well as in her objections.

NC: 2024:KHC:12904-DB According to her, she is entitled for the aforesaid reliefs so claimed in I.A.Nos.6, 7 and 8.

5. To these applications, the appellant filed independent objections denying all her assertions made in the affidavits. According to him, she cannot seek the relief of moulding of reliefs as claimed by her. It is contended that, respondent-wife has completed B.E. with M.B.A. and working in Lance Soft India Private Limited at ITPL as a H.R. Manager. She is drawing a salary of ` 1,00,000/- per month. Suppressing the material fact, she has claimed the permanent alimony. She is also an income tax assessee. She is pursuing her career and working as a H.R. Manager since more than five years. This fact has been deliberately suppressed by her. She has got a very good prospect of second marriage. The allegations that, the husband is working and getting salary of ` 1,70,000/- per month is all false. It is contended that, since 19.09.2019, he is unemployed and presently not gainfully employed in any company. He is in search of new job. Because of Covid-19 Pandemic, and because of recession NC: 2024:KHC:12904-DB he is not getting any job. According to him, the respondent-wife is not entitled for any litigation expenses or permanent alimony as prayed in her respective applications.

6. It is noticed that, on 08.03.2021 before the Trial Court, the counsel for the husband i.e., the appellant submitted his no objection to I.A.No.6. The same is recorded in the order sheet. On that day, the learned Trial Judge heard the arguments of both the side on I.A.Nos.7 and 8 and passed a detail judgment on 22.03.2021 dismissing the petition filed by the wife-respondent in M.C. No.900/2016 under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955'), and allowed M.C. No.3411/2016 filed by the appellant-husband under Section 13(1)(i-a) of the Act, 1955 and granted a decree of dissolution of marriage solemnized between the appellant and respondent on 27.01.2015 at Dharmanath Bhavan, Dharmanath Circle, Belagavi, thereby, the registration of the marriage was ordered to be cancelled.

NC: 2024:KHC:12904-DB

7. The Trial Court further considering I.A.Nos.7 and 8 directed the appellant-husband to pay the litigation expenses of `20,000/- to respondent-wife and also directed to pay maintenance of `40,000/- per month to the respondent-wife till she becomes disentitled for the same. While passing such an order, the learned Trial Court raised point Nos.5 and 6 in the judgment and gave a finding in paragraph No.64 of the said judgment. While giving such findings, the Trial Court took into consideration the assets and liabilities statements submitted by both husband and wife and has concluded that, the husband has submitted his income tax showing his total income as `25,32,360/- and he has paid income tax of `6,04,752/-. Even it is considered by the Trial Court that, the respondent-wife was working earlier and when such applications were filed she was not working. She is a B.E. and M.B.A. degree holder used to work as H.R. Manager at Lance Soft India Private Limited and has given the information from the Income Tax Department on 07.09.2020. She is having active income tax account.

NC: 2024:KHC:12904-DB

8. Considering all these aspects, the learned Trial Court fixed the litigation expenses and permanent alimony per month as stated above.

9. This judgment and decree passed by the Trial Court is challenged by the appellant-husband by preferring this appeal to the limited extent of granting monthly maintenance of `40,000/-.

10. Learned counsel for the appellant with all vehemence and force submits that, now the appellant-husband is unemployed. He is in search of new job. Therefore, he is unable to pay that much of monthly maintenance as ordered by the Trial Court. It is exorbitant. He submits that, when respondent-wife is a B.E. and M.B.A graduate earning sufficient income being the income tax assessee, is capable of maintaining herself. She has withheld all the documents showing her income. The Trial Court has not considered her education. The Bank statement shows her income. The appellant husband has got three dependants and has got liability to NC: 2024:KHC:12904-DB pay the loan amount. Because of this heavy liability, it is submitted that, it is not possible for the appellant-husband to pay the said maintenance awarded by the Trial Court. According to him, this case may be remanded to the Trial court for giving finding about the income of both.

11. As against this submission, the counsel for the respondent-wife supported the findings of the Trial Court on point Nos.5 and 6 and submits that, though long back there was an order by the Trial Court to pay the maintenance and litigation expenses, the appellant has not paid. There is no document to show that respondent-wife is working in Multi National Company.

12. It is further submitted by him that, in view of the findings of the Trial Court, and also the final order directing the appellant-husband to pay the maintenance, this appeal merits no consideration and is liable to be dismissed.

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NC: 2024:KHC:12904-DB

13. We have given our anxious consideration to the arguments of both the side. Perused the records secured from the Trial Court. In view of the rival submission of both the side and the claim of the appellant and respondent made out in their respective submissions, the points that would arise for our consideration are :

- i) Whether the amount of alimony awarded by the Trial Court to be paid per month and fixing the litigation expenses require interference by this Court?
- ii) What order?

14. Before advertizing to the other aspects of the case, let us narrate the admitted facts between both the side.

15. That, the respondent-wife has filed the petition in M.C. No.900/2016 seeking restitution of Conjugal Rights. Whereas the appellant-husband filed the petition in M.C. No.3411/2016 seeking decree of divorce on the ground of cruelty. Both the petitions were tried together by the VI Additional Principal Judge, Family Court,

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NC: 2024:KHC:12904-DB Bengaluru. In the said petitions, respondent-wife filed I.A.Nos.6, 7 and 8 seeking moulding of relief and prayed for grant of permanent alimony and litigation expenses. For these interim applications appellant-husband filed detailed objections. The appellant submitted his no objections to allow I.A.No.6. On contest, the Trial Court passed an order granting decree of dissolution of marriage as prayed by the appellant-husband and dismissed the petition of the respondent - wife and ordered to pay `20,000/- towards litigation expenses and `40,000/- per month as permanent alimony as stated above. These admitted facts need not be reanalysed again.

16. It is a fact admitted by both the side that, as per the directions given by the Hon'ble Apex Court in the case of Rajnesh Vs. Neha and others reported in 2021 (2) SCC 324 both the appellant and respondent have filed their respective assets and liability statements.

17. So far as assets and liability statements submitted by the appellant, he has filed income tax

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NC: 2024:KHC:12904-DB returns and has shown his total income at `25,32,360/- for the assessment year 2020-21 and has paid a tax of `6,04,752/-. In his assets and liability statement, he has stated so about ITR-5 form dated 26.12.2020 filed for the assessment year 2020-21 attached (IT returns). He also has shownen about the details of loan taken from SBI, Belagavi to the extent of `26,50,000/- and paying an EMI of `29,000/- per month. He has shown the outstanding loan amount at `18,42,082/-. According to him, till the date of filing of affidavit he has paid `8,07,918/-. He has taken loan for the purpose of purchasing flat No.204 in the month of November - 2014. He has stated that, the respondent-wife is working as H.R. in Lance Soft India Private Limited, and

getting salary of `1,00,000/- per month. She is also income tax assessee. He has received the communication through mail from the income tax authorities on 07.09.2020.

18. In addition to that, he has stated that, he has to maintain his parents who are aged. His father is

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NC: 2024:KHC:12904-DB suffering from heart ailments, hyper tension, highly diabetic and has spent substantial money towards medical expenses of his parents. He also states that, he has to face so many litigation expenses foisted by the respondent under the provisions of Protection of Women from Domestic Violence Act, 2005, the Code of Criminal Procedure, 1973 and the Hindu Marriage Act, 1955 etc.

19. Relying upon assets and liability statement and the serious objections filed by him to I.A.Nos.7 and 8, it is submitted by the counsel for the appellant-husband that, the said impugned order awarding monthly maintenance is exorbitant. He also relied upon the judgment in the case of Neha (supra).

20. As against this submission, the counsel for the respondent also relies upon the assets and liability statement submitted by the wife and submits that, herself and appellant are educated. She admits about income tax returns and according to her, she is now unemployed. She admits her qualification. She alleges that, appellant-

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NC: 2024:KHC:12904-DB husband is a Senior Engineer at AMD, India Pvt. Ltd. and getting a salary of `2,17,809/- per month and owned two BHK flat in classic complex at Tilakwadi, Belagavi and also is having more than three immovable non agriculture properties at Belagavi. Showing her assets and liabilities in the affidavit throughout she has stated that, she has no income.

21. It is submitted by learned counsel for the respondent that, the Trial Court is justified in passing the impugned order.

22. So far as granting of permanent alimony is concerned, Section 25 of the Act, 1955 speaks of permanent alimony and maintenance. This section is constructed by the legislature and directed the Courts exercising jurisdiction under the Act, 1955. The draftsmen avoided the use of the words "wife and husband" used the words "either party". The expression used in the opening part of Section 25 of the Act, 1955 enables the Court in exercising jurisdiction under the act at the time of passing any decree or at any time subsequent there to grant of

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NC: 2024:KHC:12904-DB alimony or maintenance cannot be restricted only to, there of judicial separation under Section 10 or divorce under Section 13 of the Act, 1955.

23. A plain reading of Section 25 of the Act, 1955 makes it clear that, an order of permanent alimony can be made only on passing of a decree for Restitution of Conjugal Rights, judicial separation, declaration that, the marriage is void, annulment of voidable marriage or for dissolution of marriage by a divorce. Thus, it is clear from Section 25 of the Act, 1955 that, the Court will have jurisdiction to pass orders for permanent alimony and maintenance under Section 25(1) of the Act, 1955 either at the time of passing any decree or at any time subsequent there to. That means, grant of maintenance under this Section is incidental to the decree granting substantial reliefs under the Act.

24. The amount of maintenance, whether it is fixed by decree or by agreement is liable to be increased or decreased, whenever there is change of circumstances as

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NC: 2024:KHC:12904-DB would be justified a change in the rate. That means Section 25 of the Act, 1955 lays down that, for arriving at a quantum of permanent maintenance to be ordered, the Court must have regard to the respondent's own income and property and also the income and property of the appellant and conduct of the parties and facts and circumstances of the case. There is no rigid rule or any fixed criteria as to the quantum of maintenance and the matter of assessment is left to the discretion of the Court. The Court has to consider all relevant circumstances keeping in view of the status of the parties, ability of the spouses, earning and their future prospects and reasonable requirements of the respondent.

25. It is settled that, there are certain aspects to be considered in fixing the permanent alimony. In estimating what would be a reasonable amount for the wife's maintenance and to support her life, the circumstances which would be taken into account are:

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NC: 2024:KHC:12904-DB

- 1) the conduct of the parties.
- 2) the position in lives
- 3) the age and respective means
- 4) the amount of the provision actually made
- 5) the existence or non existence of children, and who is to have the care and custody of them
- 6) any other circumstances which may be important in any particular case.

26. In the instant case, it is stated by the appellant himself that, his total income for the year ending 2020-21 is `25,32,360/- and accordingly he has paid income tax for the year at `6,04,752/- for the assessment year 2020-21.

This is bornout from the income tax returns submitted by him along with his assets and liability statement. The learned Trial Court has considered this aspect while answering point Nos.5 and 6.

27. It also has considered that, the respondent is B.E. and M.B.A. graduate and used to work as a H.R. in the Lance Soft India Private Limited. The appellant has

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NC: 2024:KHC:12904-DB produced the income tax department letter which he has received through mail. As per the assets and liability statement of the respondent, she admits her profession prior to her marriage and after her marriage. According to her she submitted her income tax returns prior to and after her marriage. When she claimed maintenance, she had not filed any income tax returns. Her affidavit is filed showing her assets and liabilities. She has shown herself as non agrarian deponent and submitted a declaration to that effect.

28. From the income tax returns submitted by the appellant, it shows that, there is a considerable increase in the income of the appellant. He has produced the interest certificate showing total payment at `3,07,013/-. He has produced the e-mail mentioning date as 07th September 2018 belongs to the respondent. This document does not show the income of the respondent. It shows that, the income tax returns for the assessment year of 2015-16 belongs to the respondent was uploaded on 31.08.2015 and it is pending verification. He has produced copy of the

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NC: 2024:KHC:12904-DB Form No.16 for the period commencing from 21.07.2014 to 31.03.2015 belonging to the respondent showing her monthly income at `92,280/-. These documents are not disputed by the respondent. Subsequent to 2015 to show that, respondent is really earning no document is produced. To show that his father is suffering from ailments, he has produced the discharge summary sheet issued by KLE Hospital, Belagavi. It shows that, his father was admitted on 28.12.2020 and was discharged on 01.01.2021. wherein he has undergone for coronary angiography. So far as owning the sites is concerned, the appellant is not disputing the same. The bank statements are produced to show the salary drawn by the appellant.

29. On scrupulous reading of all these documents and the affidavits filed by the appellant and respondent, they show that, the appellant is earning sufficient income every month and he is a income tax assessee.

30. In the judgment in the case of Neha (supra), certain guidelines/directions are issued regarding grant of maintenance. In part-B of paragraph No.13 of the said

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NC: 2024:KHC:12904-DB judgment, it is observed about the enactment of law with regard to maintenance based upon social justice to provide recourse to defendant, wives and children for their financial support. It is one of the major issue of social justice to protect women and children who falls within the constitutional sweep of Article 15(3) reinforced by Article 39(A) of the Constitution of India.

31. When respondent being the defendant on the appellant after dissolution of marriage and even at the time of pendency of the petition filed by the appellant was unemployment, though she is a B.E. and M.B.A graduate have to lead life to the status of the appellant who is a Software Engineer.

32. Considering all these aspects, the learned Trial Court has awarded the monthly maintenance to the respondent till she is disentitled. Both the appellant and respondent are quiet young. The appellant was fair enough before the Trial Court to say no objection to mould the relief but, contested the grant of maintenance. Assets and liability statement filed by him clearly show the income

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NC: 2024:KHC:12904-DB earned by the appellant. His submission is supported by his own documents showing substantial monthly income he is earning. The contents of the documents are supported by the objection statements filed by the respondent.

33. Now a days, because of inflation the money value has been decreased and cost of living is increased. No doubt the respondent is a B.E. and M.B.A. graduate. In due course of time, the respondent may get a good job and she also may draw handsome salary. She has to lead her life suitable to her status. In a city like Bengaluru, atleast 25% of the income has to be spent towards house rent. The remaining has to be spent towards maintenance or taking care of oneself. The transportation expenses is also more. In addition to that, food, medical expenses etc. So atleast to live to the status of the appellant and to meet the minimum requirements atleast `40,000/- per month is required for the respondent in a city like Bengaluru. Therefore, in our considered view, the learned

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NC: 2024:KHC:12904-DB Trial Court based upon the assets and liability of both side and also the status of both the side and looking to their earning capacity has ordered monthly maintenance of `40,000/- per month.

34. In our considered opinion, such an award towards monthly maintenance is just and proper. Though it is argued that, the amount of maintenance so awarded is on higher side and it is requested to send back the records for recoding the evidence with regard to payment of maintenance, but when sufficient evidence is placed on record, in view of the judgment in the case of Neha (supra),

and also in view of the factual features as the appellant and respondent litigating from 2016 and already more than eight years have been lapsed in the litigation, the argument of the counsel for the appellant has no merits on the point. If the litigations continue, the appellant and respondent also become older. There are no acceptable grounds to reduce the amount of maintenance so ordered by the Trial Court.

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NC: 2024:KHC:12904-DB

35. Considering all these aspects and in view of the law laid down by the Hon'ble Apex Court with regard to maintenance, there are no grounds to interfere the judgment and order of maintenance passed by the Trial Court.

36. We do not find any factual or legal error committed by the Trial Court in awarding the maintenance and litigation expenses.

37. Therefore, the points for consideration raised supra are answered in the negative.

38. Consequently, the appeal filed by the appellant is liable to be dismissed with cost to the respondent.

39. Resultantly, we pass the following:

ORDER

- i) Appeal filed by the appellant is dismissed with cost of the respondent.
- ii) The judgment and decree passed by the Trial Court in M.C. No.3411/2016 ordering to pay the

- 24 -

NC: 2024:KHC:12904-DB maintenance of `40,000/- per month and the litigation expenses as ordered, is hereby confirmed.

iii) The appellant is hereby directed to deposit or make payment of the arrears of maintenance digitally to the respondent till the month of February-2024 within two months from today.

iv) Send back the Trial Court records along with copy of the judgment.

Sd/-
JUDGE

Sd/-
JUDGE

SMM

Aruna vs State Of Karnataka By on 4 June, 2024

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NC: 2024:KHC:19215
CRL.P No. 4397 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JUNE, 2024

BEFORE
THE HON'BLE MRS JUSTICE M G UMA

CRIMINAL PETITION NO. 4397 OF 2024

BETWEEN:

1. ARUNA
W/O KUMARASWAMY .M.S.,
AGED ABOUT 51 YEARS,
RESIDING AT NO.6504,
A.G. BLOCK, 7TH CROSS,
N.R. MOHALLA, MYSURU
CITY - 570 007

2. M.S. KUMARASWAMY
S/O LATE SHIVANNA,
AGED ABOUT 61 YEARS,
RESIDING AT NO.6504,
A.G. BLOCK, 7TH CROSS,

Digitally
signed by
BHARATHI S
N.R. MOHALLA, MYSURU
CITY - 570 007

Location: high
court of
karnataka

(BY SRI. DINESH .B.R., ADVOCATE)

...PETITIONERS

AND:
STATE OF KARNATAKA BY
KIKKERI POLICE STATION,
K.R. PETE TALUK,
MANDYA DISTRICT,
PIN CODE - 571 427.

(BY SRI. .M.R. PATIL, HCGP)

...RESPONDENT

THIS CRL.P IS FILED U/S 438 CR.PC PRAYING TO ENLARGE
THE PETITIONERS ON BAIL IN THE EVENT OF THEIR ARREST IN THE
CR.NO.32/2024 REGISTERED KIKKERI POLICE STATION, MANDYA
DISTRICT FOR THE OFFENCE P/U/S 143, 498A, 506, 507, 304B R/W

FILE OF III ADDL. DIST. AND SESSIONS JUDGE, MANDYA (SITTING AT SRIRANGAPATNA).

THIS CRL.P, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners-accused Nos.2 and 3 are before this Court seeking grant of anticipatory bail in Crime No.32/2024 of Kikkeri Police Station, pending on the file of the learned CJ (Sr.Div) and JMFC Court, K.R.Pet, Mandya District registered for the offences punishable under Sections 143, 498A, 506, 507, 304B R/w Section 149 of Indian Penal Code (for short 'IPC'), on the basis of the first information lodged by the informant Manjula.

2. Heard Sri. Dinesh B.R., learned counsel for the petitioners and Sri.M.R.Patil, learned High Court Government Pleader for the respondent-State. Perused the materials on record.

3. In view of the rival contentions urged by the learned counsel for both the parties, the point that would arise for my consideration is:

NC: 2024:KHC:19215 "Whether the petitioners are entitled for grant of bail under Section 438 of Cr.P.C.?"

My answer to the above point is in 'Affirmative' for the following:

REASONS

4. Petitioners-accused Nos.2 and 3 are before this Court seeking grant of anticipatory bail. It is stated that accused No.1 married the deceased on 06.03.2022. Within two years, she had committed suicide by hanging in her parental house. A detailed death note is said to have been left by the deceased making specific allegation against accused No.1 and generally against other accused. These petitioners are parents of accused No.1. It is stated that investigation is almost completed after the main accused i.e., accused No.1 is apprehended and he is in judicial custody.

5. Learned counsel for the petitioners has submitted that accused No.1 has filed MC No.178/2023 under Section 9 of Hindu Marriage Act seeking Restitution of Conjugal Rights. In the meantime, the deceased had filed a complaint under the NC: 2024:KHC:19215 Protection of Women from Domestic Violence Act, 2005 alleging the commission of violence against her. Thereafter, she was residing in her parental house and took the extreme step of committing suicide there itself. Under such circumstances, I am of the opinion that these petitioners being the parents of accused No.1,

may not be required for interrogation. Hence, I am of the opinion that the petitioners may be granted anticipatory bail subject to conditions, which will take care of the apprehensions expressed by the learned High Court Government Pleader that the petitioners may abscond or may tamper or threaten the prosecution witnesses.

6. Accordingly, I answer the above point in the affirmative and proceed to pass the following:

ORDER The petition is allowed.

The petitioners are ordered to be enlarged on bail in the event of their arrest in Crime No.32/2024 of Kikkeri Police Station Police Station.

The petitioners are directed to appear before the Investigating Officer within 15 days from the date of receipt of NC: 2024:KHC:19215 this order and on their appearance, the Investigating Officer shall enlarge them on bail subject to the following conditions:-

- a. The petitioners shall furnish the bond in a sum of Rs.2,00,000/- (Rupees Two Lakhs only) each with two sureties each for the likesum to the satisfaction of the Investigating Officer; b. The petitioners shall not commit similar offences;
- c. The petitioners shall appear before the Investigating Officer or the court as and when required; and d. The petitioners shall not threaten or tamper the prosecution witnesses.

On furnishing the sureties by the petitioners, the Investigating Officer is at liberty to verify the correctness of the address and authenticity of the documents furnished by them. On satisfaction of the said documents, he may proceed to accept the sureties within a reasonable time.

Sd/-

JUDGE BH

Chandrakanth Hiremath And Ors vs Sumangala Hiremath on 21 June, 2024

Author: S.Vishwajith Shetty

Bench: S.Vishwajith Shetty

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NC: 2024:KHC-K:4091
CRL.P No. 200350 of 2023

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY
CRIMINAL PETITION NO. 200350 OF 2023 (482)

BETWEEN:

1. SRI CHANDRAKANTH HIREMATH
S/O LATE ANANDANAYYA HIREMATH ,
AGED ABOUT 41 YEARS,
OCC: PRIVATE SERVICE,
MRUTYUNJAY NIVAS,
KANAKADAS BADAVANE,
VIJAYAPURA -586 101

2. SMT. DANAMMA HIREMATH
W/O MAHADEVAYYA
AGED ABOUT 54 YEARS
OCC: HOUSE WIFE

Digitally signed by
SHILPA R TENIHALLI
Location: HIGH COURT OF KARNATAKA
TQ: MUDDEBIHAL

3. SRI MAHADEVAYYA HIREMATH
S/O NAGAYYA HIREMATH
AGED ABOUT 52 YEARS
OCC: PRIVATE
ARE RESIDING AT
NEAR GRAM DEVATE TEMPLE
RAJWADE, TALIKOTI

DIST: VIJAYAPURA-586 214.

...PETITIONER

(BY SMT. ANUSUYA HIREMATH, ADV)

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NC: 2024:KHC-K:4091

CRL.P No. 200350 of 2023

AND:

SMT. SUMANGALA HIREMATH
W/O CHANDRAKANTH HIREMATH,
AGED ABOUT 29 YEARS,
OCC: SWAMY VIVEKANAND PU AND
DEGREE COLLEGE AND OXFORD COLLAGE
AT PRIVATE SERVICE,
R/O NEAR ANJANEYA TEMPLE
PWD CAMP, WARD NO.29,
SHINDHANUR
RAICHUR-584 128.

...RESPONDENT

(BY SRI S.S.MAMADAPUR, ADV.)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO
QUASH THE ENTIRE PROCEEDINGS IN CRL.MISC.NO.186/2018
FILED BY THE RESPONDENT FOR THE RELIEF SOUGHT UNDER
SECTION 18 (A)(B)(F), 19(1)(a) (L)(3)(5), 20, 22 OF THE
PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT,
2005 NOW THE CASE IS PENDING ON THE FILES OF
HONOURABLE COURT OF THE 1st ADDL. CIVIL JUDGE AND
J.M.F.C. SINDAGI,

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

ORDER

1. Petitioners are before this Court with a prayer to quash the entire proceedings in Crl.Misc.No.186/2018 filed by the respondent herein pending before the Court of Civil Judge & JMFC, Sindagi, seeking reliefs under Sections 18(a)(b)(f)(g), 19(1)(a)l(3)(5), 20 & 22 of the Protection of Women from Domestic Violence Act, 2005.

NC: 2024:KHC-K:4091

2. Heard the learned Counsel for the parties.

3. Learned Counsel for the petitioners having reiterated the grounds urged in the petition, submits that absolutely there is no material as against petitioner nos.2 & 3 in the present case. Unnecessarily they have been implicated in the impugned proceedings. Petitioner nos.2 & 3 are the sister and

brother-in-law of petitioner no.1. No relief is sought for as against them. Pendency of the proceedings has been causing unnecessary harassment to them. Accordingly, she prays to allow the petition.

4. Learned Counsel for the respondent submits that the impugned proceedings is pending since the year 2018 and the petitioners have all along contested the proceedings before the Trial Court. Before the Trial Court, evidence of both the parties is recorded and the case is now at the stage of final arguments. He, accordingly prays to dismiss the petition.

5. The order sheet of the Trial Court in the present case would reflect that the petitioners herein have entered appearance before the Trial Court and contested the petition by NC: 2024:KHC-K:4091 filing statement of objections. They have suffered multiple orders before the Trial Court. The order sheet also would reflect that the evidence of both the parties in the impugned proceedings has been recorded. Learned Counsel for the respondent has brought to the notice of this Court that the matter is at the stage of arguments on the main matter. Therefore, I do not find any good reason to entertain this petition at this stage on the grounds urged by the learned Counsel for the petitioners. Accordingly, petition is dismissed with a request to the Trial Court to dispose of the case on merits, as expeditiously as possible.

Sd/-

JUDGE KK

Channabasavaiah vs Smt Rudramma on 25 March, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

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NC: 2024:KHC:12243
CRL.P No. 2806 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 2806 OF 2023

BETWEEN:

CHANNABASAVAIAH
S/O T.G. BASAVARAJU
AGED 56 YEARS
R/O BHAGAVATHIKERE
MAIDOLALU POST
BHADRAVATHI TALUK
SHIMOGADIST - 577 661.

...PETITIONER

(BY SRI B.N. SHETTY, ADV.)
AND:

SMT RUDRAMMA
W/O LATE PUTTASWAMY
AGED 38 YEARS
C/O PREMAMMA
W/O PARASAPPA
HALEBARANDURU VILLAGE
BAHDRAVATHI TALUK
SHIMOGA DIST.

...RESPONDENT

Digitally signed
by B A KRISHNA
KUMAR
Location: HIGH
COURT OF
KARNATAKA

(BY SRI S.N. HATTI, ADV.)

THIS CRL.P FILED U/S.482 CR.P.C PRAYING TO SET ASIDE
THE ORDER IN CRL.A.NO.152/2015 ON THE FILE OF THE III ADDL.
DIST. JUDGE, SHIVAMOGGA DATED 15.09.015 AND THE ORDER

Channabasavaiah vs Smt Rudramma on 25 March, 2024

PASSED UNDER SEC.29 OF THE PROTECTION OF WOMEN FORM
DOMESTIC VIOLENCE ACT BY THE JMFC II COURT, SHIVAMOGGA IN
CRL.MISC.NO.1/2015.

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

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NC: 2024:KHC:12243
CRL.P No. 2806 of 2023

ORDER

1. Learned counsel for the petitioner submits that though initially Criminal Revision Petition was filed challenging the orders impugned, in view of the office objection, Criminal Revision Petition was converted into a Criminal Petition.
2. The Full Bench of the Allahabad High Court in the case of Dinesh Kumar Yadav vs. State of Uttar Pradesh and Another - AIR 2017 All 29, has held that as against an order passed by the appellate Court under Section 29 of the Protection of Women from Domestic Violence Act, 2005, a revision lies under Section 397 of Cr.P.C.
3. In view of the aforesaid judgment of the Full Bench of the Allahabad High Court, Criminal Petition is not maintainable. Learned counsel for the petitioner is permitted to convert this Criminal Petition into Criminal Revision Petition.
4. For statistical purposes, this Criminal Petition stands disposed of.

Sd/-

JUDGE DN

Dr. Sukumar .T.K @ Kiran vs State Of Karnataka on 18 June, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

-1-

NC: 2024:KHC:21672
CRL.P No. 11112 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA
CRIMINAL PETITION NO. 11112 OF 2023

BETWEEN:

1. DR. SUKUMAR .T.K @ KIRAN
S/O KUMARASWAMY T.K.,
AGED ABOUT 34 YEARS,
OCC. DOCTOR.
2. KUMARASWAMY T.K.,
S/O LATE T.D. KALAPPA
AGED ABOUT 64 YEARS,
OCC. RETIRED EMPLOYEE.
3. SUKANYA
W/O KUMARASWAMY T.K.,
AGED ABOUT 54 YEARS,
OCC. HOUSEWIFE.

Digitally signed
by NAGAVENI

Location: HIGH
COURT OF
KARNATAKA

R/AT: NO.14/A, 1ST CROSS,
ESHWAR NAGAR,
BANASHANKARI 2ND STAGE,
BENGALURU, KARNATAKA.

...PETITIONERS

(BY SRI RAJATH, ADVOCATE)

AND:

1. STATE OF KARNATAKA

BY WOMEN POLICE STATION,
MYSURU CITY REPRESENTED BY

-2-

NC: 2024:KHC:21672
CRL.P No. 11112 of 2023

STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.

2. MRS. AKSHATHA
W/O SUKUMAR T.K., ALIAS KIRAN
AGED ABOUT 30 YEARS,
R/AT: 1065/6F-26
1ST MAIN
VIDYARANYAPURAM,
MYSURU - 570 008.

... RESPONDENTS

(BY SRI B.N.JAGADEESH, ADDL.SPP FOR R-1;
SRI C.N.RAJU, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C., PRAYING TO QUASH THE PROCEEDINGS IN
C.C.NO.104/2023 ARISING OUT OF CHARGE SHEET DATED
05.12.2022 FILED BY RESPONDENT NO.1 WOMEN P.S.,
MYSURU POLICE IN CR.NO.65/2022 PURSUANT TO FIR DATED
24.05.2022 AGAINST THE AFORE MENTIONED PETITIONER
WHO ARE ARRAYED AS ACCUSED NO.1-3 FOR THE OFFENCE
P/U/S.498-A, 354-A R/W SEC.34 OF IPC AND SEC.3, 4 OF DP
ACT PENDING BEFORE THE Ld.VII ACJ AND JMFC MYSURU.

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

ORDER

The petitioners are before this Court calling in question proceedings in C.C.No.104/2023, pending before the VII A.C.J. and JMFC, Mysuru, registered for the offences under Sections 498A and 354A r/w. 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

NC: 2024:KHC:21672

2. Learned counsel for the petitioners and respondent No.2 in unison submit that the parties to the lis have settled their dispute among themselves. The husband and wife were before the family Court in M.C.No.3268/2022 and have decided to obtain a decree of divorce by mutual consent. The parties have parted their ways and filed a memorandum of understanding before the concerned Court, by drawing up certain terms and conditions. One of the conditions of the settlement recognizes the closure of the present proceedings. The parties have also filed a joint affidavit of settlement before

this Court:

3. The joint affidavit of settlement reads as follows:

".....

4. In the said Memorandum of Settlement filed before the Hon'ble Family Court, the following clauses are relevant:

"7. The Petitioner No. 1 agrees to pay a sum of Rs.14,00,000 (Rs.Fourteen lakhs only) towards permanent alimony to the Petitioner no.2, by way of two Demand Drafts as follows:

a. Demand draft bearing no.870293 dated 4/6/2024 for a sum of Rs.9,15,000/-

NC: 2024:KHC:21672 (Rs.Nine Lakhs Fifteen Thousand Only), drawn on UCO bank, Banashankari branch.

b. Demand draft bearing no.155327 dated 4/6/2024 for a sum of Rs.4,85,000/- (Rs.Four Lakhs Eighty Five Thousand Only), drawn on ESAF bank, Banashankari branch.

The said demand drafts shall be payable at the time reporting settlement before this Hon'ble Court.

8. The Petitioner No. 2, subsequent to passing of the decree of divorce agrees to withdraw the Crl Misc 486/2023, filed under Domestic Violence Act, pending before II JMFC Court Mysore and also agrees to co-operate in quashing/compounding Crl Petition 11112/2023 pending before the Hon'ble High Court of Karnataka at Bangalore. The parties hereby agree to cooperate in compromising/compounding/quashing any other proceedings pending against each other and their families."

5. Accordingly, the Petitioner No. 1, as undertaken above has already handed over the afore-mentioned Demand Draft's obtained in favour of the Respondent No.2 and the Respondent No.2 has accepted the said Demand Drafts and no further claims remain between the parties to the proceedings before any forum.

6. We submit that the above terms and conditions are arrived with full consent of us and in order to amicably resolve the differences between us. Thus, we hereby undertake to abide by the terms and conditions set forth and that this would be the full and final settlement between the parties.

7. In view of the said settlement, we i.e., the Petitioner Nos.1-3 and the Respondent No.2 herein respectfully pray that this Hon'ble Court may be pleased to pass an Order quashing the entire

proceedings in C.C No.104/2023, arising out of FIR filed on 24/05/2022 against the petitioner's No. 1, 2 and 3 herein who have been arraigned as the Accused No.1, 2 and 3 for the alleged offences punishable u/s. 498(□, 354(A) r/w section 34 of IPC NC: 2024:KHC:21672 and Section 3 and 4 of the Dowry Prohibition Act, 1961 pending before the VII Addl. Senior Civil Judge and JMFC, Mysuru, in the interest of Justice which has been registered against the Petitioners herein." Though the offences alleged against the petitioners in the case at hand inter alia is one punishable under Section 498A of the IPC, since it is a marital dispute between the husband and wife and now, they have arrived at settlement and parted their ways, I deem it appropriate to accept the joint affidavit of settlement and terminate the proceedings against the petitioners, as the allegations are not against the State.

4. For the aforesaid reasons, I pass the following:

ORDER

- (i) The criminal petition is disposed.
- (ii) The proceedings in C.C.No.104/2023, pending before the VII A.C.J. and JMFC, Mysuru, stand quashed.

Sd/-

JUDGE NVJ

Girish. A. V vs Nandini. B. J on 27 March, 2024

Author: K.Natarajan

Bench: K.Natarajan

-1-

NC: 2024:KHC:13011
CRL.P No. 11141 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE K.NATARAJAN
CRIMINAL PETITION NO. 11141 OF 2022

BETWEEN:

GIRISH. A. V.
S/O VENKATESHAPPA,
AGED ABOUT 39 YEARS,
R/A NO.160, 1ST FLOOR, 2ND CROSS,
3RD MAIN, ANDRAHALLI MAIN ROAD,
1ST BLOCK, 'D' GROUP LAYOUT,
LINGADHEERANAHALLI,
BANGALORE - 560 091.

...PETITIONER

(BY SRI. VISHNU HEGDE, ADVOCATE)

AND:

1. NANDINI. B. J.
W/O GIRISH A V.,
AGED ABOUT 34 YEARS,

Digitally signed by 2. CHARVI A G
VEDAVATHI A K

REPRESENTED BY NATURAL GAUDIAN MOTHER IS

Location: High
Court of
Karnataka

RESPONDENT NO.1

D/O GIRISH A V.,
AGED ABOUT 7 YEARS,
BOTH RESPONDENT RESIDING AT;
R/A NO.69, 2ND MAIN ROAD,
3RD CROSS, 1ST BLOCK,
GNANABHARATHI LAYOUT,
VALAGEREHALLI, BANGALORE - 560 059.

...RESPONDENTS

(BY SRI. PRAKASH K M., ADVOCATE FOR R1;

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 19.04.2022 IN CRL.A.NO.8/2022 PASSED BY THE 8TH ADDL.DISTRICT AND SESSIONS JUDGE BENGALURU RURAL AT BENGALURU, WHICH IS PRODUCED AT ANNEXURE-A AND THE IMPUGNED ORDER DATED 12.01.2022 IN CRL.MISC.NO.535/2019 PASSED BY THE CHIEF JUDICIAL MAGISTRATE BENGALURU RUARL DISTRICT BENGALURU, WHICH IS PRODUCED AT ANNEXURE-B AND ALLOW THE ABOVE PETITION.

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

ORDER

This criminal petition is filed by the petitioner under Section 482 of Cr.P.C. for quashing the order dated 19.04.2022 passed by the VIII Additional District and Sessions Judge, Bangalore Rural, Bangalore, in Criminal Appeal No.8/2022 whereby the learned Sessions Judge has confirmed the order dated 12.01.2022 passed by the Chief Judicial Magistrate, Bangalore Rural District, Bangalore, for having allowed I.A. Nos.3 and 5 in Criminal Miscellaneous No.535/2019 and granting interim maintenance of Rs.8,000/- per month to respondent Nos.1 and 2 towards maintenance and Rs.8,000/- per month to respondent No.2 towards educational expenses, till disposal of the petition.

NC: 2024:KHC:13011

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for respondent Nos.1 and 2.
3. The case of the petitioner is that the petitioner married to respondent No.1 on 22.06.2014. Out of the wedlock, respondent No.2 born to them. Due to the family dispute, the couple are residing separately. Therefore, respondent Nos.1 and 2 filed criminal miscellaneous petition under Section 12 of Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to as 'D.V. Act') seeking interim maintenance of Rs.30,000/- per month for the day today expenses, till disposal of the petition. After hearing the interim application, the Magistrate allowed same and awarded Rs.8,000/- to respondent Nos.1 and 2 herein towards the monthly maintenance till disposal of the case. It is further directed that the petitioner herein shall pay Rs.8,000/- per month to respondent No.2 towards her educational expenses. Being aggrieved by the order dated 12.01.2022, the petitioner NC: 2024:KHC:13011 herein approached the Sessions Judge under Section 29 of the D.V.

Act by filing an appeal, which also came to be dismissed. Hence, this petition.

4. Learned counsel for the petitioner submits that though the petitioner, being the Mechanical Diploma Holder, was previously working in a company getting the salary of Rs.57,000/- per month, but he lost the job due to filing of the various complaints and litigations against him and attending the Court cases. Presently, the petitioner is not working and he is not having any income and he is unable to pay the maintenance amount. Hence, prayed for allowing the petition and quashing the impugned orders.

5. The learned counsel for the petitioner has further argued that respondent No.1 is working in a college earning the salary of Rs.35,000/- per month, which is admitted by respondent No.1 herself in the cross-examination. Respondents are not staying with the petitioner and the petitioner has been harassed by respondent No.1. Since the NC: 2024:KHC:13011 petitioner has lost livelihood, he is unable to pay the interim maintenance. Therefore, prayed for setting aside the order of maintenance.

6. Per contra, the learned counsel for the respondents has seriously objected the petition and contended that the father of the petitioner, who is Respondent No.1 herein, is the retired police. The father of respondent No.1 had ancestral property and sold the same by giving the share of Rs.25 lakhs to respondent No.1 and the petitioner demanded some amount out of it, which was not paid by respondent No.1, and therefore, the quarrel took place. It is further contended that the child is now studying in a private school, where the annual fee of Rs.1,00,000/- to be paid apart from the food and medical expenses. Therefore, Rs.8,000/- per month awarded by the Magistrate towards educational expenses cannot be sustainable and Rs.8,000/- per month to both respondents towards monthly maintenance also cannot be sustainable. Therefore, prayed for enhancing the said amount and accordingly, prayed for dismissing the petition.

NC: 2024:KHC:13011

7. Having heard the learned counsel appearing for the parties, perused the records.

8. The relationship between the parties is not in dispute. Due to family dispute, the divorce petition between the parties, said to be pending, is dismissed for non prosecution. Respondent No.1 is said to be a graduate and presently working in a private college earning Rs.25,000/- to Rs.30,000/- per month. Further, the child is studying in a school, where the Magistrate has granted Rs.8,000/- per month towards educational expenses. The Magistrate has also granted Rs.4,000/- each to both the respondents towards monthly maintenance. The Magistrate has not awarded any heavy amount for the purpose of maintenance to the respondents herein. Respondent No.1 has claimed Rs.10,000/- per month towards maintenance, whereas the Magistrate has awarded only Rs.4,000/- each per month to both respondents towards maintenance and Rs.8,000/- to respondent No.2 towards educational expenses. Therefore, it cannot be said to be NC: 2024:KHC:13011 exorbitant even though the petitioner said to be earlier earning Rs.57,000/- per month. However, in respect of respondent No.2, the Magistrate has awarded Rs.8,000/- per month towards educational expenses, which comes to Rs.96,000/- per annum. Now, the child is studying in a private school, where the

school fees is Rs.70,000/- . Now, considering the facts and circumstances of the case and presently looking to the fact that petitioner is not working anywhere and not earning, I am of the view that the educational expenses, shall be reduced from Rs.8,000/- per month to Rs.5000/- per month.

9. In the result, I pass the following order:

- (i) The criminal petition is allowed in part.
- (ii) The grant of interim maintenance of Rs.8,000/- to both respondents shall remain same.
- (iii) The grant of Rs.8,000/- per month to respondent No.2 towards educational expenses is reduced to Rs.5,000/-

per month.

NC: 2024:KHC:13011

- (iv) If any amount already paid by the petitioner shall be adjusted towards the arrears.
- (v) The petitioner shall deposit the entire arrears within six weeks from the date of the receipt of the copy of this order.
- (vi) The learned counsel for the respondents submits that, after filing of the petition, the petitioner has transferred the property, which stood in his name, to his father. The same shall be considered by the trial Court during the trial.

Sd/-

JUDGE CS CT:SK

Ishrath Begum And Ors vs Dr. Safa Fatima on 27 June, 2024

Author: S.Vishwajith Shetty

Bench: S.Vishwajith Shetty

-1-

NC: 2024:KHC-K:4348
CRL.P No. 200728 of 2023

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 27TH DAY OF JUNE, 2024

BEFORE
THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRIMINAL PETITION NO.200728 OF 2023 (482)
BETWEEN:

1. SMT. ISHRATH BEGUM
W/O MD. MAHMOOD
AGE: 60 YEARS
OCC: HOUSEHOLD
R/O. HOUSE NO.7-4-71,
RAWAHEL GALLI
FORT ROAD BIDAR
TQ: AND DIST: BIDAR-585 401

2. HAJIRA PRAVEEN
W/O MD. SAJEED
AGE: 42 YEARS
OCC: HOUSEHOLD
R/O. HOUSE NO.6/4/66
AT. BIDAR-585 401.

Digitally
signed by
SHILPA R
TENIHALLI
Location:
HIGH
COURT OF
KARNATAKA

3. ZAINAB W/O MERAJ
AGE: 39 YEARS
OCC: HOUSE HOLD
R/O. HOUSE NO.11-19-194
BHAGAT SINGH NAGAR
SARUN NAGAR
LB NAGAR

RANGAREDDY NAGAR
ANDRA PRADESH-501 218

4. ALMAS D/O MD. SAJEED
AGE: 21 YEARS
OCC: STUDENT
R/O. HOUSE NO.6/4/66

-2-

NC: 2024:KHC-K:4348
CRL.P No. 200728 of 2023

AT. BIDAR-585 401

5. RUQIYA D/O MD. SAJEED MINOR
UNDER GUARDIAN
RESPONDENT NO.2 HAJIRA PRAVEEN
W/O MD. SAJEED
R/O. HOUSE NO.6/4/66
AT. BIDAR585 401.

...PETITIONERS

(BY SRI LIYAQAT FAREED USTAD, ADVOCATE)

AND:

DR. SAFA FATIMA W/O MD IBRAHIM
AGE: 24 YEARS, OCC: HOUSE HOLD
R/O. HOUSE NO.7-4-71,
RAWAHEL GALLI, FORT ROAD BIDAR
TQ: AND DIST: BIDAR
NOW AT TEACHERS COLONY,
NEAR GURUNANAK PUBLIC SCHOOL
MANHALLI ROAD, BIDAR-585 401.

...RESPONDENT

(BY SRI SANJEEVKUMAR C. PATIL, ADVOCATE)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO
QUASH THE PETITION AND ENTIRE PROCEEDINGS IN
CRIMINAL MIS.1492/2022 FILED BY THE RESPONDENT HEREIN
BEFORE THE CIVIL JUDGE AND JMFC BIDAR U/SEC.12 OF THE
DV ACT, AGAINST THE PRESENT PETITIONERS.

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

ORDER

The petitioners herein, who are respondent Nos.2 to 6 before the Court of Principal Civil Judge and JMFC-II at NC: 2024:KHC-K:4348 Bidar in Crl.Misc.No.1492/2022 are before this Court with a prayer to quash the entire proceedings in the said case as against them.

2. The material on record would go to show that the respondent herein, who is the wife of respondent No.1 in Crl.Misc.No.1492/2022 has initiated proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'D.V.Act') and in the said proceedings, she has sought the following reliefs:

- "i. That this petitioner be awarded separate monthly maintenance @ Rs.25,000/- p.m. for herself and Rs.5,000/- p.m. each for her two minor sons namely Asan Ahmed and Aisa Kulsum from the person and property of respondent No.1 as per Section 20 of D.V.Act.
- ii. That this petitioner be awarded separate residence along with all amenities of life either in share household or in a rented house as per Section 19 of the Act.
- iii. That this petition and her children be awarded day to day medical expenses of Rs.1.00 NC: 2024:KHC-K:4348 lakhs from respondent No.1 as per Section 20(b) of the said Act.
- iv. That this petitioner be awarded compensation of Rs.5.00 lakhs on account of bodily mental internal and external injuries given by the respondents as per Section 22 of the Act.
- v. That it be ordered that this petitioner should hold and continue the custody of her two children with her till attaining majority by awarding their custody to her as per Section 21 of the Act.
- vi. That an order of protection be passed restraining the respondents from committing domestic violence with the petitioner and her minor children as per Section 18 of the Act.
- vii. That the costs of petition be awarded.
- viii. That any other relief/s to which the petitioner and her minor children are legally entitled to, may also be awarded."

3. Learned counsel for the respondent fairly submits that a memo has been filed before the Trial Court to delete respondent Nos.3 to 6 in Crl.Misc.No.1492/2022 NC: 2024:KHC-K:4348 and acting upon the said memo, respondent Nos.3 to 6 are already deleted. Therefore, this petition will survive only as against petitioner No.1, who is respondent No.2 in Crl.Misc.No.1492/2022.

4. From the prayers made in the petition filed under Section 12 of the D.V.Act by the respondent herein, it is seen that prayer Nos.(i) to (v) are all against respondent No.1 in Crl.Misc.No.1492/2022, who is the husband of the petitioner in Crl.Misc.No.1492/2022. Prayer No.6 is a general prayer as against all the respondents named in Crl.Misc.No.1492/2022. The learned counsel for the respondent has brought to the notice of this Court that on the basis of the memo filed by the petitioner/wife before the Trial Court, respondent Nos.3 to 6 have been deleted from the array of parties. Since none of the prayers made in the petition is specifically related to petitioner No.1 in the present petition, who is the mother-in-law of the respondent herein, I am of the considered view that she is also not a NC: 2024:KHC-K:4348 necessary party to the impugned proceedings, which is pending before the Trial Court in Crl.Misc.No.1492/2022. If the petitioner in Crl.Misc.No.1492/2022 has thought it fit that respondent Nos.3 to 6 are not necessary parties, I find no reason as to why respondent No.2 in Crl.Misc.No.1492/2022 is a necessary party as the prayer No.6 is a general prayer as against all the respondents in Crl.Misc.No.1492/2022.

5. Under the circumstances, I am of the view that the impugned proceedings as against petitioner No.1, who is respondent No.2 before the Trial Court in Crl.Misc.No.1492/2022 is required to be quashed. Accordingly, following order is passed:

ORDER The criminal petition is partly allowed.

The impugned proceedings pending before the Court of Principal Civil Judge and JMFC-II at Bidar in Crl.Misc.No.1492/2022 as against petitioner No.1, who is NC: 2024:KHC-K:4348 respondent No.2 before the Trial Court in Crl.Misc.No.1492/2022 is quashed.

It is made clear that the proceedings shall continue in Crl.Misc.No.1492/2022 only as against the husband of the respondent herein, who is arrayed respondent No.1 in the impugned proceedings.

Sd/-

JUDGE SRT

Kaushik Banerjee vs Moumita Banerjee on 18 April, 2024

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NC: 2024:KHC:15522
WP No. 7058 of 2024
C/W WP No. 4804 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF APRIL, 2024

BEFORE
THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI
WRIT PETITION NO. 7058 OF 2024 (GM-FC)
C/W
WRIT PETITION NO. 4804 OF 2024 (GM-FC)

IN W.P.NO.7058/2024

BETWEEN:

KAUSHIK BANERJEE,
S/O. LATE SANTI KUMAR BANERJEE,
AGE ABOUT 47 YEARS,
RESIDING AT NO.D303,
ANANDA VALMARK APARTMENT,
DODDAKAMMANAHALLI MAIN ROAD,
BENGALURU - 560076.
MOBILE NO.:9886495733.

ALSO AT:

Digitally signed by SUVARNA T
Location: HIGH COURT OF KARNATAKA
NO.202, NIAGRA, SIDDHA TOWN,
NARAYANPUR,
RAJARHAT, KOLKATA-700 136.
(BY SRI. SHASHI KIRAN V., ADVOCATE) ...PETITIONER
AND:

1. MOUMITA BANERJEE,
W/O. KAUSHIK BANERJEE,
D/O. KALI DAS MUKHERJEE,
AGED ABOUT 44 YEARS,
2. AROHEE BANERJEE,
D/O. KAUSHIK BANERJEE,
AGED ABOUT 8 YEARS,

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NC: 2024:KHC:15522

BOTH RESIDING AT NO.D303,
ANANDA VALMARK APARTMENT,
DODDAKAMMANAHALLI MAIN ROAD,
BENGALURU - 560 076.

...RESPONDENTS

(BY SRI. ARUN GOVINDARAJ, ADVOCATE FOR R1 AND 2)

THIS WP IS FILED UNDER ARTICLE 226 AND 227 OF THE
INDIAN CONSTITUTION PRAYING TO QUASH THE ORDER DTD
29.02.2024 PASSED BY THE II ADDL. PRL. JUDGE, FAMILY
COURT AT BANGALORE, IN C.MISC.NO.699/2022 VIDE
ANNEXURE-A AND ETC.

IN W.P.NO.4804/2024

BETWEEN:

KAUSHIK BANERJEE,
S/O. LATE SANTI KUMAR BANERJEE,
AGE ABOUT 47 YEARS,
RESIDING AT NO.D303,
ANANDA VALMARK APARTMENT,
DODDAKAMMANAHALLI MAIN ROAD,
BENGALURU - 560076.
MOBILE NO.:9886495733.

ALSO AT:
NO.202, NIAGRA, SIDDHA TOWN,
NARAYANPUR,
RAJARHAT, KOLKATA-700 136.

...PETITIONER

(BY SRI. SHASHI KIRAN V., ADVOCATE)

AND:

1. MOUMITA BANERJEE,
W/O. KAUSHIK BANERJEE,
D/O. KALI DAS MUKHERJEE,
AGED ABOUT 44 YEARS,

-3-

NC: 2024:KHC:15522

WP No. 7058 of 2024

C/W WP No. 4804 of 2024

2. AROHEE BANERJEE,
D/O. KAUSHIK BANERJEE,
AGED ABOUT 8 YEARS,

BOTH RESIDING AT NO.D303,
ANANDA VALMARK APARTMENT,
DODDAKAMMANAHALLI MAIN ROAD,
BENGALURU - 560 076.

. . . RESPONDENTS

(BY SRI. ARUN GOVINDARAJ, ADVOCATE FOR R1 AND 2)

THIS WP IS FILED UNDER ARTICLE 226 AND 227 OF THE INDIAN CONSTITUTION PRAYING TO DIRECT THE II ADDL. PRL. JUDGE, FAMILY COURT AT BENGALURU TO DISPOSE OF THE APPLICATION FILED BY THE PETITIONER UNDER SEC. 91 OF CR.P.C. IN CRL.MISC.NO.699/2022 VIDE ANNEXURE-A DTD 11.10.2023 WITHIN 30 DAYS AND ETC.

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

ORDER

W.P.4804/2024 is filed seeking the Writ of Mandamus directing the II Addl. Principal Judge, Family Court at Bangalore to dispose off the application filed by the petitioner under Section 91 of Cr.P.C. within 30 days. The parties are referred to as husband and wife for the sake of convenience.

NC: 2024:KHC:15522

2. Learned counsel appearing for the respondent submits that the husband had failed to pay maintenance to the respondent No.1/wife and to respondent No.2/adopted daughter who is suffering with health ailments. It is submitted that when he is earning more than an amount of Rs.2,50,000/- per month, without paying the maintenance, he has come up before this Court and stalled the proceedings before the Court below. Considering the submissions made on behalf of both the sides, the Writ Petition is 'disposed off' directing the Court below to decide the application as expeditiously as possible.

3. The W.P. is filed aggrieved by the order passed in Crl.Misc.No.699/2022 dated 29.02.2024 on the file the II Addl. Principal Judge, Family Court at Bangalore on an application filed under Section 18 Read with Section 26 of Protection of Women from Domestic Violence Act by the wife, the Court below had passed an order restraining the husband from committing, aiding or abetting any act of NC: 2024:KHC:15522 domestic violence on the petitioners or any persons who gives petitioners assistance from domestic violence. When this matter came up on 06.03.2024, this Court had passed the following order, "Learned counsel for the petitioner is permitted to take out notice on the learned counsel appearing for the respondents before the Trial Court and shall file a memo in that regard.

Learned counsel for the petitioner submits that the petitioner/husband has been thrown out from the apartment which belongs to him and in respect of which he pays EMI. It is submitted that all his belongings, valuables including passport are in the house. On 18.04.2023, a mail was sent to the petitioner/husband stating that his belongings will be sent through the brother of the wife, but whereas on 22.12.2023, an application is filed before the Court stating that all the belongings of the husband are already with the petitioner.

Learned counsel for the petitioner submits that when the petitioner has filed a petition under Section 340 of Cr.P.C., the Court below NC: 2024:KHC:15522 without considering the said application of the petitioner/husband, impugned order has been restrained him from committing, aiding or abetting any act of domestic violence on the respondents or any persons who gives the respondents assistance from domestic violence and posted the matter for petitioner's evidence. It is submitted that when the wife has approached the Court below with all suppression and misrepresentation of facts, the Court ought not to have considered the application and passed the impugned order.

Considering the submission of the learned counsel for the petitioner, there shall be stay of all further proceedings in Crl.Misc.No.699/2022 dated 29.02.2024 by the II Additional Principal Judge, Family Court, Bengaluru till the next date of hearing.

Post this matter along with WP.No.4804/2024 on 26.03.2024."

4. Notices were served on the respondents and the respondents are represented by the counsel. It is submitted that he is appearing for both respondent Nos.1 and 2. Learned counsel appearing for the petitioner NC: 2024:KHC:15522 submits that the property in which the wife is residing. Infact, it is purchased by the husband and he is paying the EMI's and he has been driven out of the house. Now, all his belongings are in the house and in fact the statements are made before the Court below that all his belongings are already handed over to him. This Court in earlier order dated 18.04.2023, the date is wrongly mentioned as 22.12.2022 instead of 22.12.2023. It is submitted that wife has made a false statement before the Court below as such he has filed an application under Section 340 of Cr.P.C., to initiate the perjury proceedings against the wife.

5. Learned counsel for the respondent submits that they have no objections to hand over the belongings of the petitioner/husband and infact he is the one who is not fulfilling his obligations and he has left both his wife and daughter, the belongings are with the brother.

6. In the light of the submissions made by learned counsel for the respondent that they have no intention to NC: 2024:KHC:15522 keep the belongings of the petitioner. The same are already with the brother of the respondent/wife and they have no objections to give the same to the husband/petitioner.

7. This Court has perused the other part of the order where the Court below had directed the husband to restrain from committing, aiding or abetting any act of domestic violence. This Court finds no reason to interfere with the order. Hence, the Writ Petition is 'disposed off' as follows,

i) The petitioner can take the articles which are lying with the respondent's brother and the respondent shall take all steps to instruct the brother to give the articles mentioned in the e-mail. The articles shall be returned within two weeks from the date of receipt of copy of the order.

NC: 2024:KHC:15522

ii) The Court below shall dispose off the pending application for maintenance within two months from the date of receipt of the copy of the order.

SD/-

JUDGE BN

Mohammad Khadeer B vs The State Of Karnataka on 25 April, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

- 1 -

NC: 2024:KHC:16766
CRL.P No.13686 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 25TH DAY OF APRIL, 2024
BEFORE
THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY
CRIMINAL PETITION NO.13686 OF 2023

BETWEEN:

MOHAMMAD KHADEER .B
S/O BAB JAN SAB
AGE 37 YEARS
OCC: GOVT OFFICIAL NON GAZETTED
R/O DHARWAD
Digitally signed DIST DHARWAD - 580011
by RUPA V AND R/OF C3/03, STAFF QUARTER
Location: HIGH HIGH COURT BELUR
COURT OF DHARWAD-580011.
KARNATAKA

...PETITIONER
(BY SRI. PRAVEEN KUMAR G, ADV.,)

AND:

1. THE STATE OF KARNATAKA
BY DAVANGERE WOMEN POLICE STATION
DIST: DAVANGERE-577001
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-01.

2. IRSYAD BANU
AGE 25 YEARS
OCC HOUSEWIFE
R/O NO.153, 16TH CROSS

BASHA NAGARA
TQ DIST DAVANAGERE - 577001.

. . . RESPONDENTS

(BY SRI. RANGASWAMY R, HCGP FOR R1
SRI. P.M. GOPI, ADV., FOR R2)

THIS CRL.P IS FILED U/S 482 OF CR.PC PRAYING TO
QUASH THE COMPLAINT AND FIR IN CR.NO.167/2023
REGISTERED BY DAVANAGERE WOMEN P.S., FOR THE
OFFENCE P/U/S 66, 67 OF I.T ACT 2008 AND SEC.4 OF
THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON
MARRIAGE) ACT REGISTERED BEFORE THE 2ND ADDL.
CIVIL JUDGE (SR.DN) AND J.M.F.C DAVANAGERE.

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

ORDER

Accused is before this Court under Section 482 of the Criminal Procedure Code, 1973 with a prayer to quash the entire proceedings in Crime No.167/2023 registered by Davanagere Women police station for the offences punishable under Sections 66 and 67 of Information Technology Act (Amendment) 2008 and Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 pending before the Court of II Addl. Civil Judge (Sr. Dn.) and JMFC, Davanagere.

NC: 2024:KHC:16766

2. Heard the learned counsel for the parties.

3. Learned counsel for the petitioner and learned counsel for the respondent No.2 jointly submit that the dispute between the parties who are husband and wife has been settled and they have decided to live together. They submit that the parties intend to give a quietus to all their pending disputes and they have filed a petition under Section 320(2) read with Section 482 of Cr.P.C. before this Court wherein they have prayed to quash the impugned proceedings. The petition filed by the parties under Section 320(2) read with Section 482 of Cr.P.C. is taken on record.

4. In paragraphs 2 to 5 of the petition filed under Section 320(2) read with Section 482 of Cr.P.C., parties have stated as follows:

"2. The Petitioner and Respondent No.2 are husband and wife and their marriage was performed on 31.07.2016 at H.K.G.N. ShadiMahal, NC: 2024:KHC:16766

Davanagere. After the marriage of 8-9 months the Petitioner starting asking the dowry. Then the Petitioner send the Respondent to his parental home for delivery after that one baby girl born. Then the Respondent and Respondent parents ask so much to Petitioner to bring the Respondent and the baby with him but Petitioner didn't bring with him. Then in the maintenance case the Petitioner says with Respondent to will bring the Respondent with Petitioner to say like this and the Respondent will withdraw the case and then after the case will withdraw by the Respondent. The Petitioner refuse to take the Respondent with him. On 08.11.2023 the Petitioner send a intimation letter to the Respondent through post to appear before the religious center to resolve the dispute between them but the letter will reach to the Respondent on 1.12.2023 in a letter the Petitioner inform to the Respondent to appear on 12.12.2023 at between 10:00 AM to 12:00 PM before the Darul Khaja Committee. But on said date the Respondent not appear before said committee. At 1.06 PM the Petitioner contact through phone call and ask to the Respondent, on what time you will be appear before this committee but the Respondent said that am not interested to appear there to resolve the dispute. Then the Petitioner has no way to resolve the dispute and restart the marital life so the Petitioner NC: 2024:KHC:16766 at 1:16 PM pronounce a single Talak before 3 witnesses, then the Petitioner informed to the Respondent about the pronouncement of single Talaq by phone call before 3 witnesses. On that day the Iddat period will start but during the pendency of the Iddat period the Respondent know her mistake and scare about the lost her wife rights in her husband home, so she came to the mediation with her father i.e., Abdul Rehaman but unfortunately the mediation will failure because of her father's interference. Then on 30.03.2024 once again after the completion of the iddat period the respondent came with her counsel in domestic violence case and request with the Petitioner to restart the new marital life once again and settlement the all dispute between us once for all in all cases the present petitioner also agreed for that. Then the Respondent and Petitioner also agreed for that then the Respondent and the Petitioner are all take back the Complaint which ever they earlier lodge against them and their family members. The Petitioner inform to the Respondent about the present situation of the marital life and Talaq. The Petitioner approached to the religious committee to discuss about the Talaq before the compromise they ask before religious committee according to muslim personal law. If this Talaq will legal under muslim personal law and my Talaq was valid or not under NC: 2024:KHC:16766 sharia law and muslim personal law. Then the Darul Khaja Committe on 13.03.2024 they give a letter to the Petitioner that the Talaq was valid because the iddat period was completed on 12.03.2024 so this talaq will become valid under muslim personal law. The Petitioner approached to the Respondent they told about the letter given by the committee for his request regarding the Talaq valid letter. The Petitioner inform each and every situation to the Respondent and her family and they also agreed for the same.

3. That as per compromise and settlement before Hon'ble trial Court in D.V. Case, the petitioner is ready to bring the respondent with him.

4. Further the complainant submitted that I and my family members are themselves they approached to Darul Khaja Committee and we give a letter and we clear about letter within 30 days of this judgment. Whichever they given regarding talaq, regarding the clarification the petitioner didn't interference for my clarification letter before Darul Khaja Committee.

5. Further the Complainant/Respondent No.2 submits that before Hon'ble court that this compromise petition was prepared as per the instruction of me and my husband. The Respondent No.2 submits that I have no object to quash the NC: 2024:KHC:16766 Complaint and FIR so now I will-fully come far-word to made this compromise. Further, later discuss with all I know the small dispute will spoil my marital life now I realize my mistake and ready to rejoin the marital life once again with my husband to restart the marital life because of my egoistic nature I didn't understand the intention of the Petitioner I registered a complaint against Accused but there is no enmity or grudge against the said Accused/Petitioner no.1. Now to maintain the peace and balance in the society and to be continued good cordial relationship the Petitioner and the Respondent so to settle the dispute once for all, hence the Petitioner and Respondent jointly submits the present compromise petition."

5. The Hon'ble Supreme Court in 'RAMGOPAL AND ANR. Vs. STATE OF MADHYA PRADESH' (2022) 14 SCC 531 has observed that notwithstanding the limitations provided under Section 320 of Cr.P.C., the High Court can exercise its inherent powers under Section 482 of Cr.P.C. and quash criminal proceedings registered for non-compoundable offences considering the nature of NC: 2024:KHC:16766 allegations, gravity of offence and the nature of settlement arrived at between the parties.

6. In the present case, the allegations made against the petitioners are purely private in nature and the parties have stated in their affidavit that the settlement arrived at between the parties is voluntary, without there being any undue influence and coercion. The parties who are present before the Court are identified by their respective advocates. Considering the nature of allegations, gravity of offence and the nature of settlement arrived at between the parties, I am of the opinion that it is a fit case wherein this Court is required to exercise its inherent powers under Section 482 of Cr.P.C. in order to do complete justice to the parties.

7. Accordingly, petition is allowed. The entire proceedings in Crime No.167/2023 registered by Davanagere Women police station for the offences punishable under Sections 66 and 67 of Information NC: 2024:KHC:16766 Technology Act (Amendment) 2008 and Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 pending before the Court of II Addl. Civil Judge (Sr. Dn.) and JMFC, Davanagere is quashed.

Sd/-

JUDGE RV

Mr Kukatla Charan Kumar vs State By Yelahanka Police Station on 19 April, 2024

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

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NC: 2024:KHC:15643
CRL.P No. 3660 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF APRIL, 2024

BEFORE
THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY
CRIMINAL PETITION NO. 3660 OF 2024
BETWEEN:

1. MR. KUKATLA CHARAN KUMAR,
S/O K. CHIRANJEEVULU,
AGED ABOUT 34 YEARS,
NO.131, GROUND FLOOR,
BABA NAGARA, 2ND MAIN,
BAGALURU, YELAHANKA,
BENGALURU,
KARNATAKA - 560 064.

2. MR. K. CHIRANJEEVULU,
S/O LATE K. ETHIRAJULU,
AGED ABOUT 60 YEARS,
NO.28-1241/3A,
NEW BALAJI COLONY,

Digitally
signed by
PAVITHRA N
Location:
High Court of
Karnataka
NEAR RTC DEPO ROAD,
CHITTOOR, ANDHRA PRADESH - 517 001.

3. MRS. K. NIRMALA,
W/O K. CHIRANJEEVULU,
AGED ABOUT 55 YEARS,
NO. 28-1241/3A,
NEW BALAJI COLONY,
NEAR RTC DEPO ROAD,

CHITTOOR,
ANDHRA PRADESH - 517 001.

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NC: 2024:KHC:15643
CRL.P No. 3660 of 2024

4. MR. K. CHAITANYA CHOWDARY,
S/O K. CHIRANJEEVULU,
AGED ABOUT 33 YEARS,
NO. 28-1241/3A,
NEW BALAJI COLONY,
NEAR RTC DEPO ROAD,
CHITTOOR,
ANDHRA PRADESH - 517 001.

PETITIONERS

(BY SRI. G.R. LAKSHMIPATHY REDDY, ADVOCATE)

AND:

1. STATE BY YELAHANKA POLICE STATION,
BANGALORE,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE - 560 064.

2. MRS. R SNEHA,
W/O KUKATLA CHARAN KUMAR,
AGED ABOUT 29 YEARS,
NO.131, GROUND FLOOR,
BABA NAGARA, 2ND MAIN,
BAGALURU YELAHANKA,
BENGALURU,
KARNATAKA - 560 064.

... RESPONDENTS

(BY SMT. K.P. YASHODA, HCGP FOR R1;
SMT. AMRITHA MANCHANDA, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.7196/2023
REGISTERED BY YELAHANKA P.S. / 1ST RESPONDENT FOR THE
OFFENCE P/U/S 498(A),34,498A,504,506 OF IPC AND SEC.3,4
OF D.P ACT NOW PENDING ON THE FILE OF 37TH A.C.M.M
BENGALURU.

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NC: 2024:KHC:15643
CRL.P No. 3660 of 2024

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

ORDER

Smt.Amritha Manchanda, learned counsel has filed vakalath on behalf of respondent No.2.

Same is taken on record. She submits that respondent No.2 has no objection to grant the prayer made in this petition.

Accused Nos.1 to 4 are before this Court under Section 482 of Cr.P.C, with a prayer to quash the entire proceedings in Crime No.382/2022 registered by Yelahanka Police Station, Bengaluru which is now pending before the Court of 37th Additional CMM Court, Bengaluru City, in C.C.No.7196/2023 for the offences punishable under Sections 498(A), 504, 506 r/w 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961.

2. Heard the learned counsel appearing for the parties.

3. Learned counsel appearing for the petitioners and learned counsel appearing for respondent No.2 submit that the dispute between the parties has been amicably settled before the Mediation Centre at Bengaluru in M.C.No.55/2023 and the terms of settlement is reduced under memorandum of settlement dated 16.03.2024 and the same is also submitted NC: 2024:KHC:15643 before the jurisdictional Family Court in M.C.No.55/2023. The marriage between petitioner No.1 and respondent No.2 has been dissolved by a decree of divorce. They accordingly pray that the prayer made in this petition may be allowed.

4. The memorandum of settlement filed before the Court of IV Additional Principal Judge, Family Court at Bengaluru, in M.C.No.55/2023 dated 16.03.2024 is produced at Annexure-F along with the petition. The parties, who are present before this Court are identified by their respective advocates. In paragraph Nos.2 to 10 to the said memorandum of settlement, it is stated as follows:

"2. The petitioner and the respondent state and admit that due to irreconcilable differences and incompatibility of temperaments, they started living separately from 19.06.2022. There is absolutely no chance of reunion between them, without reference to the allegations in the petition the petitioner and the respondent agree that their marriage be dissolved by a decree of divorce.

3. The petitioner and the respondent state that they have a daughter from the said marriage by name Kum. K. Shanvija Priyaa, aged about 7 years, presently under the care and custody of the petitioner/mother and shall continue to be in her custody in future, for which the respondent/father has no objection. The NC: 2024:KHC:15643 respondent/father has given up his visitation rights over the minor daughter.

4. The respondent has agreed to pay sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the petitioner towards permanent alimony/maintenance in full and final settlement of all her claims and also towards maintenance of the minor daughter by

way or demand draft bearing No.628866, dated 11.03.2024, drawn on Punjab National Bank, Marathahalli Branch, Bengaluru before the Hon'ble Court at the time of reporting this settlement. The petitioner has agreed for the same.

5. It is agreed that the respondent shall execute a registered Gift Deed in respect of site bearing No.57 Katha No.306/296/57 situated at Sathnanur Village, Jala Hobli, Bengaluru Taluk, in favour of their minor daughter Kumari. K. Shanvijapriyaa within 30 days from the date of this settlement/agreement. The petitioner being the Guardian of the minor daughter shall represent her and bear the cost of registration charges of such registration. The respondent shall deliver all the original documents on the date of registration of Gift Deed. The petitioner agree and undertake not to sell / alienate the said site gifted to her daughter until their daughter attains the majority.

6. The petitioner agree and admit that the respondent has gifted gold ornaments worth about 10 lakhs, and the same are in her custody. In view of settlement, the respondent has no objection for the petitioner to retain the same and undertakes that he shall not make claim against the same in future.

NC: 2024:KHC:15643

7. In view of this settlement, the petitioner has agreed to withdraw Crl.Misc.184/2022, filed against the respondent and others under Section 12 of the Protection of Women and Domestic Violence Act, as not pressed.

8. The petitioner also agrees and undertakes to cooperate in closing / quashing C.C.No.7196/2023 pending before 37th ACMM, Bengaluru filed against the respondent and other under section 498-A, 504, 506 r/w 34 of IPC and Sections 3 and 4 of D.P.Act in the Criminal Petition to be filed by the respondent and other under Section 482 of Cr.P.C. before the Hon'ble High Court of Karnataka, Bengaluru, in accordance with law, upon execution of the registered Gift Deed in favour of their minor daughter.

9. The petitioner and the respondent state that apart from the above, they have no other claims of whatsoever against each other with regard to permanent alimony/maintenance either for the past, present or future and also have no claims over the movable or immovable properties belonging to each other either existing at present or to be acquired in future.

10. In view of this settlement, both the parties hereby unconditionally withdraw all the allegations made against each other either in petition or in connected cases."

5. Learned counsel for respondent No.2 submits that the terms of the memorandum of settlement dated 16.03.2024 has been completely complied with by the petitioner herein. She submits that respondent No.2 has received all the originals NC: 2024:KHC:15643 of the title documents. She also

submits that respondent No.2 has filed affidavit stating that she has no objection to grant the prayer made in this petition. The said affidavit filed before this Court is taken on record.

6. Considering the nature of allegations, the nature of settlement arrived between the parties and also having regard to the fact that the offences are compoundable in nature, I am of the view that the prayer made in this petition requires to be allowed. Accordingly, the following order:

7. Petition is allowed. The entire proceedings in Crime No.382/2022 registered by Yelahanka Police Station, Bengaluru which is now pending before the Court of 37th Additional CMM Court, Bengaluru City, in C.C.No.7196/2023 for the offences punishable under Sections 498(A), 504, 506 r/w 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act, is quashed as against the petitioners.

Sd/-

JUDGE MKM

Mr.Shuhail Shariff vs State Of Karnataka on 3 June, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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NC: 2024:KHC:19007
CRL.P No. 4693 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JUNE, 2024

BEFORE
THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 4693 OF 2024

BETWEEN:

1. MR. SHUHAIL SHARIFF
S/O MOHAMMED SHARIFF
AGED ABOUT 43 YEARS
NO.2238, RAMATENT ROAD
VENKATESHPURAM
NEAR SAYEDA MASJID,
K G HALLI,
BANGALORE-560 045.

2. PARVEEN TAJ,
W/O MOHAMMED SHARIF,
AGED ABOUT 60 YEARS
NO.2238, RAMATENT ROAD
VENKATESHPURAM
NEAR SAYEDA MASJID

Digitally signed
by NAGAVENI
K G HALLI,
BANGALORE-560 045.

Location: HIGH
COURT OF
KARNATAKA

3. AMREEN TAJ
W/O ANJUM PASHA
AGED ABOUT 36 YEARS
NO.2238, RAMATENT ROAD
VENKATESHPURAM
NEAR SAYEDA MASJID

K G HALLI
BANGALORE-560 045

...PETITIONERS

(BY SRI. SHARAN L JAIN., ADVOCATE)

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NC: 2024:KHC:19007

CRL.P No. 4693 of 2024

AND:

1. STATE OF KARNATAKA
BY EAST ZONE WOMEN
POLICE STATION,
REPRESENTED BY HCGP,
HIGH COURT OF KARNATAKA,
BANGALORE-560 001.
2. NANCY AROKIADASS,
W/O SUHAIL SHARIFF
AGED ABOUT 31 YEARS
NO.238, KHB COLONY
COX TOWN
BANGALORE-560 005

... RESPONDENTS

(BY SRI. THEJESH P., HCGP FOR R1;
SRI. YASEEN SALEHA, ADV. FOR R2)

THIS CRL.P IS FILED U/S 482 OF CR.PC PRAYING TO
QUASH THE ENTIRE PROCEEDINGS IN CR.NO.0078/2019
REGISTERED BY THE 1ST RESPONDENT AGAINST THE
PETITIONER REGISTERED AT C.C.NO.1042/2020 WHICH IS
PENDING ON THE FILE OF THE XI ADDL. CMM, BANGALORE
FOR THE OFFENCE P/U/S 498(a), 506 OF IPC AND SEC. 3 AND
4 OF DOMESTIC VIOLENCE ACT.

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

ORDER

Heard the learned counsel Sri.Sharan L. Jain, appearing for the petitioners, the learned High Court Government Pleader Sri.P.Thejesh, appearing for respondent No.1 and the learned counsel Sri.Yaseen Saleha, appearing for respondent No.2.

NC: 2024:KHC:19007

2. The petitioners are before this Court seeking the following prayer:

"a To quash the entire proceedings in Crime No.0078/2019 registered by the 1st respondent against the petitioner registered at CC No.1042/2020 which is pending on the file of the XIth additional chief Metropolitan Magistrate, Bangalore for the Offence Punishable under Section 498(a), 506 of IPC and section 3 & 4 of Domestic Violence act.

b. To grant such other relief or reliefs as this Hon'ble Court be pleased to grant, in facts and circumstances of the case."

3. The learned counsel for the parties would submit that the matter has been settled between them and have filed such joint affidavit of compromise. The same read as follows:

"JOINT AFFIDAVIT I, Mr.Shuhail Shariff, Aged 44 years, S/o Mohammed Shariff, No.2238, Ramatent Road, Venkateshpuram, near Sayeda Masjid, KG Halli, Bangalore - 560045. I, Parveen Taj, Aged about 56 years, W/o Mohammed Ashraf, No.2238, Ramatent Road, Venkateshpuram, near Sayeda Masjid, KG Halli, Bangalore - 560045. I Amreen Ayesha M, Aged about 36 years, W/o Anjum Pasha, No.2238, Ramatent Road, Venkateshpuram, near Sayeda Masjid, KG Halli, Bangalore - 560045. I, Nancy Arokiadass, Aged about 31 years, D/o Arokiadass, No.238, KHB Colony, Cox Town, Bangalore - 560005. We do hereby solemnly affirm and states and oath as follows:-

NC: 2024:KHC:19007

1. I Mr.Suhail Shariff H R, accused/petitioner no.1. I, Parveen Taj the accused/petitioner no.2. I, Amreen Taj the accused/petitioner no.3 in the above case and I, Nancy Arokiadass respondent no 2/complainant in the above case, we are fully conversant with the facts of the case and we are swearing to this affidavit.

2. We submit that, we have filed an application u/s 320(2) CRPC to compound the offences in the above criminal petition.

3. We submit that, we have settled our disputes and matter has been compromised between us in the presence of the well-wisher.

4. We submit that, we have settled our disputes with own will and wish without any influence or force.

What is stated above is true and correct to the best of my knowledge, information and belief.

wherefore we must respectfully prayed that this Hon'ble may pleased to:

1. Allow application filed u/s 320 of CrPC and permit us compound the offences.

2. Pleased to quash the entire case in CC No.1042/2020 for the offences punishable under Section 498(a), 506 of IPC and sections 3 & 4 of the Domestic Violence Act, pending before the 11th Additional Chief Metropolitan Magistrate, Bangalore in the interest of justice and equity."

NC: 2024:KHC:19007

4. In the light of the settlement arrived at between the parties and the offences not being against the State, I deem it appropriate to accept the application seeking compounding of the offence and terminate the proceedings, qua the petitioners.

5. For the aforesaid reasons, the criminal petition is disposed. The proceedings in C.C.No.1042/2020 pending on the file of the XI Additional Chief Metropolitan Magistrate, Bangalore stand quashed.

Sd/-

JUDGE KG

Mrs. Bobby Elizabeth Rajeendran vs Mr. Rajeendran P on 20 March, 2024

Author: H.P.Sandesh

Bench: H.P.Sandesh

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NC: 2024:KHC:11400
CRL.RP No. 19 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

CRIMINAL REVISION PETITION NO.19 OF 2024

BETWEEN:

1. MRS. BOBBY ELIZABETH RAJEENDRAN,
AGED ABOUT 53 YEARS,
R/AT FLAT NO.B-006, SPARTA I,
PRESTIGE ACROPOLIS APARTMENT,
HOSUR ROAD, KORAMANGALA,
BENGALURU-560029

...PETITIONER

(BY SMT. RASHMI GEORGE, ADVOCATE)

AND:

1. MR. RAJEENDRAN P.,
AGED ABOUT 54 YEARS,
R/AT FLAT NO.B-006, SPARTA I,

Digitally signed
by SHARANYA T
Location: HIGH
COURT OF
KARNATAKA

PRESTIGE ACROPOLIS APARTMENT,
HOSUR ROAD, KORAMANGALA,
BENGALURU-560029

...RESPONDENT

(BY SRI. S.M. ANEES AHMED, ADVOCATE)

THIS CRL.RP. IS FILED UNDER SECTION 397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 31.10.2023 PASSED IN CRIMINAL APPEAL NO.1054/2023 IN THE COURT OF LIX ADDL. CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU BY ALLOWING THIS PETITION.

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

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NC: 2024:KHC:11400
CRL.RP No. 19 of 2024

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. This Court earlier heard both the counsel in part and directed the respondent to pay all the arrears of maintenance as on date. Inspite of the said direction, the respondent has not complied with the order of this Court. The learned counsel for the respondent has placed some documents with regard to the application, orders and objections filed before the Trial Court, but not made any statement with regard to compliance of the order of this Court dated 13.03.2024, wherein the respondent was directed to pay the arrears of maintenance as on today within one week.
3. Now, the learned counsel for the petitioner has filed a memo of calculation of arrears of maintenance with details of payments made from 17.12.2022 to 04.01.2024 i.e., payment of Rs.5,000/- each made on 17.12.2022, 23.12.2022, 28.12.2022, 30.12.2022 and 02.01.2023, Rs.45,000/- paid on 11.01.2023, Rs.25,000/- paid on 17.02.2023, 20.07.2023, 18.08.2023 and 11.09.2023, Rs.2,000/- paid on 06.12.2023 and NC: 2024:KHC:11400 Rs.1,000/- paid on 04.01.2024. In all, an amount of Rs.1,73,000/- is paid and balance arrears is Rs.2,27,000/-.
4. The learned counsel for the respondent submits that the entire arrears is paid and when this Court specifically asked for having made the payment, no answer from the mouth of the learned counsel for the respondent.
5. Now this Court has to consider the order passed by the Trial Court when an application was filed before the Trial Court under Sections 23(2) and 19(1)(b) of the Protection of Women from Domestic Violence Act, 2005 ('PWDV Act' for short) praying the Court to order directing the respondent to remove himself from the shared household at Flat No.B-006, SPARTA I, Prestige Acropolis Apartment, Hosur Road, Koramangala, Bengaluru - 560 029 and creating any impediments to the peaceful and safe living of the petitioner and children in the shared household during the pendency of the petition. In support of the application, an averment is made that the petitioner, respondent and children were living in the above said flat i.e., jointly owned and purchased with mutual contribution of the respondent and the petitioner. It is also her case that the respondent's cruelty and harassment towards the petitioner and NC: 2024:KHC:11400 even the girl children had gone to

the extreme of denying the girl children of even basic school education by refusing to pay the school fees for the last three years and both the younger daughters are still not attending any normal school. Due to this denial of education and other social stigmas associated when living in a posh apartment without going to school, the girl children have become mental wrecks and are exhibiting suicidal tendencies and pleas for medical and psychological treatment were denied by the respondent.

6. The respondent has not paid the interim maintenance for the month of March 2023, April 2023 and May 2023 and also has not paid any fees towards the education expenses. The respondent is not cooperating and taking any initiatives to rejoin the second daughter Miss Ranjana Angel, after five years of non schooling, to some online school yet and is not allowing the younger daughter even to use the computer for attending online classes. Inspite of being aware of the interim orders, the respondent was continuously creating havoc and abusing her and she was forced out of the residence on 22.02.2023 and currently she has taken shelter in a paying guest accommodation temporarily. That on 20.03.2023, the girl children also fled out of the house because the children were NC: 2024:KHC:11400 unable to bear the harassment and havocs in the house, finally culminating in a complaint with ref No.LPT No.37/2023 in the Adugodi police station at night around 8.00 p.m. based on the complaint filed by the petitioner citing the breach of the protection orders by this Court. The Adugodi police did not take necessary action to enforce the protection orders citing its family issue, but only took an undertaking from the respondent that he will take care of the children. The respondent has already thrown her out from the jointly owned shared household, but the children were not willing to go back with the respondent being utterly scared of the respondent due to the violence behaviour and shouting in the police station. In the police station the respondent also misbehaved with her lawyer and the police also registered an NCR 77/2023. The respondent sold her car for Rs.4.5 lakhs without her knowledge. The children are now being prevented from calling her from their phone and keeping in touch with her by the respondent and threatening them to cut off all connections with her. On 26.05.2023, her children called and said that they want to see her, for that she went there and saw that children living without any proper food and cleanliness. It is further alleged that her daughter Ranjana Angel is having suicidal tendencies and she NC: 2024:KHC:11400 attempted to suicide on 06.01.2023. The children are making distress phone call to her to find some ways to maintain their mental stability and hence application is filed.

7. The respondent appeared and filed objections denying all the averments made in the application and contended that the present application is based on the report of Protection Officer and the said report is obtained by the petitioner by coercing the children without any direction from the Court, which is an abuse of law. The report filed by the Protection Officer is within malafide intention by threatening and scaring the children. Hence, the same cannot be considered. He has further contended that the respondent and his children are happily living in the shared household and the respondent is taking good care of the children. He has never harassed or ill treated the petitioner or the children. He submits that the petitioner herself has deserted the children and has started residing separately at a paying guest accommodation at Koramangala and she is also working for the same paying guest accommodation. It is also the contention that the petitioner has not visited the house of the respondent and has also neglected to take care of the children since third week of

February 2023. It is also the contention that when he had gone out for the work, NC: 2024:KHC:11400 the petitioner without permission of the respondent or the Court, entered the house of the respondent and pressurized the children and obtained their statement. He submitted that he has filed a separate application to appoint the Court Commissioner to record the statement of the children in order to ascertain the true facts.

8. The Trial Court having considered the application and the objections filed by both of them, taken note of the averments made by the respective parties and in paragraph No.7 taken note of the definition of 'shared household' for a proper consideration. The Trial Court in paragraph No.8 taken note of the relationship defined under Section 2(f) of the PWDV Act and also taken note of the premises in which they were residing is purchased in joint name. Both the petitioner and the respondent have submitted that their daughters went missing on 20.03.2021 due to an argument with the respondent and a missing compliant was filed by the respondent. The Trial Court also taken note of that as per the scheme of the act, the Magistrate if he is satisfied the application *prima facie* discloses that the respondent is committing or has committed an act of domestic violence or there is likelihood of such violence and he may grant an order against the respondent on the basis of an NC: 2024:KHC:11400 affidavit of aggrieved person. If the domestic violence has taken place, he can pass residence orders restraining the respondent from dispossessing the aggrieved person or in any manner disturbing her peaceful household or direct the respondent to remove himself from the shared household, or pass an order restraining from selling the suit property. It is not in dispute that this Court has granted ex parte protection order on 02.01.2022 against the respondent directing him not to dispossess the petitioner from the shared household, but inspite of the same, the petitioner is currently residing in a paying guest accommodation. The dispute is whether the respondent had driven her out of the shared household or whether the petitioner herself has walked out of the house and the Trial Court comes to a conclusion that the same has to be decided in a full fledged trial. Whether the daughters were coerced and pressurized by the petitioner to give false statement implicating the respondent before the Protection Officer is also to be considered in a full fledged trial.

9. Having taken note of the very contentions of the respective parties, the Trial Court comes to the conclusion that the statement of the elder daughter before the police, report of the Protection Officer, conduct of the elder daughter in NC: 2024:KHC:11400 attempting to commit suicide, neglectful conduct of the respondent in not paying the outstanding fees and interim maintenance, it is *prima facie* clear that the relationship between the respondent and the two daughters is antagonistic. Admittedly, the respondent is the only earning member, whereas the petitioner and two children have no financial source to maintain themselves. Hence, the Trial Court passed an order for over all well being of the children and directed the respondent to remove himself from the shared household and allowed the application filed under Section 23(2) and 19(1)(b) of the PWDV.

10. Being aggrieved by the said order, an appeal is filed in Criminal Appeal No.1054/2023. The Appellate Court having considered the material on record and also the earlier protection order and having considered the provisions of Sections 23(2) and 19(1)(b) of the PWDV Act, which has been discussed in paragraph No.18, comes to the conclusion in paragraph No.19 that the Trial Court has committed an error in passing the order of removal of the appellant from the flat. The Appellate

Court observed that if any domestic violence has taken place, the Magistrate can pass residence order restraining the respondent from dispossessing the aggrieved person or in any manner

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NC: 2024:KHC:11400 disturbing her peaceful household or direct the respondent to remove himself from the shared household, or passing an order restraining from selling the suit property. It has also taken note of the fact that the Court has granted ex parte protection order on 02.01.2022. Whether the respondent/husband had driven her out of the shared household or whether the petitioner/wife herself has walked out of the house, is a question to be decided in a full fledged trial. However, taking note of the order passed by the Trial Court, the Appellate Court comes to the conclusion that the property i.e., flat where the husband and wife were living, is a jointly purchased property and it requires full fledged trial for consideration of allegations made against each other. The Appellate Court also taken note of the allegations made by each of the parties and according to the respondent, the wife has occupied the house belonging to him and she is not allowing him to enter the house and threatening to file another complaint before the police and he has no enough money to have an alternative accommodation. It is also observed by the First Appellate Court that the wife has been misusing the orders passed by the Trial Court, as contended by the respondent. Taking note of the same, the Appellate Court made an observation that both the parties have ample opportunity to put

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NC: 2024:KHC:11400 forth their defence before the Trial Court during trial. In such condition, if the appellant/husband is ordered to go out of their residential house where the parties were/are living, it requires a full dressed trial as observed by the Trial Court and therefore interference is necessary and the impugned order and the challenge deserves to be set aside and reversed the order. Hence, the present revision petition is filed.

11. The main contention of the learned counsel for the revision petitioner in this petition is that when the protection order was given by the Trial Court, the same has been misused. The respondent is not taking care of the petitioner and children, who are pursuing their education and in view of the non-payment of educational fee, the daughter who went to Canada could not continue her education and also not making any payment towards school fee and unable to send other daughter also to school. The learned counsel would contend that inspite of the order is passed to pay maintenance of Rs.25,000/- per month, the same is not paid and still Rs.2,27,000/- is due as on today. The First Appellate Court committed an error and only discussed the order passed by the Trial Court and comes to the conclusion that the matter requires to be tried before the Trial Court. The learned counsel brought to the notice of this Court

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NC: 2024:KHC:11400 the provisions of Section 19 of the PWDV Act and the provision is very clear that while disposing of an application under sub- Section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order directing the

respondent to remove himself from the shared household in terms of Section 19(1)(b) of the PWDV Act. The Trial Court's order is in consonance with Section 19(1)(b) of the PWDV Act. The learned counsel also brought to the notice of this Court Section 23 of the PWDV Act, wherein granting interim and ex parte order in any proceedings before him under this Act, the Magistrate may pass such interim order as he deems just and proper. Hence, the First Appellate Court has committed an error and without any reasons set aside the order of the Trial Court and no discussion was made with regard to threat caused to the petitioner.

12. Per contra, the learned counsel for the respondent would contend that as on today, entire arrears of maintenance is paid. The learned counsel contend that the petitioner herself walked away from the house leaving the children and the report which has been relied upon by the petitioner is created one. The home visit report made by the conservation officer and the children opinion is created for the purpose of driving out the

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NC: 2024:KHC:11400 respondent from the house. The learned counsel would contend that the flat has been jointly purchased and the respondent is not having money to make his other accommodation. The learned counsel would contend that the Appellate Court has taken note of the fact that the case was set out for cross- examination of P.W.1 and almost case is pending for final adjudication and when such being the case, at this juncture, the question of removing the respondent does not arise and the Appellate Court has taken note of the said fact into consideration and passed the order.

13. Having heard the learned counsel for the petitioner and the learned counsel for the respondent, the Trial Court while passing the removal order of the respondent from the flat, taken note of the fact that earlier children went missing in lieu of the strained relationship between the petitioner and the respondent and missing complaint was filed by the respondent. In paragraph No.9, the Trial Court taken note of the scope of Domestic Violence Act and also taken note of the report submitted before the Court with regard to domestic violence and also taken note of the earlier order passed by the Trial Court i.e., ex parte protection order dated 02.01.2022. No doubt, it is the allegation of the petitioner that due to harassment, the

- 14 -

NC: 2024:KHC:11400 petitioner left the house. The contention of the respondent that the petitioner left the house on her own and staying in paying guest accommodation is also considered by the Trial Court. The conduct of the elder daughter in attempting to commit suicide is also taken note of by the Trial Court while passing an order of removal of the respondent himself from the shared household. The First Appellate Court while reversing the order of the Trial Court, taken note of the protection order as well as allegations made against each other and while passing the order in paragraph No.22, taken note of the complaint filed by the petitioner before the concerned police and also taken note of the fact that the wife has occupied the house belonging to him. In view of the order of the Trial Court, the petitioner is not allowing the respondent to enter the house.

14. When such pleadings are made before the Court and also when there is a report before the Court that there is an act of domestic violence and apart from that, when the daughter also made an attempt to commit suicide, only observation is made that both the parties have ample opportunity to put forth their defence before the Trial Court during trial. No doubt, the matter is still pending for consideration on merits and both are making allegations against each other. The material on record

- 15 -

NC: 2024:KHC:11400 shows that both of them are living in the same shared household. The material also discloses that the petitioner once left the house and was staying in paying guest accommodation and now in view of the order passed by the Trial Court to remove the respondent from the shared house, she joined the house along with children. The statement of the children was also recorded and to that effect, documents are also produced before the Court and the children's opinion is that they want to stay with their mother and they want to stay away from father and like to live in different house with their mother. When such statement is made by the children, the respondent can make other alternative residence to wife and children, but the same has not been made and even when the Trial Court has granted maintenance and the same is not paid regularly. According to the petitioner, there is an arrears of Rs.2,27,000/- It is also the specific allegation that the respondent has not met the educational expenses of the children and due to the conduct of the respondent, one of the daughter left Canada and not pursued the education. Though this Court directed the respondent to pay the arrears of maintenance, since the petitioner has to take care of herself and two children, who are pursuing their education, the respondent is not making

- 16 -

NC: 2024:KHC:11400 payment. When this Court asked the respondent to place the document with regard to for having made the payment from September till date, there is no answer from the mouth of respondent. When the respondent is not taking care of the children and not making payment of arrears of maintenance in order to take care of wife and two children, the Appellate Court has not discussed anything about all these aspects while reversing the order of the Trial Court and simply passed an order in coming to the conclusion that the matter has to be decided in a full fledged trial before the Trial Court and committed an error in reversing the order of the Trial Court. The Trial Court has given the reason for invoking Section 19 of the PWDV Act. The very proviso under Section 19(1)(b) of the PWDV Act is clear that the Court can direct the respondent to remove himself from the shared household and the same is in conformity with Section 19 of the PWDV Act. Under Section 23 of the PWDV Act, in any proceedings, the Magistrate can pass such interim order as he deems proper. When the interim order has been passed to pay maintenance of Rs.25,000/- per month, the same is not paid regularly and the petitioner each and every year has to file a petition before the Trial Court for enforcing the same. The Appellate Court without assigning any reasons

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NC: 2024:KHC:11400 reversed the order of the Trial Court and comes to an erroneous conclusion that the matter requires a full fledged trial. The Appellate Court passed the order without

Mrs. Bobby Elizabeth Rajeendran vs Mr. Rajeendran P on 20 March, 2024
application of judicious mind and hence it requires interference of this Court.

15. In view of the discussions made above, I pass the following:

ORDER

- (i) The revision petition is allowed.
- (ii) The order of the Appellate Court dated 31.10.2023 passed in Criminal Appeal No.1054/2023 is set aside.
- (iii) The order passed by the Trial Court is restored.
- (iv) Insofar as the grievance with regard to non-payment of maintenance is concerned, the petitioner can enforce the order of maintenance by filing necessary petition before the appropriate Court.

Sd/-

JUDGE MD

Mrs Dorothy Pinto @ D M Pinto vs Mrs Sheena Nandan on 13 June, 2024

Author: N S Sanjay Gowda

Bench: N S Sanjay Gowda

-1-

NC: 2024:KHC:21108
CRL.P No. 4485 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA
CRIMINAL PETITION NO. 4485 OF 2018

BETWEEN:

1. MRS DOROTHY PINTO
@ D M PINTO
WIFE OF LATE P F PINTO
AGE ABOUT 90 YEARS,
RESIDING AT: "DOROTHEA"
NO.132, RESIDENCY ROAD
BENGALURU-560 025.

2. MRS ARLENE PINTO
W/O MR ROHAN RAJU
AGE 54 YEARS,
RESIDING AT:
STANMORE APARTMENTS
NO.2C, VITTAL MALLYA ROAD
BENGALURU-560 001.

3. MR TREVOR PINTO
SON OF THE LATE P F PINTO
AGED 69 YEARS,
RESIDING AT: " TRELKA"
NO.132, RESIDENCY ROAD
BENGALURU-560 025.

4. MR KENNETH PINTO

Digitally
signed by
KIRAN
KUMAR R
Location:
HIGH
COURT OF
KARNATAKA

SON OF THE LATE P F PINTO
AGED 60 YEARS,
RESIDING AT:
PRESTIGE ACROPOLIS APARTMENTS
DELPHI-II
NO.704, NO.20, HOSUR ROAD
BENGALURU-560 029

-2-

NC: 2024:KHC:21108
CRL.P No. 4485 of 2018

5. MRS LISA PINTO
WIFE OF MR KENNETH PINTO
AGED ABOUT 51 YEARS,
RESIDING AT:
PRESTIGE ACROPOLIS APARTMENTS
DELPHI-II,
NO.704, NO.20, HOSUR ROAD
BENGALURU-560 029.

...PETITIONERS

(BY SRI. G. JANARDHANA., ADVOCATE)

AND:

1. MRS. SHEENA NANDAN
DAUGHTER OF MR LESLIE PINTO
WIFE OF MR NANDAN RAJEEV
NO.132, RESIDENCY ROAD
BENGALURU-560 025.

ALSO RESIDING AT:
KALESWARA ESTATE
P.O. BOX NO.50
MUDIGERE POST-577 132
CHICKMAGALURU DISTRICT.

ALSO AT:
402, BLOCK A
SPARTIN HEIGHTS
RICHMOND ROAD
BENGALURU-560 025.

...RESPONDENT

(BY SRI. N. RAVINDRANATH KAMATH., SENIOR COUNSEL
FOR SMT. VANAJAKSHI., ADVOCATE)

THIS CRL.P FILED UNDER SECTION 482 CR.P.C BY THE
ADVOCATE FOR THE PETITIONER PRAYING TO QUASH THE
PROCEEDINGS IN CRL.MISC.NO.96/2018 PENDING ON THE
FILE OF THE METROPOLITAN MAGISTRATE TRAFFIC COURT-1
AT MAYO HALL BANGALORE PUNISHABLE UNDER SECTIONS
12, 18, 19, 20 AND 22 OF PROTECTION OF WOMEN FROM

DOMESTIC VIOLENCE ACT.

- 3 -

NC: 2024:KHC:21108
CRL.P No. 4485 of 2018

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

ORDER

1. After arguing for some time, learned counsel for the respondent submits that the respondent may be permitted to withdraw the Domestic Violence application that has been filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act').
2. In view of the above, the application filed by the respondent under Section 12 of the Act against the petitioners herein shall stand dismissed as withdrawn.
3. As a consequence, this petition which has been filed challenging the cognizance taken from the application filed by the respondent has been rendered infructuous, and is disposed of as having become infructuous accordingly.

Sd/-

JUDGE

Prithviraj Balutagi S/O Ashok Balutagi vs Smt. Sushma W/O Prithviraj Balutagi on 26 June, 2024

-1-

NC: 2024:KHC-D:8663
CRL.P No. 102446 of 2024
C/W WP No. 104419 of 2024

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 26TH DAY OF JUNE, 2024

BEFORE
THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

CRIMINAL PETITION NO.102446 OF 2023 (482-)
C/W
WRIT PETITION NO.104419 OF 2023

IN CRL.P.NO.102446/2023

BETWEEN:

PRUTHVIRAJ BALUTAGI
S/O. ASHOK BALUTAGI,
AGE: 29 YEARS, OCC: PRIVATE SERVICE,
R/O. FLAT NO.201, SUDHANVA,
3RD CROSS, SHARADADEVI LAYOUT,
RAJARAJESHWARI NAGAR,
BENGALURU-560098.

...PETITI

(BY SRI. NARAYAN V. YAJI, ADVOCATE)

AND:

1. SMT. SUSHMA W/O. PRUTHVIRAJ BALUTAGI,
AGE: 26 YEARS, OCC: ENGINEER,
R/O. NO.1303, ENKAY ASSOCIATES,

ASHPAK

KASHIMSA

MALAGALADINNI

2ND FLOOR, 11TH MAIN ROAD,

SBI STAFF COLONY, HOSAHALLI EXTENSION STAGE-I,

VIJAYANAGARA, BENGALURU-560040.

Digitally signed by ASHPAK
KASHIMSA MALAGALADINNI
Location: High Court of
Karnataka, Dharwad Bench
Date: 2024.07.02 15:47:14
+0530

2. THE STATE OF KARNATAKA,
THROUGH THE POLICE INSPECTOR,
WOMEN POLICE STATION,
HUBBALLI-DHARWAD,
REP/BY STATE PUBLIC PROSECUTOR,

OFFICE OF THE ADVOCATE GENERAL,
HIGH COURT BUILDING DHARWAD-580011.

... RESPONDENT

(BY SRI. T.R. PATIL, ADV. FOR R1;
SRI. V.S. KALASURMATH, HCGP FOR R2)

-2-

NC: 2024:KHC-D:8663
CRL.P No. 102446 of 2023
C/W WP No. 104419 of 2023

THIS CRIMINAL PETITION IS FILED U/SEC. 482 OF CR.P.C.
PRAYING THAT QUASH THE ORDER DATED 31.08.2023 TAKING
COGNIZANCE OF THE OFFENCE U/SEC.498A, 323, 504, 506 OF IPC
AND U/SEC. 3 AND 4 OF DP ACT AS AGAINST THE PETITIONER BY III
ADDL.CIVIL JUDGE & JMFC, HUBBALLI IN C.C. NO.9802/2023 AND
ALSO QUASH THE ENTIRE CHARGE SHEET AND PROCEEDINGS
PENDING ON THE FILE OF THE 3RD ADDL. CIVIL JUDGE AND JMFC,
HUBBALLI AS IT IS ILLEGAL AND NOT MAINTAINABLE.

IN WP. NO.104419 OF 2023 (GM-FC)
BETWEEN:

1. PRITHVIRAJ BALUTAGI
S/O. ASHOK BALUTAGI,
AGE: 29 YEARS,
OCC: PRIVATE SERVICE,
R/O. FLAT NO.201, SUDHANVA,
3RD CROSS, SHARADADEVI LAYOUT,
RAJARAJESHWARI NAGAR,
BENGALURU-560098.
2. ASHOK
S/O. LATE SHANKRAPPA BALUTAGI,
AGE: 55 YEARS, OCC: AGRICULTURIST,
R/O. S.V.NILAYA, NEAR KANAKADASA CIRCLE
VIDYANAGAR, KUSHTAGI, DIST: KOPPAL-583277.
3. SMT. SAROJA W/O. ASHOK BALUTAGI,
AGE: 50 YEARS, OCC: HOME MAKER,
R/O. S.V.NILAYA, NEAR KANAKADASA CIRCLE,
VIDYANAGAR, KUSHTAGI, DIST: KOPPAL-583277.
4. KIRAN S/O. ASHOK BALUTAGI,
AGE: 31 YEARS, OCC: SELF EMPLOYMENT,
R/O. BCTSK DESIGN SOFTECH INDIA PRIVATE LTD.,
1ST FLOOR, 3RD MAIN ROAD,
NEAR PARVATHI NAGAR, BELLARY,
DIST: BALLARY-583103,
5. DEVENDRAPPA BALUTAGI
S/O. LATE SHANKRAPPA BALUTAGI,
AGE: 63 YEARS, OCC: AGRICULTURIST,

R/O. NO.4/1 NEAR KANAKADASA CIRCLE,
(WARD NO.7), NEAR GOVT. HOSPITAL,
KUSHTAGI, DIST: KOPPAL-583277.

-3-

NC: 2024:KHC-D:8663
CRL.P No. 102446 of 2023
C/W WP No. 104419 of 2023

6. SMT. SHANKRAMMA BALUTAGI
W/O. DEVENDRAPPALUTAGI,
AGE: 55 YEARS, OCC: HOME MAKER,
R/O.NO.4/1 NEAR KANAKADASA CIRCLE,
(WARD NO.7), NEAR GOVT. HOSPITAL,
KUSHTAGI, DIST: KOPPAL-583277.

7. BASAVARAJ BALUTAGI
S/O. DEVENDRAPPALUTAGI,
AGE: 40 YEARS, OCC: BUSINESS,
R/O.WARD NO.2, NEAR GOVT. HOSPITAL
VIDYANAGAR, KUSHTAGI,
DIST: KOPPAL-583277.

8. SUVARNA BALUTAGI
W/O. BASAVARAJ BALUTAGI,
AGE: 32 YEARS, OCC: HOME MAKER,
R/O.WARD NO.2, NEAR GOVT. HOSPITAL,
VIDYANAGAR, KUSHTAGI,
DIST: KOPPAL-583277.

...PETITIONERS

(BY SRI. NARAYAN V YAJI., ADVOCATE)

AND:

SMT. SUSHMA W/O. PRITHVIRAJ BALUTAGI
AGE: 26 YEARS, OCC: ENGINEER,
R/O.NO.1303, ENKAY ASSOCIATES
2ND FLOOR, 11TH MAIN ROAD,
SBI STAFF COLONY, HOSAHALLI
EXTENSION STAGE 1, VIJAYANAGAR,
BENGALURU-560040.

...RESPONDENT

(BY SRI. T.R. PATIL, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ENTIRE
PROCEEDING PENDING ON THE FILE OF LEARNED JMFC III COURT,
HUBBALLI IN BEARING CRL.MISC.NO.20/2023 U/SECTION 12 OF THE
PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT AS
AGAINST THE PETITIONERS VIDE ANNEXURE-A TO THE WRIT
PETITION AND THE COMPLAINT FILED BY THE RESPONDENT AS
AGAINST THE PETITIONERS U/SECTION 12 OF THE PROTECTION OF
WOMEN FROM DOMESTIC VIOLENCE ACT DATED 25/03/2023 VIDE
ANNEXURE-B TO THE WRIT PETITION ARE ILLEGAL AND
UNCONSTITUTIONAL.

THESE PETITIONS ARE COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Today, a joint memo was filed in the two petitions before this Court. The memo requests the quashing of the entire criminal proceedings pending in C.C. No. 9802/2023, which involve offenses punishable under Sections 498A, 323, 504, and 506 of the Indian Penal Code (IPC) and Sections 3 and 4 of The Dowry Prohibition Act, 1961 (DP Act). Additionally, it seeks to quash the proceedings in Crl. Misc. No.20/2023 for the offense punishable under Section 12 of The Protection of Women from Domestic Violence Act, 2005 (PWDV Act). Both matters are currently pending before the learned JMFC-III Court.

2. According to the joint memo, the petitioner and respondent, who are husband and wife respectively, have reached an amicable settlement. As part of the settlement, the respondent/wife has received a sum of Rs. 8,00,000/- as permanent alimony. In compliance with the terms of the joint memo, both parties have agreed to withdraw all allegations and counter-allegations made against each other. The NC: 2024:KHC-D:8663 respondent/wife has also agreed to withdraw the complaint registered in C.C. No.9802/2023.

3. This Court has conducted an inquiry with the respondent/wife. During the inquiry, she confirmed that she has voluntarily decided to resolve the marital dispute. She acknowledged that she has received the sum of Rs. 8,00,000/- by way of demand draft as part of the settlement. Furthermore, she expressed her agreement to withdraw the complaint filed in C.C. No.9802/2023.

4. Given the amicable settlement between the petitioner/husband and respondent/wife, and considering that the offenses in question are not heinous and are more civil in nature, this Court is of the view that the criminal proceedings pending in C.C. No.9802/2023 for the offenses punishable under Sections 498A, 323, 504, and 506 of the IPC, as well as Sections 3 and 4 of the DP Act, and in Crl. Misc. No.20/2023 for the offense punishable under Section 12 of the PWDV Act, should be quashed.

The joint memo is hereby taken on record. Consequently, both petitions are disposed of. The criminal proceedings NC: 2024:KHC-D:8663 pending in C.C. No.9802/2023, and those in Crl.Misc.No.20/2023, both pending before the learned JMFC-III, Hubballi, are quashed.

Sd/-

JUDGE AM

Pruthviraj Balutagi S/O Ashok Balutagi vs Smt Sushma W/O Pruthviraj Balutagi on 26 June, 2024

-1-

NC: 2024:KHC-D:8663
CRL.P No. 102446 of 2024
C/W WP No. 104419 of 2024

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 26TH DAY OF JUNE, 2024

BEFORE
THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM

CRIMINAL PETITION NO.102446 OF 2023 (482-)
C/W
WRIT PETITION NO.104419 OF 2023

IN CRL.P.NO.102446/2023

BETWEEN:

PRUTHVIRAJ BALUTAGI
S/O. ASHOK BALUTAGI,
AGE: 29 YEARS, OCC: PRIVATE SERVICE,
R/O. FLAT NO.201, SUDHANVA,
3RD CROSS, SHARADADEVI LAYOUT,
RAJARAJESHWARI NAGAR,
BENGALURU-560098.

...PETITI

(BY SRI. NARAYAN V. YAJI, ADVOCATE)

AND:

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AGE: 26 YEARS, OCC: ENGINEER,
R/O. NO.1303, ENKAY ASSOCIATES,

ASHPAK

KASHIMSA

MALAGALADINNI

2ND FLOOR, 11TH MAIN ROAD,

SBI STAFF COLONY, HOSAHALLI EXTENSION STAGE-I,

VIJAYANAGARA, BENGALURU-560040.

Digitally signed by ASHPAK
KASHIMSA MALAGALADINNI
Location: High Court of
Karnataka, Dharwad Bench
Date: 2024.07.02 15:47:14
+0530

2. THE STATE OF KARNATAKA,
THROUGH THE POLICE INSPECTOR,
WOMEN POLICE STATION,
HUBBALLI-DHARWAD,
REP/BY STATE PUBLIC PROSECUTOR,

OFFICE OF THE ADVOCATE GENERAL,
HIGH COURT BUILDING DHARWAD-580011.

... RESPONDENT

(BY SRI. T.R. PATIL, ADV. FOR R1;
SRI. V.S. KALASURMATH, HCGP FOR R2)

-2-

NC: 2024:KHC-D:8663
CRL.P No. 102446 of 2023
C/W WP No. 104419 of 2023

THIS CRIMINAL PETITION IS FILED U/SEC. 482 OF CR.P.C.
PRAYING THAT QUASH THE ORDER DATED 31.08.2023 TAKING
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AND U/SEC. 3 AND 4 OF DP ACT AS AGAINST THE PETITIONER BY III
ADDL.CIVIL JUDGE & JMFC, HUBBALLI IN C.C. NO.9802/2023 AND
ALSO QUASH THE ENTIRE CHARGE SHEET AND PROCEEDINGS
PENDING ON THE FILE OF THE 3RD ADDL. CIVIL JUDGE AND JMFC,
HUBBALLI AS IT IS ILLEGAL AND NOT MAINTAINABLE.

IN WP. NO.104419 OF 2023 (GM-FC)
BETWEEN:

1. PRITHVIRAJ BALUTAGI
S/O. ASHOK BALUTAGI,
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OCC: PRIVATE SERVICE,
R/O. FLAT NO.201, SUDHANVA,
3RD CROSS, SHARADADEVI LAYOUT,
RAJARAJESHWARI NAGAR,
BENGALURU-560098.
2. ASHOK
S/O. LATE SHANKRAPPA BALUTAGI,
AGE: 55 YEARS, OCC: AGRICULTURIST,
R/O. S.V.NILAYA, NEAR KANAKADASA CIRCLE
VIDYANAGAR, KUSHTAGI, DIST: KOPPAL-583277.
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VIDYANAGAR, KUSHTAGI, DIST: KOPPAL-583277.
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AGE: 31 YEARS, OCC: SELF EMPLOYMENT,
R/O. BCTSK DESIGN SOFTECH INDIA PRIVATE LTD.,
1ST FLOOR, 3RD MAIN ROAD,
NEAR PARVATHI NAGAR, BELLARY,
DIST: BALLARY-583103,
5. DEVENDRAPPA BALUTAGI
S/O. LATE SHANKRAPPA BALUTAGI,
AGE: 63 YEARS, OCC: AGRICULTURIST,

R/O. NO.4/1 NEAR KANAKADASA CIRCLE,
(WARD NO.7), NEAR GOVT. HOSPITAL,
KUSHTAGI, DIST: KOPPAL-583277.

-3-

NC: 2024:KHC-D:8663
CRL.P No. 102446 of 2023
C/W WP No. 104419 of 2023

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W/O. DEVENDRAPPA BALUTAGI,
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R/O.NO.4/1 NEAR KANAKADASA CIRCLE,
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KUSHTAGI, DIST: KOPPAL-583277.

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VIDYANAGAR, KUSHTAGI,
DIST: KOPPAL-583277.

8. SUVARNA BALUTAGI
W/O. BASAVARAJ BALUTAGI,
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R/O.WARD NO.2, NEAR GOVT. HOSPITAL,
VIDYANAGAR, KUSHTAGI,
DIST: KOPPAL-583277.

...PETITIONERS

(BY SRI. NARAYAN V YAJI., ADVOCATE)

AND:

SMT. SUSHMA W/O. PRITHVIRAJ BALUTAGI
AGE: 26 YEARS, OCC: ENGINEER,
R/O.NO.1303, ENKAY ASSOCIATES
2ND FLOOR, 11TH MAIN ROAD,
SBI STAFF COLONY, HOSAHALLI
EXTENSION STAGE 1, VIJAYANAGAR,
BENGALURU-560040.

...RESPONDENT

(BY SRI. T.R. PATIL, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ENTIRE
PROCEEDING PENDING ON THE FILE OF LEARNED JMFC III COURT,
HUBBALLI IN BEARING CRL.MISC.NO.20/2023 U/SECTION 12 OF THE
PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT AS
AGAINST THE PETITIONERS VIDE ANNEXURE-A TO THE WRIT
PETITION AND THE COMPLAINT FILED BY THE RESPONDENT AS
AGAINST THE PETITIONERS U/SECTION 12 OF THE PROTECTION OF
WOMEN FROM DOMESTIC VIOLENCE ACT DATED 25/03/2023 VIDE
ANNEXURE-B TO THE WRIT PETITION ARE ILLEGAL AND
UNCONSTITUTIONAL.

THESE PETITIONS ARE COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

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3. This Court has conducted an inquiry with the respondent/wife. During the inquiry, she confirmed that she has voluntarily decided to resolve the marital dispute. She acknowledged that she has received the sum of Rs. 8,00,000/- by way of demand draft as part of the settlement. Furthermore, she expressed her agreement to withdraw the complaint filed in C.C. No.9802/2023.

4. Given the amicable settlement between the petitioner/husband and respondent/wife, and considering that the offenses in question are not heinous and are more civil in nature, this Court is of the view that the criminal proceedings pending in C.C. No.9802/2023 for the offenses punishable under Sections 498A, 323, 504, and 506 of the IPC, as well as Sections 3 and 4 of the DP Act, and in Crl. Misc. No.20/2023 for the offense punishable under Section 12 of the PWDV Act, should be quashed.

The joint memo is hereby taken on record. Consequently, both petitions are disposed of. The criminal proceedings NC: 2024:KHC-D:8663 pending in C.C. No.9802/2023, and those in Crl.Misc.No.20/2023, both pending before the learned JMFC-III, Hubballi, are quashed.

Sd/-

JUDGE AM

Rajeswari. B. S vs Shivananda on 30 May, 2024

Author: H.T. Narendra Prasad

Bench: H.T. Narendra Prasad

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NC: 2024:KHC:18400
CP No. 147 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF MAY, 2024

BEFORE

THE HON'BLE MR JUSTICE H.T. NARENDRA PRASAD
CIVIL PETITION NO. 147 OF 2023

BETWEEN:

RAJESWARI. B. S.
W/O SHIVANAND
AGED ABOUT 30 YEARS
D/O L PRAKASH @ SHIVANANJAPPA
R/AT BELAKAVADI VILLAGE
B G PURA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT 571417.

...PETITIONER

(BY SRI. DINAKAR M P., ADVOCATE)

AND:

SHIVANANDA
S/O T S PRABHUSWAMY
Digitally signed by
by
HEMALATHA A
Location: High Court of Karnataka
by
KOWLANDE HOBLI
NANJANAGUD TALUK
MYSURU DISTRICT
WORKING AT NESLEY INDIA LTD
K.I.A.D.B. INDUSTRIAL QUARTERS
NANJANAGUD, MYSURU DISTRICT 570009.

...RESPONDENT

(BY SRI. VINAYA KUMAR P., ADVOCATE [ABSENT])

THIS CIVIL PETITION IS FILED UNDER SECTION 24 OF

CPC, 1908, PRAYING TO WITHDRAW THE M.C. PETITION NO.
40/2019 PENDING ON THE FILE OF THE SENIOR CIVIL JUDGE
AND JMFC, NANJANAGUDU AND TRANSFER THE CASE TO THE

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NC: 2024:KHC:18400

CP No. 147 of 2023

SENIOR CIVIL JUDGE AND JMFC, MALAVALLI UNDER THE
FACTS AND CIRCUMSTANCES OF THE CASE.

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

ORDER

This petition under Section 24 of CPC is filed by the petitioner-wife seeking for transfer of M.C.No.40/2019 filed by the respondent-husband pending on the file of Senior Civil Judge and JMFC, Nanjanagudu to the file of Senior Civil Judge and JMFC, Malavalli.

2. The petitioner is the legally wedded wife of the respondent and their marriage was solemnized on 23.04.2015 at Mahadeshwara Kalyana Mantapa, as per Hindu rites and customs. After the marriage, the petitioner was residing with her husband in her matrimonial house at T.Narasipura. In the year 2016, as matrimonial disputes arose between the parties, the petitioner started living separately with her mother in Belakavadi Village, Malavalli Taluk. She filed a C.Misc.No.504/2016 under the Protection of Women from Domestic Violence Act, 2005 (for short, 'DV Act') against the respondent on the file of NC: 2024:KHC:18400 Principal Civil Judge and JMFC, Malavalli. Thereafter, the respondent-husband filed a divorce petition in M.C.No.40/2019 under Section 13(1)(ia) and (ib) of the Hindu Marriage Act before the Civil Judge and JMFC, Nanjanagudu. Since the petitioner is residing with her mother at Belakavadi village, Malavalli Taluk, she filed this petition for transfer of M.C.No.40/2019 filed by the respondent-husband to Malavalli.

3. The learned counsel for the petitioner-wife contended that the petitioner is residing with her mother in Belakavadi Village, Malavalli Taluk. Her father expired long back, and there are no other male members to accompany her to attend the case in Nanjanagudu, she has to travel 80 kms. from Malavalli to Nanjanagudu to attend the case and it causes more inconvenience to the petitioner. Hence, the learned counsel sought to allow the petition.

4. When the matter was called in the morning session, none appeared for the respondent, only the learned counsel for the petitioner was present. Hence, it NC: 2024:KHC:18400 was passed over. Even in the afternoon session also, there is no representation on behalf of the respondent.

5. Heard the learned counsel for the petitioner. Perused the petition papers.

6. It is not in dispute that the petitioner is the legally wedded wife of the respondent and their marriage was solemnized on 23.04.2015 at Mahadeshwara Kalyana Mantapa, as per Hindu customs. Since there was a difference of opinion cropping up between the parties, from the year 2016, the petitioner started living separately with her mother at Belakvadi village, Malavalli Taluk. She filed C.Misc.No.504/2016 before the Principal Civil Judge, Malavalli under Section 12 of the DV Act. In that case, the respondent-husband appeared and he is prosecuting the case. Thereafter, in the year 2019, the respondent- husband filed M.C.No.40/2019 before the Civil Judge and JMFC, Nanjanagudu for divorce. Since the distance between Malavalli and Nanjanagudu is about 80 kms., it is difficult for the petitioner to travel to Nanjanagudu to prosecute the case. She is residing with her mother and NC: 2024:KHC:18400 her father expired long back, there are no male members to accompany her to attend her case at Nanjanagudu.

7. This Court in the case Smt.M.V.Rekha v. Sri Sathya @ Suraj - ILR 2010 KAR 5407 at Paragraph No.15 held as hereunder:

"The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereon and the circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Generally, it is the wife's convenience which must be looked at while considering transfer. Further, when two proceedings in different Courts which raise common question of fact and law and when the decisions are NC: 2024:KHC:18400 interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions (See Smt.NandaKishori v. S.B.Shiua Prakash AIR 1993 Kar 87, Sumita Singh v. Kumar Sanjay and Anr.

MANU/SC/0936/2001:AIR 2002 SC 396 and Smt.Swarna Gouri v. Sri Vinayak Pujar
MANU/KA/7130/2007 : ILR 2007 Kar 4561."

(emphasis supplied)

8. Therefore, taking note of the inconvenience as made out by the petitioner and the law laid down in the case of Smt.M.V.Rekha (supra), which provides that the convenience of the wife is an aspect that is to be taken note of while considering the transfer petitions, petition deserves to be allowed. Accordingly, the following order is passed:

- i) The petition is allowed.
- ii) The case in M.C.No.40/2019 on the file of Senior Civil Judge and JMFC, Nanjanagudu is hereby NC: 2024:KHC:18400 withdrawn and transferred to the file

of Senior Civil Judge & JMFC, Malavalli.

iii) The transferor Court is hereby directed to transmit the entire records to the transferee court.

iv) The transferee court, after hearing the parties is directed to dispose of the said case, as expeditiously as possible and in accordance with law.

Sd/-

JUDGE CM

Rekha @ Lakhsmi And Anr vs Mallinath on 31 May, 2024

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NC: 2024:KHC-K:3489
RPFC No. 200130 of 2023

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 31ST DAY OF MAY, 2024

BEFORE

THE HON'BLE MRS JUSTICE K S HEMALEKHA

REV.PET FAMILY COURT NO.200130 OF 2023

BETWEEN:

1. REKHA @ LAKHSMI
W/O MALLINATH DODDAMANI
AGE: 30 YEARS, OCC: HOUSEHOLD,
R/O: C/O SHANTAPPA
S/O MALLAPPA DEVARMANI
MALLIKARJUN NILAYA,
BEHIND JAITEERTH KALYAN MANTAPA,
PLOT NO. 100, UDNOOR ROAD,
KALABURAGI.
2. ERANNA S/O MALLINATH DODDAMANI
AGE: 8 YEARS, OCC: NIL,
MINOR U/G HIS NATURAL MOTHER
PETITIONER NO. 1.

Digitally signed

by SWETA

KULKARNI

Location: High

(BY SRI B. K. HIREDHATH, ADVOCATE)

Court of

Karnataka

...PETITIONERS

AND:

MALLINATH
S/O NEELAPPA DODDAMANI
AGE: 34 YEARS, OCC: CONSTABLE,
GURUMITAKAL POLICE STATION,
TQ: GURUMITKAL, DIST: YADGIR.

...RESPONDENT

(BY SRI SANTOSH PATIL, ADVOCATE)

THIS RPFC IS FILED U/S. 19(4) OF THE FAMILY COURTS ACT, PRAYING TO CALL FOR THE RECORDS AND SET ASIDE THE IMPUGNED ORDER PASSED BY THE PRL. JUDGE FAMILY COURT AT KALABURAGI IN CRL. MISC. NO.128/2019 DATED 18.07.2022 AND GRANT MAINTENANCE AMOUNT OF RS.10,000/- IN FAVOUR OF PETITIONER NO.1 FROM THE DATE OF PETITION AND ENHANCE THE MAINTENANCE AMOUNT OF RS.5,000/- TO 10,000/- IN FAVOUR OF PETITIONER NO.2 AND DIRECT THE RESPONDENT TO PAY THE SAME.

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

ORDER

Seeking maintenance of Rs.10,000/- to herself and to son, petitioners filed claim petition in Crl.Misc.No.128/2009. The Principal Judge, Family Court, Kalaburagi [for short, 'the Family Court'], by the impugned order, rejected the claim of the wife and directed the husband to pay maintenance of Rs.5,000/- to the son.

2. Facts of the case are that petitioner No.1 and respondent are husband and wife and their marriage was solemnized on 26.02.2012. From the wedlock, petitioner No.2 is born. It is the case of the petitioner No.1 that due to the harassment meted by the respondent - husband, the petitioner filed criminal case against the husband under Section 498A of IPC in Crime No.61/2019. The case of the petitioner is that the NC: 2024:KHC-K:3489 husband and his family members were always insisting for dowry and lastly have thrown out the petitioner and her son from the matrimonial home. The respondent- husband is working as a Constable and earning around Rs.45,000/- per month and he has got agricultural land measuring 10 acres and getting income more than Rs.2,00,000/- per year. It is further case of the petitioner-wife that the husband has performed second marriage and that though he has sufficient means to maintain his wife and child, he has neglected to do so.

3. Pursuant to the summons issued by the Family Court, the respondent-husband appeared and filed his written statement. He admitted the relationship with that of the petitioner No.1 and the child born to them. It is the case of the respondent-husband that he is always ready and willing to accept the wife and take her back to the matrimonial home. However, the wife has made no efforts to join the matrimonial home.

4. The Family Court, on the basis of the pleadings, framed necessary points for consideration and held that the petitioner proved that the respondent has neglected and NC: 2024:KHC-K:3489 refused to maintain them and the petitioners are unable to maintain themselves and though the respondent-husband is having sufficient income to maintain the wife and child, he has refused to do

so. The Family Court, however, by the impugned order, arrived at a conclusion that since the wife is studying Nursing course, she can earn and maintain herself and refused to award any maintenance to the wife and awarded maintenance of Rs.5,000/- to the child.

5. Heard Sri B.K. Hiremath, learned counsel for the petitioners and Sri Santosh Patil, learned counsel for the respondent-husband.

6. The perusal of the impugned order would indicate that the Family Court, on the premise that the wife is studying for Nursing, arrives at a conclusion that she can maintain herself by doing nursing work and no maintenance needs to be awarded to her. Law is well settled under Section 125 Cr.P.C., if any person against whom a maintenance is sought has neglected to maintain his wife and the wife is unable to maintain herself, is entitled for maintenance. The material on record would also indicate that the husband is a Constable, the NC: 2024:KHC-K:3489 assets and liabilities have been filed by the parties before the Family Court. The present petition is resisted by the husband contending that the wife, on her own accord, has left the matrimonial home without reason and therefore, she is not entitled for maintenance. Further, that interim maintenance of Rs.3,000/- has been awarded under the Protection of Women from Domestic Violence Act, 2005 and though the husband is willing to take his wife, she has refused to join the matrimonial home, as such, she is not entitled for maintenance.

7. Though the Family Court holds that the husband has got sufficient income from salary and also from the landed property, denies maintenance to the wife on the sole ground as stated supra.

8. Under Section 125 Cr.P.C., the object of the legislation is to provide social justice which has been enacted to protect the weaker section of the society like women and children. The object is to compel a man to perform moral obligations towards the society in respect of maintaining his wife, children and old parents, so that they may not face destitution and become liability of the society or may be forced NC: 2024:KHC-K:3489 to adopt a life of vagrancy, immorality and crime for their subsistence of go astray. The reasoning assigned by the Family Court in denying the maintenance to the wife warrants interference, the petitioner No.1 studying for Nursing cannot be a ground for denial of maintenance.

9. The Family Court further holds that the maintenance of Rs.5,000/- is required to be awarded to the child, without considering that the present expenses to meet the daily needs of the child are increasing. The awarding of maintenance of Rs.5,000/- by the Family Court is also on the lower side. The respondent - husband is an able bodied person and is dutifully bound on his part to maintain his wife and child and to see that they are not made to face destitution. The non-awarding of maintenance to the wife and awarding of maintenance of Rs.5,000/- to the child warrants interference. In the circumstances, this Court pass the following:

ORDER

(i) The Revision petition is hereby allowed in part.

NC: 2024:KHC-K:3489

(ii) The impugned order dated 18.07.2022 passed in Crl.Misc.No.128/2019 by the Family Court is modified.

(iii) Petitioner No.1 - wife is entitled for monthly maintenance of Rs.3,000/- [Rupees Three Thousand Only] apart from the interim maintenance of Rs.3,000/- which is awarded in the petition filed under Domestic Violence Act and petitioner No.2 - child is entitled for further monthly maintenance amount of Rs.3,000/- [Rupees Three Thousand Only] with total of Rs.8,000/- [Rupees Eight Thousand Only] from the date of petition.

Sd/-

JUDGE SWK CT: VD

Sangeetha vs Avinash on 11 June, 2024

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NC: 2024:KHC-K:3795-DB

MFA No. 203505 of 2023

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 11TH DAY OF JUNE, 2024

PRESENT

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI
AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

MISCL. FIRST APPEAL NO. 203505 OF 2023 (MC)

BETWEEN:

SMT. SANGEETHA W/O AVINASH MUSTOOR,
AGED ABOUT 31 YEARS, OCC: HOUSEHOLD,
R/O LINGAREDDY BUILDING,
KALANGATAKI ROAD,
SARASWATIPURA ROAD,
TQ. AND DISTRICT: DHARWAD.

...APPELLANT

(BY SRI. GANESH NAIK, ADVOCATE)

Digitally signed by AND:

BASALINGAPPA

SHIVARAJ

DHUTTARGAON

Location: HIGH

COURT OF

KARNATAKA

Sri. AVINASH

S/O VENKATESH MUSTOOR,

AGED ABOUT 35 YEARS,

OCC: PRIVATE EMPLOYEE,

R/O: RANGANATH NILAYA,

BALAJI NAGAR YADGIRI,

TQ. AND DISTRICT: YADGIRI- 585202.

...RESPONDENT

(BY SRI. G. G. CHAGASHETTI, ADVOCATE)

THIS MFA IS FILED UNDER SECTION 28 OF HINDU MARRIAGE ACT, PRAYING TO ALLOW THIS APPEAL BY SETTING ASIDE THE JUDGMENT AND DECREE PASSED IN M.C.NO.14/2020 BY THE COURT OF SENIOR CIVIL JUDGE AND CJM AT YADGIR DATED 30.09.2023 AND FURTHER TO DISMISS THE PETITION OF THE RESPONDENT AND ALSO TO GRANT ANY OTHER RELIEF TO WHICH THE APPELLANT IS FOUND ENTITLED IN THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY
ASHOK S. KINAGI J., DELIVERED THE FOLLOWING:

JUDGMENT

The appellant and respondent are present and they are identified by their respective counsel. They have filed Memorandum of Agreement under Section 89 of the CPC r/w 24 and 25 of the Karnataka Civil Procedure (Mediation) Rules, 2005. The contents of the memorandum of agreement reads as follows:

"The appellant and respondent humbly submits as under:

1. The Appellant has preferred the present appeal challenging the Judgment and decree in M.C. No.: 14/2020 dated: 30.09.2023 granting decree of Divorce by dissolving the marriage between the appellant and respondent solemnized on 16.05.2019 at Balaji Temple, Yadgiri.

NC: 2024:KHC-K:3795-DB

2. The appellant submits that, the Respondent has sought for dissolution of the marriage based on the allegation of the cruelty U/Sec. 13(1)(A) of Hindu Marriage Act and the trial court based on the allegations made by the respondent was pleased to grant the decree of divorce on the ground of cruelty.

3. The appellant and respondent submit, due to intervention of well wishers, family, friends and relatives both respondent and appellant have mutually agreed for amicable settlement on the following terms.

I. The appellant has agreed to withdraw the present appeal and has mutually agreed for dissolution of marriage between the appellant and the respondent by way of mutual consent.

II. The appellant has received a sum of Rs. 10,50,000/- (Ten lakhs Fifty Thousand rupees only) towards one time permanent alimony by virtue of D.D. bearing No.:031679 of amount Rs. 9,00,000/- (Nine Lakhs Rupees only) drawn on Axis Bank, Raichur Branch (K.T.) dated:

10.06.2024 and remaining amount of Rs.

1,50,000/- is paid in the form of cash which is duly acknowledged by the appellant.

NC: 2024:KHC-K:3795-DB III. The appellant has received all her belongings and has no objection for dissolution of their marriage and both the parties are at liberty to proceed in their life without any intervention of either party.

iv. Both the parties herein withdraw all the allegations made against each other and the appellant under takes not to claim any further maintenance in any form.

V. The appellant also under takes not to initiate any legal proceedings under the provision of Protection of Women from Domestic Violence Act and the provisions of Criminal proceedings against the respondent or any of his family members.

Wherefore, the Appellant and Respondent prays this Hon'ble court be pleased to allow the present Memorandum of Settlement in terms of the present petition and confirm the dissolution of marriage granted by the court below in M.C. No.: 14/2020 dated: 30.09.2023 by the court of Senior Civil and C.J.M. Yadgiri, in the interest of justice and equity."

2. The said compromise conditions are read over and explained to them in English language, they have NC: 2024:KHC-K:3795-DB accepted the terms of compromise. The memo random of agreement is placed on record.

3. The appeal is disposed of in terms of the memorandum of agreement. Accordingly, the respondent has handed over the demand draft bearing No.031679 of Rs.9,00,000/- (Nine Lakhs Rupees Only) drawn on Axis Bank, Raichur Branch dated 10.06.2024 and the remaining amount of Rs.1,50,000/- is paid in the form of the cash before the Court, the appellant acknowledges receipt for having received the said amount.

Draw decree in terms of memorandum of agreement.

In view of disposal of IA.No.1/2024, does not survive for consideration.

Sd/-

JUDGE Sd/-

JUDGE MSR CT;BN

Santosh S/O Kanteppa Wadeepnoor vs Renuka W/O Santosh Wadeepnoor And Anr on 27 March, 2024

Author: H.T.Narendra Prasad

Bench: H.T.Narendra Prasad

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NC: 2024:KHC-K:2602-DB
MFA No.202478 of 2022

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 27TH DAY OF MARCH, 2024

PRESENT

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD
AND
THE HON'BLE MR. JUSTICE K V ARAVIND

MISCL. FIRST APPEAL NO.202478 OF 2022 (FC)

BETWEEN:

SRI SANTOSH
S/O KANTEPPA WADEPNOOR
AGE ABOUT: 43 YEARS
R/O H NO.8-10-117
BHAGYAWANTI LINGAYAT
KHANALVALI GANESH MAIDAN
BIDAR - 585 401.

...APPELLANT

(BY SRI GANESH SUBHASHCHANDRA KALBURGI AND
SRI ABHINAV R., ADVOCATES)

Digitally signed

by VARSHA N

RASALKAR

AND:

Location: HIGH

COURT OF

KARNATAKA

1. SMT. RENUKA

W/O SANTOSH WADEPNOOR

AGED ABOUT 33 YEARS

R/O PLOT NO.55, H NO.3/352

ALAM PRABHU NAGAR

GUMPA, BIDAR - 585 403.

2. ABHISHEK
S/O SANTOSH WADEPNOOR
AGED ABOUT 16 YEARS
MINOR REPRESENTED BY HIS
GUARDIAN MOTHER

-2-

NC: 2024:KHC-K:2602-DB
MFA No.202478 of 2022

THE 1ST RESPONDENT HEREIN
R/O PLOT NO. 55, H.NO.3/352
ALAM PRABHU NAGAR
GUMPA, BIDAR - 585 403.

... RESPONDENTS

(BY SRI SACHIN M. MAHAJAN, ADVOCATE)

THIS MFA IS FILED UNDER SECTION 19(1) OF THE FAMILY COURTS ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 05.08.2022 PASSED BY THE PRINCIPAL JUDGE FAMILY COURT, BIDAR IN O.S.NO.04/2020 AND DISMISS THE SAID SUIT BY ALLOWING THE APPEAL.

THIS MFA COMING ON FOR ADMISSION THIS DAY H.T.NARENDRA PRASAD J., DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the husband under Section 19(1) of the Family Courts Act, challenging the judgment and decree dated 05.08.2022, passed in O.S.No.4/2020, whereby the husband was directed to pay the monthly maintenance of Rs.5,000/- to the wife and Rs.4,000/- to the son.

2. For the sake of convenience, parties are referred to as per their ranking before the Family Court.
3. The plaintiff Nos. 1 and 2 are the wife and son of the defendant. The plaintiffs filed a suit for maintenance and creating charges over the properties of the defendant.

NC: 2024:KHC-K:2602-DB The case of the plaintiffs is that plaintiff No.1 and defendant were married on 25.05.2003 in Bhavani Mandir, Kumbarwada, Bidar. Out of the wedlock, plaintiff No.2 born. After some time, there was a difference of opinion between the plaintiff No.1 and the defendant. They started living separately. Since the plaintiffs are not in a position to maintain their livelihood and the defendant was not paying any money, they filed the above suit before the Family Court, Bidar.

4. After service of summons, defendant appeared through counsel. After hearing the parties, the

Family Court, by the impugned order, decreed the suit, directing the defendant to pay monthly maintenance of Rs.5,000/- to plaintiff No.1 - wife and Rs.4,000/- to plaintiff No.2 - son. Being aggrieved by the same, defendant - husband is before this Court.

5. Learned counsel appearing for the appellant/ defendant contended that before awarding monthly maintenance, the plaintiffs have not filed any affidavit NC: 2024:KHC-K:2602-DB disclosing their assets and liabilities. The Apex Court in the case of RAJNESH vs. NEHA reported in (2021) 2 SCC 324 has held that the Family Court, before deciding the maintenance, direct the parties to file an affidavit disclosing their assets and liabilities. Contrary to the judgment of the Apex Court, the decree has been passed.

6. Per contra, learned counsel appearing for the respondents/plaintiffs contended that the appellant/ defendant has appeared before the Family Court and after hearing both the parties the Family Court decreed the suit. The Family Court, after considering the oral and documentary evidence of the parties rightly decreed the suit. The decree passed by the Family Court is in accordance with law. Hence, sought for dismissal of the appeal.

7. Heard the learned counsel for the parties and perused the judgment and decree.

8. It is not in dispute that plaintiff Nos. 1 and 2 are the wife and son of the defendant. It is also not in dispute NC: 2024:KHC-K:2602-DB that plaintiff and defendant were married on 25.05.2003 in Bhavani Mandir, Kumbarwada, Bidar. Because of the dispute between the parties, the husband and wife were living separately. Since the plaintiff No.1 was unable to maintain herself and her son, she filed a suit against the defendant for maintenance. The Apex Court in the case of RAJNESH (supra) held as follows:

"72. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:

72.1. (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

72.2. (b) The applicant making the claim for maintenance will be required to file a concise NC: 2024:KHC-K:2602-DB application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to

the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings [Kaushalya v. Mukesh Jain, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915]. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

NC: 2024:KHC-K:2602-DB 72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof. 72.6. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned. 72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

NC: 2024:KHC-K:2602-DB 72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

72.9. (i) In case the parties belong to the economically weaker sections ("EWS"), or are living below the poverty line ("BPL"), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court. 72.11. (k) A professional Marriage Counsellor must be made available in every Family Court."

9. Following the judgment of the Apex Court in the case of RAJNESH (supra), the Apex Court in the case of ADITI ALIAS MITHI vs. JITESH SHARMA reported in 2023 SCC Online SC 1451 held as follows:

NC: 2024:KHC-K:2602-DB "15. Nothing is evident from the record or even pointed out by the learned counsel for the appellant at the time of hearing that affidavits were filed by both the parties in terms of judgment of this Court in Rajnesh's case (supra), which was directed to be communicated to all the High Courts for further circulation to all the Judicial Officers for awareness and implementation. The case in hand is not in isolation. Even after pronouncement of the aforesaid judgment, this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without their being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance.

Comprehensive guidelines were issued pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of maintenance are available under the Special Marriage Act, 1954, Section 125 Cr. P.C., the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act, 1956, and Criteria for determining quantum of maintenance, date from which maintenance is to be awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. As a result, the litigation which should close at the trial

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NC: 2024:KHC-K:2602-DB level is taken up to this Court and the parties are forced to litigate.

10. From the above judgments, it is very clear that the Family Court, before passing any order for maintenance, either interim order or final order, has to insist the parties to file an affidavit in respect of the assets and liabilities. In the case on hand, both the plaintiff and the defendant have not filed their affidavits in respect of the assets and liabilities. Without the affidavit, the Family Court passed the decree and directed the defendant to pay the maintenance. The judgment and decree passed by the Family Court is contrary to the judgment of the Apex Court in the cases of RAJNESH (supra) and ADITI ALIAS MITHI (supra). Hence, the judgment and decree is unsustainable and liable to be set aside.

11. Accordingly, we pass the following order:

(i) The appeal is allowed.

(ii) The judgment and decree passed by the Family Court, Bidar in O.S.No.4/2020 is set aside.

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(ii) The Family Court is directed to reconsider the matter afresh in terms of the law laid down by the Apex Court in the cases of RAJNESH (supra) and ADITI ALIAS MITHI (supra).

(iv) The parties are directed to appear before the Family Court, Bidar, on 24.04.2024, without any further notice.

(v) The Family Court, Bidar is directed to dispose of the suit, as expeditiously as possible, not later than four months from the date of appearance of the parties.

(vi) The amount deposited by the appellant/ defendant before this Court is ordered to be transferred to the Family Court, Bidar.

Sd/-

JUDGE Sd/-

JUDGE CM

Shiddesh Bharamappa Channagiri vs The State Of Karnataka on 13 June, 2024

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NC:2024:KHC-D:7986-DB
CRL.A. No. 100145 of 2021

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH
DATED THIS THE 13TH DAY OF JUNE, 2024

R

BEFORE
THE HON'BLE MR JUSTICE E.S.INDIRESH
AND
THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR
CRIMINAL APPEAL NO. 100145 OF 2021 (C)

BETWEEN:

SHIDDESH BHARAMAPPA CHANNAGIRI
AGE 18 YEARS, OCC: HAMALI

**YASHAVANT
NARAYANKAR** R/O. MASUR SIDDESHWARA NAGAR

Location: HIGH COURT OF KARNATAKA DHARWAD BENCH HIREKERUR TALUK, HAVERI DISTRICT.

(ACCUSED BEFORE THE SESSIONS COURT,
APPELLANT BEFORE THE HON'BLE HIGH COURT)

...APPELLANT

(BY SRI.S.D.BABLADI., ADVOCATE (THROUGH VC))
AND:

1. THE STATE OF KARNATAKA
HIREKERUR POLICE STATION
REPRESENTED BY STATE
PUBLIC PROSECUTOR
HIGH COURT BUILDINGS DHARWAD.

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NC:2024:KHC-D:7986-DB

2. SMT. PALLAVI BALIGAR
AGED ABOUT 25 YEARS OCC: COOLIE
R/O. MASUR SIDDESHWARA NAGAR
HIREKERUR TALUK
HAVERI DISTRICT.

(COMPLAINANT BEFORE THE SESSIONS COURT
RESPONDENT BEFORE THIS HON'BLE HIGH COURT)

... RESPONDENTS

(BY SRI.M.B.GUNDAWADE (ADDL.SPP.FOR R1) (VC)
R2 SERVED AND UNREPRESENTED)

THIS CRIMINAL APPEAL IS FILED U/S. 374(2) OF CR.P.C.
PRAYING TO SET ASIDE THE JUDGMENT PASSED BY THE ADDL.
DISTRICT AND SESSIONS JUDGE, FTSC-1, HAVERI
PUNISHABLE UNDER SECTIONS 366, 376(2)(I) OF IPC AND
SECTION 6 OF POSCO ACT, 2012 AND 3(2)(V) OF SC AND ST
(PA) ACT 1989 IN SPECIAL S.C.NO.31/2018 DATED 9TH APRIL
2021 AND ACQUIT THE APPELLANT FROM THE CHARGES
LEVELED AGAINST HIM.

THIS CRIMINAL APPEAL, COMING ON FOR HEARING AND
THE SAME HAVING BEEN HEARD AND RESERVED FOR
PRONOUNCEMENT OF JUDGMENT, THIS DAY RAMACHANDRA
D. HUDDAR J., DELIVERED THE FOLLOWING:

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NC:2024:KHC-D:7986-DB
CRL.A. No. 100145 of 2021

JUDGMENT

The present appeal has been filed by the Child in Conflict with Law (hereinafter called as 'CCL') impugning the orders dated 9th April, 2021 passed in Special Sessions Case No.31 of 2018 by the Additional District and Sessions Judge, FTSC- 1, Haveri. Briefly, the facts leading to this appeal are as under:

FIR was registered against CCL by the Hirekerur Police Station for the offences punishable under sections 366, 376(2)(i) of IPC, under Section 6 of POCSO Act, 2012 and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 as amended (in short 'SC & ST (PA) Act').

2. After his arrest on 17.4.2018, he was released on bail. After completion of investigation, charge sheet was filed. The Juvenile Justice Board ('JJB' in short) was called upon to decide the issue as to whether the CCL is to be tried by the Board or as an adult by the NC:2024:KHC-D:7986-DB Children's Court. In this appeal the learned Counsel for the appellant mainly pressed into service, that no proper procedures have been followed by the JJB or the Children's Court in assessing the age of the CCL.

3. It is alleged in the FIR that, the victim girl was aged about two years six months at the time of alleged incident and belongs to Scheduled Tribe. It is alleged in the FIR that, on 15.4.2018, accused kidnapped the minor victim girl from the lawful guardianship of the complainant with an intention to have illicit intercourse with her. With that intention CCL took the victim girl behind his house, situated at Masur village, committed forcible sexual assault on her, so also aggravated penetrative sexual assault upon her, repeatedly, knowing fully well that, she was a minor and belongs to the Scheduled Tribe. Therefore, it is alleged by the complainant in the complaint that, the accused had committed the aforesaid offences.

NC:2024:KHC-D:7986-DB

4. Initially, as per the records, the matter was pending before JJB, Haveri. The learned President of JJB, Haveri, passed a detailed order on 14.9.2018 with a direction to transfer the case to the Children's Court i.e., the trial Court. During the pendency of the trial as stated above, CCL was granted bail.

5. Before the learned Special Court i.e., Children's Court to prove the guilt of the accused, prosecution has examined in all, 11 witnesses in the shape of PWs. 1 to 11, so also got marked Ex.P.1 to P20. MO Nos.1 to 11 are also marked.

6. Learned trial Court i.e., Children's Court after having heard the arguments and after evaluation of the evidence placed on record by the prosecution, found the CCL guilty of committing the offences under sections 366, 376(2)(i) of IPC, under Section 6 of the POCSO Act, 2012 and under Section 3(2)(v) of SC and ST (PA) Act, 1989 and sentenced him as under:

NC:2024:KHC-D:7986-DB "The accused shall undergo rigorous imprisonment for a period of 5 years and shall pay fine of Rs.2,000/- For the offence punishable under Section 366 of IPC. In default of payment of fine amount, the accused shall undergo simple imprisonment for further period of one year.

The accused shall undergo rigorous imprisonment for a period of 10 years and shall pay fine of Rs.5,000/- for the offence punishable under Section 6 of POCSO Act. In default of payment of fine amount, the accused shall undergo simple imprisonment for further period of 6 months.

The accused shall undergo life imprisonment and shall pay fine of Rs.5,000/- for the offence punishable under Section 3(2) (V) of SC/ST (Prevention of Atrocities) Act,

1989. In default of payment of fine amount, the accused shall undergo rigorous imprisonment for further period of five years."

7. Being aggrieved and dissatisfied by the impugned judgment, now, the CCL is before this Court, challenging the said judgment of conviction and order of sentence passed against him.

8. The learned counsel for the appellant Sri S.D.Babaladi with all force submits that, the JJB as well as the Children's Court have committed error in holding NC:2024:KHC-D:7986-DB that, the CCL is an adult and without applying the judicious mind, have come to the conclusion that, the CCL is an adult and he has been wrongly tried by the Children's Court. It is his submission that, the appellant admittedly was a juvenile, aged 16 years 10 months 20 days as on the date of commission of the alleged offence. According to him, as per the provisions of Juvenile Justice Act, 2015 (in short 'the Act'), it provides two procedures, out of which, JJB has to opt for one found suitable.

9. Sri. S. D. Babladi, Advocate for appellant further submits that, the JJB has passed an order on preliminary assessment under section 15 read with section 18(3) of Juvenile Justice (Care and Protection of Children) Act, 2015. According to this provision, the JJB has received a report from Psychologist attached to the DIMHANS. The JJB has to assess mental and physical capacity of this CCL to commit to the aforesaid offences, so also ability to understand the consequences of those acts. It is his NC:2024:KHC-D:7986-DB submission that, CCL has no maturity and he is innocent as such, he should have been tried before the JJB only. It is his further submission that, the learned JJB has just reproduced the sections and has wrongly come to the conclusion based upon the certificate issued by the Headmaster collected by the Investigation Officer stating that, as on the date of commission of the offence, the age of the CCL was 16 years, 10 months, 20 days. The said certificate was issued by the Headmaster, Government Lower Primary School, Masur dated 25.4.2018.

10. It is his submission that, when the aforesaid offences are alleged to be the heinous offences as per Section 2(33) of the JJ Act, 2015, the JJB has just referred the report of the Psychologist. No further report from the experts in the shape of DNA test or ossification test have been obtained by the Board. Without considering that, the impugned order was passed by the JJB by coming to the wrong conclusion, that, the CCL has NC:2024:KHC-D:7986-DB to be tried as an adult. The Children's Court passed an order on 5.8.2019 after transfer of the case stating that, the CCL has to be tried as an adult. The said order passed by the Children's Court shows that, there is no application of mind by the Children's Court also. No opportunity was given to the CCL to prove that, he was still a juvenile and having no maturity at all. He submits that, the order so passed by the JJB as well as the Children's Court is cryptic in nature. They have been passed without giving any opportunity either to the prosecution or to the appellant. As such, the principles of natural justice, that is, audi alteram partem, is not followed by the JJB as well as the Children's Court. This has affected the fundamental rights of the appellant as provided under Articles 14, 19 and 21 of the Constitution of India.

11. In support of his submission, the learned counsel for the appellant relies upon the judgment of the Hon'ble Supreme Court of India in A.R.Antulay Vs.

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NC:2024:KHC-D:7986-DB R.S.Nayak and another, reported in (1988) 2 SCC

602. Further, learned counsel for the appellant submits that, on perusal of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 as well as the POSCO Act and also the provisions of the IPC, it shows that, if a juvenile is above 16 years of age, looking to his mental maturity, he can either be tried by the JJB or case may be transferred to the Children's Court. It is his submission that, even after transfer of a juvenile to the Children's Court, the Children's Court is required to take a fresh enquiry and adjudicate as to whether he should be tried as an adult. It is his submission that, when law prescribes alternative punishments in that case, judicial authority applying such laws has to be extremely cautious and careful while passing such orders, keeping the interest of women, children and persons belonging to backward caste, persons affected by extreme poverty or socially neglected group to see that equal justice is imparted to, as provided under the preamble of the Indian Constitution.

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12. In support of this submission, the learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court of India in Bachan Singh Vs. State of Punjab (1980) 2 SCC 684. So also, he submits that, there is no proper procedure followed with regard to the assessment by conducting the preliminary inquiry by the JJB as well as the Children's Court, no adequate opportunity was given to the appellant. Therefore, the procedure so adopted is patently illegal, erroneous, and unconstitutional. Therefore, he submits that, this case is a fit case to set aside the conviction.

13. He also relies upon a judgment of the Hon'ble Apex court in Narayan Chetanram Chaudhary Vs. State of Maharashtra (2000) 8 SCC 457 Supreme Court) which has dealt with the provisions of the JJ Act as well as other provisions. According to his submission, the intention of the Legislature has not been properly understood by both JJ Board as well as the children's

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NC:2024:KHC-D:7986-DB Court. He further relies upon the judgment in Mahesh Vs. State of Rajasthan (2021) 18 SCC 582.

14. Relying upon all these provisions of law as well as the said Judgments, the learned counsel for the appellant submits that, on this lapse on the part of the Children's Court as well as JJ Board, the conviction so passed against the accused and order of sentence is liable to be set aside.

15. In addition to that, he submits that, the witnesses so examined in this case, are all relatives. They are all interested witnesses. Because of some domestic dispute between the father of the CCL as well as the complainant and her mother, a false case has been foisted against CCL, falsely implicating

him. As the father of the CCL was a drunkard and every day he used to quarrel being a neighbour of the complainant's mother, because of that alleged irritation and because of several quarrels in between them, the CCL has been falsely implicated in this case.

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16. In support of his submission, he relied upon certain evidence placed on record by the prosecution, as well as pointed out certain contradictions and discrepancies in the evidence spoken to by the witnesses examined by the prosecution. It is his submission that, the Investigation Officer also has not properly followed the procedure. Therefore, he submits that, the appeal so filed by the appellant deserves to be allowed and the judgment of conviction and order of sentence, so passed against the CCL is to be set aside.

17. As against this submission, learned counsel for the respondent - State Sri M.B.Gundawade, Additional State Public Prosecutor submits that, on perusal of the order sheet of JJ Board as well as the Children's Court, after fully satisfying, the JJ Board has come to the conclusion that, the CCL is a juvenile, but has to be tried as an adult. The said finding is based upon the report from the Psychologist from the DIMHANS Hospital, Dharwad. So also, certain guidelines which were required

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NC:2024:KHC-D:7986-DB are followed by the JJB and the said order is in strict adherence to the provisions of the JJ Act.

18. He further submits that, while assessing the age of the CCL, the JJ Board has taken to consideration the birth certificate issued by the Headmaster, where the CCL was studying at that point of time. That was a conclusive proof. The investigation officer has maintained throughout his investigation that, this CCL is aged in between 16 and 18 years, who has to be tried by the Children's Court only. No appeal or revision though available to the appellant - CCL was filed by him. Thereby, whatever the order so passed by the JJ Board and Children's Court with regard to the age of the CCL has become final. He was capable of understanding the nature of the offences which he has committed. He had full knowledge about this. Therefore, now the appellant cannot find fault with JJ Board or the Children's Court.

19. It is his further submission that, after assessing the evidence and its evaluation as the complainant

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NC:2024:KHC-D:7986-DB herself is an eyewitness to the said incident so also her mother, who accompanied her, that itself goes to establish that just to deprive the prosecution case, the appellant

has made out such a ground in this appeal. The said submission of the learned Counsel for the appellant, according to him, cannot be accepted. Thus, it is submitted that, the learned Children's Court has rightly passed the legally sustainable judgment of conviction and order of sentence, which do not require any interference by this Court.

20. We have given our anxious considerations to the arguments of both side. Meticulously perused the records. In view of rival submissions of both the side, the points that would arise for our consideration are:

(1) Whether the appellant proves that no proper procedures have been followed by the JJ Board as well as the Children's Court in ascertaining and assessing his age as a juvenile as submitted?

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NC:2024:KHC-D:7986-DB (2) Whether the trial Children's Court has committed any legal or factual error in finding the CCL guilty of committing the offence?

(3) What order?

21. In view of the submissions made at the Bar it is just and proper to incorporate the relevant statutes and rules with regard to the present facts of the case in this judgment so as to have a better understanding of the provisions of the Act.

Section 2(10) of the JJ Act defines Board i.e., "Board" means a JJB constituted under Section 4.

Section 2(13) speaks of "child in conflict with law", it means a child who is alleged or found to have committed an offence and who has not completed 18 years of age on the date of commission of such an offence.

Section 2(20) speaks of "Children's Court". It means a court established under the commissions for Protection of Child Rights Act, 2005 or the Special Court

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NC:2024:KHC-D:7986-DB under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such Courts have not been designated, the Court of sessions having jurisdiction to try offences under the Act.

Section 2(22) defines Committee, it means Child Welfare Committee constituted under Section 27.

Section 2(23) defines 'Court', it means a Civil Court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court and City Civil Courts.

Section 2(33) defines "heinous offences". These heinous offences includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment for seven years or more.

Section 4. speaks of "JJB". As per this section, a Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of first class not being a Chief Metropolitan or Chief Judicial Magistrate.

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NC:2024:KHC-D:7986-DB Section 7 speaks of "procedure in relation to Board". Sub section 2 of this section 7 also speaks of procedure to be followed by the JJB.

22. The most important sections are section 14, 15 and 17 to 19 of the JJ Act. It speaks of inquiry by Board regarding Child in Conflict with Law.

Section 14: Inquiry by Board regarding child in conflict with law.--

(1) Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

(2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

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NC:2024:KHC-D:7986-DB (3) A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

(4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:--

(a) at the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-

treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment;

(b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible

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NC:2024:KHC-D:7986-DB and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings;

(c) every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry; 17

(d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973 (2 of 1974);

(f) inquiry of heinous offences,--

(i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

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NC:2024:KHC-D:7986-DB Section 15. Preliminary assessment into heinous offences by Board.--

(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.--For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence. (2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the

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NC:2024:KHC-D:7986-DB procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub- section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

Section 17. Orders regarding a child not found to be in conflict with law.--

(1) Where a Board is satisfied on inquiry that the child brought before it has not committed any offence, then notwithstanding anything contrary contained in any other law for the time being in force, the Board shall pass order to that effect. 18.

(2) In case it appears to the Board that the child referred to in sub-section (1) is in need of care and protection, it may refer the child to the Committee with appropriate directions.

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NC:2024:KHC-D:7986-DB Section 18. Orders regarding child found to be in conflict with law.--

(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, 1[or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter] then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,--

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

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NC:2024:KHC-D:7986-DB

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

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NC:2024:KHC-D:7986-DB

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to--

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then

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NC:2024:KHC-D:7986-DB the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

Section 19. Powers of Children's Court.--

(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that-- 19

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law,

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NC:2024:KHC-D:7986-DB shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

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NC:2024:KHC-D:7986-DB (5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.

23. Even the other provisions like Section 101 speaks of appeals on the orders under the Act, so also the act speaks of revision.

24. Even in this judgment, it is just proper to incorporate certain model rules framed in the year 2016(as amended) i.e., such rule 10, 10A and 11 of Juvenile Justice (Care and Protection of Children's Model) Rules, 2015. They read as under:

10. Post-production processes by the Board.- (1) On production of the child before the Board, the report containing the social background of the child, circumstances of apprehending the child and offence alleged to have been committed by the child as provided by the officers, individuals, agencies producing the child shall be reviewed by the Board and the Board may pass such orders in relation to the child as it deems fit, including orders under sections 17 and 18 of the Act, namely:

(i) disposing of the case, if on the consideration of the documents and record submitted at the time of his first

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NC:2024:KHC-D:7986-DB appearance, his being in conflict with law appears to be unfounded or where the child is alleged to be involved in petty offences;

(ii) referring the child to the Committee where it appears to the Board that the child is in need of care and protection;

(iii) releasing the child in the supervision or custody of fit persons or fit institutions or Probation Officers as the case may be, through an order in Form 3, with a direction to appear or present a child for an inquiry on the next date; and

(iv) directing the child to be kept in the Child Care Institution, as appropriate, if necessary, pending inquiry as per order in Form 4.

(2) In all cases of release pending inquiry, the Board shall notify the next date of hearing, not later than fifteen days of the first summary inquiry and also seek social investigation report from the Probation Officer, or in case a Probation Officer is not available the Child Welfare Officer or social worker concerned through an order in Form

5. (3) When the child alleged to be in conflict with law, after being admitted to bail, fails to appear before the Board, on the date fixed for hearing, and no application is moved for exemption on his

behalf or there is not sufficient reason for granting him exemption, the Board shall, issue to the Child Welfare Police Officer and the Person- in-charge of the Police Station directions for the production of the child.

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NC:2024:KHC-D:7986-DB (4) If the Child Welfare Police Officer fails to produce the child before the Board even after the issuance of the directions for production of the child, the Board shall instead of issuing process under section 82 of the Code of Criminal Procedure, 1973 pass orders as appropriate under section 26 of the Act.

(5) In cases of heinous offences alleged to have been committed by a child, who has completed the age of sixteen years, the Child Welfare Police Officer shall produce the statement of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board, a copy of which shall also be given to the child or parent or guardian of the child.

(6) In cases of petty or serious offences, the final report shall be filed before the Board at the earliest and in any case not beyond the period of two months from the date of information to the police, except in those cases where it was not reasonably known that the person involved in the offence was a child, in which case extension of time may be granted by the Board for filing the final report.

(7) When witnesses are produced for examination in an inquiry relating to a child alleged to be in conflict with law, the Board shall ensure that the inquiry is not conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by section 165 of the Indian Evidence Act, 1872 (1 of 1872) so as to

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NC:2024:KHC-D:7986-DB interrogate the child and proceed with the presumptions in favour of the child. (8) While examining a child alleged to be in conflict with law and recording his statement during the inquiry under section 14 of the Act, the Board shall address the child in a child-friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which has been alleged against the child, but also in respect of the home and social surroundings, and the influence or the offences to which the child might have been subjected to.

(9) The Board shall take into account the report containing circumstances of apprehending the child and the offence alleged to have been committed by him and the social investigation report in Form 6 prepared by the Probation Officer or the voluntary or non- governmental organisation, along with the evidence produced by the parties for arriving at a conclusion.

10 A. Preliminary assessment into heinous offences by Board.- (1) The Board shall in the first instance determine whether the child is of sixteen years of age or above; if not, it shall proceed as

per provisions of section 14 of the Act. (2) For the purpose of conducting a preliminary assessment in case of heinous offences, the Board may take the assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult

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NC:2024:KHC-D:7986-DB circumstances. A panel of such experts may be made available by the District Child Protection Unit, whose assistance can be taken by the Board or could be accessed independently.

(3) While making the preliminary assessment, the child shall be presumed to be innocent unless proved otherwise. (4) Where the Board, after preliminary assessment under section 15 of the Act, passes an order that there is a need for trial of the said child as an adult, it shall assign reasons for the same and the copy of the order shall be provided to the child forthwith.

11. Completion of Inquiry.- (1) Where after preliminary assessment under section 15 of the Act, in cases of heinous offences allegedly committed by a child, the Board decides to dispose of the matter, the Board may pass any of the dispositional orders as specified in section 18 of the Act.

(2) Before passing an order, the Board shall obtain a social investigation report in Form 6 prepared by the Probation Officer or Child Welfare Officer or social worker as ordered, and take the findings of the report into account.

(3) All dispositional orders passed by the Board shall necessarily include an individual care plan in Form 7 for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or a recognised voluntary organisation on the basis of interaction with the child and his family, where possible.

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NC:2024:KHC-D:7986-DB (4) Where the Board is satisfied that it is neither in the interest of the child himself nor in the interest of other children to keep a child in the special home, the Board may order the child to be kept in a place of safety and in a manner considered appropriate by it.

(5) Where the Board decides to release the child after advice or admonition or after participation in group counseling or orders him to perform community service, necessary direction may also be issued by the Board to the District Child Protection Unit for arranging such counseling and community service.

(6) Where the Board decides to release the child in conflict with law on probation and place him under the care of the parent or the guardian or fit person, the person in whose custody the child is released may be required to submit a written undertaking in Form 8 for good behavior and well-being of the child for a maximum period of three years.

(7) The Board may order the release of a child in conflict with law on execution of a personal bond without surety in Form 9. (8) In the event of placement of the child in a fit facility or special home, the Board shall consider that the fit facility or special home is located nearest to the place of residence of the child's parent or guardian, except where it is not in the best interest of the child to do so.

(9) The Board, where it releases a child on probation and places him under the care of

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NC:2024:KHC-D:7986-DB parent or guardian or fit person or where the child is released on probation and placed under the care of fit facility, it may also order that the child be placed under the supervision of a Probation Officer who shall submit periodic reports in Form 10 and the period of such supervision shall be maximum of three years.

(10) Where it appears to the Board that the child has not complied with the probation conditions, it may order the child to be produced before it and may send the child to a special home or place of safety for the remaining period of supervision.

(11) In no case, the period of stay in the special home or the place of safety shall exceed the maximum period provided in clause (g) of sub-section (1) of section 18 of the Act.

25. The appellant has not questioned the designation of a Special Court established under the Juvenile Justice Act to try the offences of present nature.

26. Section 28 POCSO Act speaks of designation of Special Courts, which is not in dispute. On perusal of the aforesaid provisions of law, Section 15 of the JJ Act enables the board to make preliminary assessment into heinous offences, where such an offence alleged to have

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NC:2024:KHC-D:7986-DB been committed by a child between 16 and 18 years of age. The preliminary assessment is to be conducted with regard to his mental and physical capacity to commit such an offence, ability to understand the consequences of the offence and the circumstances in which the offence was alleged to have been committed.

27. On reading the proviso to the section 15, it provides that for making such an assessment, the Board may take assistance of an experienced Psychologist or Psycho-social worker, or other experts. Further explanations provide that, the process of preliminary assessment is not a trial but merely to assess the capacity of such a child to commit and understand the consequences of the alleged offence. The importance of the assistance from the expert is even evident from reading section 101(2) of the Act. While considering the appeal against the order passed under section 15, the Appellate Authority can also take assistance of experts other than those who assisted the Board.

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28. Section 14 (3) of the Act provides, that the preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board. But, in view of the recent judgment of the Hon'ble Supreme Court of India in Criminal Appeal No. 2411 of 2024 decided on 7.5.2024 in Special Criminal No.3033 of 2024 CHILD IN CONFLICT WITH LAW THROUGH HIS MOTHER v. THE STATE OF KARNATAKA AND ANOTHER, it is held that, such a period so prescribed is directory and not mandatory.

29. On reading the aforesaid provision of law, when the child-accused is produced before the JJB, mandatorily, the JJB has to follow the following procedures before transferring the case to the Children's Court. Once the JJB satisfies that the juvenile is in between 16-18 years, it has to transfer the case to the Children's Court.

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NC:2024:KHC-D:7986-DB Procedures to be followed by Children's Court when a CCL between 16-18 years allegedly commits Heinous Offence is described in a pictorial manner as under.

On receipt of preliminary assessment from JJB (Section

15), the Children's Court may decide (Section 19) There is a need for trial of the There is no need for trial of child as an adult as per the the child as an adult and may provisions of CrPC, 1973 and conduct an inquiry as JJB and pass appropriate orders after pass appropriate orders in trial subject to the provisions of Section 21 considering the accordance with provisions of special needs of the child, the Section 18 {Section 19(1)(ii)} tenets of fair trial and maintaining a child friendly atmosphere. {Section 19(1)(i)} Children's Court shall ensure that the final order, with regard to child shall include an individual care plan for rehabilitation of child, including follow up by PO or by DCPU or a social worker {Section 19 (2)} Children's Court shall ensure Reports {Section 19 (4)} Children's Court shall that there is a periodic follow shall be forwarded to the ensure that the child up report every year by the PO Children's Court for record who is found to be in or the DCPU or a social worker, and follow up, as may be conflict with law is as required, to evaluate the required. {Section 19 (5)} sent to a Place of progress of the child in the Safety till he attains place of Safety and to ensure the age of 21 years that there is no ill-treatment to and thereafter, the the child in any form. {Section person may be 19 (4)} transferred to a jail.

{Section 19 (3)}

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NC:2024:KHC-D:7986-DB Thus, on reading the above provisions of the Act, it is very much necessary to follow the following Guidelines by the Juvenile Justice Board.

1. Age enquiry of the CCL.

i) Conducted as per Sec.94 of the Act.

ii) Primarily the age can be determined on the basis of appearance of Child.

iii) In case the age cannot be so determined, the Act provides that the age is to be determined, firstly on the basis of date of birth as mentioned in school Certificates/ Matriculation Certificates/equivalent certificates from concerned examination board.

iv) If such Certificates are not available, then on the basis of birth certificate given by corporation or Municipal authority or Panchayat.

v) If the Municipal record is also not available, then the age is determined by ossification test or any other latest medical age determination test conducted by orders of the committee or the Board such medical test has to be concluded within 15 days of the order.

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2. JJB has to receive social investigation report:-

i) The report should includes information regarding the antecedents; family background and other material circumstances in which the offence was committed.

ii) Based on this report JJB can take decision in best interest of the CCL.

iii) It is to be prepared by Probation Officer and if he is not available, then by Child welfare officer/social worker.

iv) It has to be prepared within 15 days from the date of first production of the CCL before JJB.

3. JJB to consider 4 aspects while assessing a minor.

i) Physical capacity of the minor to commit the offence.

ii) Mental capacity of the minor to commit the offence.

iii) Ability to understand the Consequences of the alleged offence.

iv) Circumstances under which the offence was allegedly committed.

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4. JJB has to refer the report of Psychologist as well as expert opinion.
5. CCL is to be thoroughly examined, just one time examination is not sufficient to transfer the case to Children's Court.

Following Guidelines are to be followed by the Children's Court

1. After transferring any POCSO case from JJ Board to Children's Court, the Children's Court is required to take a fresh enquiry and adjudicate as to whether he should be tried as an adult or not/ maturity test.
2. As per Sec.19 of the amended Act, a Children's Court has to ensure that the Child in conflict with the law is sent to a 'Place of safety' until he reaches the age of 21 years, and is only then transferred to jail.
3. Children's Court can also order the conditional release of the Child after he attains the age of 21 years.
4. If Children's Court relies upon the Psychologist report then it is a duty of the Court that if juvenile wants to cross- examine the Psychologist, then the court

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NC:2024:KHC-D:7986-DB has to give chance to cross-examination of a Psychologist, if not given then it is against natural justice.

5. Preliminary assessment of mental and Physical capacity of juvenile to commit heinous offence must be concluded expeditiously.
30. Now, as could be seen from the records of this case, the CCL was produced before the JJB on 17.4.2018 at 7:30 p.m. He was remanded to Observation Home till 20.04.2018. Thereafter, he was produced before the JJ Board on 20.4.2018 and subsequent days on 1.06.2018, it was ordered by the JJ Board on hearing both the sides with regard to the preliminary assessment. The DIMHANS, Dharwad was requested to give the preliminary assessment report. It was ordered that, CCL shall be subjected to preliminary assessment with regard to his mental and physical capacity to commit the alleged offences, ability to understand the consequence of the offences and the circumstances in which he allegedly committed offences by Psychologist of remarks from

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NC:2024:KHC-D:7986-DB DIMANS Dharwad. Accordingly, necessary direction was issued to the concerned authorities. Subsequently, charge sheet came to be filed by the investigation officer on 03.7.2018.

31. The Trial court records reveal that, the President of the JJB took cognizance of the offence. After receipt of the report from the Psychologist, DIMANS, 2nd bail application came to be filed by the CCL and bail was granted to him on 14.9.2018. On the same day itself, a detailed order came to be passed under section 15, Section 18(3) of JJ Act, 2015 holding that, age of CCL is 16 years, 10 months, resident of Masur and case against him be transferred to Children's Court for trial of the offences for which he has been charged. During the course of the order at paragraph 8, the learned JJ Board has passed an order and observed as under:

"The Psychologists at DIMHANS, Dharwad, after mental assessment of CCL with regard to ability to understand the consequences of commission of offences have opined that, there is no history suggestive of any diseases or trauma or surgery of or medications use which

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NC:2024:KHC-D:7986-DB may affect potency. There is no history suggestive use of any legal or illegal substances which may alter his behaviour. They ultimately formed an opinion that after comprehensive Psychologist assessment, there is nothing to suggest that the above person is Psychological incapable to perform the sexual act. This report makes it clear that, CCL is mentally able having physical capacity to commit the alleged offences and also ability to understand the consequences of offences, which he allegedly committed the offences in question. Even, that apart DNA test placed on record by the IO also discloses that he can perform the sexual intercourse. These materials, at this juncture, point out that CCL is mentally able person to commit the alleged offences and he is having mental capacity and ability to understand the consequences of commission of alleged offences. Therefore, in our considered opinion, this is a fit case to transfer it to Children Court for trial of the alleged offences".

32. After transfer of the case to the Special Court, that is, Children's Court on 5.8.2019, the Children's Court passed an order stating that, date of birth of CCL is 4.6.2001 as per certificate issued by the Headmaster, Government Primary School, Siddheshwar nagar, Masur.

He has completed the age of 16 years, 10 months, 11 days, as on date of offence. It is a serious and grave offence committed upon victim minor girl by CCL.

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NC:2024:KHC-D:7986-DB Therefore, this CCL has to face trial of this case as an adult as per provisions of Section 19 of JJ Act. The Children's Court will ensure that at the time of passing final order, it is going to consider about rehabilitation of a child and other measures and provisions of section 21 of the said act.

33. It is observed by the JJ Board that, by looking into the provisions of Section 19 of JJ (CPC) Act and gravity of offence committed by CCL upon victim minor girl, based on report of JJ Board and others, this Court is of the opinion that, "the trial of this case has to be conducted against CCL as an adult accused, as contemplated under the said provisions".

34. After transfer of the case, the learned Children's Court also has considered the findings of the JJ Board, and after satisfaction proceeded with trial by passing detailed order.

35. The learned Children's Court has considered the birth certificate issued by the Headmaster, where the

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NC:2024:KHC-D:7986-DB CCL was studying at the relevant point of time. While marking this birth certificate, marked at Ex. P13, no little finger or objection was raised by the CCL. That means, this Ex.P.13 is dated 25.4.2018 is collected by the Investigation Officer wherein the Head master has issued the birth certificate as per the records maintained in the school, stating that a CCL was born on 4.6.2001. Thereby, calculated the age of the CCL as 16 years 10 months 11 days, as on the date of the commission of the offence.

36. From the conjoint reading of the aforesaid provisions of the Act and the Rules framed in the year 2016, in our opinion, wherever words "Children's Court"

or "Sessions Court" mentioned both should be read in alternative. In the sense where Children's Court is available even if the appeal is said to be a maintainable in the Sessions Court, it has to be considered by the Children's Court.

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37. Though it is argued by the counsel for the appellant that, no opportunity is given to the appellant while assessing his exact age, the report so submitted by the DIMHANS authorities do establish that, after medically examining the appellant and after following all the medical formalities, a report was submitted stating that, CCL was aged 16 years 10 months 20 days. The JJ board has rightly assessed the report, evaluated the same and based upon Ex.P.13 birth certificate issued by the school authorities, as on the date of the commission of the offence CCL was aged 16 years 10 months 20 days. For the first time before this court, the appellant has raised this question. No doubt, there is no bar for raising this question before this court in the first appellate Court. But in view of the evidence

placed on record by the prosecution and also the non denial of the fact of the age of the CCL as was aged 16 years 10 months 20 days as on the date of commission of offence by him would establish that, for the sake of objections this question is raised before this court. There is no

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NC:2024:KHC-D:7986-DB effective cross examination directing either to the Investigation officer or to the Doctor who has medically examined the CCL.

38. PW.8 Dr.Praveen Kumar K.S., the Medical Officer, Government Hospital, Davanagere, says that, he has issued Ex.P.15 after medically examining the CCL and he identifies his signature, etc., Thus, on perusal of all these aspects, they do suggest that, as on the date of commission of offence CCL was aged 16 years 10 months 20 days. His date of birth is a conclusive proof showing his date of birth as 4.6.2001. Therefore, now the appellant cannot contend that, he has not been given any opportunity and there is a violation of the principle of natural justice i.e., audi alteram partem by applying A.R.Anthony's case etc., There is no substance in the submission of the counsel for the appellant that, there is no proper assessment of age of the CCL by the JJ board.

39. It was ordered by the JJ Board that, the Doctors of DIMHANS are requested to give their findings to give

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NC:2024:KHC-D:7986-DB their preliminary assessment, ability to understand the consequences of the offences and the circumstance in which he has allegedly committed the offence, by psychological test at Dharwad. This report is not challenged by the appellant by preferring an appeal before the Session's Court. Thus, the said report has become final.

40. In view of all these factual features, it can very well be stated that, the CCL was aged 16 years 10 months 20 days as on the date of the commission of the offence and as per the provisions of the JJ Act, 2015 and Rules 2016, he was rightly tried by the Children's Court. Before the Children's Court, no objections were raised by the CCL. The silence on the part of the CCL goes against his own defence now set up in this appeal. In our considered opinion, the JJB and the Children's Court having followed the aforesaid guidelines if not all, but, all relevant guidelines and have proceeded with trial of the case in accordance with Law. We do not find any factual

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NC:2024:KHC-D:7986-DB or legal error by the JJB and Children's Court. Therefore, point no.1 raised supra is answered against the appellant holding that, CCL was rightly tried by the Children's Court as an adult.

41. So far as the judgment of conviction and order of sentence passed by the trial Court is concerned, it is argued that, there is no proper evidence led by the prosecution and the witnesses examined are

all interested witnesses. Therefore, their evidence cannot be accepted.

42. Ex.P.1 is the complaint, wherein the complainant the mother of the victim girl has stated that, on 15.4.2018 being Sunday, she had been to the house of her parents along with the victim girl. When her child victim girl was playing, this CCL came there had a talk with complainant and took the victim girl with him. In the evening hours, when complainant wanted to answer her nature's call and went towards the hillock area, she noticed that CCL by removing his clothes so also

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NC:2024:KHC-D:7986-DB removing the clothes of the victim girl was sexually intercourse with the victim girl. It was 6.30 p.m. at that time. She noticed the illegal act of the CCL and scared herself and went there and made the CCL to get up. CCL went away by wearing his pant. On noticing the private part of the victim girl, she noticed that there was tenderness and pain and the said private part of victim girl had become red colour. Thus, it is alleged that, the complainant is an eye witness to the incident. At that time, she was accompanied with her mother. Thereafter, she lodged a complaint at 10.00 p.m. by appearing before the Hirekerur Police Station, which is registered in Crime No. 119 of 2018 for the aforesaid offences.

43. It is the case of the prosecution that, after filing the complaint, the police came to the scene of offence, conducted the spot panchanama, took the photographs as per Ex.P.3 to P5. While marking these photographs, no objections were raised by the defence. Ex.P.6 is the scene of offence panchanama, wherein it

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NC:2024:KHC-D:7986-DB shows that, where exactly the said offence has taken place. It is accompanied with this sketch. Exs.P7, P8 are the photographs showing that, it was CCL who had shown the scene of offence to the Panchas and Investigating Officer. This fact is also not disputed by the defence. Ex.P9 is the CD, P.10 is a site sketch prepared by the Engineer. To show that, it is the victim girl belongs to the backward class from the office of the Tahsildar, Ratti Halli, the certificate has been obtained by the Investigating Officer, showing that victim girl belongs to Hindu (Thalwar) being the Scheduled Tribe. Ex. P12 is the birth certificate of a victim girl showing her date of birth as 5.10.2015. This certificate of birth is not disputed. It shows that the victim girl was a baby when the said incident has taken place. Ex. P13 is the birth certificate issued by the Headmaster of Masur Government Primary School. To show that CCL belongs to Nekar community, a certificate from Rattihalli Tahsildar is obtained as per Ex.P.14. These documents so marked in this case are not disputed by the defence.

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44. To show that CCL was capable of sexual intercourse a note sheet is produced at Ex. P15. This shows that CCL was medically examined by the Doctor. Ex.P.16 is the letter addressed by the Medical Officer, Taluka Government Hospital to the Forensic laboratory for giving opinion. Ex.P.17 is a Medico Legal Examiner's report of a sexual violence of victim girl. Before the Doctor, it was narrated by the mother - complainant that CCL was aged 16 years, 10 months 20 days used to play with victim girl, carried her to the backyard of his house at 6:30 p.m. and undressed her, removed her panty and was found sleeping on the girl with his pant open and by lying was trying to have a sexual intercourse with the girl. Mother with the other relative tried to catch the CCL and brought to the police station.

45. On medically examining the victim girl, it was opined by the Doctor that, the other parts of the body of the victim girl was found to be normal, but, "it was noticed that "inner aspect of upper arms, tenderness and

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NC:2024:KHC-D:7986-DB contusion over the private part". The Doctor has given an opinion that, there are "evidences suggestive of a forceful sexual act." Though the Forensic Laboratory has given a certificate of examination, it was opined that semen stains were not detected in item nos.1, 2, 3, 4, 5, 6, 7, 8, 10 and 11 and skin tissue was not detected in item no.9. But the evidence of PW.1 complainant is not falsified by the defence. She is an eye witness. So also to show that, where exactly the said offence has committed, the letter issued by the Gram Panchayat, Masur, is produced at Ex. P.19.

46. So far as the oral evidence is concerned, PW.1 being the complainant reiterated the contents of the complaint in her evidence on both. She is consistent in her evidence that, her child victim girl was aged two and half years when the incident took place. She had been to Masur Village, to her parent's house, as she used to have a frequent visit to her parents house. She was knowing this CCL. According to her evidence, whenever she takes

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NC:2024:KHC-D:7986-DB her child, victim girl to her parent's house, the CCL used to take the victim girl with him and used to bring her back. She states, that on 15.04.2018 Sunday at 6.00 p.m., CCL came to the house of her parents. At that time, victim girl was playing on the Katta in front of the house. He took her towards backyard, towards the Siddappana Gudda. Even after half an hour, he did not return. When she went to attend her nature's call and proceeded towards Siddappana Gudda, she noticed in the backyard of the house of the CCL, that the CCL has removed his pant and also the under garment of her victim daughter and was doing the sexual intercourse. On seeing her, he worn his pant and went away. She told that, she had faith in him but he is doing this illegal act. She bet him. She noticed that the victim's private part has become red in colour. Thereafter, she came to the house, took her mother with her and lodged a complaint thereafter.

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47. Though this P.W.1 has been directed with severe and intensive cross-examination but nothing worth is elicited. The defence that has been set up by the accused CCL is that, as the father of the CCL used to consume alcohol and do galata, therefore, the complainant being aggrieved by the galata, the CCL has been falsely implicated. But this suggestion is flatly denied by PW.1 in material particulars. Though lengthy cross examination is directed to her but nothing worth is elicited to disbelieve her version given in her examination

-in-chief.

48. PW2 Girish Bhimappa Olekar is the PDO who has issued the Ex.P.6. He was also pancha to the panchanama. His presence at the time of Panchanama and Ex.P.6 is not disputed by the defence. Through the evidence of PW.2, panchanama Ex.P.6 is duly proved in accordance with law.

49. PW.3 Manjamma Nagarajappa Vaddar is none other than the mother of the complainant. She

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NC:2024:KHC-D:7986-DB corroborated the evidence of P.W.1 in material particulars. From her evidence, it can be stated that she is not an eyewitness and came to know about the said fact only through her daughter. Though she has been cross examined at length by the defence, but nothing worth is elicited so as to disbelieve her version given in the examination in chief.

50. PW.4 Sujata Basavaraj Bhuvi is the sister of the complainant and she too is not a witness, but she has signed the panchanama as per her evidence. Her evidence can be believed to the extent that, she came to know about the said incident through her sister.

51. PW.5 Jagdish Jayappa Baligar is none other than the husband of P.W.1 - complainant. As he is not an eyewitness, much value cannot be attached to the evidence of PW.5.

52. PW.6 Ranjitha Maravalli is a relative of complainant and she came to know about the said incident through P.W.1 only. She heard the noise of P.W.1

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NC:2024:KHC-D:7986-DB according to her evidence. This fact is not denied by the defence. She has deposed ignorance in the cross examination.

53. PW.7 Subhash Chandra Shivappa, was an Engineer at the relevant time who has issued Ex.P.10 the sketch. The contents of the sketch are not denied in the cross examination.

54. PW.8 Dr. Praveen Suresh Rao Kumar is Medical Officer, who has medically examined CCL on 16.4.2018. He noticed no injuries on the body of the CCL during his medical examination. According

to his evidence, CCL was capable to perform sexual intercourse. This fact is not denied in the cross examination.

55. P.W.9 Dr.Netravati Narayan Sirsikar was the Doctor at the relevant time, who medically examined the victim girl after obtaining the consent from the victim's mother, she conducts the examination of victim girl. During her general physical examination, she has not found any injuries on the body. But during the genital

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NC:2024:KHC-D:7986-DB examination, she noticed tenderness and contusion on the perineum. She did not mention about the hymen as it was infantile (very small). There was tenderness and reddish congestion present on Urethra and external genetalia. She collected the clothes of the victim and swab from perineum and vagina for the purpose of chemical analysis.

56. According to her clinical opinion, there are evidence suggestive of forceful sexual act on the victim girl. The victim being aged two and half years, not in a position to explain the history, but the victim was saying the name as "CtÚ" and also saying "CtÚ ®äí ªÁiÁrzÀ, CtÚ£À À ÁÄ ¹zÉÝÃ±À JAZÀÄ ªÀÄUÀÄ °ÉÃ¼ÀÄwvÀÄÛ". This fact was stated by the °É,g Doctor is not denied by the defence in material particulars. Except denial nothing is elicited.

57. P.W.10 Anil Kumar Boomreddy was the Investigation Officer at relevant time. According to him, on taking up the investigation, he conducted investigation and obtained various documents i.e., more

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NC:2024:KHC-D:7986-DB importantly, the personal details of the CCL, showing date of birth, etc., No effective cross examination is directed to this witness to disbelieve that, the investigation is not proper. Even the law says that, even if the investigation is perfunctory, if there is a cogent evidence led by the prosecution, that will not come in the way of finding the accused guilty.

58. P.W.11 Hulgappa Hanamappa Vaddar, was the PSI at the relevant time, who registered the crime and set the law in motion.

59. Thus, on cumulative reading of the evidence led by the prosecution and also the submission of the both the side, It can be stated that, in the light of our findings and the reasons, as discussed for arriving at such a finding, we accept the findings of the JJB of holding that, the CCL was an adult, was to be tried as an adult member, and accordingly, the JJ Board is right in finding the CCL as an adult accused. We accept that, the date of birth of the appellant CCL as mentioned in the

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NC:2024:KHC-D:7986-DB certificate issued by the headmaster of Masur School dated 20.5.2018 is correct. A copy of which is produced before this court is to be accepted for determining the age of the CCL at the time of Commission of the offence of which he has been convicted. Going by that certificate, his age at the time of commission of the offence was 16 years, 10 months, 20 days. Thus he was a juvenile on the date of the commission of the offence and he was rightly tried by the Children's Court and Children's Court has convicted him in terms of the provisions of the Juvenile Justice Act 2015. This shall be deemed to be the true age of the CCL, who was tried and convicted.

60. The following table shows the quantum of sentence imposed on CCL:

Sl.No.	Offence	Sentence and fine
1.	Section 366 of IPC	Rigorous imprisonment for a period of 5 years and shall pay fine of Rs. 2000/-. In default of payment of fine amount, the accused shall undergo simple imprisonment for - 61 -

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2.	Section 6 of POCSO Act.	further period of one year. Rigorous imprisonment for a period of 10 years and shall pay fine of Rs. 5000/-. In default of payment of fine amount, the accused shall undergo simple imprisonment for further period of 6 months.
3.	Section 3(2) (v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.	Undergo life imprisonment and shall pay fine of Rs. 5000/-. In default of payment of fine amount, the accused shall undergo rigorous imprisonment for further period of five years.

61. The CCL was also tried by the trial Court for the alleged offence under Section 3(2)(v) of The Schedule Caste and Schedule Tribes (Prevention of Atrocities Act), 1989. On scrupulous reading of the entire evidence placed on record by the prosecution either PW.1 or any other witnesses including the IO have stated in their respective evidence that CCL was knowing that the

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NC:2024:KHC-D:7986-DB victim baby belongs to the Scheduled Tribe. Except producing the caste certificate of the baby as per Ex.P11 and of her mother, no other evidence is placed on record by the prosecution. Even during the course of the argument, no such submission was made by the prosecution.

62. On reading the provisions of Section 3(2)(v) of the aforesaid Act, it is a mandate that the accused must have knowledge about the caste of the victim. In this case, the victim baby just 2 1/2 years of age and had no sense of its caste. So also accused is a juvenile aged in between 17 and 18 years as per the evidence placed on record. Unless the accused knew about the caste of the victim, this provision as amended in the year 2016 has no application. Therefore, the prosecution has utterly failed to prove the offence against CCL under section 3(2)(v) of the SC & ST (Prevention of Atrocities) Act, 1989. Therefore, the CCL is to be acquitted for the aforesaid offence by giving benefit of doubt.

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NC:2024:KHC-D:7986-DB

63. The learned counsel for the appellant Sri S.D.Babaladi submits that, the offence alleged to have been committed by the CCL he was in between 17 and 18 years and a boy having good future. He is coming from a poor family belonging to Nekar community. Even his family life is not conducive because of conduct of his father. It has come in the evidence that his father is a drunkard. So looking to the family status and the age of the CCL, he submits to show some leniency in imposing the sentence by modifying the sentence already imposed by the trial Court.

64. As against this submission, the learned Addl. SPP submits that taking into consideration of all the aspects of the case and considering the mitigating circumstances, the trial Court has rightly sentenced the CCL. Therefore, he submits not to interfere to the said sentence.

65. As submitted by the learned counsel for the CCL, except the age and family background of the CCL,

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NC:2024:KHC-D:7986-DB there are no mitigating circumstances brought on record by the defence.

66. As there is cogent and acceptable evidence lead by the prosecution, we do not find any factual or legal error in finding the accused guilty of the commission of the aforesaid offences. Therefore, in view of the discussion made above on various points for consideration, we do not find any factual error or legal error committed by the Trial Court in finding the accused guilty of committing the offences.

67. At this stage, this court is obliged to observe that; the Juvenile Justice Boards (JJBS) and Children's Courts shall have to follow the guidelines to assess the age of the Juvenile and shall take appropriate steps in accordance with law. We request all the JJB's and Children's Court to follow the same as narrated in the course of this judgment.

68. In view of above discussion, the appeal succeeds in part. The accused-CCL is entitled for

- 65 -

NC:2024:KHC-D:7986-DB acquittal for the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989.

Resultantly, we pass the following:

ORDER

- i) Appeal is allowed in-part.
- ii) The Judgment of conviction and order of sentence dated 09.04.2021 passed by the Additional District and Sessions Judge, FTSC-1, Haveri for the offences under Sections 366 of IPC, Section 6 of the POCSO Act is confirmed.
- iii) Whereas, the order of conviction and sentence passed for the offence under Section 3(2) (v) of The Schedule Caste and Schedule Tribes (Prevention of Atrocities Act), 1989 dated 09.04.2021 passed by the Additional District and Sessions Judge, FTSC-1, Haveri is hereby set aside and the consequently, the - CCL is acquitted of the said charges.

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NC:2024:KHC-D:7986-DB

- iv) The recommendation made by the Trial Court to decide about the quantum of compensation to be awarded to the victim remains undisturbed.
- v) Copy of this judgment be circulated to all the Juvenile Justice Boards (JJBS) and the Children's Courts in the State for necessary guidance as well as to the Karnataka Judicial Academy Bangalore for reference.

vi) Send a copy of this judgment along with original records to the trial court also copy of the judgment to the concerned Superintendent of Jail for reference and necessary action.

We place on record the appreciation for the assistance rendered by Ms. Shreya Sunil Utture, Law Clerk-Cum-Research Assistant.

Sd/-

JUDGE Sd/-

JUDGE PSJ/Sk/-

Shri Umesh S/O Hanamanth Murgod vs Smt Maheshwari Alias Sawata W/O Umesh ... on 4 April, 2024

Author: Ravi V.Hosmani

Bench: Ravi V.Hosmani

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NC: 2024:KHC-D:6163
WP No. 101739 of 2024

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 4TH DAY OF APRIL, 2024
BEFORE

THE HON'BLE MR JUSTICE RAVI V.HOSMANI
WRIT PETITION NO. 101739 OF 2024 (GM-CPC)

BETWEEN:

SHRI UMESH S/O. HANAMANTH MURGOD,
AGE: 36 YEARS,
OCC: POLICE AT FIRE DEPARTMENT,
A.P.M.C. AMARGOL, R/O. BEEDAKI, TQ: RAMDURG,
NOW RESIDING AT HUBBALLI,
QUARTERS OF THE FIRE DEPARTMENT,
SHREE NAGAR CROSS, HUBBALLI,
DIST: DHARWAD-580009.

...PETITIONER

(BY SRI H.M. DHARIGOND, ADVOCATE)

AND:

SMT. MAHESHWARI @ SAWATA
W/O. UMESH MURGOD,
AGE: 33 YEARS, OCC: HOUSEHOLD WORK,
R/O. BEEDAKI, TQ: RAMDURG,
NOW RESIDING AT

CHANDRASHEKAR

C/O. SHEKAPPA S/O. BASAPPA KAMBLI,

LAXMAN

GUDVINKATTI VILLAGE, TQ: KUNDAGOL,

KATTIMANI
Digitally signed by

DIST: DHARWAD-581113.

CHANDRASHEKAR

LAXMAN KATTIMANI

Location: HIGH COURT
OF KARNATAKA

...RESPONDENT

DHARWAD BENCH

Date: 2024.04.08

15:02:04 +0530

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 12-09-2017 PASSED ON IA NO. I/2016 IN MC NO.5/2016 PASSED BY THE SENIOR CIVIL JUDGE RAMDURG VIDE ANNEXURE-D AND PROCEEDINGS INITIATED UNDER ORDER 21 RULE 11 OF CPC FILED BY THE RESPONDENT IN EX. P NO.41/2019 ON THE FILE OF SENIOR CIVIL JUDGE, RAMDURG PRODUCED AT VIDE ANNEXURE-H.

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

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NC: 2024:KHC-D:6163
WP No. 101739 of 2024

ORDER

This writ petition is filed seeking for following relief:

"Issue a writ in the nature of Certiorari to quash the impugned order dated 12-09-2017 passed on IA no. I/2016 in MC no.5/2016 passed by the Senior Civil Judge Ramdurg vide Annexure-D and proceedings initiated Under Order 21 Rule 11 of CPC filed by the respondent in Ex.P.41/2019 on the file of Senior Civil Judge, Ramdurg produced at vide Annexure-H."

2. Sri H.M.Dharigond, learned counsel for petitioner submitted that marriage of petitioner with respondent was celebrated on 08.06.2014 as per religious customs. They lived together for only two days and thereafter, respondent left for her maternal home. Subsequent efforts for reconciliation failed. Hence, petitioner was constrained to file M.C.no.5/2016 under Section 9 of Hindu Marriage Act, 1955 for restitution of conjugal rights. On appearance, respondent filed application for interim maintenance under Section 24 of Hindu Marriage Act. Though it was opposed, on 12.09.2017, an order was passed directing petitioner to pay interim maintenance of Rs.2,500/- per month and Rs.5,000/- towards litigation expenses until disposal of petition. Thereafter, when petitioner sought to withdraw his petition, same was permitted reserving liberty to respondent, to recover interim maintenance.

NC: 2024:KHC-D:6163

3. Suppressing above, respondent filed petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 ('D.V. Act', for short) and filed interim application for maintenance. Same was allowed on 26.09.2016 directing petitioner to pay Rs.2,500/- per month to respondent until further orders.

4. Subsequently, petitioner filed M.C.no.44/2018 under Section 13(1) (ia) and (ib) of Hindu

Marriage Act. Said petition was decreed on 24.06.2021. In meanwhile respondent had filed Ex.P.no.41/2019 for recovery of arrears. Challenging order granting interim maintenance in M.C.no.5/2016 and Ex.P.no.41/2019 on ground of maintainability, this petition was filed.

5. It was submitted, admittedly, interim maintenance was granted in M.C.no.5/2016. Upon its disposal as withdrawn, interim order would merge with final order. Therefore execution petition would not be tenable. Further, award of interim maintenance in proceedings under D.V. Act was without any reasons and would be unsustainable when only intention of respondent was to harass petitioner. On above grounds sought for allowing petition.

NC: 2024:KHC-D:6163

6. Heard learned counsel and perused writ petition.

7. From above, it is seen that marriage of petitioner with respondent is not in dispute. Likewise award of interim maintenance in M.C.no.5/2016 is also not in dispute. Though said petition was withdrawn, order passed expressly permitted respondent to recover arrears. Consequently, challenge against execution petition filed for recovery would be justified.

8. Insofar as interim maintenance awarded in proceedings under D.V.Act, it is seen that petitioner is an employee of Fire Department and withdrawal of petition for restitution would prima facie justify respondent residing separately from petitioner. And as petitioner is Government employee, interim maintenance of Rs.2,500/- would not call for interference on quantum also. No grounds for interference made out.

9. Writ petition is dismissed.

Sd/-

JUDGE CLK

Smt Akshata W/O Mahesh Oswal vs Sri Mahesh S/O Hirachand Oswal on 21 June, 2024

Author: M.G.S. Kamal

Bench: M.G.S. Kamal

-1-

NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 21ST DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE M.G.S. KAMAL

REV.PET FAMILY COURT NO.100136 OF 2023
C/W
REV.PET FAMILY COURT NO. 100191 OF 2023

IN RPFC NO.100136/2023

BETWEEN:

SRI MAHESH S/O. HIRACHAND OSWAL,
AGED ABOUT 49 YEARS,
OCC: BUSINESS AND INDUSTRIALIST,
R/AT: FLAT NO. 402, 25/1,
MEHTA COLONY, E-WARD,
SAMRAT NAGAR, KOLHAPUR CITY,
KOLHAPUR, MAHARASHTRA.

...PETITIONER

(BY SRI VAIJAYANTHIMALA B., AND
MAMATHA B.L., ADVOCATES)

Digitally
signed by V N
BADIGER
Location:
High Court of
Karnataka

AND:

1. SMT. AKSHATA

W/O. MAHESH OSWAL,
AGED ABOUT 37 YEARS,
OCC: HOUSE WIFE,
R/AT: C/O. SMT. PREMA ANIL
WAINGADE GAYATRI BUILDING,
GROUND FLOOR, SHANTI COLONY,
OPP. ASHRAY VIDYA ASHRAM,
DATTA MANDIR ROAD,
TILAKWADI, BELAGAVI,
PIN CODE - 590 001.

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

2. KUMAR MANOMAY
S/O. MAHESH OSWAL,
AGED ABOUT 8 YEARS,
OCC: STUDENT,
R/AT. C/O. SMT. PREMA ANIL,
WAINGADE GAYATRI BUILDING,
GROUND FLOOR, SHANTI COLONY,
POO. ASHRAY VIDYA ASHRAM,
DATTA MANDIR ROAD, TILAKWADI,
BELAGAVI - 590 001.

(RESPONDENT NO.2 BEING MINOR
IS REPRESENTED BY HIS NEXT FRIEND
MOTHER RESPONDENT NO.1)

... RESPONDENTS

(BY SRI NAGARATNA S. PATTAR,
SHAMSUNDAR N. PATTAR,
S.B. DEYANNAVAR, ADVOCATE FOR R1;
R2 IS MINOR R/BY R1)

THIS RPFC IS FILED UNDER SEC.19(4) OF THE FAMILY
COURT ACT, AGAINST THE JUDGMENT AND ORDER DATED
07.07.2023, IN CRL.MISC. NO.543/2018, ON THE FILE OF THE
PRINCIPAL JUDGE, FAMILY COURT, BELAGAVI, PARTLY
ALLOWING THE PETITION FILED UNDER SEC.125 OF CR.P.C.
AND ETC.,

IN RPFC NO.100191/2023

BETWEEN:

1. SMT. AKSHATA
W/O. MAHESH OSWAL,
AGE: 37 YEARS,

OCC: HOUSEWIFE,
R/O C/O: SMT. PREMA ANIL WAINGADE,
GAYATRI BUILDING, GROUND FLOOR,
SHANTI COLONY
OPP. ASHRAYA VIDYA ASHRAM,
DATTA MANDIR ROAD, TILKWADI

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

BELAGAVI.

2. KUMAR MANOMAY
S/O. MAHESH OSWAL,
AGE: 08 YEARS, OCC: STUDENT,
R/O. C/O: SMT. PREMA ANIL WAINGADE,
GAYATRI BUILDING, GROUND FLOOR,
SHANTI COLONY,
OPP. ASHRAYA VIDYA ASHRAM,
DATA MANDIR ROAD, TILAKWADI,
BELAGAVI.

(PETITIONER NO.2 BEING
MINOR IS REPRESENTED BY
HIS GAURDIAN MOTHER
PETITIONER NO. 1)

...PETITIONERS

(BY NAGARATHNA S. PATTAR AND
S.B.DEYANNAVAR, ADVOCATES)

AND:

SRI MAHESH
S/O. HIRACHAND OSWAL,
AGE: 49 YEARS,
OCC: BUSINESS AND INDUSTRIALIST,
R/O FLAT NO 402, 25/1, MEHTA COLON,
E-WARD, SAMRAT NAGAR,
KOLHAPUR CITY, KOLHAPUR,
MAHARASHTRA.

...RESPONDENT

THIS RPFC IS FILED UNDER SEC. 19(4) OF THE FAMILY
COURT ACT, 1984, PRAYING TO, THE ORDER DATED
07.07.2023 PASSED IN CRL.MISC.543/2018 BY THE PRINCIPAL
JUDGE, FAMILY COURT, BELAGAVI AND ETC.,

THESE PETITIONS, COMING ON FOR ADMISSION, THIS
DAY, THE COURT MADE THE FOLLOWING:

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NC: 2024:KHC-D:8323
RPFC No. 100136 of 2023
C/W RPFC No. 100191 of 2023

ORDER

1. This petition RPFC No.100136/2023 is filed by the husband aggrieved by the order dated 07.07.2023 passed in Crl.Misc.No.543/2018 on the file of the Principal Judge, Family Court, Belagavi, by which while partly allowing the petition filed under Section 125 of Cr.P.C., the Family Court has directed the petitioner herein to pay Rs.8,000/- per month to the respondent No.1 and Rs.4,000/- per month to the respondent No.2 from the date of petition.
2. The above petition for maintenance seeking grant of Rs.25,000/- per month to respondent No.1 and Rs.15,000/- per month to respondent No.2 was filed under Section 125 of Cr.P.C. contending that respondent No.1 is the legally wedded wife of the petitioner herein and their marriage was solemnized on 07.01.2014 and that the respondent No.2 was born out of the said marriage. That soon after the marriage, respondent No.1 was subjected to physical and mental harassment at the hands of the NC: 2024:KHC-D:8323 petitioner herein and his mother. Due to the ill-treatment, the respondent No.1 along with the child started staying with her parents from the year 2016 onwards. That the petitioner herein despite having sufficient income in excess of Rs.2,00,000/- from his business from Ugam Metal Industries, had neglected and refused to maintain his wife. Several other allegations of ill-treatment have been made in the petition. Respondent No.1 had also initiated proceedings under the provisions of Women Domestic Violence Act, 2005 and the petitioner herein has initiated proceedings under the Guardians and Wards Act, 1890. Under the circumstances, the above petition under Section 125 of Cr.P.C. was filed seeking maintenance.
3. Statement of objection filed by the petitioner herein admitting his relationship with the respondents, however denied all the allegations of ill-treatment and harassment. It is also denied that the petitioner herein is having income in excess of Rs.2,00,000/- and he owning a flat and two houses as contended by the respondent No.1 NC: 2024:KHC-D:8323 wife. It is contended that respondent No.1 was not interested to stay with the petitioner and his mother, which caused discord amongst them. That the respondent No.1 herself has left the matrimonial home refusing to stay with the petitioner. That he had shown all the care and concern towards the respondents. That the petitioner is working in a shop earning salary less than Rs.9,000/- per month and the said income is not sufficient to maintain them. On the other hand, respondent No.1 is a MBA graduate, capable of earning for herself, as such, she do not require any financial assistance from the petitioner.
4. Considering the pleading and evidence led in by the parties, the Family Court allowed the petition holding that there were sufficient reasons and grounds for the respondent No.1 not to stay with the petitioner. The Family Court also on assessment of the evidence produced by the parties, came to the conclusion that the petitioner be directed to pay Rs.8,000/- per month to the respondent No.1 and Rs.4,000/- per month to the respondent No.2.

NC: 2024:KHC-D:8323 Being aggrieved by the same, the petitioner-husband is before this Court seeking reduction of maintenance amount and respondent-wife and child is before this Court seeking enhancement of maintenance amount.

5. Learned counsel for the petitioner-husband reiterating the grounds urged in the memorandum of petition submitted that the Family Court grossly erred in accepting the contention of respondent wife and child of petitioner having income as claimed by them. She submits that the so called Ugam Metal Industries is running scrap business and standing in the name of the mother of the petitioner and said business is not earning amount as claimed by the respondents. She submits that the affidavit of income and expenditure of the petitioner was filed before the Family Court and the same has remained uncontested. She submits that the income being drawn by the petitioner is just about Rs.9,000/- and the impugned order directing the petitioner to pay Rs.12,000/-

NC: 2024:KHC-D:8323 in aggregate, would cause serious hardship. Hence, the petition.

6. On the other hand, learned counsel appearing for the respondent wife who has also filed petition for enhancement of maintenance, contend that the Family Court in its judgment at paragraph 29 onwards has dealt in detail with regard to income and the properties of the petitioner and has declined to accept the contention of the petitioner of he not owning the Ugam Metal Industries. She also submits that in that view of the matter, inference needs to be drawn that the petitioner himself owning Ugam Metal Industrial and earning amount in excess of Rs.2,00,000/- per month. She also submits that the petitioner is owning immovable properties, earning rental income from it. Thus, she submits that sufficient material is placed on record to justify the claim of the respondents, of the petitioner earning in excess of Rs.2,00,000/-, which eventually should be considered while determining the maintenance to be paid to the respondents. Hence, she NC: 2024:KHC-D:8323 submits that the maintenance amount as awarded by the Family Court be enhanced to Rs.25,000/- to respondent No.1 and Rs.15,000/- to respondent No.2.

7. Heard and perused the records.

8. The marriage between the petitioner and respondent No.1 and respondent No.2 being their child, is not in dispute. Petitioner and respondents staying separately from the year 2016 is also not in dispute. The petition and counter petition under different provisions of family law have been filed by the parties sufficient to infer that there is serious discord between the parties. Though the respondent wife has contended the petitioner having income in excess of Rs.2,00,000/-, the material evidence brought on record would not justify the said claim. The Family Court in the impugned judgment at paragraphs 29 to 33 has assessed and analyzed the evidence produced by the parties and has thereafter come to the conclusion that the respondents claim would be justified if they are

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NC: 2024:KHC-D:8323 paid Rs.8,000/- and Rs.4,000/- per month respectively. Accordingly, partly allowed the petition.

9. In the petition filed by the husband seeking reduction, except contending that he does not own and posses Ugam Metal Industries, nothing is being urged. Even if he is earning Rs.9,000/- as claimed, no satisfactory material in that regard is produced either. Petitioner being healthy and able bodied person cannot claim his inability to pay the amount as awarded by the Family Court. Similarly, in the absence of any acceptable material on record regarding the petitioner having income in excess of Rs.2,00,000/-, the respondents cannot be heard for enhancement of maintenance as claimed.

10. In the light of the pleadings and material evidence made available by the parties, including filing of the affidavits as required, in the considered view of this Court, the Family Court has arrived at a just and reasonable conclusion directing the petitioner herein to

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NC: 2024:KHC-D:8323 pay Rs.8,000/- to respondent No.1 and Rs.4,000/- to respondent No.2.

11. In that view of the matter, for the present, this Court do not see any reason to interfere with the order passed. Accordingly, both the petitions are dismissed confirming the order passed by the Family Court.

SD/-

JUDGE KGK/CT-ASC

Smt Anitha vs Mr S G Manohar on 12 June, 2024

Author: V Srishananda

Bench: V Srishananda

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NC: 2024:KHC:20724
CRL.RP No. 334 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 12TH DAY OF JUNE, 2024
BEFORE
THE HON'BLE MR JUSTICE V SRISHANANDA
CRIMINAL REVISION PETITION NO. 334 OF 2021

BETWEEN:

SMT. ANITHA
AGED ABOUT 37 YEARS
W/O. S G MANOHAR,
R/AT SHREE NIDHI, BEHIND CHAKRA SOUDHA,
HONNAKATTE, KULAI, MANGALORE-575001.

...PETITIONER
(BY SRI. DEEPAK FOR SRI. KESHAVA BHAT A., ADVOCATES)

AND:

MR. S G MANOHAR
AGED ABOUT 46 YEARS,
S/O. B.N.GOPAL KRISHNA,
R/AT NO. 464, 10TH MAIN, 6TH CROSS,
VIVEK NAGAR, BANGALORE-560040.

...RESPONDENT

Digitally signed by
VEDAVATHI A K
Location: High
Court of
Karnataka

(BY SMT. KALPANA P.V., ADVOCATE)

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING
TO SET ASIDE THE ORDER DATED 23.07.2020 PASSED BY THE
I ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K.,
MANGALURU IN CRL.A.NO.6/2015 VIDE ANNEXURE-A BY
WHICH ORDER THE LEARNED SESSIONS JUDGE HAS
CONFIRMED THE ORDER DATED 07.10.2014 PASSED BY THE
J.M.F.C.(II COURT), MANGALURU IN M.C.NO.24/2013 VIDE
ANNEXURE-B, AND ALLOW PRESENT PETITION WITH COST
THROUGHOUT.

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

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NC: 2024:KHC:20724
CRL.RP No. 334 of 2021

ORDER

Wife is the revision petitioner who suffered an order of dismissal of petition filed under provisions of Protection of women from Domestic Violence Act, 2005 (hereinafter referred to as 'D.V.Act' for the sake of brevity) which was also the subject matter of Criminal Appeal No.6/2015 which also dismissed on merits.

2. Learned counsel for revision petitioner Sri. Deepak for Sri. Keshav Bhat contends that both Courts have not properly appreciated the scope of proceedings before the learned Trial Magistrate under the provisions of D.V. Act and has wrongly dismissed the request of petitioner-wife-petitioner and sought for allowing the revision petition.

3. Per contra, learned counsel Smt. P V Kalpana representing the respondent-husband supports the order and contends that the petition filed by husband seeking restitution of conjugal rights came to be allowed and appeal filed by the petitioner-wife against the said order was also dismissed and the divorce petition filed by the petitioner is also dismissed. As such, there cannot be any attribution of desertion on the part NC: 2024:KHC:20724 of respondent-husband in the matrimonial relationship and therefore, both the Courts have rightly rejected the prayer of petitioner-wife and sought for dismissal of revision petition.

4. Having heard the parties, this Court perused the material on record meticulously.

5. On such perusal of material on record, it is crystal clear that there is no dispute of matrimonial relationship between the parties. Further, on account of desertion on the part of petitioner-wife without proper reason, respondent- husband sought for restitution of conjugal rights by filing appropriate application before the Family Court, D.K.Mangaluru. Same was allowed and against the said order, petitioner-wife preferred an appeal before this Court. Appeal on merits, came to be dismissed. Further, the petition filed by petitioner-wife seeking divorce was dismissed and it has become final.

6. In the meantime, the allegations leveled against the husband by petitioner-wife that there was a domestic violence which all contested came to be dismissed.

NC: 2024:KHC:20724

7. Learned Judge of the First Appellate Court also took into consideration of all the relevant aspects of the matter and upheld the order of the learned Trial Magistrate in dismissing the petition filed by

the petitioner-wife under provisions of D.V. Act.

8. When the material on record has been properly appreciated by the duly constituted Courts, in the revisional jurisdiction having regard to the scope of revision, this Court cannot revisit into the factual aspects and admit the present revision petition for further consideration.

9. Accordingly, the following:

ORDER a. Admission declined.

b. Revision petition dismissed.

Sd/-

JUDGE SSD

Smt. Dakshayini G.P vs Sudeendra Kumar on 4 June, 2024

Author: H.T. Narendra Prasad

Bench: H.T. Narendra Prasad

-1-

NC: 2024:KHC:19159
CP No. 207 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE H.T. NARENDRA PRASAD
CIVIL PETITION NO. 207 OF 2023

BETWEEN:

SMT. DAKSHAYINI G.P
W/O SRI SUDEENDRA
AGED ABOUT 46 YEARS
D/O LATE PUTTACHARI
R/O HARISCHANDRAPURA
GONIKOPPAL, PRESENTLY R/AT
7TH BLOCK, GANDHINAGAR
VIRAJPET TOWN & TALUK
KODAGU DISTRICT.

...PETITIONER
(BY SRI. HANUMANTHAPPA HARAVI GOWDAR., ADVOCATE)

AND:

SUDEENDRA KUMAR
AGED ABOUT 46 YEARS

Digitally signed by
HEMALATHA A S/O LATE L. RAGHAVENDRA
Location: High R/AT TARNAPURI VILLAGE
Court of HUNSUR TALUK-571105.
Karnataka ...RESPONDENT
(BY SRI. SYED AMEER., ADVOCATE [ABSENT])

THIS CIVIL PETITION IS FILED UNDER SECTION 24 OF
THE CPC, PRAYING TO TRANSFER M.C. NO. 18/2023
PROCEEDINGS PENDING ON THE FILE OF SENIOR CIVIL JUDGE
AT HUNSUR TO HONBLE CIVIL JUDGE AT VIRAJPET. AND
CONSEQUENTLY ALLOW THIS PETITION, IN THE INTEREST OF
JUSTICE AND EQUITY.

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

ORDER

This petition under Section 24 of CPC is filed by the petitioner-wife seeking for transfer of M.C.No.18/2023 filed by the respondent-husband pending on the file of Senior Civil Judge and JMFC, Hunsur to the file of the Civil Judge, Virajpet.

2. The petitioner is the legally wedded wife of the respondent and their marriage was solemnized on 22.06.2003 at Umamaheshwari temple choultry, Gonikoppal, as per Hindu rites and customs. After marriage the petitioner was living in her matrimonial house. Out of their wedlock a daughter was born. After some time, as matrimonial disputes arose between the parties, the petitioner started living separately with her brother and daughter in Gonikoppal. Thereafter, the petitioner-wife filed Criminal Misc. Petition No.39/2023 before the Civil Judge, Virajpet under Section 12 of the Protection of Women under Domestic Violence Act, 2005 (for short, 'DV Act') NC: 2024:KHC:19159 and the respondent-husband filed a divorce petition in M.C.No.18/2023 under Section 13(1)(ia) and (ib) of the Hindu Marriage Act before the Senior Civil Judge and JMFC, Hunsur. Since the petitioner is residing with her brother and daughter at Gonikoppal, she filed this petition for transfer of M.C.No.18/2023 filed by the respondent- husband to the file of Civil Judge, Virajpet.

3. The learned counsel for the petitioner-wife contended that after the matrimonial dispute the petitioner is residing with her brother and daughter at Gonikoppal. She filed a Criminal Misc. No.39/2023 before the Civil Judge, Virajpet under the DV Act against the respondent- husband. The respondent-husband filed a divorce petition in M.C.No.18/2023 on the file of the Senior Civil Judge & JMFC, Hunsur. Hunsur is about 75 kms. from Gonikoppal and it is difficult for her to travel from Gonikoppal to Hunsur to attend the case and it causes more inconvenience to the petitioner. Hence, the learned counsel sought to allow the petition.

NC: 2024:KHC:19159

4. When the matter was called in the morning session none appeared for the respondent. Even in the afternoon session also there is no representation on behalf of the respondent.

5. Heard the learned counsel for the petitioner. Perused the petition papers.

6. It is not in dispute that the petitioner is the legally wedded wife of the respondent and their marriage was solemnized on 22.06.2003 at Umamaheshwari temple choultry, Gonikoppal, as per Hindu customs. After the marriage the petitioner was living in her matrimonial house. Out of

wedlock, a daughter was born. After some time, since there was a difference of opinion between the parties, the petitioner started living separately with her brother and daughter at Gonikoppal. Thereafter, she filed Crl.Misc.No.39/2023 under Section 12 of DV Act and the respondent-husband filed M.C.No.18/2023 before the Senior Civil Judge and JMFC, Hunsur for divorce. Since the distance between Gonikoppal and Hunsur is about 75 kms., it is difficult for the petitioner to travel to NC: 2024:KHC:19159 Nagamangala to prosecute the case. She is residing with her brother and daughter and there are no persons to accompany her to attend her case at Hunsur.

7. This Court in the case Smt.M.V.Rekha v. Sri Sathya @ Suraj - ILR 2010 KAR 5407 at Paragraph No.15 held as hereunder:

"The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereon and the circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Generally, it is the wife's convenience that must be looked at while considering transfer. Further, when two proceedings in different Courts which raise common questions of fact NC: 2024:KHC:19159 and law and when the decisions are interdependent, it is desirable that they should be tried together by the same Judge to avoid multiplicity in trial of the same issues and conflict of decisions (See Smt.NandaKishori v. S.B.Shiua Prakash AIR 1993 Kar 87, Sumita Singh v. Kumar Sanjay and Anr.

MANU/SC/0936/2001:AIR 2002 SC 396 and Smt.Swarna Gouri v. Sri Vinayak Pujar MANU/KA/7130/2007 : ILR 2007 Kar 4561."

(emphasis supplied)

8. Therefore, taking note of the inconvenience as made out by the petitioner and the law laid down in the case of Smt.M.V.Rekha (supra), which provides that the convenience of the wife is an aspect that is to be taken note of while considering the transfer petitions, petition deserves to be allowed. Accordingly, the following order is passed:

- i) The petition is allowed.
- ii) The case in M.C.No.18/2023 on the file of Senior Civil Judge and JMFC, Hunsur is hereby withdrawn and transferred to the file of Civil Judge, Virajpet.

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- iii) The transferor Court is hereby directed to transmit the entire records to the transferee court.

iv) The transferee court, after hearing the parties is directed to dispose of the said case, as expeditiously as possible and in accordance with law.

Sd/-

JUDGE CM

Smt Manjula vs Sri B Shivakumar @ A Shivanna on 11 June, 2024

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NC: 2024:KHC:20585-DB
MFA No.242/2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF JUNE, 2024

PRESENT

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL No.242/2017 (MC)

BETWEEN:

SMT.MANJULA
W/O SHIVAKUMAR @ SHIVANNA
AGED ABOUT 34 YEARS
R/AT DUDDA MALLAPURA
CHANNAGIRI TALUK
DAVANAGERE DISTRICT

(BY SRI D.S.SHIVANAND FOR SRI M.V.HIREMATH, ADVOCATES)

AND:

SRI B SHIVAKUMAR @ A SHIVANNA

Digitally

S/O BASAVARAJAPPA
AGED ABOUT 40 YEARS
R/AT KHALAGHATTA VILLAGE
B.DURGA HOBLI, HOLALKERE TALUK

CHITRADURGA DISTRICT . . . RESPONDENT

(BY SRI N.D. ONKARAPPA, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 28(1) OF HINDU MARRIAGE ACT, 1955 PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 24.08.2016 PASSED BY SENIOR CIVIL JUDGE, & JMFC, HOLALKERE IN M.C.NO.43/2011

ALLOWING THE PETITION FILED U/S 13(1)(i-a)(i-b) OF HINDU MARRIAGE ACT FOR DIVORCE.

THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR HEARING, THIS DAY, K.S.MUDAGAL.J DELIVERED THE FOLLOWING:

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MFA No.242/2017

JUDGMENT

Challenging the judgment and decree of divorce passed against her, the respondent in M.C.No.43/2011 on the file of Senior Civil Judge & JMFC, Holalkere, has preferred this appeal.

2. The appellant was the respondent and the respondent herein was the petitioner in M.C.No.43/2011 before the trial Court. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the trial Court.

3. The marriage of the petitioner and respondent was solemnized on 05.05.2009 at Sri.Nanjundeshwara Samudaya Bhavana, Santhebennur Village, Holalkere Taluk. The parties being Hindus are governed by the Hindu Marriage Act, 1955 ('the Act' for short).

4. The petitioner filed M.C.No.43/2011 against the respondent under Section 13(1)(ia)(ib) of the Act seeking decree of dissolution of marriage alleging that after three months of marriage, the respondent subjected him and his parents to mental cruelty. He alleged that the respondent was always speaking ill of him and insisting him to separate from his parents. He further alleged that during night time, the NC: 2024:KHC:20585-DB respondent used to get phone calls and she used to go outside and converse with the callers. Ultimately, the respondent deserted him and left the matrimonial home about two years and one month prior to the filing of the petition i.e., 19.10.2011. He alleged that since two years prior to the petition, respondent deprived him of his conjugal rights and pushed him to depression.

5. The respondent contested the petition denying the allegation of cruelty and desertion. She contended that the petitioner, his sisters and parents subjected her to physical and mental cruelty on the ground that she did not begot the child and forced her to leave the house. In that connection, panchayats were held. Being unable to withstand the ill-treatment, she filed the complaint in Chikkajajur police station, there also they were advised. She further alleged that to play fraud on her, petitioner, his sisters and parents have effected the partition in the family properties and have thrown her out. She sought dismissal of the petition.

6. In support of his case, the petitioner got himself examined as PW.1 and one Sri.S.R.Rajashekharappa @ Rajappa as PW.2 and on his behalf wedding invitation card is marked as NC: 2024:KHC:20585-DB Ex.P1. The respondent was examined as RW.1 and on her behalf RWs.2 &

3 were examined.

7. The trial Court on hearing the parties, by the impugned judgment and decree, allowed the petition and granted decree of divorce. The trial Court held that the evidence of PWs-1 and 2 that due to the conduct of the respondent, petitioner had to separate from his parents was not controverted. The trial Court further held that on the complaint of the respondent, petitioner, his parents and his sisters are facing trial in C.C.No.442/2012 for the offence punishable under Section 498A of IPC and that amounts to cruelty. The trial Court further held that the evidence of RWs.1 to 3 did not prove the allegations of cruelty set up by the respondent, thus allowed the petition.

8. Sri.D.S.Shivanand, learned Counsel appearing for Sri.M.V.Hiremath, learned Counsel on record for the respondent-wife submits that the allegations of cruelty were bald and mere filing of criminal case does not amount to cruelty. He further submits that there were sufficient grounds for the wife to leave the matrimonial home and the trial Court has failed to appreciate the evidence in proper perspective.

NC: 2024:KHC:20585-DB Thus, he seeks for reversal of the order of the trial Court and dismissal of the petition.

9. Sri N.D.Onkarappa, learned Counsel for the petitioner-husband justifying the impugned judgment and order submits that the wife has admitted about she living separately and she failed to prove that there was reasonable excuse for her to stay separately. Her allegations of cruelty were not proved. He further submits that during the pendency of this appeal, petitioner-husband has contracted second marriage, got a child out of the said marriage and if now the decree is reversed that leads to further complications. He further submits that in the year 2023, respondent-wife has initiated the proceedings under the provisions of Protection of Women from Domestic Violence Act, 2005 and in that case the Court has awarded interim maintenance of Rs.5,000/- per month and the same is being paid. Thus, he seeks dismissal of the appeal.

10. Considering the submissions of both sides and examining the materials on record, the question that arises for consideration is :

"Whether the impugned judgment and decree passed by the trial Court for dissolution of marriage is sustainable in law?"

NC: 2024:KHC:20585-DB Analysis

11. There is no dispute that the parties are Hindus and are governed by the Act. It is also not disputed that they were married on 05.05.2009 and they started living separately about two years prior to filing of the petition i.e., 19.10.2011.

12. The husband claims that respondent-wife subjected him to mental cruelty and deserted him without any excuse, thereby he is entitled to decree of divorce. Whereas, the wife claims that it was the husband and his relatives, who ill-treated her mentally and physically for she not begetting the

child, which forced her to leave the matrimonial home. When the petitioner-husband has come before the Court seeking decree for dissolution of marriage under Section 13(1)(ia)(ib) of the Act, the burden is on him to establish the said grounds. Reg. Cruelty:

13. What amounts to mental cruelty and how the cruelty has to be proved was dealt with by the larger bench of the Hon'ble Supreme Court in *Samar Ghosh v. Jaya Ghosh*¹. Para (2007) 4 SCC 511 NC: 2024:KHC:20585-DB 101 of the said judgment, which is relevant for the purpose of this case, reads as follows:

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

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(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

(Emphasis supplied)

14. In the present case, the allegation of inflicting cruelty that too to the extent of causing mental depression to NC: 2024:KHC:20585-DB the petitioner, being serious in nature, he has to plead the particulars and prove the same by cogent evidence. In the petition, the particulars about when and what kind of mental depression the petitioner suffered and whether he was treated for that are not pleaded. Even the date and place of alleged ill-treatment by the respondent to the petitioner and his family members were not stated. In the cross-examination of PWs.1 and 2, the respondent denied the allegation of cruelty. The observation of the trial Court that the allegations of cruelty were not controverted in the evidence is apparent error.

15. Though the petitioner claims that himself and his parents were subjected to ill-treatment by the respondent wife, he did not choose to examine his parents or sisters. He chose to examine PW.2 who was neither neighbour nor witness to the alleged cruelty which had taken place within four walls of

the house of the petitioner. PW.2 clearly states that in between the house of himself and the petitioner, there are several other houses. The immediate neighbours would have been the best witnesses to speak to the alleged cruelty, but they were not examined. Absolutely no explanation was given by the petitioner for non examination of his parents, sisters and

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NC: 2024:KHC:20585-DB neighbours regarding alleged cruelty or the respondent abusing them or ill-treating them.

16. The petitioner contended that because of insistence of the respondent, he separated from his parents and that was the cruelty inflicted by the respondent. But the respondent claimed that to defeat all her claims, the petitioner, his parents and sisters have effected partition subsequently. The petitioner did not whisper any particulars of such partition nor produced any documents of such partition to find out what was the cause mentioned in the partition document. Contrary to that, the petitioner in the petition itself imputes disloyalty to the respondent claiming that during odd hours she used to go outside the house and indulge in conversation with some other men. In the cross-examination, he admits that she was conversing when she was between the family members. If that be so, how the respondent could talk over the phone and speak with strangers was not clarified. The trial Court also disbelieved such allegations on the ground that the petitioner neither produced any call detail records nor produced any documents to show that the respondent was possessing phone.

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17. According to the trial Court, respondent's complaint against the petitioner, his parents and sisters was cruelty. Records show that they were being tried in C.C.No.442/2012. The very fact of filing of the charge sheet and finding that to be a fit case for trial, implies that the law enforcing agency did not find the complaint frivolous. Had the Investigating Officer filed 'B' summary report, then it would have been said that the complaint was vexatious. Therefore the trial Court was not justified in observing that such prosecution of the petitioner and his relatives amounts to cruelty.

18. It was argued before this Court that in C.C.No.442/2012 the petitioner and his relatives were acquitted. First of all, nothing is produced to show such acquittal. Secondly, nothing is produced to show that such acquittal was honourable acquittal or any finding was recorded against the respondent to the effect that the complaint was vexatious to wreck vengeance against the petitioner or his relatives. The copy of the said judgment is not produced by the petitioner husband in this case. Therefore that ground also does not sustain.

19. The judgment in Samar Ghosh's case referred to supra indicates that to call the act as cruelty, it should be such

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NC: 2024:KHC:20585-DB that on consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty. It was further held that mere trivial irritations, quarrels between spouses, normal wear and tear which happens in day-to-day married life may also not amount to cruelty and would not be adequate to grant decree of divorce on the ground of mental cruelty.

20. In this case, first of all the alleged ground of cruelty namely the respondent ill-treating the petitioner, his parents and sisters of the petitioner were not substantiated by acceptable evidence. Even assuming for the sake of arguments, the respondent had no compatibility with the parents-in-law or sisters-in-law, that does not amount to cruelty as contemplated under Section 13(1)(ia) of the Act and interpreted by the Hon'ble Supreme Court in Samar Ghosh's case referred to supra. Therefore finding of the trial Court on this point is unsustainable.

Reg. Desertion:

21. The petitioner contended that the respondent has deserted him without reasonable excuse for more than two

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NC: 2024:KHC:20585-DB years prior to the petition. The allegation of cruelty is already rejected. Desertion as contemplated under Section 13(1)(ib) of the Act does not mean only the couple living separately. Explanation to Section 13(1) of the Act shows that desertion should be without any reasonable cause.

22. The respondent contended that the petitioner himself subjected her and her family members to cruelty making it impossible for her to live in the said house. The petitioner himself in his petition made unfounded allegations that during night hours, the respondent was getting phone calls from some outsiders, soon after she gets call, she used to leave the house during night hours and return. Thereby he made allegations of infidelity to her. Making unfounded imputations of infidelity itself amounts to cruelty. Admittedly in the complaint of the respondent, the petitioner and his parents and sisters were tried in C.C.No.442/2012. That goes to show that there were sufficient grounds for the respondent to leave matrimonial home. If really the petitioner was interested in continuing the matrimonial relationship, on she leaving matrimonial home, he could have filed the petition for restitution of conjugal rights or issue notice seeking restitution of conjugal rights and he did not

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NC: 2024:KHC:20585-DB do so. Under the circumstances the finding of the Trial Court on the ground of desertion is unsustainable.

23. It was argued before this Court that pending this appeal, the petitioner/husband remarried and he has child out of the said marriage, therefore if decree of divorce is reversed that leads to complications. Atleast, he could have sought permission of the Court to remarry. Such conduct of the petitioner goes to show that he himself wanted to end his conjugal relationship with the respondent/wife to find new spouse. The trial Court without appreciation of the aforesaid fact granted decree of divorce which is unsustainable.

24. So far as the contention of complication due to second marriage of the petitioner pending this appeal, the petitioner has willingly invited the same. More over no material is placed to show when and whom he married and the said contention is totally baseless. Even otherwise, a flawed judgment cannot be confirmed only for the purpose of legitimizing the alleged second marriage of the petitioner/husband. Showing such leniency amounts to thwarting the cause of justice. Under the circumstances, the

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NC: 2024:KHC:20585-DB impugned judgment cannot be confirmed and the same is liable to be set aside. Hence the following:

ORDER The appeal is allowed with costs.

The impugned judgment and decree dated 24.08.2016 in M.C.No.43/2011 passed by the Senior Civil Judge and JMFC, Holalkere is hereby set aside.

M.C.No.43/2011 is hereby dismissed.

Sd/-

JUDGE Sd/-

JUDGE BSR,KSR