

Reserved on : 12.02.2024
Pronounced on : 28.02.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.14094 OF 2023 (GM - FC)

BETWEEN:

1 . SMT.

2 . MASTER

3 . MASTER

... PETITIONERS

(BY SRI B.R.SRINIVASA GOWDA, ADVOCATE)

AND:

... RESPONDENT

(BY SRI ANIL R., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER PASSED BY THE LEARNED II ADDL. SENIOR CIVIL JUDGE AND JMFC ANEKAL IN IA II IN M.C.NO. 104/2022 VIDE ANNEXURE-E1 DTD 12/06/2023 IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.02.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court seeking quashment of an order dated 12-06-2023 passed by the II Additional Senior Civil Judge and JMFC, Anekal on I.A.No.II in M.C.No.104 of 2020 and allowing I.A.No.II as prayed for.

2. Facts adumbrated are as follows:-

The 1st petitioner is the wife of the respondent, her husband. The petitioners 2 and 3 are the two children born from the wedlock who are aged 11 years and 6 years. The 1st petitioner and the respondent got married on 09-05-2012 and as observed hereinabove, the two have two children born from the wedlock. It appears that the relationship between the two flounders and on floundering of the relationship the two are before the Family Court in M.C.No.104 of 2020. The issue in the *lis* does not concern the merit of the claim of parties in M.C.No.104 of 2020. The wife files an application in I.A.No.II invoking Section 24 of the Hindu

Marriage Act seeking grant of interim maintenance at ₹36,000/- per month. The concerned Court, after analyzing assets and liabilities statements produced by both the husband and the wife, orders maintenance at ₹18,000/- per month. It is calling that in question the said order, the wife is before this Court complaining that she is entitled to maintenance as claimed in I.A.No.II, but the concerned Court has granted half of what is sought for.

3. Heard Sri B.R. Srinivasa Gowda, learned counsel appearing for the petitioners and Sri R.Anil, learned counsel appearing for the respondent.

4. The learned counsel for the 1st petitioner/wife would take this Court through the order and the documents to the petition to demonstrate that the husband is a Manager in Canara Bank, earns close to ₹90,000/- as salary and the wife though qualified and was working, the husband makes her leave the job to take care of the children and the children are now being taken care of by the wife by leaving the job. Therefore, she would need maintenance as sought for. The learned counsel would further submit that the school fee

and other incidental expenses of the children are not being met by the husband and the husband every time dodges the issue of payment of money.

5. Per-contra, the learned counsel representing the respondent/husband who has filed his statement of objections, vehemently opposes any order granting maintenance as sought for by the petitioners. It is his submission that the 1st petitioner is not a dutiful wife. She has not taken care of the needs of the husband and the husband is in a job which is fluctuating; he may at any time lose it. Therefore, with the fluctuating job he is not in a position to pay any amount beyond what is ordered by the concerned Court. He would submit that the wife was working as a lecturer earlier before marriage and for a little while after marriage. Therefore, she is qualified to work and she has to work and earn money and not depend on maintenance that is to be paid by the husband. He would further contend that he has to maintain his aged mother. In the teeth of inconsistent job in which he is placed, the wife is not entitled to maintenance to lead a luxurious life.

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

7. The afore-narrated facts are not in dispute. The relationship between the petitioners and the respondent is what is narrated hereinabove. The 1st petitioner was earlier working as a Lecturer. She gets married to the respondent in the year 2012. Two children are born from the wedlock. It is the submission and a matter of record that the husband asks the wife to quit the job so that the children are taken care of. Accordingly the wife quits the job. All was well for a long time. The relationship then flounders. Therefore, the couple are before the concerned Court in M.C.No.104 of 2020 after about 8 years of marriage.

8. The wife files an application under Section 24 of the Hindu Marriage Act, 1955 for grant of maintenance urging that it becomes difficult for her to maintain herself and the children. The concerned Court grants half the maintenance that she sought. The issue is whether the wife is entitled to maintenance as was sought.

Maintenance is trite that it is granted to tide over the crisis that befalls on the wife after leaving the matrimonial house, sometimes with children and sometimes alone where there are no children. In the case at hand, two children are born from the wedlock and between the wife and the husband the relationship turns sore after 8 years of marriage. In these circumstances, with the growing necessity of money *qua* the cost of living and the manner in which the couple lived together along with the children, maintenance has to be adjudged and granted. The Apex Court in the case of **SHAMIMA FAROOQUI v. SHAHID KHAN**¹ has held as follows:

" "

14. Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was getting a monthly salary of Rs 17,654. The High Court, without indicating any reason, has reduced the monthly maintenance allowance to Rs 2000. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs 2000 per month. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable

¹ (2015) 5 SCC 705

arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.

15. While determining the quantum of maintenance, this Court in *Jasbir Kaur Sehgal v. District Judge, Dehradun* [(1997) 7 SCC 7] has held as follows : (SCC p. 12, para 8)

"8. ... The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the

mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court.

In Chaturbhuj v. Sita Bai [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] , it has been ruled that : (SCC p. 320, para 6)

"6. ... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Capt. Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508] falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787]."

17. *This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.*

18. *In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in Chander Parkash Bodh Raj v. Shila Rani Chander Prakash [1968 SCC OnLine Del 52 : AIR 1968 Del 174] wherein it has been opined thus : (SCC OnLine Del para 7)*

7. ... an able-bodied young man has to be presumed to be capable of earning sufficient money

so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him."

(Emphasis supplied)

Later, the Apex Court in the case of **REEMA SALKAN v. SUMER SINGH SALKAN**² has held as follows:

"....

13. *Be that as it may, the High Court took into account all the relevant aspects and justly rejected the plea of the respondent about inability to pay maintenance amount to the appellant on the finding that he was well educated and an able-bodied person. **Therefore, it was not open to the respondent to extricate from his liability to maintain his wife.** It would be apposite to advert to the relevant portion of the impugned judgment which reads thus : (Reema Salkan case [Reema Salkan v. Sumer Singh Salkan, 2018 SCC OnLine Del 9380 : (2018) 250 DLT 16] , SCC OnLine Del paras 80-84)*

"80. The respondent during the cross-examination has admitted that he too is BCom, MA (Eco) and MBA from Kentucky University, USA; the respondent is a Canadian citizen working with Sprint Canada and is earning Canadian \$(CAD) 29,306.59 as net annual salary. However, he has claimed that he has resigned from Sprint Canada on 23-11-2010

² (2019) 12 SCC 303

and the same has been accepted on 27-11-2010 and the respondent since then is unemployed and has got no source of income to maintain himself and his family.

81. In the instant case, the petitioner has filed the case under Section 125 CrPC, 1973 for grant of maintenance as she does not know any skill and specialised work to earn her livelihood i.e. in Para 26 of maintenance petition against her husband. However, the respondent husband who is well educated and comes from extremely respectable family simply denies the same. The respondent husband in his written statement does not plead that he is not an able-bodied person nor he is able to prove sufficient earning or income of the petitioner.

*82. It is an admitted fact emerging on record that both the parties got married as per Hindu rites and customs on 24-3-2002 and since then the petitioner was living with her parents from 10-8-2002 onwards, and the parents are under no legal obligation to maintain a married daughter whose husband is living in Canada and having Canadian citizenship. **The plea of the respondent that he does not have any source of income and he could not maintain the wife is no answer as he is mature and an able-bodied person having good health and physique and he can earn enough on the basis of him being able-bodied to meet the expenses of his wife. In this context, the observation made in Chander Parkash v. Shila Rani [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] by this Court is relevant and reproduced as under : (SCC OnLine Del para 7).***

'7. ... an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in position to earn enough to be able to

maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child.'

83. The husband being an able-bodied person is duty-bound to maintain his wife who is unable to maintain herself under the personal law arising out of the marital status and is not under contractual obligation. The following observation of the Apex Court in *Bhuvan Mohan Singh v. Meena* [*Bhuvan Mohan Singh v. Meena*, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200 : AIR 2014 SC 2875] , is relevant : (SCC p. 357, para 2)

'2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that

the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.'

84. The respondent's mere plea that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife in presence of good physique along with educational qualification."

(emphasis in original)

14. *The view so taken by the High Court is unassailable. Indeed, the respondent has raised a plea to question the correctness of the said view, in the reply-affidavit filed in this appeal, but in our opinion, the finding recorded by the High Court is unexceptionable.*

15. *The only question is: whether the quantum of maintenance amount determined by the High Court is just and proper. The discussion in respect of this question can be traced only to para 85 of the impugned judgment which reads thus: (Reema Salkan case [Reema Salkan v. Sumer Singh Salkan, 2018 SCC OnLine Del 9380: (2018) 250 DLT 16], SCC OnLine Del)*

"85. *So far the quantum of maintenance is concerned, nothing consistent is emerging on record to show the specific amount which is being earned by the respondent after 2010, however, the husband is legally bound to maintain his wife as per the status of a respectable family to which he belongs. The husband being able-bodied along with high qualification BCom, MA (Eco) and MBA from*

Kentucky University, USA could earn at least minimum of Rs 18,332 as per the current minimum wage in Delhi. Therefore, the petitioner being wife is entitled to Rs 9000 per month from 9-12-2010 onwards till further orders."

16. The principle invoked by the High Court for determination of monthly maintenance amount payable to the appellant on the basis of notional minimum income of the respondent as per the current minimum wages in Delhi, in our opinion, is untenable. We are of the considered opinion that regard must be had to the living standard of the respondent and his family, his past conduct in successfully protracting the disposal of the maintenance petition filed in the year 2003, until 2015; coupled with the fact that a specious and unsubstantiated plea has been taken by him that he is unemployed from 2010, despite the fact that he is highly qualified and an able-bodied person; his monthly income while working in Canada in the year 2010 was over Rs 1,77,364; and that this Court in Reema Salkan v. Sumer Singh Salkan [Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 312] has prima facie found that the cause of justice would be subserved if the appellant is granted an interim maintenance of Rs 20,000 per month commencing from 1-11-2014. At this distance of time, keeping in mind the spiraling inflation rate and high cost of living index today, to do complete justice between the parties, we are inclined to direct that the respondent shall pay a sum of Rs 20,000 per month to the appellant towards the maintenance amount with effect from January 2010 and at the rate of Rs 25,000 per month with effect from 1-6-2018 until further orders. We order accordingly.

17. We, therefore, direct the respondent to pay the enhanced maintenance amount, as determined in terms of this order, to the appellant within a period of eight weeks from today after duly adjusting the amount already deposited in Court/paid to the appellant till date. The appellant will be entitled to forthwith withdraw the

maintenance amount deposited by the respondent in Court, if any. The impugned judgment of the High Court is accordingly modified in the aforementioned terms.”

(Emphasis supplied)

In the light of the judgments rendered by the Apex Court in the aforesaid cases, maintenance has to be awarded to the wife and children which would be commensurate to the cost of living or continued living as they lived along with the respondent. Therefore, the concerned Court has undoubtedly fallen in error in directing maintenance only at ₹18,000/- per month, as against ₹36,000/- per month, as was sought on the ground that the wife is qualified and can make a living by earning self.

9. The contention of the learned counsel appearing for the respondent/husband that the wife is not dutiful towards the husband; was throughout quarrelsome or his job is inconsistent are all submissions which have to be rejected on the face of them. The petitioner is an employee at Canara Bank, a Government of India undertaking working in the cadre of Manager – an Officer in Middle Management Grade Scale-II and the salary of an officer under

Middle Management Grade Scale-II is beyond ₹70,000/-. It is not a job that can be taken away like how pink slips are issued by private employers, who sometimes practice the role of hire and fire, nor the petitioner is bound by the principle of last come first go. He is in a job that offers security of tenure. The pay that he receives can never be reduced; it can only grow. Therefore, those submissions of the learned counsel for the respondent/husband are to be rejected as misleading and mischievous.

10. The other submission is that the 1st petitioner/wife is not a dutiful wife. While this Court would not enter upon the claims of the husband and the wife on discordant relationship between them, as that is not the issue in the case at hand, but would consider it germane to observe that a dutiful mother is on a higher pedestal than a dutiful wife.

11. It is not in dispute that on the birth of the first child the wife was asked to leave the job of a Teacher to take care of the child. The second child is born, therefore, the wife completely quits the employment only to take care of the children and becomes a

homemaker and a dutiful mother taking care of her children. All was well till the relationship turned sore and till the maintenance is sought. Once the maintenance is sought, the husband now alleges that though the wife is qualified, she is not willing to work and earn money and wants to live on the maintenance that the husband pays.

12. It is trite law that merely because the wife is qualified she is barred from seeking any maintenance. Every case will have to be considered on the strength of the merit obtaining in those cases. The wife-mother admittedly has quit the job to take care of the children and taking care of the children cannot be taking care of mere existence. It is shrouded by countless responsibilities and necessary expenditure from time to time. The wife, as a homemaker and mother, works indefatigably round the clock. The respondent being the husband, cannot be seen to contend that the wife is lazing around and not earning money to take care of the children, as observed hereinabove, taking care of the children, for a mother, is a whole time job. Therefore, such submissions made

by the learned counsel for the respondent-husband, is noted only to be rejected as, to say the least, they are ***preposterous***.

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

ORDER

- (i) Writ Petition is allowed.
- (ii) The order dated 12-06-2023 passed by the II Additional Senior Civil Judge and JMFC, Anekal on I.A.No.II in M.C.No.104 of 2020 is modified and the Application – I.A.No.II in M.C.No.104 of 2020 filed by the wife is allowed.
- (iii) It is declared that the 1st petitioner/wife is entitled to maintenance at ₹36,000/- per month as was sought for in the application. Arrears of maintenance if any, shall be cleared by the respondent/husband within a time frame that will be fixed by the concerned Court.

Accordingly, I.A.No.1 of 2023 also stands disposed.

bkp

**Sd/-
JUDGE**