

(2016) 04 KAR CK 0029

KARNATAKA HIGH COURT

Case No: R.P.F.C. No. 42 of 2013 C/W R.P.F.C. No. 14 of 2013.

P. Suresh - Petitioner @HASH
Smt. S. Deepa and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: April 5, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125

Citation: (2016) ALLMRCri 624 : (2016) CriLJ 4794 : (2017) 2 Crimes 129 : (2017) 1 DMC 629 :
(2017) 1 HLR 714 : (2017) 1 RCRCivil 438 : (2017) 1 RCRCriminal 300

Hon'ble Judges: Aravind Kumar, J.

Bench: Single Bench

Advocate: H.V. Krishnamurthy, Sr. Counsel a/w, H.P. Leeladhar, M/s. H.P. Leeladhar and Co., Advocates, for the Petitioners; R.L. Patil, Sr. Counsel for M/s. Patil and Patil, Ashish Krupakar, Advocate, for the Respondents

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Aravind Kumar, J. - These two petitions have been filed by wife as well as husband questioning the correctness and legality of the order dated 23-11-2012 passed by the Prl. Civil Judge, Family Court, Bangalore in C. Mis. No. 14/2009 where under petition filed by wife under Section 125 of Code of Criminal Procedure, 1973 (for short "Cr. P.C.") claiming a sum of Rs. 30,000/- per month as maintenance and expenses for herself and for her minor son, together with a sum of Rs. 30,000/- towards litigation expenses came to be adjudicated by Family Court and said petition has been partly allowed directing the husband to pay her maintenance of Rs. 20,000/- per month to second petitioner (son) from the date of order till he attains the age of majority with Rs. 20,000/- towards litigation expenses and rejecting the claim of first petitioner for maintenance. Aggrieved by rejection of the

claim made, wife has filed RPFC No. 14/2013 and husband has preferred RPFC No. 42/2013 being aggrieved by award of maintenance of Rs. 20,000/- to the second petitioner - son as being highly excessive.

2. Since common arguments are advanced and issue involved in both the petitions being one and the same, both are taken up together and disposed of by this common order.

3. The discordant note between husband and wife which has derailed their marriage has resulted in various litigation arising between them and the present two petitions are the offshoot of such dispute between husband and wife.

4. Facts in brief which has led to filing of these two petitions can be crystallised as under:

Marriage between Sri. Suresh and Smt. Deepa came to be solemnized on 26-1-2000 as per Hindu rites and customs prevailing in their community at Tamil Nadu. Out of the said wedlock, a son was born who has been named as Srinath and he is the second petitioner in C. Mis. No. 14/2009. It was alleged by first petitioner that respondent husband is a drunkard and he was neglecting, ill treating, humiliating and harassing her and she has been made to starve without food and she was fed up with the inhumane attitude of her husband. It was also contended that respondent husband was given dowry by way of cash and articles and on account of continued ill treatment and harassment and being unable to meet his demand for additional dowry and physical and mental torture, she lodged a complaint before the jurisdictional police and on being thrown out from her matrimonial home, she is living with her parents and the petition for divorce filed by respondent husband is being prosecuted by her and on account of she being unable to maintain herself and her son and respondent being gainfully employed in System Development at Tata Elxsi Limited and getting a salary of more than Rs. 1 lakh per month, she is entitled for maintenance as sought for. As such, she has prayed for award of maintenance of Rs. 30,000/- for herself and her son.

5. On service of summons, respondent appeared and filed statement of objections denying averments made in the petition except admitting the marriage and birth of a son. It has been contended that they had stayed together at a rented house till October, 2005 and thereafter she has deserted the petitioner on being caught red handed by him while he found her in a compromising position with another person. It was also contended that she hated the petitioner and she was in love with another person and she was forced to marry him on account of pressure of her parents. It was also contended that it was the petitioner wife who was in the habit of consuming alcohol and the alleged demand of dowry was denied as false. It was admitted by the respondent husband that he was working as a System Development Officer at Tata Elxsi and all other averments made by the wife regarding physical assault, demand for dowry, ill treatment came to be denied in to. It was specifically

contended by the husband that first petitioner is highly educated; she is a civil engineer from Regional Engineering College, Warangal and she is capable of maintaining herself. It was also contended by him that he has aged parents who are dependent on him and he has to pay rent towards the residential building in his occupation and it was contended that first petitioner is gainfully employed. Hence, respondent husband sought for dismissal of the petition.

6. Both parties have tendered evidence both oral and documentary. On behalf of wife, four documents came to be produced and have been got marked as Exs. P-1 to P-4 and on behalf of husband, 59 documents were produced and they have been got marked as Ex. R-1 to R-59. On the basis of the pleadings, Court below has formulated following points for its consideration:

(1) "Whether the petitioners prove that they have justifiable reason to reside separately from the respondent?

(2) Whether the petitioners are entitled for grant of maintenance of Rs. 30,000/- per month and Rs. 30,000/- towards litigation expenses?

(3) What order ?"

7. As noticed herein above, on appreciation of evidence, both oral and documentary, Family Court rejected the claim of wife for grant of maintenance and awarded maintenance of Rs. 20,000/- to the second petitioner - son, from the date of order till the date of second petitioner attaining majority. It is this order dated 23-11-2012 which has been questioned by both petitioners (wife and son) and respondent (husband).

8. RPFC No. 14/2013 is filed by wife challenging the order of rejection of her claim for maintenance and RPFC No. 42/2013 has been filed by husband challenging award of maintenance of Rs. 20,000/- to the son as being excessive.

Finding Recorded By Family Court:

9. As could be discerned from the order under challenge, claim for award of maintenance by the wife has been rejected on the ground that though she had stated in her evidence that she has given up the employment with M/s. Shobha Developers, she had not produced either the resignation letter or any proof with regard to cessation of employment. It has been noticed by the Family Court that admission has been elicited in the cross-examination of wife that she is an income tax assessee and she being a qualified engineer it would indicate that she has not ceased to work. These facts swayed in the mind of the Family Court to reject the petition filed by first petitioner-wife. It was further noticed by the Family Court that wife has been awarded a sum of Rs. 2,500/- as maintenance in the petition filed by her for domestic violence which was also not disclosed by her and as such, it held that she had not only deliberately suppressed the details regarding her occupation, but also about her income and maintenance being received by her. In this

background, Family Court held that first petitioner-wife is not entitled for any maintenance.

10. Insofar as awarding of maintenance towards second petitioner is concerned, Family Court has noticed that respondent husband is drawing a salary of Rs. 55,000/- per month (as on that date) and undisputedly the minor son being in the custody of first petitioner - mother was attending to Baldwin's Boys High School and at the time of adjudication of the petition, he is aged 9 years and as such, for his maintenance which also includes schooling, uniform, books, medical expenses etc., as also the standard of living as the basis for arriving at a conclusion that a sum of Rs. 20,000/- per month is required towards his maintenance as accordingly, awarded the same.

11. I have heard the arguments of Sri R. L. Patil, learned Sr. Counsel appearing on behalf of husband who is petitioner in RPFC No. 42/2013 and respondent in RPFC No. 14/2013 and Sri H. P. Leeladhar, learned advocate appearing for petitioner-wife in RPFC No. 14/2013 and respondent in RPFC No. 42/2013. Perused the records.

12. It is the contention of Sri R. L. Patil, learned Sr. Counsel appearing for husband that Family Court committed a serious error in awarding maintenance to second petitioner in a sum of Rs. 20,000/- to a school going child and there is no reason assigned as to how said quantum is awarded and fixation of maintenance of Rs. 20,000/- for a school going child is arbitrary and it is not supported by any reasons. He would further submit that neither averments made in the petition nor evidence tendered by P.W. 1 would establish that quantum of Rs. 20,000/- sought as maintenance for second petitioner is supported by any evidence and as such, order under challenge is to be modified. He would further elaborate his submission by contending that meaning attached to the word "maintenance" should include food, clothing and shelter for a decent and healthy living and cannot be extended to luxurious life. He would also contend that wife has also responsibility of maintaining the son and as such, amount if any awarded towards maintenance of the child has to be born by both the parents. He would further submit that order passed by Family Court rejecting the claim of wife is just and proper since she has suppressed the fact of being gainfully employed and when she is a qualified engineer, it cannot be gainsaid that she is not employed and evidence on record would substantiate that she being employed and prays for the memo dated 3-11-2015 filed to be considered which would indicate that she is working as Project Coordinator in a company called "Dimensions Projects and Services (P) Ltd.".

In support of his submissions, he has relied upon the following judgments :

(1) AIR 1994 SC 853 S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others.

(2) 2010 AIR SCW 3648, Manohar Lal v. Ugrasen.

(3) AIR 1975 SC 83 Bhagwan Dutt v. Smt. Kamla Devi and another.

(4) 1985 (2) Kar LJ 268 : (1985 Cri LJ 1706 (Kar)) Nagamallappa K. M. v. B. J. Lalitha and another.

(5) ILR 2005 Kar 2981 : (AIR 2005 Kar 417) Dr. E. Shanthi v. Dr. H. K. Vasudev.

(6) 1970 Ker LT 554 : (AIR 1971 Ker 22) P.T. Ramankutty v. Kalyanikutty.

(7) II (2000) DMC 170 Mamata Jaiswal v. Rajesh Jaiswal.

(8) I (2003) DMC 799 : (AIR 2003 Mad 212) Manokaran alias Ramamoorthy v. M. Devaki.

13. Per contra, Sri H. P. Leeladhar, learned advocate appearing for the wife not only support the order passed by the Family Court to the extent of awarding maintenance @ Rs. 20,000/- per month to second petitioner - son, but also hasten to add that trial Court committed a serious error in rejecting the claim of first petitioner without noticing the fact that the wife had resigned from her job with M/s. Shobha Developers and thereby it has resulted in an erroneous order being passed, he would also submit that the trial Court has not examined the evidence in proper perspective and erred in presuming that on account of petitioner being an Engineer, she has to be necessarily gainfully employed which is contrary to facts. He would further contend that it is the duty of the husband to maintain the wife and on account of standard of living which the wife in the instant case was accustomed to, petitioners were entitled for maintenance of Rs. 30,000/- per month.

In support of his submissions, he has relied upon the following judgments :

(1) (2015) 6 SCC 353 : (AIR 2014 SC 2875) Bhuwan Mohan Singh v. Meena and others.

(2) 2014 (3) Crimes 267 (Kant) : (2014 (4) AIR Kant HCR 505) Ramesh v. Dr. Laxmi and Ors.

(3) (2008) 2 SCC 316: (AIR 2008 SC 530) Chaturbhuj v. Sita Bai.

(4) 2007 Cri LJ 700 T. P. Ashraf v. Fousia M.

(5) 2007 Cri LJ 811 S. Brahmanandam v. S. Rama Devi and another.

14. Having heard the learned advocates appearing for the parties, this Court is of the considered view that following points would arise for consideration:

(1) Whether the Family Court was justified in awarding maintenance of Rs. 20,000/- per month to the second petitioner-son? and if not, what is maintenance which he would be entitled to?

(2) Whether the Family Court was justified in rejecting the claim of first petitioner for maintenance being awarded to her?

(3) What order?

Brief Background:

15. Respondent in RPFC No. 14/2013 is the husband of Smt. Deepa who is petitioner in the said petition and respondent in RPFC No. 42/2013. Their marriage was solemnized on 26-1-2000 as per Hindu rites and customs. The second petitioner was born out of the said wedlock. These facts are not in dispute.

16. Wife and son filed a petition under Section 125, Cr. P.C. claiming a sum of Rs. 30,000/- per month towards maintenance and expenses of petitioners and also for education of the second petitioner and a sum of Rs. 30,000/- towards litigation expenses. Both husband and wife entered the witness box and got themselves examined as P.W. 1 and R. W. 1 respectively and on behalf of petitioners, four documents were got marked as Exs. P-1 to P-4 and Exs. R-1 to R-59 respectively. The principal Judge, Family Court, after evaluating the evidence tendered by the parties, by order dated 23-11-2012 allowed the petition in part and directed the husband to pay maintenance of Rs. 20,000/- per month towards the maintenance of petitioner No. 2 from the date of order till second petitioner attains majority. Husband was also directed to pay a sum of Rs. 20,000/- towards litigation expenses.

17. It is this order which is assailed by both husband, wife and son by filing two revision petitions, where under the wife is contending that she ought to have been awarded maintenance and her claim should not have been rejected and son through mother and guardian is contending that maintenance awarded is on the lower side. Whereas, the husband is contending that the maintenance awarded @ Rs. 20,000/- per month to the son is excessive and supports the order of Family Court insofar as rejection of maintenance sought for by the wife.

Re: Point No. (1)

18. Family Court while examining the claim of the second petitioner for award of maintenance has rightly arrived at a conclusion that husband cannot escape from his liability to pay maintenance to the second petitioner either on the ground of mother of minor child being gainfully employed or on the ground that she has capacity to earn her living and as such, she would also be required to earn and maintain the minor son. The Family Court has taken into consideration that the father of the minor child is working in a company by name "Tata Elxsi Limited" as specialist in System Development and drawing salary more than Rs. 55,000/- per month and as such, commensurate to the standard of living has ordered him to pay a sum of Rs. 20,000/- per month towards maintenance of the second petitioner.

19. There is no dispute to the fact that father of the minor son working in "Tata Elxsi Limited" as specialist in System Development. As on the date he tendered evidence before Family Court, he has admitted that his take home salary was Rs. 55,000/- per month. During the course of these proceedings, the "pay slip" of the father of the

minor child for the month of September, 2015 has been made available, and perusal of the same would indicate that his total earnings is Rs. 96,704/- and a sum of Rs. 14,953/- is deducted towards professional tax and income tax and when so deducted, the net pay which he is earning would be Rs. 81,751/- per month. Thus, he cannot dispute that he is not earning the amount which is reflected in the pay slip for the month of September, 2015. Nowhere in the pleadings the father of minor child has contended that either he is not earning the salary as contended by the petitioners. However, the ground on which he has attempted to stave off his liability to pay maintenance is on the grounds:

(i) the wife or the mother of minor child has also equal responsibility to earn and maintain;

(ii) that he has financial commitment to other members of the family;

(iii) the minimum required for maintaining the minor child alone is to be awarded.

20. All these three contentions are required to be considered with utmost circumspection. It has been held by the Apex Court in **Bhuvan Mohan Singh v. Meena and others reported in 2015 (6) SCC 353 : (AIR 2014 SC 2875)** that proceedings under Section 125, Cr. RC. are of summary nature and it 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. It has been further held that concept of sustenance does not necessary mean to lead a life of an animal, feel like an unknown person 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 the strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one.

21. Keeping this aspect in mind, when the facts on hand are examined, it would clearly indicate that minor child is studying in Bishop Cotton Boys' High School in Class - IX for the academic year 2015-16 which school is considered in the city of Bengaluru being a school attended by the children of the elite in the society. This fact is also not disputed by the father of the minor child. Merely because the wife is employed (in the instant case, it is seriously disputed by the wife and same would be delved upon by this Court while examining point No. 2) would not be a ground to deprive the minor child the maintenance to which he would be entitled to. While considering the award of maintenance, the Courts cannot lose sight of the fact that in these hard days of inflation and the cost of living having increased by many folds. The minor son is aged about 13 years and is required to spend towards books, uniforms, expenses towards extra curricular activities in the school like sports and cultural activities, excursions and expenses towards the minimum entertainment

the child would be entitled to are all factors which the Court will have to take into consideration while awarding maintenance to a minor child. In the instant case, it is an undisputed fact that both husband and wife are engineering graduates and the husband i.e., father of the minor child is gainfully employed in a reputed multinational company i.e., "Tata Elxsi Limited" and earning gross salary of Rs. 96,704/- and as such, a sum of Rs. 20,000/- per month in all, if paid to the son, cannot be construed either excessive or higher amount. In that view of the matter, maintenance awarded by the Family Court a sum of Rs. 20,000/- per month to the minor son cannot be held to be excessive. Hence, point No. (1) is answered in the affirmative i.e., against father of minor son.

Re: Point No. (2)

22. Family Court has taken note of the fact that wife has approached the jurisdictional Magistrate under the provisions of Protection of Women from Domestic Violence Act in C. Mis. No. 14/2008 wherein an interim maintenance of Rs. 2,500/- per month is awarded as one of the main grounds to reject her claim. Further, Family Court has noticed that plea in the petition filed under Section 125, Cr. P.C. i.e., C. Misc. No. 14/2009 is to the effect that she is without any source of income, has clearly admitted in her cross-examination that she is an income tax assessee and she was working with Shobha Developers and earning a salary of Rs. 20,500/- per month and it was being credited directly to her savings Bank Account at Axis Bank, Wilson Garden and yet she did not produce her Bank statements or substantiate her claim with regard to giving up her employment by tendering resignation. The Family Court has also taken note of the fact that she is a qualified B. Tech Engineer. Supporting this finding, Sri R. L. Patil, learned Sr. Counsel has contended that wife has to plead that she is not gainfully employed and without any source of income and she is unable to maintain herself until and unless these conditions are fulfilled, a wife would not be entitled for maintenance.

23. It cannot be gainsaid that a mere production of material to show that respondent-wife was earning some income would not be sufficient to rule out the claim made under Section 125, Cr. P.C. by the wife, inasmuch as, it has to be established that with the amount that she is earning, she is capable of maintaining herself. It is in this background, evidence will have to be examined and scrutinised.

24. In the light of afore stated facts, it requires to be noticed that along with the petition RPFC No. 14/2013, an interlocutory application - I.A. No. 1/2013 under Order 41, Rule 27, CPC has been filed by the wife seeking production of documents contending inter alia that though she had tendered resignation, she could not produce the said document before the Family Court since she had produced the same in C. Misc. No. 14/2008 and on an application filed by her or grant of certified copies, same had been rejected on the ground that those documents are yet to be marked. Hence, she has contended in RPFC No. 14/2013 that these documents are of vital importance and it would clearly indicate that she had tendered her

resignation with M/s. Shobha Developers where she was earlier working and the said document would clearly substantiate her claim and as such, she has sought for same being received by way of additional evidence. This Court, in the normal circumstances, could have considered the said application, but for the affidavit filed by the husband contending that she has since been working in a different firm known and called as "Dimensions Projects and Services (P) Limited. Perusal of the averments made in the affidavit dated 4-11-2015 filed by the husband would indicate that he has been asserting that his wife is gainfully employed and even as on 31-3-2010 she was employed in the said Firm "Dimensions Projects and Services (P) Limited and yet in the cross-examination in C. Misc. 14/2009 dated 4-12-2010 she has stated that she is unemployed and hence, he has contended that she has been stating falsehood before the Court. Neither of the parties have proved the contents of the documents produced before this Court. It is an assertion of "oath against oath". As such, if any exercise undertaken by this Court to examine the correctness or otherwise of the contents of the documents produced by the parties without oral evidence, would amount to dredging on a dangerous path. In that view of the matter, this Court is of the considered view that it would be appropriate to relegate the parties back to the Family Court on the issue of the first petitioner's (wife) claim for maintenance being adjudicated afresh in the light of both parties producing the documents to buttress their respective contentions. Accordingly, point No. (2) is answered.

Re : Point No. (3)

For the reasons indicated herein above, I pass the following:

ORDER

- (1) RPFC No. 14/2013 is hereby allowed in part and RPFC No. 42/2013 is hereby dismissed;
- (2) Order dated 23-11-2012 passed by the Principal Judge, Family Court, Bengaluru in C. Misc. No. 14/2009 to the extent of rejecting the claim of first petitioner (Smt. S. Deepa-wife) is set aside and petition is restored to the file of Principal Judge, Family Court, Bengaluru for adjudication of claim of the first petitioner afresh.
- (3) Insofar as order dated 23-11-2012 passed by the Principal Judge, Family Court, Bengaluru in C. Misc. 14/2009 awarding maintenance of Rs. 20,000/- per month to second petitioner (Srinath-minor son) stands affirmed.
- (4) I. A. 1/2013 filed under Order 41, Rule 27 , CPC by the petitioner in RPFC No. 14/2013 as well as the affidavit filed by the petitioner along with documents in RPFC No. 42/2013 is ordered to be placed in C. Misc. No. 14/2009 for adjudicating the claim of first petitioner (Smt. Deepa-wife) afresh as ordered here in above.
- (5) Parties to bear their costs.

(6) Registry to transmit the ICR to the Principal Judge, Family Court, Bengaluru together with I.A. 1/2013 filed by petitioner in RPFC No. 14/2013 and affidavit along with documents filed by the petitioner in RPFC No. 42/2013 forthwith.