

KABC010240152024



**IN THE COURT OF THE LXII ADDL.CITY CIVIL &
SESSIONS JUDGE (CCH-63), BENGALURU.**

DATED: THIS THE 28TH DAY OF MARCH, 2026.

P R E S E N T:-

**Sri. Raghavendra S. Channabasappa, B.A., LL.B (Spl).,
LXII Additional City Civil & Sessions Judge,
Bengaluru City.**

CRIMINAL APPEAL No.1527/2024

**APPELLANT/
RESPONDENT:**

**Sri. Nandish Kumar,
S/o. Late. Ganganna,
Aged about 38 years,
R/at. Kempegowdanagara,
Gooleharavi,
K.Palasandra Post,
Goolur Hobali,
Tumakur Taluk and District.**

(By Sri. Umashankar.L, Advocate)

-V/.s-

**RESPONDENT/
PETITIONER**

**Smt. Chitra.D
W/o. G.S.Nandish Kumar,
D/o. Doddaramaiah,
Aged about 33 years,
R/at. Manchalukuppe,**

Hirenahalli,
Tumakur Taluk and District.

Now R/at. No.910,
EWS 2nd Stage,
Yelahanka New Town,
Yelahanka,
Bengaluru – 560 016.

(By Sri. T.N.Narayana Swamy, Advocate)

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JUDGMENT

1. The appellant has filed this criminal appeal under Section 29 of the Protection of Women from Domestic Violence Act, seeking to set aside the order passed by the learned M.M.T.C-VI, Bengaluru, dated 23-01-2024 in Crl. Misc. No.129/2019, wherein the M.M.T.C-VI, has allowed the petition in part filed by the respondent-petitioner.
2. Rank of the parties is referred to as per their ranks assigned before the learned trial Court.
3. **Brief facts of the case:-**
The petitioner is the legally wedded wife of respondent and their marriage was solemnized on 27.08.2010. They have a

girl child by name Poorvi N born on 14.04.2014. After the marriage the petitioner and respondent started to live at matrimonial house situated at Kempegowdanagara, Gooleharavi with her in-laws and they led happy marital life only for few months after that respondent and his family members ill-treated the petitioner and started to demand dowry from her parents. Further respondent made the petitioner to go to her parents house situated at Bengaluru, thereafter also the respondent personally as well as telepathically tortured her and her parents and demanded dowry for a sum of Rs.20 lakhs. When she and her parents were unable to fulfill the demands of the respondent and his family members they started to ill-treat by abusing, assaulting and torturing physically and causing mental agony to the petitioner. Further respondent and his family members threatened to do away with the life of the petitioner and her family members. The respondent has not provided food and clothing and shelter for her livelihood. Petitioner further submits that she tolerated the atrocities of the respondent

under the impression that one or the other day the respondent will improve and realize his mistakes and will take the petitioner to the matrimonial home and they may live happily. Further, the respondent never came to look after the pregnant woman before giving birth to a child and further not even a single day the respondent or his parents came to see the child as well as the petitioner. Further she submits that, she went to the respondent's house many times and petitioner was pushed out of the matrimonial house without any valid reasons. Further she submits that, respondent and his family members picked up a quarrel near the house of the petitioner and forcibly sent the petitioner to her father house. Further she is not having any avocation of her own and she is a home maker and her father's income is very low and they are unable to take care of the petitioner. Further, the respondent is an employee in Government Department as a First Division Clerk in BEO Office at Tumkur and he getting a monthly salary of Rs.65,000/- and he is getting monthly income around one lakh from agriculture property and other sources. In spite of having

sufficient source of income he neglected to maintain her and her child. Hence, she filed Cri. Misc. petition before the learned trial Court.

4. After the service of notice, respondent appeared before the learned trial Court through his counsel and filed statement of objection and in the statement of objection he has admitted his relationship with the petitioner and admitted that they have daughter from the wedlock and he denied all the other allegations. He has stated that, he and his family members never demanded dowry and they never caused domestic violence against the petitioner. Further he submits that, he admitted his daughter to school and he has borne the entire educational expenses of the child. Further, he submits that, he is residing at Tumkur as he is working at BEO Office, Tumkur and he owns ancestral property near Tumkur and he is not intending to reside at Bengalüru but the petitioner forced him to reside in Bengaluru and to arrange a house at Bengaluru and when he denied petitioner's demand she

voluntarily deserted him and went to her parents' house. Further after a panchayath was convened for reunion, he rented a house at Tumkur and admitted his daughter to a school at Tumkur but there also petitioner and her parents picked up a quarrel with him and again petitioner went to her parents' house. Further he submits that, petitioner restricted her daughter to talk with him. Further he submits that he is not receiving salary of Rs.65,000/-. Further he submits that, after deducting loan he is receiving salary of Rs.26,000/- per month. Further he submits that, till now he is paying the rent of the Tumkur house which was arranged by him for the petitioner. Further he submits that, he has not deserted the petitioner, the petitioner has voluntarily deserted him and started to reside at her parents house. On all these grounds he prays to dismiss the petition filed by the petitioner.

5. In order to prove the case, the petitioner has got examined herself as P.W-1 and got marked Ex.P-1 to 4 and the Respondent has got examined himself as R.W-1 and got

marked Ex.R-1 to 8. After the elaborate arguments of the both side counsels the learned trial Court, without considering the facts and circumstances of the case, and documents produced by the parties has wrongly allowed the petition of the respondent in part by its judgment and order dated 23/01/2024 wherein directed the respondent to pay an amount of Rs.10,000/- per month to the petitioner towards the maintenance from the date of petition till her lifetime or till she gets remarried and further respondent is directed to pay an amount of Rs.10,000/- to the petitioner's minor child by name Poorvi toward the maintenance from the date of petition till her marriage.

6. Being aggrieved by the judgment, the respondent has preferred this appeal on following :-

GROUND

- (1) The learned trial Court has failed to correctly appreciate the evidence and documents produced by the parties and hence the findings of the learned trial Court is opposed to facts and law.

- (2) The Family Court at Tumakuru in M.C. No.256/2019 has observed in the judgment, the petitioner herself deserted the respondent and after the marriage petitioner could not adjust to the matrimonial home and she was never a dutiful wife to the petitioner and never took care of him. The respondent started losing his patience for her frivolous reasons and used to quarrel, but, petitioner did not returned to the matrimonial home. That she subjected to her mental and physical cruelty. Since the petitioner did not come forward to join the respondent in matrimonial home, hence he filed petition in M.C.No.256/2019 for decree of divorce before the I Addl. Pri Judge family Court, Tumakur, pleased to allow the petition by granting decree of divorce in favour of the respondent by dissolve the marriage of the respondent with the petitioner solemnized on 27/08/2010. The petitioner to counter blast the same, she has filed present petition for the purpose of harassing the respondent, because of the attitude of the petitioner and filing of the cases, she deserted the respondent, herself with free will and hence, is not entitled to any maintenance from the respondent. The learned trial Court without considering the same, has held that the respondent has neglected the petitioner and he is liable to pay the maintenance to the petitioner is contrary to

facts and law and hence same may be liable to be set aside.

- (3) The learned trial Court failed to consider the documents produced by the respondent in Ex.R-11, the I Addl. Prl Judge Family Court, at Tumakur, granted interim order of interim maintenance Rs.6,000/- per month to the petitioner as per the order dated 21/10/2022 from the date of application till disposal of the petition and further ordered to pay litigation expenses of Rs.5,000/- to the petitioner, the respondent paid above maintenance to the petitioner up to date without any arrears of balance. The learned trial Court without considering the above facts passed order by observed that the economic abused caused by the respondent to the petitioner it is clearly shows that the petitioner intentionally filed present petition by harassing the respondent and for wrongful gain. The learned trial Court without considering facts and documentary evidence of the respondent allowed the said petition, hence same liable to be set-aside.
- (4) The learned trial Court failed to appreciate fact that the I Addl. Prl. Judge Family Court, at Tumakur, passed order by granting decree of divorce in M.C. No.256/2019 favour of the respondent. After completion of appeal

time the respondent married another women by name Sri. Komala.D out of their wedlock they by gotten baby boy. The respondent based on the salary he has also maintain the his 2nd wife and son and also old aged mother this fact very known to the petitioner and she is suppressed true and material facts before learned trial Court passed in impugned order, said fact not considered by the Trial Court, hence impugned order is liable to be set-aside.

- (5) The learned trial Court failed to considered the evidence and documents of the M.C. No.256/2019 in the I Addl. Prl. Judge Family Court, at Tumakur, it is clearly shows that the petitioner voluntarily deserted respondent for the reason that she unable to live together with her mother-in-law i.e., mother of the respondent. The learned trial Court has failed to consider the above said fact while passing impugned order hence liable to set-aside.
- (6) The learned trial Court blindly relying upon the documents of Rental Agreement dated 05/07/2019 same is marked as in Ex.P-4 passed impugned order. Except this document the respondent not produced any supporting documents i.e., Electricity Bill, Gas Bill, Water Bill, etc., and the petitioner not produced any

single document regarding education expenses of her daughter, its clearly shows that the petitioner approached the Court of law not with clean hand to suppressed the true and material facts before the learned trial Court. The learned trial Court seriously error by considering false documents of the petitioner, hence impugned order liable to be set-aside.

- (7) The learned trial Court failed to considered the attitude of the petitioner that the petitioner initiated another proceedings before the Prl. Judge Family Court, Bengaluru, in Cri. Misc. No.144/2021 same was disposed as dismissed for default and the petitioner also filed application before the I Addl. Prl. Judge Family Court, at Tumakur, seeking relief of interim maintenance. Upon hearing the Family Court pleased to granted interim maintenance of Rs.6,000/- per month and also granted litigation expenses 5,000/- to the petitioner, the appellant paid the entire arrears of maintenance to the petitioner without any default. The petitioner suppressed these things obtain impugned order. The learned trial court failed to considered the conduct of the petitioner by filed one and another proceedings her maintenance, its clearly shows that the petitioner intentionally harassing the respondent filed

several proceedings. The learned trial Court failed to appreciate this facts passed impugned order, hence same may be liable to be set-aside.

On these grounds, the appellant-respondent prays to set aside the order passed by the learned M.M.T.C-VI, Bengaluru, dated 23-01-2024 in Crl. Misc. No.129/2019, wherein the M.M.T.C-VI, has allowed the petition in part filed by the respondent-petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

7. After registration of the appeal, notice was issued. respondent appeared through his counsel. The entire trial court records have been secured.
8. Heard the arguments from both side and perused the materials on record.
9. The points, that arise for my consideration are :-
 1. Whether the appellant-respondent has made-out grounds to allow the appeal and to set-aside the order dated 23-01-2024 in Crl. Misc. No.129/2019 passed by the learned M.M.T.C-VI, Bengaluru?

2. What order?

10. On re-appreciation of oral and documentary evidence, in the light of the arguments advanced by the learned advocates for both sides, my answer to the aforesaid points are as follows:-

Point No.1 : In the Negative,

Point No.2 : As per final order for the following:-

REASONS

11. **POINT NO.1:-** It is not dispute that, the respondent is the legally wedded wife of the appellant. The material on record indicates that, the respondent residing separately and she has no independent source of income sufficient for maintenance. Section 20 of the P.W.D.V Act empowers the Court to grant monetary relief to meet the expenses and losses suffered by the aggrieved person and her children. The said provision is vide in its scope and includes maintenance not only to the aggrieved woman, but, also to her children.

12. The contention of the appellant that, the minor children are not parties and hence, not entitle for maintenance cannot be accepted. Proceedings under P.W.D.V Act are beneficial and welfare oriented in nature, intended to protect woman from economic abuse and to secure financial stability of the family unit. The respondent being the natural guardian and mother, is a competent to seek maintenance for her minor children. Non-impleading of minor children is only a technical defect, which cannot be defeat their substantive right. Denial of maintenance on such ground would amount to defeating the very object of the Act.
13. It is well settled that, procedural laws are handmaid of justice, and in proceedings of this nature, the Court is required to adopt a liberal approach. The minor children being dependent is entitled to be maintained by the appellant-father and such relief can be granted even if they are not separately arrayed as a parties. Further, the appellant, being an able bodied person, as a legal and moral obligation to maintain his wife

and children. No material is placed to show that the appellant is incapable of earning. Hence, adverse inference is liable drawn regarding his income.

14. **Domestic Relationship & Violence:-** On appreciation of the pleadings and evidence, this Court finds that, the aggrieved person is the legally wedded wife of the appellant and had resided in a shared household. The evidence on record establishes that, she was subjected to economic and physical abuse, resulting in her living separately. The appellant has failed to prove that the wife deserted him without sufficient cause. Thus, the ingredients of domestic violence are prima-facie established.
15. **Income and Financial Capacity:-** The appellant has not produced clear documentary proof of income. From the surrounding circumstances, lifestyle, and standard of living, this Court reasonably assesses his monthly income. It is settled that a husband cannot evade liability by suppressing

income, and the Court is empowered to make a reasonable estimation.

16. **Needs of Aggrieved Person:-** The aggrieved person has placed material to show her monthly requirements, which include food, clothing, basic needs medical expenses, rent and household expenses, miscellaneous personal expenses. She has no sufficient independent source of income to maintain herself with dignity.
17. **Child Maintenance:-** It is brought on record that, the minor child is in the custody of the aggrieved person. The appellant, being the father, is legally bound to maintain the child, including, educational expenses, medical needs, day-to-day maintenance.
18. **Determination of Quantum:-** Taking into consideration, income and earning capacity of appellant, needs of wife and child, standard of living during matrimonial life, rising cost of living, this Court deems it just and proper to award the medical

expenses. To bear reasonable medical expenses of the aggrieved person and child as and when incurred.

19. **Parallel remedies are permissible:-** The Domestic Violence Act provides independent and additional remedies. Proceedings under Section 125 CrPC and DV Act operate in different fields, though both relate to maintenance.
20. **Statutory recognition (Section 20 OF P.W.D.V Act):-** Under Section 20(1)(d) of the DV Act, the Magistrate can grant monetary relief, including maintenance, even if the aggrieved person has sought or obtained maintenance under any other law.
21. **Finding on Alleged Desertion:-** The appellant-husband has contended that, the aggrieved wife has voluntarily deserted him without any reasonable cause and, therefore, is not entitled to reliefs under the Protection of Women from Domestic Violence Act, 2005. However, upon careful perusal of the pleadings and evidence on record, this Court finds that no cogent material has been placed by the appellant to

substantiate the said contention. The burden to establish that the wife had, of her own volition and without sufficient cause, withdrawn from the matrimonial home squarely lies upon the husband. Mere bald allegations, unsupported by documentary or reliable oral evidence, cannot be accepted.

22. On the contrary, the material available on record, including the version of the aggrieved person, indicates that she was constrained to live separately due to the conduct of the appellant. There is no independent evidence, such as prior complaints, notices, or testimony of neutral witnesses, to demonstrate that the wife deserted the husband without justification.
23. It is well settled that “desertion” must be proved by clear evidence showing intentional and permanent abandonment without reasonable cause. In the absence of such proof, an adverse inference cannot be drawn against the wife.
24. Further, under the scheme of the Domestic Violence Act, even a woman who is living separately is entitled to seek reliefs,

provided she establishes that she was subjected to domestic violence. The mere plea of desertion, in the absence of proof, does not dis-entitle her from claiming reliefs.

25. **Conclusion:-** Wife can maintain a claim for maintenance/monetary relief under the DV Act even if she is already receiving maintenance under Section 125 CrPC. The monetary relief granted herein is just, reasonable, and necessary to ensure that the aggrieved person lives with dignity and is not subjected to economic abuse. In view of the above discussion, this Court holds that, the appellant has failed to establish that the wife had deserted him on her own accord. Hence, the contention of desertion is liable to be rejected.

26. The learned Magistrate upon appreciation of material on record, has come to the conclusion that, the respondent was subjected to domestic violence and that she has no sufficient independent income for her maintenance. The contention of the appellant that, the respondent is capable of maintenance

of herself is not supported by any cogent evidence. On the contrary, the appellant has failed to produce satisfactory material regarding his own income. Hence, an adverse inference has been rightly drawn against him. Further, it is settled principles of law that, husband is bound to maintain his wife. The obligation is both legal and moral. The appellant cannot shirk his responsibility on untenable grounds.

27. It is true that, material proceedings between the parties are pending before the competent Court. However, the pendency, as such proceedings does not bar the present petition the Protection of Women from Domestic Violence Act, 2005. The said proceedings may be taken into consideration only to the limited extent of assessing the relationship between the parties and availing reliefs. The remedies under the Domestic Violence Act are independent in nature and the respondent is entitled to seek relief notwithstanding pendency of other matrimonial litigation.

28. The appellant contended that, she having sufficient independent income and thereafter she is not entitled for monetary relief. However, the appellant has not placed any material before this Court to substantiate the said contention. Mere assertion without documentary evidence cannot be accepted. The burden lies upon the appellant to establish that she has sufficient means to maintain herself. In the absence of such proof this Court holds that, wife is unable to maintain herself independently and is entitled for monetary relief under the Protection of Women from Domestic Violence Act, 2005. I relied one authority in the case of **Vincent Shanthakumar -V/s.- Christina Geetha Rani and Others**, reported in **2015(2) KCCR 1776**, wherein held that, “*for grant of monetary relief the condition precedent is that there must be an act of person resulting in domestic violence act.*”
29. I relied on another authority in the case of **Smt. Leelavathi.S - V/s.- Shri. Murugesh and Others**, reported in **2010(4) KCCR 2973**, wherein held that, “*18. A Division Bench of the Delhi*

High Court in the case of Varsha Kapoor v. Union of India and Ors. 2010 ILD 1526, has also considered the conspectus of provisions contained under Sections 12, 19 & 31 of the Act providing basis of redressal machinery to the aggrieved persons and has held that the provision is not satisfactorily worded and there is ambiguity in the definition of the term "Respondent". It is also observed that in such situation, the Courts are not supposed to throw their hands up in air expressing their helplessness as, it becomes the duty of the Court to give correct interpretation to such a provision having regard to the purpose sought to be achieved by the legislation. Based on this judgment, it is contended that the proviso to Section 2(q) caters for wife or a female in live-in relationship. In their case, the definition of the term "Respondent" is widened by not limiting it to adult male person only, but by including a relative of husband or the male partner, as the case may be. Hence, it is held that on the one hand, aggrieved persons other than wife or female living in a relationship in the nature of marriage i.e., sister, mother,

daughter or sister-in-law can file applications as aggrieved person against adult male person only, but on the other hand, wife or a female living in a relationship in the nature of marriage is given right to file complaint not only against husband or male partner, but also against his relatives. Emphasis is also laid on Section 19(1)(b) apart from referring to Section 21 of the Act which deals with grant of temporary custody of any child or children to the aggrieved person or other person making an application on her behalf and to specify necessary arrangements for visit of such child or children by the Respondent to urge that if the children are under the custody of mother-in-law of an aggrieved person, then no order for giving temporary custody of the child can be given against such a female relative of the husband if a restricted interpretation is given to the term "Respondent".

19. Referring to Section 31(1), it is argued taking support from the decision of the Delhi High Court, that a breach of protection order committed by the Respondent is an offence

under the Act and shall be punishable. Therefore, unless the Respondent could be a female person, an offence cannot be committed by breach of the protection order. If such an interpretation is adopted, it is urged the expression "complaint" which is used under the proviso to Clause (q) of Section 2, cannot be given any meaning and that the expression complaint used in the proviso cannot be termed as a complaint conceived or provided for u/s 31(1). In fact it is to be noticed here that the decision of the Division Bench of the Kerala High Court in Dr. Vijayalakshmi Amma v. Bindu ILR 2010 Ker 60 is referred to by the Delhi High Court in this regard, wherein it is held that unless the proviso is understood as enabling an application to be filed by the wife against any relative, male or female of her husband, the provision made for filing a complaint as per the proviso would be redundant. It is also canvassed that if this interpretation is not adopted, then the provisions contained under Sections 19 & 31 shall be rendered otiose.

20. *The Respondent has placed reliance on the decision of the Apex Court in the case of [S.R. Batra and Another Vs. Smt. Taruna Batra Ajay Kant and Others Vs. Smt. Alka Sharma](#). Strong reliance is also placed on the Single Judge judgment of this Court in Amruth Kumar and Anr. v. Smt. Chithra Shetty and Anr. 2010 (1) KCCR 459.”*

30. I relied on another authority in the case of **Smt. Shalu Ojha -V/s.- Sh. Prashant Ojha**, reported in **2014 AIR SCW 5709**, wherein held that, “*The petitioner, who appears in person, has submitted that there were no valid reasons for the learned ASJ to reduce the maintenance. In order to prove that the respondent is a man of means who is running number of businesses either as the proprietor or partner of firm(s) or shareholder/director in certain companies and possesses various assets and is also enjoying the life of affluence, she has produced plethora of documents in support. The respondent has refuted the authenticity or the relevance of those documents and his submission is that his stakes in all*

these businesses are no longer there. According to him, some of the companies/firms mentioned by the petitioner never took off and started any business and in some other companies he no longer enjoys any stakes. Picture painted by the respondent is that he is undergoing very hard times and his financial condition is pathetic. It is also stated that he had to even go behind bars and remain in custody for more than fifty days because of his inability to pay the arrears. We are not giving the details of the properties and businesses as mentioned by the petitioner or the response thereto as given by him. It is because of the reason that after going through these documents, we find that final view thereupon can be taken only after evidence is led by both the parties and the veracity of their respective stands is tested with their cross-examination in the light of material which both the parties want to produce.”

31. Therefore, the learned Magistrate rightly held that, the respondent is unable to maintain herself. Non-production of

the best evidence permits drawing adverse inference against him. Hence, the learned Magistrate was justified in assessing the income based on available material. The contention that, the appellant has family responsibilities also cannot be accepted to deny maintenance to the legally wedded wife. The obligation to maintain the wife is a statutory duty, and such responsibility cannot be avoided. The amount of maintenance awarded by the learned Magistrate appears reasonable proportionate considering the status of the parties, cost of living, needs of the respondent and earning capacity of the appellant. This Court does not find that the learned Magistrate has committed any error, illegality or perversity warranting interference in appellate jurisdiction. Hence, I answer **Point No.1 is in the Negative.**

32. **POINT NO.2:-** In view of findings on the above Point No.1, this Court proceed to pass the following;

ORDER

This Criminal Appeal filed by the appellant-respondent under Section 29 of Protection of Women from Domestic Violence Act, 2005, is hereby dismissed.

Consequently, the order passed by the learned M.M.T.C-VI, Bengaluru, in Crl. Misc. No.129/2019, dated 23-01-2024, is hereby confirmed.

Office is hereby directed to transmit T.C.R along with copy of this Judgment to the learned trial Court, forthwith.

No order as to cost.

(Dictated to the Steno Gr-III directly on computer, typed by him and corrected, signed and then pronounced by me in the open court on this the 28th day of March, 2026.)

(Raghavendra S. Channabasappa)
LXII Addl. C.C. & Sessions Judge,
Bangalore City.