



**IN THE COURT OF CIVIL JUDGE AND J.M.F.C, SRINGERI**

**PRESENT: Sri. Rahul Shettigar, B.Com (Hons.), LL.B  
Civil Judge & J.M.F.C, Sringeri**

**DATED THIS THE 3<sup>rd</sup> DAY OF JULY, 2024**

**CRL.MISC.No. 36/2023**

**BETWEEN:**

Smt. Mynavathi H K

**Petitioner**

**-AND-**

Sri. Annappa K K and One other

**Respondents**

**In the present I.A**

Smt. Mynavathi H K

**Applicant**

**-AND-**

Sri. Annappa K K

**Opponent**

**ORDERS ON APPLICATION FILED BY THE APPLICANT/  
PETITIONER UNDER SECTION 23 OF THE P.W.D.V ACT,  
2005 SEEKING INTERIM MAINTENANCE**

1. The main petition is filed by the Petitioner under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter, 'the Act' in short) seeking several reliefs one among which is for monetary relief of maintenance under Section 20 of the Act. The Petitioner has filed the instant application under Section 23 of the Act with the prayer to pass an order directing the Respondent No.1 to pay the



interim maintenance to the tune of Rs.30,000/- to the Petitioner, till disposal of the Petition.

2. In the affidavit appended to the application, it is stated that the marriage between the Petitioner and Respondent No.1 was solemnized on May 20, 1998, and out of this marriage, two girl children, viz., Bhandavya and Bhavaikya, were born on November 21, 1999, and December 7, 2007, respectively; right from the beginning, the Respondent No.1 has failed in his duties as a caring husband and father; he has failed to take care of and look after his wife and has driven her out of the matrimonial house along with the children, five years ago; he has also not paid any maintenance to them till today; he has inflicted mental and physical cruelty against the Petitioner with the assistance of his brother, i.e., Respondent No.2; this necessitated the Petitioner to approach the CDPO, Sringeri, and in that backdrop, the instant petition came to be filed under the provisions of the Act; an amount of Rs. 30,000/- p.m. is very much necessary to meet the basic needs of the Petitioner and her one minor child; the Petitioner is residing separately with her minor daughter, namely., Bhavaikya, and they both are completely dependent on others to eke out their livelihood; Respondent No.1 has various agricultural lands and



has his own house, whereas the Petitioner and her minor daughter are residing in rented premises; a criminal case is also registered against him; Respondent No.1 is bound to look after the Petitioner and minor child but has willfully failed to do so; the Petitioner is unemployed and has resorted to working as a daily wage laborer, all because of the willful refusal by the Respondent No.1 to look after her and the minor child. Hence, the prayer to allow the application.

3. *Per contra*, Respondent No.1, though he has not filed any objections to the instant application, has filed a memo seeking to adopt the objections filed by him to the main petition as objections to the instant application; in the objections that has been filed to the main petition, apart from denying the allegations put forth against him, he has contended that he has never subjected the Petitioner to any sort of physical or mental cruelty; he has fulfilled all the duties expected of him as a dutiful husband and father, despite which the relationship between him and the Petitioner has marched southwards only for the reason that the Petitioner is highly short-tempered and is suffering from mental illness; in this regard, she has also undergone mental health treatment, but till today, she has not completely recovered from the same and has been making



false, reckless allegations against him and his family members without any basis; their first child is a major, and she is employed in a private company in Bengaluru, earning upwards of Rs. 50,000/- per month; the entire educational expenses of their second child are being taken care of by Respondent No.1; he is an agriculturist by profession, and presently, the plantations on his agricultural land are affected by various diseases, due to which his income has become close to non-existent; he is eking out his livelihood from the grants allotted to him by the government, and he is also responsible for looking after his aged mother; he is always ready to welcome the Petitioner and their children to his house, wherein he contends that he would look after them with all love and affection and would also provide necessary treatment to the Petitioner. Hence, the prayer is to reject the application.

4. On the filing of the petition, as per order dated 28.11.2023, this Court had passed an interim order granting interim maintenance to the Petitioner to the tune of Rs.10,000/- per month till further orders. The said order was challenged by Respondent No.1 in appeal whereby, as per order dated 22.04.2024, in Crl.A.No.09/2024, the Hon'ble II<sup>nd</sup> Addl. District



and Sessions Judge, Chikkamagaluru was pleased to set aside the order dated 28.11.2023 passed by this Court on the ground that there is non-compliance in filing statement of assets and liabilities as per the Judgment of the Hon'ble Supreme Court of India in **RAJNESH V NEHA** reported in **(2021) 2 SCC 324** and also on the ground that the interim order of maintenance that has been passed is against the well-settled principles on the subject. Further, a direction has been given to this Court to consider the claim of the Petitioner for interim maintenance afresh by following the procedure laid down in **RAJNESH V NEHA** (supra) and dispose of such claim within an outer limit of three months from the date of receipt of the order. The copy of the said order has been received by this Court on 20.05.2024. In the said order, Respondent No.1 has also been directed to pay maintenance of Rs.2,000/- p.m to the Petitioner from the date of the petition, till her claim for interim maintenance has been re-adjudicated.

5. Respondent No.1 has now filed his objection to the main petition and both the parties have filed their respective statements of assets and liabilities. Subsequent to the order in Crl.A.No.09/2024 supra, the Petitioner has come up with the instant application under Section 23 of the Act seeking interim



maintenance to the tune of Rs.30,000/- p.m. Accordingly, the claim of the Petitioner for interim maintenance was considered afresh.

6. Heard Learned Counsels on both sides.
7. Having heard and on perusal of the materials, the points that would now arise for my consideration are as under;

**Point No.1** : Whether the Petitioner is entitled to interim maintenance as sought for?

**Point No.2** : What order?

8. Now, my findings on the above points are as follows;

**Point No.1** : Partly in the Affirmative

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

#### **REASONS**

9. **Point No.1:** The rival contentions have already been extracted in detail in the opening paragraph of this order. Hence, it becomes unnecessary to reiterate the same once again.
10. The main petition is filed by the Petitioner under Section 12 of the Act seeking various reliefs including the monetary relief by way of maintenance under Section 20 of the Act. Presently, by way of the instant application, the Petitioner has sought for interim maintenance to the tune of Rs.30,000/- per month, until the disposal of the main petition.



11. Section 20 of the Act provides for various sorts of monetary reliefs that the aggrieved party under the Act could claim one among which is for her maintenance. Section 23 of the Act empowers the Magistrate to pass any interim order as found just and proper. Hence, there is no doubt about the position of law being that an order for interim maintenance could be granted whilst the pendency of the main petition. For being entitled to any interim order, the basic necessity that needs to be fulfilled by the person seeking such interim order is to establish a *prima facie* case of its entitlement.
12. The above apart, in the Judgment of **RAJNESH V NEHA** reported in **(2021) 2 SCC 324**, the Hon'ble Supreme Court of India has laid down certain guidelines that would help the Court in arriving at a reasonable amount of maintenance. It is held that the objective of granting interim/ permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded. The factors that would weigh with the Court *inter alia* are the status of the parties; reasonable needs of the wife and dependent children; whether



the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed before her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child-rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. The financial position of the parents of the applicant wife would not be material while determining the quantum of maintenance. It is no answer to a claim of maintenance that the wife is educated and could support herself. The Court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it. On the other hand, the financial



capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiraling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the Respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the Respondent nor should it be so meager that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to



maintain herself with reasonable comfort. It is also mentioned that even though proceedings under the D.V Act or 125 Cr.P.C may be independent, the Magistrate cannot ignore the maintenance awarded in any other legal proceedings while determining whether over and above the maintenance already awarded, any further amount was required to be granted for reasons to be recorded in writing. Directions are issued by the Hon'ble Apex Court that where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding.

13. Keeping these principles in mind, it is necessary to delve into the essential facts of the present case, only to the extent necessary for the disposal of the instant application. The Petitioner and Respondent No.1 have filed their respective statements of assets and liabilities. This Court has carefully looked into the same. The Petitioner has stated that she is not doing any work, she has no independent source of income, and the two children are shown as her dependents. On the other hand, the statement of assets and liabilities that has



been filed by Respondent No.1 appears to be willfully silent on the income that he is presently earning, though he has admitted therein that he owns several landed properties. Apart from mentioning that he is earning from agricultural activities, there is a willful silence on the exact amount that is being earned by him from such agricultural activities. His aged mother is shown as his dependent.

14. The relationship between the parties is not in dispute. The Petitioner in the affidavit filed in support of the instant application has contended that due to various acts of harassment inflicted upon her by Respondent No.1, she is residing apart with her minor child, and hence it has become difficult for her to eke out her livelihood without monetary support from her husband. On the other hand, the Respondent No.1 has taken the stand that though he is ready to look after the Petitioner and the children, the Petitioner has herself left his company without any reasonable cause, and he is ready to welcome her back to his house and that his income has now become non-existent due to the disease that has affected the crops grown on his agricultural lands. Respondent No.1, through his own admission, has affirmed the contention that the Petitioner is residing separately with the minor child.



Hence, there is no dispute towards the fact that the Petitioner is staying apart from Respondent No.1. Despite which, nothing is produced to show that Respondent No.1 has been dutiful in fulfilling his moral obligation of looking after his wife. Though, Respondent No.1 has contended that his income has become non-existent due to the disease that has affected the crops grown on his landed properties; no material has been produced to establish the effect that has occasioned on his overall income from agricultural activities. The truthfulness or otherwise of the rival contentions and the exact capability of Respondent No.1 to pay the maintenance and of its extent can only be ascertained after a full-fledged inquiry. But, at this stage, it appears that Respondent No.1 is an able-bodied person and hence, he cannot escape from such serious responsibility in maintaining his wife, citing the reason that he is not earning sufficiently, and accordingly, he becomes liable to make interim arrangements for the maintenance of his wife. There is a clear *prima facie* case of negligence and refusal on the part of Respondent No.1 to maintain his wife. The above apart, despite the clear order in Crl.A.No.09/2024 supra to pay maintenance to the tune of Rs. 2,000/- p.m. to the petitioner from the date of the petition, there is nothing on



record that would indicate that the Respondent No.1 has complied with the said order, which again goes against his *bonafides*.

15. Taking into consideration the cost of living in present days and also the expenses likely to be incurred in the maintenance of the Petitioner, this Court holds that a reasonable amount is required to be granted. An amount of Rs.7,500/- per month as maintenance to the Petitioner is found to be fit on overall consideration. In this day and age, the said amount does not appear to be exorbitant which Respondent No.1 cannot pay. Further, this Court is of the opinion that since the present order is passed in view of the directions to consider the claim of the Petitioner for interim maintenance afresh as per order in Crl.A.No.09/2024 supra wherein, directions are also issued against the Respondent No.1 to pay maintenance of Rs.2,000/- p.m to the Petitioner from the date of filing of the petition till the date of this order, it would not be appropriate to direct the Respondent No.1 to pay the interim maintenance from the date of the petition or the instant application. Accordingly, interim maintenance is to be ordered to be paid from the date of the order i.e from this day. Accordingly,



**Point No.1** which has arisen for my consideration is answered ***Partly in the Affirmative.***

16. **Point No.2:** For the foregoing reasons, the following -

**ORDER**

*Application filed by the Petitioner under Section 23 of the Protection of Women from Domestic Violence Act, 2005 is hereby allowed in part.*

*Respondent No.1 is directed to pay the interim maintenance of Rs.7,500/- per month to the Petitioner from this day, till the disposal of the main petition.*

*Respondent No.1 shall clear the arrears (if any) of interim maintenance liable to be paid to the Petitioner as per order dated 22.04.2024 passed by the Hon'ble II<sup>nd</sup> Addl. District and Sessions Judge, Chikkamagaluru in Crl.A. No.09/2024, forthwith.*

(Dictated to Stenographer, after transcription, print out corrected and then pronounced by me in open Court on this the 3<sup>rd</sup> day of JULY 2024)

**(Rahul Shettigar)  
Civil Judge & J.M.F.C,  
Sringeri.**