

**ORDER ON MAINTAINABILITY**

1. The present petition filed by the petitioner contended that, she has filed Crl.Misc.No.101/2018 against the respondents seeking maintenance. The said petition was disposed on

21.12.2020 directing the respondents to pay Rs.500/-each. The respondents have to pay in total Rs.2,000/-. As per the order, the respondents are due to pay a sum of Rs.78,000/- from 21.09.2021 to 31.12.2024. As the petitioner is aged and due to no proper bus facility could not file the petition seeking maintenance. The petitioner depending on the respondents and she is in need the same. Hence, prays to direct the respondents to pay maintenance due by the respondents.

**2.** The respondents admitted that, in Crl.Misc.No.101/2018 the respondents are directed to pay Rs.5,00/- each. The respondents denied that, the petitioner are liable to pay Rs.78,000/- as sought by the petitioner. Further denied that, due to old age and non-availability the bus facility she could not file petition recovery. Further contended that, the petitioner has filed Crl.Misc.No.54/2021 seeking maintenance of Rs.72,000/- from 09.08.2018 to 21.08.2021. The respondents have paid the said amount. Now the petitioner has sought for maintenance of period of 3 years. The said claim is false. Further contended that, as per Section 144(3) of BNSS, the petitioner has to file maintenance only for a period of 1 year, but the respondents have sought maintenance for 39 months and this is barred by limitation. Further contended that, the 1<sup>st</sup> respondent aged and he has no capacity to work. The other respondents look after him. The present petition filed seeking maintenance for 36 months is not maintainable.

The petitioner is entitle maintenance for 11 months maintenance. Hence, prays for dismissal of the petition.

**3.** Heard arguments. The following points are arise for my consideration.

**POINTS**

1. Whether the petitioner not maintainable as contended in the objection?
2. What order?

**4.** My findings on the above points are as here under:

Point No 1: In the Negative

Point No 2: As per final order for following:

**REASONS**

**5. Point No.1:-** The petitioner contended that, in Crl.Misc.No.101/2018, this Court order dated 21.08.2021 directed to pay maintenance of Rs.5,00/- each to the respondents from 21.09.2021 to 31.12.2024. The respondents are liable to pay maintenance of Rs.78,000/-. Due to old age and bus facility problem she could not file the petition. On the other hand, the respondents admitted the order passed in Crl.Misc.No.101/2018. The respondents denied that, they are due to pay sum of Rs.78,000/- as contended in the petition. Further contended that, the petition is not maintainable as the petitioner has sought for maintenance for 39 months, this is

barred by limitation. The petitioner is entitled maintenance for only for a period of 11 months.

**6.** The petitioner counsel argued that, the respondents even has not paid 11 months maintenance also. Further contended that, the present petition is maintainable. The respondents contended that, for 11 months the petition has to prefer separate petition.

**7.** Admittedly, on perusal of order passed in Crl.Misc petition No.101/2018, it appears that, this Court ordered to pay maintenance of Rs.500/- each to the respondent No.1 to 4. The respondents admits the same. Though the the respondents denied that, they are liable to pay Rs.78,000/- as contended in the petition, but has not placed any material before the Court to show that, they have paid the amount.

**8.** It appears that only the respondent no.1 has filed objection to the petition questioning the maintainability, contended petition seeking for 39 months is not maintainable. Now it is necessary to refer Section 144(3) of BNSS which states as follows:

**144. Order for maintenance of wives, children and parents:-**

“(3) If any person so ordered fails without sufficient cause to comply with the order, any such

Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:"

**9.** It is pertinent to note that section 144 of BNSS is the beneficial legislation. Admittedly, the petitioner has not preferred the petition when the arrears of maintenance becomes due. The respondent no.2 to 4 who are the childrens of the petitioner has not placed any material to show that they have paid the maintenance as ordered by this court. As per the said provision, this court cannot issue warrant for the recovery of the amount due under the said section unless the application is made to the court to levy such amount within a period of one year from the date on which it became due. The said provision does not bar the institution of the petition. It

only bars issuance of warrant if not instituted within one year when it becomes due. Moreover, the as stated supra, the said provision is a beneficial legislation. In the instant case, the respondent has sought maintenance for the year 2024 also. Mere on technicality i.e., the contention of the respondent that the petitioner has to prefer separate petition for 11 months is not acceptable. Whether the petitioner is not entitle for maintenance for 39 months would be considered later. Hence, the contention of the respondent the present petition is not maintainable is not acceptable. Hence, I answer the **Point No.1 in the Negative.**

**10. Point No.2:-** In view of the above discussions, I proceed to pass the following:

### **O R D E R**

The objection of the respondent as to the maintainability of the petition is hereby rejected.

The petitioner is maintainable.

Call on:

Sd/-

Civil Judge and JMFC, Byadgi.





Sd/-

**I Addl. Civil Judge and JMFC  
Bailahongal.**