



THE COURT OF THE CIVIL JUDGE AND JMFC.,
AT HANGAL

Present: **Sri. JANARDHANA S.K., B.A.L., LL.B.,**
Civil Judge and JMFC., Hangal.

Crl.Mis.No.27 of 2023

DATED THIS THE 3rd DAY OF JULY – 2024

- Petitioner :** 1. Sunita W/o Raghavendra Chouhan
Age: 30 years, Occ: House hold work
R/o: Nekar Nagar, Tq: Hubballi,
Dist: Dharwad. Presently residing at
Tilavalli, Tq: Hangal, Dist: Haveri.
2. Sharavani D/o Raghavendra Chouhan
Age: 9 months, R/o: Nekar Nagar,
Tq: Hubballi, Dist: Dharwad.
Presently residing at Tilavalli,
Tq: Hangal, Dist: Haveri.
(Minor represented by her natural mother
i.e., petitioner No.1 by name Smt.Sunita
Chouhan)

(By Sri.K.P.Bosale – Adv.,)

- Versus -

Respondent: Raghavendra S/o Bapuji Chouhan
Age: 33 years, Occ: Lab reporter
(KIMS hospital, Hubballi)
R/o: Nekar Nagar, Tq: Hubballi,
Dist: Dharwad.

(By Sri.P.S.Katlear – Adv.,)

(Sri.Janardhana S.K)
Civil Judge and JMFC.,
Hangal.



ORDER ON I.A.No.I

The petitioner No.1 has filed present application under section 125(2) Cr.P.C seeking grant of interim maintenance to the tune of Rs.15,000/- from the respondent till the disposal of petition on merits.

2. In response to notice of main petition and application for interim maintenance, the respondent has appeared through his counsel and resisted the petition by filing objections. In fact, the respondent not inclined to file separate objections to present application.

3. Heard the arguments of counsel for the petitioner and respondent. Perused all the materials made available on record at this stage.

4. The points that would arise for consideration this court are as follows:-

POINTS

1. Whether applicant has made out sufficient grounds to allow the application?

2. What order?

5. The findings of this court on aforesaid points are as follows:-



Point No.1 : In the partly affirmative.

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

REASONS

6. **Point No.1:-** In the affidavit annexed to the application by reiterating similar facts stated in the main petition, the petitioner No.1 has deposed to the facts that she is legally wedded wife of respondent and their marriage solemnized on 12-12-2021 in Neelakanateshawara temple of Old Hubballi town in the presence of elders of both the sides and per Hindu customs and traditions. At the time of marriage, the respondent given with dowry in the form of 10 gms of gold and cash of Rs.50,000/- and further cash of Rs.50,000/- to purchase marriage things. After the marriage, she went to matrimonial house to extend marital relationship. Out of their wedlock, the minor petitioner No.2 born. Later, the respondent has look after her with all love and affection for the period of 6 months and thereafter he has caused physical and mental cruelty against her and also abused her in filthy language. Despite she being pregnant, the respondent assaulted her by use of helmate and same was not stopped by his parents. Despite all such ill-treatment and cruelty, she continued to extend martial relationship with respondent with fond hope that he might ratify bad deeds and conduct in future. Even during her pregnancy, the respondent



did not provided medical treatment and all expenses incurred by her parents. Even after gave birth to petitioner No.2, the respondent did not turned up to look after petitioners and thereby completely refused and neglects to maintain them. Moreover, despite panchayat held 2 -3 times and good words extended therein by the elders of the village, the respondent did not bring back the petitioner No.1 to the matrimonial house. The petitioner No.1 along with petitioner No.2 leading their life under miserable circumstance and she has no income of her own. The respondent possessing house for himself and also rented the houses and therefrom receiving monthly income of Rs.16,000/-. That apart, he is working as laboratorin and therefrom monthly salary of Rs.15,000/-. As such he is capacity to maintain the petitioners and accordingly, it is claimed that he is liable to pay interim monthly maintenance of Rs.15,000/-. Upon said grounds, it is prayed to allow the application.

7. Though respondent not filed separate objections to the present application for interim maintenance, however filed objections to main. Wherein except admitting factum of his marriage with petitioner No.1 and born of petitioner No.2 out of their wedlock, the respondent denies rest of the petition averments regarding alleged cruelty and ill-treatment and thereby specifically contented that at the instigation of her



parents, the petitioner No.1 residing separately with her parental house and despite his readiness and willingness to look after her, she refuse to join his company despite good words extended by the elders in the panchayat and as such, it is claimed to dismiss the petition.

8. In the contest of relief claimed in the application and facts deposed in the accompanying affidavit and objections filed to the main petition, on perusal of materials available on record, it is forthcoming that the petitioner No.1 has filed this petition U/s.125 of Cr.P.C., seeking monthly maintenance for herself and petitioner No.2 to the tune of Rs.20,000/-. At outset and prima facie, the factum of husband and wife relationship between respondent and petitioner is undisputed and similarly born of petitioner No.2 out of their wedlock is also not in dispute.

9. In addition, factum of marriage of petitioner with that of the respondent apparently substantiate through original marriage invitation card produced along with list of documents dated 19-08-2023 at the time of presentation of petition U/s.125 of Cr.P.C. Such being the prima facie materials on record at this stage, by kept open proof of alleged refusal and negligence on the part of the respondent to maintain the petitioners and sufficiency or otherwise of



income of the respondent to maintain the petitioners, the considered opinion of this court is that, it is legal and moral obligation of the respondent to provide something to the petitioner to maintain herself including minor petitioner No.2 and meet the expenses of the proceedings till the disposal of the petition on the merit. At this juncture, fact to be noted that, there is no contra materials on record to believe that the petitioner has substantial and source of income of her own to maintain herself. Moreover, the respondent admittedly working as attender in the serum department, KIMS hospital Hubballi and also monthly salary at the rate of minimum wages prescribed by law as reported by Information Officer of said hospital. Therefore, it is evident that the respondent has receiving minimum wages in terms of law and capable and under obligation to provide interim maintenance to the petitioners. The court shall not disregard the fact that petitioner No.1 is legally wedded wife of the respondent and out of their wedlock the petitioner No.2 born and as such, the respondent under legal and moral obligation to provide monthly interim maintenance and expenses of the proceedings in favour of the petitioners until he proves that the petitioner has substantial income of her own to maintain herself and she is voluntarily deserted him without sufficient cause.



10. This court got discretionary power under second proviso of 125(1) of Cr.P.C., to direct the husband and father to provide interim maintenance and expenses of the proceedings to the wife and children. As indicated earlier, there are prima facie materials on record that the petitioner is legally wedded wife of the respondent and out of their wedlock the petitioner No.2 born. In fact, the petitioner No.2 is only 9 months baby and require all nourishment and due medical attention. Therefore, by taking into account and consideration of raise in price of essentials and standard of living in the society and age of the petitioner No.2, the respondent is to be directed to pay interim maintenance and expenses of proceedings so as to reasonably meet the situation. Accordingly, the facts and circumstance of the case, the considered opinion of this court is that the respondent is liable to pay interim monthly maintenance and towards expenses of the proceedings totally at Rs.3,000/- to the petitioners. Per contra, interim maintenance of Rs.15,000/- in favour of petitioners claimed in the application is appears to be on hypothetical basis and no rational beyond claiming such huge amount of Rs.15,000/- towards interim monthly maintenance. Hence, the petitioners are not entitle for monthly interim maintenance of Rs.15,000/- claimed in the application. Accordingly, point No.1 is answered in the partly affirmative.



11. As could be seen from the records, the present application for interim monthly maintenance is filed U/s.125(2) of Cr.P.C. In fact, section 125(2) of Cr.P.C contemplates from date on which the maintenance or monthly interim maintenance may be ordered by jurisdictional magistrate. So as to claim interim monthly maintenance, one is to file application under second proviso to section 125(1) of Cr.P.C. As indicated earlier, though present application for interim monthly maintenance filed under wrong provision of law i.e., U/s. 125(2) of Cr.P.C., that itself not a ground to reject or refuse relief claimed in the application as it is well established and settled principal law of is that mere wrong quoting of provision of law is not a ground to reject the relief or prayer.

12. **Point No.2:-** In view of aforesaid reasons and discussions, this court has proceed to pass the following:-

ORDER

The application filed by the petitioner No.1 under second proviso of section 125(1) of Cr.P.C., against the respondent by seeking interim monthly maintenance of Rs.15,000/- is hereby partly allowed.



Consequently, the respondent is hereby directed to pay monthly interim maintenance and towards expenses of proceedings at Rs.3,000/- to the petitioner No.1 from date of this order till the disposal of petition.

(Dictated to Stenographer, directly typed by him on computer, once revised, corrected and later initialed by me and then pronounced by me in the open court on this the 3rd day of July - 2024)

**(Sri.Janardhana S.K)
Civil Judge and JMFC.,
Hangal.**