

IN THE COURT OF PRL.CIVIL JUDGE AND JMFC, MALAVALLI.

Present

**SMT.SHEMIDA.K., B.A(LAW)., LL.B,
Prl. Civil Judge and JMFC.,
Malavalli.**

Dated this the 26th day of July, 2019.

Crl.Misc.No.403/2016

Petitioner :

Smt. Kempamma @ Poornima, W/o.
Shekhar K.H. S/o. Kalegowda, Aged
about 25 years, R/at Nellur Village,
Appugowdanahalli Dakhale, Kasaba
Hobli, Malavalli Taluk, Mandya District.

(By Sri.P.E., Advocate)

V/s

Respondent:

Sri. K.H. Shekhar, S/o. Sri.
Hanumegowda, Aged kabout 30 years,
R/at Karadakere Village, C.A. Kere
Hobli, Maddur Taluk, Mandya District.

(By Sri.N.P., Advocate)

I.A.No.I

Applicant : Smt. Kempamma @ Poornima.

V/s.

Opponent : Sri. K.H. Shekhar.

:- ORDERS ON I.A. No.I :-

1. This I.A.No.1 is filed by the petitioner against the respondent under Sec.125(1) of Cr.P.C seeking an order of interim maintenance of Rs.5,000/- pm., till disposal of this petition from the respondent in the interest of justice and equity.

2. In the application, the petitioner has stated that she is the legally wedded wife of the respondent. She has filed this petition against the respondent for maintenance, during the pendency of the said petition, it is necessary to grant interim maintenance to her for her basic needs like food, clothes, shelter, medical expenses etc. Now, she is living in her parents house, the respondent has neglected her completely and deliberately avoided to take care of her. The respondent is working at Toyota Kisloskar Motor Pvt. Ltd., Bidadi and he is having a salary of Rs.40,000/- pm. The petitioner has not getting any income and not doing any work and hence, it is necessary to grant the interim maintenance. If the application is not allowed, the petitioners will be put to great hardship, inconvenience and injustice. Hence, it is prayed to allow this application.

3. On receipt of summons the respondent has appeared through his counsel and filed his objection to this application

and contended that the application filed by the petitioner is not at all maintainable either in law or on facts. It is contended that he is not doing any job and he has resigned from his job from the Toyota Company and he has not any income at all. The petitioner has not produced any documentary evidence before the Court to prove her contention. The respondent is suffering mentally, physically and financially from his family. If the application is rejected, there is no injury or loss caused to the petitioner. On the other hand, if the application is allowed, the respondent will be put to much hardship and injustice and it cannot be compensated. By stating all these things, the respondent has sought for rejection of this application.

4. Heard the arguments of both the sides and perused the same.

5. Now the points that arise for my consideration are:

1. Whether the petitioner has made out grounds to grant interim maintenance as prayed for at this stage?

2. What order?

6. My findings on the above points are as under:

Point No.1- In the Partly Affirmative,

Point No.2- As per final order,

for the following:

-: REASONS :-

7. **Point No.1:-** In the case on hand, it is the specific contention of the petitioner that she is the legally wedded wife of respondent and the respondent has completely neglected and deserted the petitioner by playing cruelty without providing any maintenance to her and now she is living with her parents. There is no source of income to the petitioner to eke-out her life. In this regard, the petitioner has produced the marriage invitation Card, 3 numbers of their marriage photographs, copy of Crime No. 273/15 registered in K.M. Doddi Police Station for the offences punishable under Section 498A, 143, 504, 323 r/w Sec 149 of IPC and Sec 3 and 4 of DP Act, copy of petition filed in M.C.23/2016 before the Hon'ble Senior Civil Judge at Maddur which shows that the petitioner has filed the petition for restitution of conjugal rights and 5 RTC of the properties which shows that all the properties are standing in the name of father of the respondent. It is to be noted that in this case the respondent has not disputed the relationship with the petitioner.

8. On the other hand, the respondent has contended that that he is not doing any job and he has resigned from his job from the Toyota Company and he has not any income at all and the petitioner has not produced any documentary

evidence before the Court to prove her contention and he is suffering mentally, physically and financially from his family and he is ready to live with the petitioner. In this regard the respondent has produced copy of legal notice dated:29.09.15 which shows that respondent has issued the same to the petitioner, copy of complaint filed by the petitioner dated 06.10.15, statement of petitioner and respondent which shows that they have compromised the case and agreed to live together, statement of witnesses, copy of acknowledgement issued by the K.M. Doddi Police Station dtd:19.10.2015, copy of FIR in crime No.273/15 registered before K.M. Doddi Police Station, copy of complaint, copy of notice dated 22.02.16, copy of the order sheet in M.C.No.23/16 and the petition under Sec.9 of Hindu Marriage Act which shows that the petitioner has filed the petition and closed the same by filing the memo and also furnished the copy of memo filed in M.C.No.23/16. Copy of legal notice dated 15.05.18 shows that notice issued by the respondent, copy of petition filed before Senior Civil Judge and JMFC in M.C.37/2018 which shows that the respondent has filed the petition under Section 9 of Hindu Marriage Act for restitution of conjugal rights and it is pending and also service certificate issued by Toyota dated 09.11.17 which shows that the respondent has resigned his job and his last date of working is 08.11.17.

9. The counsel for the respondent vehemently argued that the respondent is willing to live with the petitioner but the petitioner is without any reason giving harassment to the respondent by filing various petitions. She has already closed the M.C.23/2016 and suppressed the same before this Court and the respondent has first issued the legal notice to the petitioner to come and live with him, and for that the petitioner has filed the complaint before the jurisdictional police without complying the notice and all false allegations were made. It is to be noted that the documents furnished by the respondent clearly shows that on 09.01.2018 the petitioner has filed the 'not press memo' in M.C.No.23/16 and same was closed as per the memo. The said aspect not mentioned by the petitioner during the time of argument.

10. Further the documents in the file clearly shows that there is strong dispute between the parties and once they have compromised before the police and the respondent has filed the petition for restitution of conjugal rights also. It is to be noted that the petitioner not furnished any documents to show the income of the respondent. More over the respondent has furnished the document to show that he has resigned his job. As per Section 125(1) of Cr.P.C if any persons having sufficient means neglects or refuses to maintain (a) his wife unable to maintain herself or..... Magistrate may order to

maintain such wife at such monthly rate which he thinks fit..... Hence it is pertinent to note that on being the husband of petitioner, the respondent is under legal, social and moral obligation to maintain his wife when she is depending on him.

10. As per the quantum of maintenance is concerned, as petitioner has not produced any documents regarding the income of the respondent awarding interim maintenance as prayed. The RTC furnished by the petitioner which shows that the properties are standing in the name of the father of the respondent. Therefore having regard to the cost of essential commodities and other facts this Court is of the opinion that it is just and proper to award maintenance or sum of Rs.2,000/- per month to the petitioner from the date of petition till the disposal of the petition. Hence, I answer ***Point No.1 in the Partly Affirmative.***

11. **Point No.2:** As per my above discussion in Point No.1, I proceed to pass the following:-

ORDER

***The application filed under
Sec.125(1) of Cr.P.C. by the petitioner is
hereby allowed in part.***

The petitioner is entitled for Rs.2,000/- per month as interim maintenance until disposal of main petition.

The respondent is hereby directed to pay the aforesaid maintenance without fail.

(Dictated to the Stenographer, directly on computer, corrected and then pronounced by me in the open court on this the **26th day of July, 2019**).

(Shemida.K)
Prl. Civil Judge & J.M.F.C.
Malavalli.