

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

P R E S E N T

Present: **Ashok R H**
Addl. Civil Judge & J.M.F.C.,
Hosapete.

Dated this the 24th day of July, 2024

Crl.Misc.No.40/2023

PETITIONERS:

1. V.Deepavathi D/o. K.Vijayan,
Age: 39 years, R/o. House No.NA
39, 30th Ward, TSP Colony, Near TSP
Club, Tungabhadra Dam, Hosapete,
Ballari.

2. S.Vanshika D/o. Sachin Kumar K.,
Age: 7 years, R/o. House No.NA
39, 30th Ward, TSP Colony, Near TSP
Club, Tungabhadra Dam, Hosapete,
Ballari (Represented by natural
mother).

(By Sri M.V.T., Advocate)

//Vs//

RESPONDENT:

Sachin Kumar K. S/o. Kanakaraj M.,
Age: 43 years, R/o. House No.9,
Venkatesh Colony, Bengeri,
Hubballi.

(By Sri S.M.B., Advocate)

I.A.No.I

Petitioners:

V.Deepavathi and another

//Vs//

Respondent:

Sachin Kumar K.

ORDERS ON IA.No.I

The petitioners have filed this application under Section 125(3) of Cr.PC seeking interim maintenance.

2. The case of the petitioners is that, the petitioner No.1 is the legally wedded wife of the respondent. Their marriage was solemnized on 12.02.2015 at Kempannavar Kalyan Mantapa, Vijayanagara, Hubballi. Out of their wedlock, the petitioner No.2 is born. It is contended that the respondent turned out to be so cruel in virtue of which he started demanding to bring Rs.5,00,000/- as dowry, the respondent started doing all these activities under the influence of his family members, out them most prominently, his sister, who is a police officer, knowing the innocence and helplessness nature of the petitioner and her parents as the father of the petitioner No.1 was suffering from Brain Tumor a serious ailment which needs immediate medical

attention. The respondent taking advantage of this fact started assaulting her on regular basis. This cruel nature of the respondent has caused great harm and disappointment and has brought great sorrow in her life. Finally the petitioner No.1 lost her patience and started living independently. Even though she was harassed multiple number of times, the petitioner No.1 was always and even now willing to lead a matrimonial life and discharge her marital obligations. But due to the above mentioned circumstances, the petitioners have been forced to live an independent life, at the very same instance, the petitioner No.1 has also been compelled to shoulder the responsibility of their only daughter petitioner No.2 while living independently. It is alleged that the respondent is an employee working in the capacity of Human Resource Manager (HR Manager) with a private company Aparajitha Corporate Services Limited and is earning a handsome salary of approximately Rs.1,00,000/- per month as a net salary. It is further alleged that the respondent has no other liability, while the petitioner No.1 is a housewife and has no source of income whereas the petitioner No.2 is a

young girl child, who needs attention on priority for her education and other activities and that the petitioners are dependent upon the respondent for their day to day expenses. That the petitioner No.1 is eligible and have right to claim maintenance from the day of marriage as per Hindu Marriages Act, 1955. Now the petitioner No.1 as a matter of her right is willing to claim maintenance to meet the daily expenses of herself along with the petitioner No.2 to lead a basic normal life.

3. The petitioner No.1 has stated the said averments on oath in the affidavit accompanying the application.

4. The respondent has filed objections to the main petition and same is treated as objections to IA No.1. He has denied all the allegations made against him. It is specifically contended that the petitioner No.1 is habitual and developed her mind towards litigation. She has not only filed the present petition, she has filed other petition under the shelter of Dowry Act. Same is pending before III Addl. Civil Judge and JMFC Court, Hubballi in C.C.No.10074/2023. Apart from this, she has also filed another petition in M.C.No.106/2023 on the file of Hon'ble

Principal Sr. Civil Judge and JMFC Court, Hubballi against this respondent. It is alleged that the petitioner No.1, out of her own to lead her Hi Fi life and out of her parental dignity, has always not co-operated with the respondent for leading matrimonial life. Nowhere in the entire petition it has been alleged that there is any ill treatment or any harassment being exercised by this respondent. The petitioner and her family members, taking undue advantage of this respondent staying with them, have ill treated and harassed him like anything. He was treated like a maid servant in their house. Neither the petitioner nor any of her family members have treated this respondent as a family member nor the petitioner No.1 lead a normal married life with this respondent. It is also alleged that the petitioner never shown any love and affection towards this respondent or treated him like her husband. All the family members including the petitioner was abusing this respondent in filthy language and was always taunting him as an empty person and ashaming him with that of beggar. Apart from all these illegal and harassive attitude, in order to keep this respondent and over power upon him, a false

complaint has also been lodged against him thereby alleging under the dowry harassment etc. When the respondent himself was staying with the petitioner, question of harassing the petitioner on dowry or on any type of harassment does not arise at all. It is contended that the petitioner is blowing both hot and cold together. At one breath she alleges that this respondent is involved in commission of offence under Section 498A of IPC and other commission of offences and still it is pending. At another breath she alleged that the respondent left her intentionally and neglected, deserted her and thereby calls upon him for joining and leading matrimonial life. The petitioner is interested in money rather leading a normal prosperous married life. The respondent is getting a meager sum salary, out of which he has to maintain his ailing parents and also other family members. The petitioner instead of strengthening the hands of the respondent, is bent upon harassing the respondent to maximum extent not only the respondent, but also his family members. The petitioner files a petition seeking joining the matrimonial life at the same time, she also files a criminal case for taking action

against the respondent and his family members. She has no mind to lead a married life. She is only interested in money. Hence, she is not at all entitled to seeking any relief of maintenance. Moreover, out of his income after spending amounts for the treatment of his parents and his family expenses, the respondent is not left with any amount and therefore, he is unable to pay any amount as sought for by the petitioners. On these grounds, it is prayed to reject the application.

5. In support of the petition, the petitioner No.1 has filed declaration of assets and liabilities, Aadhar card of petitioner No.1 and 2, marriage invitation card and marriage photographs.

6. Heard the Id counsel for the petitioners. Perused the materials available on record.

7. On the basis of the above pleadings, the following points arise for consideration:

P O I N T S

1. Whether the petitioners prove that the respondent is having sufficient means and has neglected and refused to maintain the petitioners?
2. Whether the petitioners are entitled for the

interim maintenance as sought for?

3. What order ?

8. Based on the facts and the circumstances of the case and the materials on record, the answers to the above points are as below:-

Point No.1 : In the affirmative

Point No.2 : Partly in the affirmative

Point No.3 : As per the final order
for the following ;

REASONS

9. Point No.1 : The petitioners have filed this petition seeking maintenance against the respondent. The relationship of the petitioners with respondent is not disputed. The petitioner No.1 has specifically alleged that the respondent has subjected her to mental and physical cruelty and finally the petitioner No.1 has lost her patience and started living independently along with her daughter petitioner No.2. It is alleged that the respondent has failed and neglected to maintain the petitioners. Per contra, the respondent has denied all the allegations.

10. Looking into the materials at this stage, it is seen that

the respondent being the husband of the petitioner No.1 is not providing maintenance to the petitioners. It is not at all the case of the respondent that he has made arrangements of maintenance to the petitioners. It is not in dispute that the petitioners and respondent are living separately.

11. Whether or not, the respondent has subjected the petitioner to cruelty, and whether or not, the petitioner succeed in obtaining the maintenance order, has to be seen after a detailed enquiry. At this stage, it is suffice, if the petitioner was to satisfy a prima facie case. As already observed, admittedly the petitioner No.1 is the wife of the respondent and the petitioner No.2 is the daughter of the respondent and that the respondent is not residing with the petitioners. Under such circumstances, at this stage, it is to be accepted that the petitioners have no independent income and is not able to maintain herself. As far as petitioner No.2 is concerned, the respondent being the father, is bound to provide maintenance.

12. The petitioner No.1 has stated that the respondent is an employee working in the capacity of Human Resource

Manager (HR Manager) with a private company Aparajitha Corporate Services Limited and he is having handsome salary of approximately Rs.1,00,000/- per month as a net salary and having own house, no materials are produced. Though the respondent has stated that he is getting a meager sum salary, out of which, he has to maintain his ailing parents and also other family members, it is a bounded duty of the respondent, as husband of petitioner No.1, that he has to maintain his wife and child, pending disposal of this petition. Otherwise, the petitioners would be left under the state of destitute. The object of granting interim maintenance is to ensure that arrangements are made to the needy during the period of determination of the case.

13. The respondent has stated that he is ready to take the petitioners with him and live with them. As per the second proviso of 125 (3) of Cr.P.C, if a person offers to maintain his wife on a condition of her living with him and she refuses to leave with him, the Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that

there is just ground for so doing. Thus in the instant case it is to be ascertained as to whether or not there are just ground for the petitioners herein to refuse the offer of the respondent to maintain her on a condition of her living with him.

14. The petitioner No.1 has specifically alleged that the respondent has subjected her with cruelty. There is an allegation of harassment for dowry. The petitioner No.1 has stated the same on oath. This court is not determining whether or not the respondent has really subjected the petitioner No.1 to cruelty. But to the extent of determining the grounds to refuse to live with the respondent as contended by the petitioner No.1, whether are satisfiable or not, has to be looked into.

15. In **Sirajmohammedkhan Janmohamadkhan Vs. Hafizunnisa Yasinkhan, AIR 1981 SC 1972** it is held that "where the wife has a reasonable apprehension arising from the conduct of the husband that she is likely to be physically harmed due to persistent demands of dowry from her husband's parents or relations, such an apprehension also would be manifestly a reasonable justification for the

wife's refusal to live with her husband". In this view of the matter, the statement on oath made by the petitioner No.1 regarding the cruelty subjected to her by the respondent is suffice to justify her refusal to live with respondent. For all these reasons, the petitioners are entitled for interim maintenance. Accordingly, this court has answered Point No.1 **in the Affirmative.**

16. Point No.2: The next aspect is determination of quantum of maintenance to the petitioners. In **Rajesh V Neha (2021) 2 SCC 324** it is held that the objective of granting interim / permanent alimony is to ensure that the dependant 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.

17. The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant 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 prior to 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. 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.

18. 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.

19. 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. The same principles apply for grant of maintenance to the child of the spouse.

20. It is seen that the petitioner No.1 is unemployed. There is no source of income to the petitioner No.1. Taking into the consideration the cost of living in present days and

also the expenses likely to be incurred in the maintenance of the petitioner No.1 as well as her daughter, the petitioner No.2, this court holds that an amount of Rs.4,000/- to the petitioner No.1 and an amount of Rs.3,000/- to the petitioner No.2, would be reasonable for the petitioners to meet their necessities. The said amount does not appear to be exorbitant which the respondent cannot pay. This court is of the opinion that the maintenance is to be paid from the date of the petition. With these observations and the reasons aforementioned, this court has answered Point No.2 **Partly in the Affirmative.**

21. Point No.3:- In view of the above discussions, observations, reasons and the answers to point No.1 and 2, this Court proceeds to pass the following :

ORDER

The application seeking interim maintenance filed by the petitioners under Section 125(3) of Cr.P.C is partly allowed.

The respondent is directed to pay a monthly maintenance of Rs.4,000/- (Rupees four thousand only) to the

petitioner No.1 and Rs.3,000/- (Rupees three thousand only) to the petitioner No.2, till her marriage.

The interim maintenance is payable from the date of filing of the petition.

(Dictated to the Stenographer, transcribed and typed by her, script revised and corrected and then pronounced by me in the Open Court on this the 24th day of July, 2024).

(ASHOK R.H.)
Addl. Civil Judge and JMFC,
Hosapete.