

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

REV.PET FAMILY COURT NO. 169 OF 2023

BETWEEN:

MR. DIVAKARA .N
AGED ABOUT 42 YEARS
S/O.LATE NARASIMHA BHANDARY
R/O THALAMAKKI
KUDREGUNDI POST
KOPPA,
CHIKKAMAGALURU 577 126.

...PETITIONER

(BY SRI. PRABHUGOUDA B.TUMBAGI.,ADVOCATE)

AND:

1. MRS. SHUBHA GAYATHRI
AGED ABOUT 32 YEARS
W/O. DIVAKARA N
D/O. LATE DEVAPPA BHANDARY
R/O. PRASHANTH NILAYA
BONATHILA, VAMANJOOR
MANGALURU - 575 029.

2. MASTER SADWIN
AGED ABOUT 5 YEARS
S/O DIVAKARA N,

SINCE MINOR, REP. BY
MOTHER AND NATURAL GUARDIAN
SHUBHA GAYATHRI
R/O PRASHANTH NILAYA
BONANTHILA,
VAMANJOOR,
MANGALURU - 575 029.

...RESPONDENTS

(R1 & R2-SERVED AND UNREPRESENTED,
R1-MINOR, REPRESENTED BY R2)

THIS RPFC IS FILED UNDER SECTION 19(4) OF FAMILY COURT ACT, AGAINST THE ORDER DATED 01.06.2023 PASSED IN CRL.MISC.NO.7/2021 ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, D.K. MANGALURU, PARTLY ALLOWING THE PETITION FILED UNDER SECTION 125(1)(a)(b) OF Cr.P.C FOR MAINTENANCE.

THIS REVISION PETITION FAMILY COURT HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.03.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV ORDER

The present petition is filed by the petitioner–husband seeking to set aside the order dated 01.06.2023 passed in Cr.Mis.No.7/2021, produced at Annexure–A, and to dismiss the maintenance petition filed on the file of the Principal Judge, Family Court, D.K., Mangaluru (for short, 'the Family Court').

2. The petitioner herein is the husband, respondent before the Family Court and the respondents herein are wife and minor child, petitioners before the Family Court.

3. For convenience of reference, the parties herein are referred to as per their ranking before the Family Court.

4. The brief facts of the case are as follows:

The petitioners instituted a petition under Section 125(1)(a) and (b) of the Criminal Procedure Code, 1973 (for short, 'Cr.P.C.'), seeking maintenance of Rs.15,000/- each from

the respondent. It was contended that petitioner No.1–wife married the respondent–husband on 12.11.2017 at Samaja Mandira, Moodabidri, and out of the said wedlock, a male child, namely, petitioner No.2–Master Sadwin, was born on 11.03.2019. Petitioner No.1 asserted that she had completed M.Sc. in Chemistry and was working as a lecturer at Mangala Para Medical College, Mangaluru. According to her, after the marriage, she left the said employment on the assurance that she would be provided employment at Koppa and thereafter joined the matrimonial home.

5. Petitioner No.1 further alleged that after the marriage, she was subjected to ill-treatment by the respondent and his mother and was not provided proper care during her illness and pregnancy. It was also alleged that the respondent suspected her character and installed a CCTV camera inside the room. Due to the negligent and torturous conduct of the respondent, she was constrained to leave the matrimonial home in June 2020. She further contended that the respondent neglected and refused to maintain her and the minor child and that she is presently residing in her mother's house and is dependent upon her mother for sustenance, having no independent income.

6. Petitioner No.1 also alleged that the respondent is running a garage at Koppa and is earning about Rs.1,00,000/- per month, and on that basis sought maintenance of Rs.15,000/- each for herself and the minor child.

7. Upon service of summons, the respondent appeared and admitted the marriage and the birth of petitioner No.2. However, he denied the other allegations and contended that petitioner No.1, from the beginning of the marriage, behaved rudely and had informed him that she was not interested in marrying him as she was allegedly having an affair with one Srinivasa Boruthu of Mangaluru, and that she married him only due to family pressure.

8. The respondent further contended that petitioner No.1 treated him and his ailing and bedridden mother with disrespect and expressed dissatisfaction about residing in a village. Despite attempts by both families to resolve the disputes, the same did not yield results. According to him, petitioner No.1 left the matrimonial home with the intention of ending the relationship. He asserted that he is working in another person's garage, has no permanent income, holds a BPL card, and has to maintain himself and his bedridden mother. He also contended that petitioner No.1, being well

qualified and previously employed, suppressed material facts and filed a false dowry harassment case at the instance of her family members.

9. In order to substantiate her case, petitioner No.1 examined herself as PW-1 and her brother as PW-2 and produced documents at Exs.P1 to P7. The respondent examined himself as RW-1 and his brother as RW-2 and produced documents at Exs.R1 to R8.

10. Based on the pleadings and evidence, the Family Court framed points for consideration and partly allowed the petition by order dated 01.06.2023 directing payment of maintenance, which is under challenge in the present petition.

11. Learned counsel for the petitioner would contend that neither the pleadings nor the evidence establish the alleged ill-treatment. The Family Court, merely on the basis of registration of a criminal case, which has not been tested in trial, erroneously concluded that the petitioner subjected respondent No.1 to cruelty.

12. It is further contended that respondent No.1 is admittedly an M.Sc. graduate and had been working as a lecturer. Despite such qualification, she voluntarily left the matrimonial home and claimed maintenance. It is urged that

the Family Court erred in rejecting the petitioner's application seeking production of her bank statements and assets and liabilities affidavit, which would have aided proper adjudication.

13. It is also contended that the petitioner earns only Rs.4,000/- to Rs.5,000/- per month as a gas welder and has to maintain his bedridden mother. The allegation that he earns Rs.1,00,000/- per month is unsubstantiated. Even the suggestion of Rs.35,000/- per month was not supported by evidence. Despite this, the Family Court awarded Rs.7,500/- each, which is beyond his capacity.

14. The petitioner further contends that respondent No.1 had no inclination to lead matrimonial life in a village and insisted on sending his mother to an old age home. Allegations regarding her prior relationship and conduct are also reiterated. It is contended that the Family Court failed to consider recorded conversations and other material evidence.

15. Heard learned counsel for the parties.

16. Having considered the contentions advanced and after perusal of the materials placed on record, it is not in dispute that the marriage between the parties was solemnized on 12.11.2017 and that a male child was born on 11.03.2019. The relationship and paternity being admitted, the

requirements under Section 125 of Cr.P.C. stand satisfied. The only question is with regard to the correctness of the quantum of maintenance.

17. On re-appreciation of the material, this Court finds that the Family Court was justified in holding that respondent No.1 had sufficient cause to live separately. The evidence of PW-1, corroborated by PW-2, discloses ill-treatment and neglect. Complaints dated 17.09.2020 and 08.11.2020 have resulted in registration of a criminal case in Cr.No.67/2020 for offences under Sections 498A, 504, 506, 201 read with Section 34 of IPC. Exs.P3 and P4 constitute *prima facie* material. The petitioner herein/husband has not discredited the same.

18. The plea of desertion by respondent No.1 herein/wife is not substantiated. No steps such as issuance of notice or filing of a petition for restitution of conjugal rights were taken by the petitioner herein. Allegations regarding her conduct remain unproved and were rightly discarded.

19. Insofar as the financial capacity of respondent No.1 is concerned, the Family Court has rightly held that mere educational qualification or past employment cannot be a ground to deny maintenance in the absence of proof of present income. Though it is admitted that respondent No.1 is the

M.Sc. graduate and was earlier working as a lecturer, no evidence has been adduced by the petitioner to establish that she is presently employed or earning. The burden in this regard was on the petitioner, which he has failed to discharge. Hence, the finding that respondent No.1 is unable to maintain herself and the minor child calls for no interference.

20. With regard to the income of the petitioner, the Family Court has assigned cogent reasons for disbelieving his plea of earning only Rs.4,000/- to Rs.5,000/- per month. The admission that he has been running a garage at Koppa for more than 10 years, coupled with the photograph of his residential house marked at Ex.P7, justifies the inference that he has a stable and sufficient source of income. In the absence of documentary proof from the petitioner regarding his exact income, the Family Court was justified in assessing his monthly income notionally at Rs.30,000/- to Rs.35,000/- based on probabilities and the material on record.

21. In that view of the matter, the award of maintenance of Rs.7,500/- each to respondent Nos.1 and 2, totaling Rs.15,000/- per month from the date of petition, is neither excessive nor arbitrary. The Family Court has balanced the needs of the wife and minor child with the earning capacity

and obligations of the petitioner, including maintenance of his aged mother.

22. The findings of the Family Court are based on evidence and do not suffer from perversity or illegality warranting interference under revisional jurisdiction.

23. Accordingly, the petition is ***dismissed***. The order dated 01.06.2023 passed in Cr.Mis.No.7/2021 on the file of the Principal Judge, Family Court, D.K., Mangaluru, is hereby confirmed.

**SD/-
(DR.K.MANMADHA RAO)
JUDGE**

BNV