

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No. 474 OF 2022

BETWEEN

SRI. SATHISH N

... PETITIONER

[BY SRI.SHIVANNA, ADVOCATE (PHYSICAL HEARING)]

AND

SMT. AMBIKA J

... RESPONDENT

[BY SRI. UMESH B.N. ADVOCATE (PHYSICAL HEARING)]

THIS CRIMINAL PETITION IS FILED UNDER SECTION
482 OF CR.P.C., PRAYING TO QUASH THE PROCEEDINGS

IN CRL.MISC.361/2020 PENDING BEFORE THE PRINCIPAL CIVIL JUDGE AND JMFC AT DODABALLAPURA, BENGALURU RURAL DISTRICT.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question entertaining of the proceedings in Crl.Misc.361/2020, registered by the respondent-wife seeking maintenance from the hands of the husband invoking Section 125 Cr.P.C.

2. Heard Sri. Shivanna, learned counsel for the petitioner and Sri. Umesh B.N., learned counsel for respondent.

3. Brief facts leading to the filing of the present petition as borne out from the pleadings are as follows:

The petitioner and the respondent get married on 01-11-2016. On the relationship between the petitioner and the respondent getting strained, respondent- wife registers a complaint on 7-12-2020 alleging offences

punishable under Sections 498A, 504 read with 34 of IPC and later on, prefers CrI.Misc.361/2020 seeking maintenance from the hands of the husband invoking Section 125 of the Cr.P.C.

4. The petitioner contends that the petition was not even maintainable and the Court has declined to consider these submissions holding the submissions would be taken note of after hearing the respondent-wife and while considering the matter for grant of maintenance or otherwise. At that juncture, petitioner files the subject petition seeking quashment of the entire proceedings instituted under 125 Cr.P.C.

5. Learned counsel appearing for the petitioner would place reliance upon Sub Section 4 of Section 125 Cr.P.C in support of his submission on maintainability. Sub Section 4 of Section 125 Cr.P.C. reads as follows:

"125. Order for maintenance of wives, children and parents –

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent".

6. The submission of the learned counsel appearing for petitioner is that, wife on her own consent or with the consent of the husband moved out of matrimonial house and therefore, husband -petitioner is not liable to pay any maintenance. The said submission runs counter to the very averments in the petition.

7. The respondent-wife at paragraph- 5 of the petition filed under Section 125 Cr.P,C. avers as follows:

*"5. It is respectfully submitted that the father of the petitioner have spent huge amount for the purpose of engagement, clothes and Marriage and Reception of the petitioner with the respondent and the petitioner parents have given gold Jewelers to the respondent and petitioner. The said gold Jewelers within the hand of respondent. Herewith produced Gold receipts are marked as Documents No.3 to 6. **The Respondent***

at the instance has started ill treating he petitioner; however the petitioner being a Hindu married wife has tolerated all the harassment meted out to her by the respondent and his mother. That for the last one year the harassment has so aggravated that the petitioner could not tolerate the same, and the respondent at the instance of her mother has drove away the petitioner to her parental/rent house and refused to maintain her. It is submitted that the petitioner knew only household work, and she has no source of income. Now the petitioner is living at he mercy of her father house."

The respondent-wife narrates about unbearable harassment and ill-treatment from both by the husband and mother- in- law has resulted in her going away from matrimonial house. This can by no stretch mean moving away of the wife by mutual consent for the petitioner to contend that proceedings were not maintainable.

8. These submissions were taken note of by the trial Court in the proceedings on 3-8-2021, the Court observes as follows:

"Sri. JK Learned counsel for petitioner present. Respondent present. Respondent has filed petition U/s 125, 126 of CrPC along with affidavit contending that he is intending to examine

the petitioner before passing any orders on Interim maintenance.

The Learned counsel for petitioner has vehemently argued that the examination of petitioner for the sake of interim maintenance is not necessary.

It is the contention of the Learned counsel for respondent that his client should not be punished without examining the petitioner.

Perused the entire record. For the main petition the respondent has filed detail counter. Now we are at the stage of hearing on Interim maintenance.

The proviso to Sec. 125 of CrPC provides discretion to court to order for interim maintenance during the pendency of proceedings and at this pre matured stage court feels it is not just to post the matter for examination. So far as contention of Learned counsel for respondent is concerned, the granting or non granting interim maintenance is not at all decided yet. It will be decided only after giving opportunity of hearing to both side. Further granting or non granting of interim maintenance is not punishing any litigant. Prima-facie at this juncture petition shows that petitioner and respondent are not living together since two year and petitioner is living in her maternal house. Hence, the application filed by the respondent U/s 125 and 126 of CrPC is concerned it will be considered at the time of hearing on main petition. Hence, the application filed by the respondent U/s 125 and 126 of CrPC is kept in abeyance as examination of the parties is not at all necessary for deciding interim application is maintenance.

Hence posted for hearing.

*Heard on application for interim application
by learned counsel for petitioner.*

*Learned counsel for respondent prays time
for hearing on interim maintenance. Granted.*

*Call on for hearing as final chance by
18-08-21.*

*Sd/-
PCJ & JMFC
Doddaballapura.*

9. Therefore, finding no grounds to interfere at
this juncture, the petition stands dismissed.

In view of the dismissal of the main petition,
prayer sought in I.A.No.1/2022 does not survive for
consideration. Hence, it is disposed of.

**Sd/-
JUDGE**

tsn*