

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 02<sup>ND</sup> DAY OF NOVEMBER, 2020

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

**R.P.F.C. NO. 63 OF 2016**

**BETWEEN:**

1. D.A.DIVYA @ DIVYASHREE,  
W/O M.YASHWANTH,  
D/O ANAND,  
AGED ABOUT 28 YEARS.
2. THANAY,  
S/O M.YASHWANTH,  
BEING MINOR REPRESENTED  
BY HIS NATURAL GUARDIAN MOTHER  
1<sup>ST</sup> PETITIONER -

BOTH ARE R/AT:  
ARAVINDANAGARA, 2<sup>ND</sup> CROSS,  
BASAVANAHALLI EXTENSION,  
CHIKKAMAGALUR TOWN,  
CHIKKAMAGALUR - 577 101.

... PETITIONERS

(BY SRI GIRISH B.BALADARE, ADVOCATE)

**AND:**

M.YASHWANTH,  
S/O MALLESHAPPA,  
AGED ABOUT 38 YEARS,  
R/AT: AKSHAYA,  
MALAVAGOPPA,

B.H.ROAD,  
SHIMOGA TALUK AND DISTRICT - 577 201.

... RESPONDENT

(BY SRI GOPALA GOWDA B.H., ADVOCATE FOR  
SRI G.SUKUMARAN, ADVOCATE)

THIS R.P.F.C. IS FILED UNDER SECTION 19(4) OF THE FAMILY COURT ACT CHALLENGING THE ORDER DATED 25.01.2016 PASSED BY THE PRINCIPAL JUDGE, FAMILY COURT, CHIKKAMAGALURU IN CRIMINAL MISCELLANEOUS NO.18/2015.

THIS R.P.F.C. COMING ON FOR ADMISSION THIS DAY THE COURT MADE THE FOLLOWING:

**ORDER**

Though the revision petition is listed for admission, with the consent, it is heard finally.

2. Sri.Girish B.Baladare, learned counsel has appeared through video conferencing and Sri.Gopala Gowda.B.H., learned counsel appearing on behalf of Sri.G.Sukumaran, has appeared in-person.

3. For the sake of convenience, the parties shall be referred to in terms of their status and ranking before the Family Court.

4. The order dated 25.01.2016, passed by the Principal Judge, Family Court, Chikkamagaluru in CrI.Misc.No.18/2015 is called in question in this revision petition wherein learned Judge has dismissed the petition as not maintainable. It is this order which is called in question on various grounds as set out in the revision petition.

5. Learned counsel Sri.Girish B.Baladare, contended that, the order of the Family Court suffers from serious infirmities and the same is liable to be set aside.

He submitted that the learned Judge has erred in coming to the conclusion in holding that petition filed under Section 125 of Cr.P.C is not maintainable.

He submitted that the ground for rejection of the petition is that petitioners had filed a petition in CrI.Misc.No.239/2009 under the provisions of Protection of Women from Domestic Violence Act, 2005 and obtained an order of compensation is wholly unsuitable in law.

A further submission was made that mere passing of maintenance order under the provisions of Protection of Women from Domestic Violence Act, 2005 does not preclude petitioners from filing a petition under Section 125 of Cr.P.C.

Lastly, he submitted that viewed from any angle, the order passed by the Family Court is arbitrary, illegal, and opposed to law. Hence, the same is liable to be set aside. Therefore, he made a submission that the revision may be allowed

6. Per contra, Sri.Gopala Gowda.B.H., learned counsel appearing on behalf of Sri.G.Sukumaran for respondent submits that first petitioner has already filed petition seeking maintenance under the provisions of the Protection of Women from Domestic Violence Act, 2005 in Crl.Misc.No.239/2009 on the file of II Additional Civil Judge and JMFC, Chikkamagaluru. The said petition was allowed by granting Rs.96,000/- as compensation and Rs.4,000/- per month towards maintenance.

Aggrieved by the said order, first petitioner had preferred an appeal in Crl.A.No.134/2011 and respondent had preferred an appeal in Crl.A.No.107/2012 under Section 29 of the Protection of Women from Domestic Violence Act, 2005, before the Fast Track Court, Chikmagalur. Both appeals were clubbed and a common judgment was passed in dismissing both the appeals by confirming the maintenance order passed by the II Additional Civil Judge and JMFC, Chikmagaluru in Crl.Misc.No.239/2009. He further submits that the order has reached finality as petitioners have not preferred further appeal before any other Courts.

A further submission was made that the amount of maintenance and compensation ordered in Crl.Misc.No. 239/2009 is more than sufficient for her livelihood. Therefore, he prays for dismissal of the petition.

7. Heard and perused the order with care.

8. The only question involved in this revision petition is whether the Family Court is justified in rejecting the petition as not maintainable?

First petitioner contended that she is the legally wedded wife of respondent and that their marriage was solemnized on 28.02.2007 at Gayathri Mangalya Mandira, B.H.Road, Shimoga as per the Hindu Rites and Customs. They lived blissfully for some time. Thereafter, due to difference of opinion, she was constrained to leave apart from respondent. Contending that her husband has sufficient means, refused and neglected to maintain her and her minor child, she has filed petition in Crl.Misc.No.239/2009 seeking protection order under Section 18, Maintenance under Section 20 and compensation order under Section 22 of the Protection of Women from Domestic Violence Act, 2005.

After enquiry, the said petition was partly allowed by granting protection order under Section 18, compensation of Rs.96,000/- under Section 22 and maintenance of

Rs.4000/- per month from the date of order during her life time.

Aggrieved by the said order, both first petitioner and respondent had preferred appeal in Crl.A.No.134/2011 connected with Crl.A.No.107/2012. Both the appeals were clubbed and were dismissed on 31.10.2012 confirming the order passed in Crl.Misc.No.239/2009.

First petitioner then brought action under Section 125 of Cr.P.C contending that respondent has sufficient means, neglected and refused to maintain her and her minor child.

Respondent remained absent. Hence, he was placed ex-parte. The petition came to be dismissed as not maintainable. It is this order which is called in question on various grounds as set out in the revision petition.

Learned Judge while answering point No.1 has taken note of the proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005 and

has come to the conclusion that the petition under Section 125 of Cr.P.C is not maintainable.

It seems to me that learned Judge for no particular reason has created a confusion regarding the relevant provisions of the statutes. The confusion which, I may venture to think, has sometimes crept into the cases is, in my view, due to a failure to ascertain and understand the material propositions put forth by the parties.

I would observe that first petitioner filed a petition under Section 125 of Cr.P.C and not under Section 127 of the code. With all respect to learned Judge, my view is that, on the facts, the Judge has totally erred in not appreciating the distinction between the provisions of the Domestic Violence Act and Cr.P.C and the reasoning is clouded by an impression that first petitioner is seeking enhancement of maintenance, which is not the case.

In view of the above, the order of the Family Court is hereby set aside. I find it appropriate to remand the



matter to reconsider the application filed by first petitioner under Section 125 of Cr.P.C and to pass appropriate orders.

The petition has to be disposed of as expeditiously as possible not later than six months from the date of receipt of copy of this order.

Accordingly, the revision petition is allowed.

In view of the disposal of the main petition, IA.No.1/2019 seeking direction does not survive for consideration and accordingly, it is dismissed.

**Sd/-  
JUDGE**

SB