



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO. 7378 OF 2019

C/W

CRIMINAL PETITION NO. 7379 OF 2019

IN CRL.P No. 7378/2019

BETWEEN:

1. U ESHAN
S/O K T UMASHANKAR
AGED ABOUT 31 YEARS
C/O K SIDDAPPA
R/O MARUTHI RANGANATHA NILAYA
I CROSS, KENCHAPPA LAYOUT
VINOBANAGAR
SHIVAMOGGA CITY-577201

...PETITIONER

(BY SRI. JAYAPRAKASH R V., ADVOCATE)

AND:

1. K T UMASHANKAR
S/O LATE K M THAMMAIAH
AGED ABOUT 65 YEARS
AGRICULTURIST & BUSINESSMAN
R/O B H ROAD
OPP JUNIOR COLLEGE
KADUR TOWN

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

CHIKMAGALUR DISTRICT
PIN:577518

...RESPONDENT

(BY SRI. R B SADASIVAPPA.,ADVOCATE)

THIS CRL.P IS FILED U/S.482 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONBLE COURT MAY BE PLEASED TO QUASH THE JUDGMENT AND ORDER DATED 08.04.2019 IN CRL.RP.NO.445/2018 ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, AT CHIKKAMAGALURU CONFIRMING THE JUDGMENT AND ORDER DATED 09.08.2018 IN CRL.MISC.NO.281/2014 ON THE FILE OF THE PRL.CIVIL JUDGE AND JMFC AT KADUR.

IN CRL.P NO. 7379/2019

BETWEEN:

1. U ESHAN
S/O K T UMASHANKAR
AGED ABOUT 31 YEARS,
C/O K SIDDAPPA
R/O MARUTHI RANGANATHA NILAY
I CROSS,
KENCHAPPA LAYOUT
VINOBANAGAR
SHIVAMOGGA CITY-577201

...PETITIONER

(BY SRI. JAYAPRAKASH R V.,ADVOCATE)



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

AND:

1. K T UMASHANKAR
S/O LATE K M THAMMAIAH
AGED ABOUT 65 YEARS,
AGRICULTURIST & BUSINESSMAN
R/O B H ROAD,
OPP JUNIOR COLLEGE
KADUR TOWN,
CHIKMAGALUR DISTRICT
PIN-577548

...RESPONDENT

(BY SRI. R B SADASIVAPPA.,ADVOCATE)

THIS CRL.P IS FILED U/S.482 OF CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONBLE COURT MAY BE PLEASED TO SET ASIDE AND QUASH THE JUDGMENT AND ORDER DATED 08.04.2019 IN CRL.RP.NO.457/2018 ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE AT CHIKKAMAGALUR CONFIRMING THE JUDGMENT AND ORDER DATED 09.08.2018 IN CRL.MISC.NO.281/2014 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE AND JMFC AT KADUR.

THESE PETITIONS ARE COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL ORDER

The petitioner is before this Court challenging the judgment and order dated 08.04.2019 in Crl.R.P.No.445/2018 on the file of the II Addl. District and Sessions Judge at



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

Chikmagalur, (for short 'Revisional Court') confirming the judgment and order dated 09.08.2018 in Crl.Misc.No.281/2014 on the file of the Prl.Civil Judge and JMFC at Kadur (for short 'trial Court').

2. Heard the learned counsel for the petitioner and also learned counsel appearing for the respondent.

3. These two petitions are filed by the son challenging the order passed by the trial Court in Crl.Misc.No.281/2014 filed by the father invoking Section 125 of Cr.P.C, whereby trial Court granted amount of Rs.4,000/- per month to the father. Aggrieved by the said order, the son preferred Crl.R.P.No.445/2018 before the Revisional Court. The father also preferred Crl.R.P.No.457/2018 seeking enhancement of the maintenance amount. The Revisional Court dismissed the petition filed by the son and allowed the petition filed by the father, thereby enhancing the maintenance from Rs.4,000/- to Rs.7,000/- per month. Both the orders of the Trial Court and Revisional Court have been challenged before this Court in these petitions.



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

4. The main contention of the counsel appearing for the petitioner is that both the courts have committed an error in awarding maintenance of Rs.4,000/- per month to the respondent and thereafter, in enhancing the said amount to Rs.7,000/- per month.

5. The learned counsel appearing for the petitioner would vehemently contend that the Courts below ought to have taken note of the fact that respondent is a rich person owning vast extent of immovable properties like arecanut and coconut garden and that he is residing in a joint family with his brothers. It is further contended that he has 1/3rd share in the joint family properties. The respondent has not produced any material evidence to establish that he is a person without sufficient means or he is unable to maintain himself and earn a livelihood. It is also contended that the Courts below have not recorded any specific finding to the effect that the respondent is unable to maintain himself. In the absence of the said finding that the respondent has no independent source of income and is unable to maintain himself, the question of entertaining a petition under Section 125 of Cr.P.C does not arise.



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

6. The learned counsel would further contend that the Courts below ought to have taken note of the fact that the petitioner and his mother were driven out by the respondent more than 22 years ago and since then the respondent has neither provided any financial assistance nor extended the support to the petitioner or his mother. It is contended that despite having sufficient means to provide maintenance, the respondent has failed to do so. The respondent is stated to be the son of former MLA and a person of substantial means, whose family owns vast extent of agricultural and commercial properties.

7. Both the courts have completely ignored the aforesaid fact and committed an error in entertaining a petition under Section 125 of Cr.P.C. The Court's below have further failed to take note of the fact that respondent had obtained a decree of divorce against his wife upon payment of an amount of Rs.10,00,000/- and this by itself shows that the respondent is an affluent person and possesses sufficient means to maintain himself from his properties and other resources. Further, the respondent was also directed to pay monthly



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

maintenance to his wife, which he has been paying since 2012. There is absolutely no evidence on record adduced by the respondent to establish that he is unable to maintain himself. In the absence of any such evidence, the findings of the Courts below is unsustainable.

8. The Courts below ought to have taken into consideration the findings recorded by this Hon'ble Court in RPFC.No.131/2012 as well as Judgment and Decree dated 31.02.2017 passed in O.S.No.13/2010 on the file of Senior Civil Judge and JMFC at Kadur, Chikkamagalur District.

9. The learned counsel for the petitioner vehemently contended that when the suit was filed by the petitioner seeking a decree for partition of immovable properties was partly decreed, holding that petitioner is entitled to half share out of the share of his father in the joint family properties and the said decree has become final. But final decree is not yet passed.

10. The learned counsel for the petitioner would further vehemently contend that in order to invoke Section 125 of



Cr.P.C there must be a specific finding that father is not having any source of income to maintain himself. It is only upon such a finding that the liability of the son to maintain his father can arise. However, the learned counsel contends that the trial Court as well as the revisional Court have failed to take note of these material aspects while passing the impugned orders. Hence, the impugned orders passed by the Courts below warrant interference by this Court.

11. Per contra, the learned counsel appearing for the respondent would vehemently contend that respondent is not earning any income and merely because he is residing along with the joint family, it cannot be presumed that he has sufficient means to maintain himself. It is further contended that a decree was passed in O.S.No.13/2010 and that the respondent is not deriving any income from the arecanut or coconut gardens. The learned counsel would also contend that an amount of Rs.10,00,000/- was paid towards permanent alimony pursuant to the order of the Court, by raising the said amount with the assistance of relatives. The mere receipt of



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

the said amount as permanent alimony would not establish that the respondent is financially capable of maintaining himself.

12. The learned counsel for the respondent also brought to the notice of this Court, the admission made by RW-1, who has examined before the trial Court. The said admission has been extracted in the impugned order, wherein RW-1 has categorically admitted that no document has been produced to establish that the respondent is having sufficient income to maintain himself. Taking note of the said admission, particularly the admission contained in paragraph No.10, the trial Court has rightly come to the conclusion that the petitioner is liable to pay maintenance to his father.

13. It is further contended that the Revisional Court, while considering the revision petition filed by the respondent, has taken note of the fact that the maintenance of Rs.4,000/- awarded by the trial Court was meagre and accordingly, enhanced the same to Rs.7,000/- per month.

14. The Revisional Court has also considered the decree passed in favour of the petitioner and has rightly held that the



NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

said decree, by itself cannot be a ground to reject the claim for maintenance. The trial Court has further taken note of the fact that the petitioner is earning a salary of about Rs.25,000/- per month. Hence, the learned counsel contends that the order passed by the Revisional Court is neither erroneous nor perverse and is supported by cogent reasons. It is therefore contended that the petitioner has not made out any ground for interference with the order passed by the trial Court. The Revisional Court has rightly dismissed CrI.RP.No.445/2018 filed by the petitioner and has also rightly considered CrI.R.P.No.457/2018 filed by the respondent seeking enhancement of compensation.

15. Having heard the learned counsel appearing for the petitioner as well as learned counsel appearing for the respondent.

16. On perusal of the material on record, there is no dispute that the respondent-father has filed a petition invoking Section 125 of the Cr.P.C, seeking maintenance from the son. It is also not in dispute that the petitioner-son is an engineering



NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

CNR: KAHC010442072019

graduate and is gainfully employed. However, while considering the claim for maintenance, the court is required to take into consideration the facts and circumstances of the case in entirety.

17. It is the specific case of the petitioner that he is residing along with his mother. Learned counsel appearing for the petitioner vehemently contended that there was a difference between the petitioner's father and mother and that the father had deserted both the mother and the petitioner. The petitioner is presently aged about 31 years. The material on record also discloses that immediately after the birth of the petitioner, his father had deserted his wife as well as the petitioner and has failed to discharge his obligations towards him.

18. The petitioner's mother had also initiated proceedings against the husband seeking maintenance. In addition, the petitioner/son had instituted a suit in O.S.No.13/2010. It is pertinent to note that, when a dispute arose between the mother and the son with regard to their



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

claim for maintenance, this Hon'ble Court in RPFC.No.131/2012, considered the matter when the husband/father of the petitioner herein challenged the order passed in the said proceedings.

19. Though the respondent claims that he is residing along with the joint family, it is pertinent to take note of the observation made in paragraph No.10, which reads as follows: *"It is not the case of the petitioner that there is no areca garden. Besides it is also not disputed that there is absolutely no other properties. No doubt the petitioner may be living in joint family. That itself will not indicate that he does not have any income from the joint family property. It is also borne out from the record that the revision petitioner has got lands, theater, commercial complex and other properties of joint family. From this he gets substantial amount by way of income the trial Court was constrained to make some guesswork based on the material placed on record and awarded maintenance amount of Rs.8,000/-. The learned counsel for the revision respondent has filed a memo that the respondent is agreeable to receive maintenance amount of Rs.7,000/- per month."*



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

20. It is also important to note that in MFA No.8815/2012 the father had filed an appeal before the court questioning the order passed in MC.No.83/2011 and this Court also made an observation in paragraph No.8 that *"Admittedly, the parties are living separately since 25 years. The petition is filed in the year 2011 since then efforts have not been made by appellant to secure his wife to the matrimonial home. In addition to that the son has been under the care and custody of the respondent. He has completed his Engineering Graduate. As a matter of fact, in the cross-examination of RW-1, the appellant's counsel has put a question that, is there any need for her the presence of appellant at the time of celebrating the marriage of his son. The answer to the said question is when she has been living separately for last 25 years for her remaining life would be the same and she can spend life with her son."*

21. It is also an observation made in paragraph No.9 that, *"If really the appellant was interested to take the respondent back he would have made attempt long back. When he has made his wife to file a petition for maintenance and also*



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

his son to file a suit for partition, several years thereafter, if he files petition under Section 9 of the Hindu Marriage Act, the only presumption that could be drawn by any court would be to avoid maintenance payable and to avoid to give share to his son, the present petition is filed."

22. Having taken note of the fact that the matter has reached this Court in connection with the claim for maintenance as well as the matrimonial proceedings, wherein certain observations have already been made, it appears that the father has sought maintenance from his son, despite the specific circumstances pleaded by the son regarding the conduct of the father towards his mother during his lifetime. It is the specific case of the petitioner that his father had failed to take care of and provide support to his mother and had denied their rights throughout his life.

23. It is not in dispute that the respondent is residing in a joint family and that the joint family is possessed of substantial properties. It is also not in dispute that proceedings were instituted in O.S.No.13/2010 between the father and son,



wherein the trial Court passed a decree in favour of the son. These circumstances, in the opinion of this Court, are relevant while considering the claim for maintenance made by the father against the son.

24. The material on record discloses that the son had been living separately along with his mother and that the father had not extended financial support to them. In such circumstances, the fact that the father is presently seeking maintenance from the very son whom he had allegedly failed to maintain and support assumes significance. However, the trial Court as well as the Revisional Court have not properly considered these material circumstances and the observations made by this Court in the earlier proceedings while determining the entitlement of the respondent to maintenance.

25. Taking note of the observations made by this Court in the earlier proceedings in RPFC as well as MFA, this Court has already observed that the respondent is having a source of income and is residing in a joint family along with his brothers, and that the joint family is also possessed of substantial



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

properties. There are several properties, including arecanut and coconut gardens, belonging to the joint family. Though the final decree has not been passed in favour of the son, the fact remains that the wife and son had been deserted by his father when he was a child, along with his mother. The mother had also approached the court in respect of the said grievance, and the matter had, on earlier occasions, reached this Court, in the course of those proceedings.

26. This Court has made an observations in both the earlier proceedings arising out of the matrimonial dispute between the husband and wife. The learned counsel appearing for the petitioner has also brought to the notice of this Court that, when the respondent-father was able to pay a sum of Rs.10,00,000/- in M.C.No.154/2015, he cannot now contend that he has no sufficient means to meet his livelihood while invoking Section 125 of the Cr.P.C.

27. The order passed in M.C.No.154/2015 clearly discloses that the respondent had paid a sum of Rs.4,50,000/- on 30.08.2017 and that the balance amount of Rs.5,50,000/-



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

was also payable towards the said liability. These circumstances are relevant for considering the respondent's contention regarding his financial capacity and his inability to maintain himself.

28. Learned counsel appearing for the respondent would submit that the aforesaid amount was arranged and paid with the assistance of his family members. However, the fact remains that the respondent is residing in a joint family and has also suffered a judgment and decree in O.S.No.13/2010.. When the suit was filed by the son, it is nothing but an off-suit as against the judgment and decree passed in O.S.No.13/2010 against the father.

29. Instead of seeking his share in the joint family properties, the respondent challenged the judgment and decree passed in O.S.No.13/2010 and thereafter filed a petition under Section 125 of the Cr.P.C. seeking maintenance from his son. As rightly pointed out by the learned counsel for the petitioner, when a petition is filed under Section 125 of the Cr.P.C., the



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

claimant is required to establish that he has no sufficient means to maintain himself.

30. In the present case, the material on record discloses that the respondent is residing in a joint family and that the joint family owns substantial properties, as reflected in the proceedings in O.S. No.13/2010. It is also the case of the petitioner that the respondent is deriving income from the joint family properties and that the joint family also owns commercial properties. These aspects have already been noticed by this Court in the earlier RPFC proceedings as well as in the MFA proceedings.

31. It is further relevant to note that the respondent has not succeeded in the proceedings from the trial Court to the appellate Court in respect of his claims that no source to pay maintenance. Ultimately, a decree was also passed in M.C.No.154/2015 against his wife. All these circumstances, when considered cumulatively, are relevant for determining whether the respondent has established his inability to maintain himself so as to claim maintenance from his son under Section



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

125 of the Cr.P.C. In order to arm twist the decree of partition of the

32. In M.C.No.154/2015, permanent alimony was also awarded and the same was paid by the father. In such circumstances, he cannot now contend that he has no source of income or sufficient means to maintain himself and seek maintenance from his son by invoking Section 125 of the Cr.P.C. In order to arm twist the decree of partition of the son, an attempt is made clandestine by the father in an ingenious method.

33. This Court is of the considered view that the Trial Court as well as the Revisional Court have committed an error in directing the petitioner to pay maintenance of Rs.4,000/- per month and, thereafter, enhancing the same to Rs.7,000/- per month and it is nothing but an attempt made by the father by invoking Section 125 of Cr.P.C. to counter the judgment and decree passed in O.S.No.13/2010.

34. Though there is an admission on the part of the petitioner that he has not produced any document to establish



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

the financial status of the respondent, the other material on record has to be considered in its proper perspective. The earlier proceedings clearly disclose that the petitioner was driven out along with his mother when he was a child, nearly 25 years ago. This aspect has also been noticed by this Court in MFA No.8815/2012. Though the orders passed in the earlier proceedings are not part of the documentary evidence before the Trial Court, the observations made by this Court therein regarding the financial capacity of the respondent and his ability to maintain himself cannot be ignored while considering the present proceedings.

35. The said proceedings also arose in the context of the claim for maintenance made by the mother of the petitioner. This Court, in the earlier proceedings, had occasion to consider the financial circumstances of the respondent and the circumstances in which the petitioner and his mother were residing separately from him. These material circumstances have not been properly considered either by the Trial Court or by the Revisional Court while determining the entitlement of the respondent to maintenance. The learned counsel for



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

respondent would contend that the observation made by this Court in the earlier proceedings do not form part of the present proceedings and therefore, cannot be taken into consideration by the trial Court. This argument of the counsel cannot be accepted for the reason that this Court can take judicial notice of any fact under Section 56 of the Indian Evidence Act, is an exception to general rules of evidence applicable for proving any fact by adducing evidence in the court of law. Under Section 56 of the Indian Evidence Act, court has power to take judicial notice as held by the Hon'ble Supreme Court in the case of *Harendra Rai vs. State of Bihar*¹. Further held that the judgment is public document. Moreover, it has a torch bearer effect over the facts of the case. Thus, it qualifies the requirement of law for the purpose of taking judicial notice thereof, court can take judicial notice of the intervenes, observations and findings arrived to the extent of the subsequent conduct. Recognition of facts without formal proof is a matter of expediency and no one has ever questioned the need and wisdom of accepting the existence of matters which

¹ (2023) 13 SCC 563



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

are unquestionably within public knowledge as already determined in earlier proceedings as held in *Onkar Nath and others vs. The Delhi Administration*².

36. It is also relevant to note that the respondent had not taken care of the petitioner during his childhood or supported him towards his education and upbringing. Having regard to the fact that the petitioner was separated from the respondent along with his mother when he was a child and that the respondent did not provide support to him for more than 25 years, the subsequent claim for maintenance against the son under Section 125 of the Cr.P.C. requires consideration in the light of the entire factual background.

37. Having regard to the facts and circumstances of the case, this Court is of the view that the petitioner has made out sufficient grounds to interfere with the orders passed by the Trial Court and the Revisional Court. Accordingly, I proceed to pass the following:

² 1977 AIR 1108



CNR: KAHC010442072019

NC: 2026:KHC:50065
CRL.P No. 7378 of 2019
C/W CRL.P No. 7379 of 2019

ORDER

- i. Both the petitions are ***allowed***.
- ii. The judgment and order dated 08.04.2019 in Crl.R.P.No.445/2018 on the file of the II Addl. District and Sessions Judge at Chikmagalur enhancing the amount from Rs.4,000/- to 7,000/- and confirming the judgment and order dated 09.08.2018 in Crl.Misc.No.281/2014 on the file of the Prl.Civil Judge and JMFC at Kadur are hereby quashed.

The amount deposited by the petitioner pursuant to the interim order passed by this Court shall be released in favour of the petitioner, subject to due verification and identification of the petitioner, in accordance with law.

**Sd/-
(H.P.SANDESH)
JUDGE**

AG
List No.: 1 Sl No.: 19