



CNR: KAHC010453692026

NC: 2026:KHC:49492
WP No. 20501 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 20501 OF 2026 (GM-FC)

BETWEEN:

SHRI BIJU JOSEPH JACOB
SON OF JACOB JOHN,
AGED ABOUT 35 YEARS,
RESIDING AT NO.13,
CEDAR SIDE APARTMENTS,
3 ALBERT ROAD, LONDON,
NW65FT, ENGLAND,
UNITED KINGDOM.

REP. BY POWER OF ATTORNEY HOLDER,
MR.JACOB JOHN,
SON OF K.C.JOHN,
RESIDING AT NO. 13,
1ST CROSS ROAD,
MEG OFFICERS COLONY,
BANASWADI MAIN ROAD,
MARUTHI SEVANAGAR,
BENGALURU- 560 033

...PETITIONER

(BY SRI. GEETHA DEVI M P.,ADVOCATE)

AND:

SMT. FRANKIE ARUJA BANANDA KIRAN
D/O DR KIRAN BANADA GANESH,
AGED ABOUT 25 YEARS,
RESIDING AT FLAT NO. 306,
SILICON APARTMENT,
BELAVADI ROAD, VIJAYANAGARA,



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4TH STAGE,
MYSURU -570 032

...RESPONDENT

(BY SRI. PRAKASHA H.C., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS IN C.MIS. NO.889 OF 2025 ON THE FILE OF THE II ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT AT MYSORE.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

Aggrieved by the orders dated 16.04.2026 passed in I.A.No.2 in C.Mis.No.889/2025 by the II Addl. Prl.Judge, Family Court, Mysuru, the petitioner/husband is before this Court. The parties are referred to as husband and wife for the sake of convenience.

2. The respondent has filed I.A.No.2 under Section 144 of the BNSS claiming interim maintenance amount of Rs.30,000/- per month. It is the case of the wife that she is not having any source of income and having difficulties to lead her life. Her husband has neglected her and failed to take care of her. To the said IA, objections are filed. It is a specific case of



the husband that the wife had voluntarily left the company of the husband on 26.04.2025 and she herself sent a message dated 04.08.2025 ending the marriage with the respondent which she calls as an alliance and she has intention to marry her boyfriend with whom she had affair for 10 years. After returning from London, the wife reconnected with her boyfriend on 29.04.2025 and had a very emotional and intimate conversation with him and attempted to commit suicide on 02.05.2025. The marriage was not consummated on account of the wife's willful refusal to consummate. Having left the husband voluntarily living in adultery she has come up with the present application seeking maintenance. The Family Court by order impugned had granted maintenance of Rs.30,000/- to the wife.

3. According to the husband, the wife has sufficient means. However, no evidence has been placed on record. It is the bounden duty of the husband to maintain the wife by paying a reasonable maintenance amount. Though the husband has taken contention that she deserted the husband and that it is a sham marriage, this contention cannot be considered at the



preliminary stage. The question of desertion cannot be ascertained by conducting a mini trial. Hence, the said contention of the husband cannot be believed. Considering the admitted case of both parties, it appears that the wife is kept away from the husband and she is unable to maintain herself; accordingly, maintenance was granted.

4. Learned counsel appearing for the petitioner/husband submits that the husband has placed before the court the relevant material to show that she deserted the husband and she has sent WhatsApp messages and she is going to marry her boyfriend and without a reasonable cause left the company of the husband and she is not entitled for maintenance. The court has failed to consider any of the aspects. The court went on the premise that all these aspects cannot be considered at an interlocutory stage. Learned counsel submitted that it is contrary to the law laid down by the Hon'ble Apex Court in the case of ***Himanshu Chordia Vs. State of Rajasthan and another reported in 2026 INSC 778***. Learned counsel has relied on paragraph Nos.9 to 12 and 17 to 20, which read as under:



"9. As already reproduced supra, a perusal of the clause suggests maintenance shall be denied if the wife lives in adultery or without any sufficient reason refuses to live with her husband or is living separately by mutual consent. The text of the statute itself points to the answer to the question raised in this appeal. Sub-section (4) of Section 125 provides that if adultery is established, the wife claiming maintenance would not be entitled to the same as an interim measure and therefore, obviously, not even as a final measure. Sub-section (5) thereof makes it even more obvious.

10. Once a petition under Section 125(1) is made before the concerned court, and the person from whom maintenance is sought makes an application under Section 125(4), determination thereof, would depend upon the facts and circumstances of each case; as also the kind of evidence presented in reference to application filed under Section 125(4); whether the interim maintenance so granted to the applicant under the proviso to sub-section (1) of Section 125, would continue to obtain or not.

11. The second proviso to Section 125(1) makes provision for interim maintenance and expenses of proceedings. It is clear therefore that the intent is for the maintenance allowance to reach the applicant expeditiously. It cannot be said as such, that once an application under the latter Section 125(4) has been made, even the payment of interim maintenance in the interregnum, till such application is decided, will be stopped. If it is concluded that the said application has merit, then the interim order would be vacated. If it is concluded otherwise, the interim order would be confirmed/modified. To put it plainly, the pendency of a 125(4) application would not per se bar the applicant from receiving interim maintenance on the ground that the said sub-section uses the word 'interim maintenance' also. If such a view is



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accepted, the payment of maintenance would be perpetually contingent on the decision in 125(4), which may, given the nature of the allegation, take considerable time in reaching its final conclusion.

12. Put clearly, it has to be observed that an application for maintenance is stage one of the proceedings wherein by virtue of the second proviso, the court may, circumstances permitting, award interim maintenance. The application under Section 125(4) is stage two and it is the decision in stage two which will determine whether the application reaches the final stage i.e. order of maintenance under Section 125(1) or not. What is provided by Section 125(5) accounts for a situation that is subsequent to final order having been made in stage three.

17. At this stage, a segue into how an allegation of adultery can be/is to be proved may be warranted. Evidence is of two types, direct and circumstantial. The former is the kind that establishes, on the face of it, an allegation.

18. It is obvious that when a case is sought to be proved by circumstantial evidence, it requires a detailed study of the circumstances presented. The evidence furnished in support thereof, including verification, particularly when the evidence in question is electronic, etc. These procedures are bound to take time. Since the stipulation in the Section 125 (4) is that if adultery is proved, the wife would neither be entitled to interim nor final maintenance, we are of the view that if a husband files an application under Section 125(4) and is, at the first instance, able to establish the charge through evidence ex facie, then only, there can be said to be a bar to interim maintenance.

19. The courts below clearly fell into error to hold that it was only at the stage of final



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adjudication that such a question could be decided. This view would render otiose what has been provided in the statute.

20. Applying this understanding to the record, in order to establish that the Respondent No. 2 was living in adultery, the appellant has placed a number of photographs and other evidence. This evidence is obviously electronic in nature. The question that the court must consider at the stage of interim maintenance is whether the evidence so presented establishes adultery. It is obviously open for the Respondent No. 2 to dispute the correctness and legality of the evidence presented, which would then have to be considered by the Court.

In that view of the matter, we are of the view that the Trial Court ought to have decided the appellant's application under Section 125(4). It was incorrect for them to have observed that the appellant's application could not have been decided prior to the final adjudication of the application filed by the wife. The second proviso to sub-section (1) of Section 125 provides for interim maintenance; and as such, the logical flow of proceedings would be that once the basic facts are established, an order is made for interim maintenance, and that would continue to operate till the application under Section 125 (4) is decided conclusively. This is in view of the beneficent nature of the provision. This question is accordingly decided. Consequently, the matter stands remanded to the Trial Court to make a decision on the merits since they had in this instance dismissed the application on the threshold. However, the matter does not end there."

5. Relying on this, it is submitted that the Family Court ought to have considered the contentions with regard to



adultery and desertion. It is submitted that the order impugned needs to be set aside.

6. Learned counsel appearing for the respondent/wife, relying on the very same judgment, submits that an application needs to be filed under 125(4) of the Cr.PC to decide all these issues. No such application has been filed by the husband. Further, it is submitted that till such application is filed, the wife is entitled to maintenance. The issue whether the wife is living in adultery has to be considered after a full-fledged trial, and at an interlocutory stage that cannot be decided. Considering all this, the court has rightly granted maintenance to the wife. It is submitted that it is a fact that the husband has completely deserted the wife and has not taken care of her, and the court has rightly come to the conclusion that she is in need of maintenance and has granted an amount of Rs.30,000/-. That order needs no interference from the hands of this court.

7. Having heard the learned counsel on either side, perused the material on record. The wife sought maintenance, and the husband has filed objections categorically stated that, as per Section 144(4) of the BNSS, the wife is not entitled to



maintenance because she is living in adultery and has voluntarily left the husband, residing separately. In both the scenarios, she is not entitled to maintenance. This Court has perused the order passed by the Family Court. The Family Court failed to consider any of the contentions raised by the petitioner. More so, the Court went off on a footing that it is the responsibility of the husband to take care of the wife. When the provision itself states that a wife who is living in adultery is not entitled to maintenance, or who left the matrimonial home without any reasonable cause, that has to be considered by the Court based on the evidence let in. In the entire order, there is no whisper with regard to that. Further, the Family Court comes to the conclusion that, it cannot be decided in an interlocutory application. In the light of the law laid down by the Apex court in case of **Himanshu Chordia's** case referred supra, the Family Court ought to have considered the same. In that view of the matter, this Court is passing the following:

ORDER

- i. The order dated 16.04.2026 passed in I.A.No.2 in C.Mis.No.889/2025 by the II Addl.



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Prl.Judge, Family Court, Mysuru is ***set aside*** and the matter is ***remanded back*** to the Family Court for fresh consideration.

- ii. The Family Court shall consider the case in the light of the principles laid down by the Apex Court in ***Himanshu Chordia's*** case referred *supra*.
- iii. Accordingly, the writ petition is ***disposed of***.
- iv. Pending IAs., if any, shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

PKN
List No.: 1 Sl No.: 51