

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

REV.PET FAMILY COURT NO.216 OF 2023

BETWEEN:

SMT. GIRIJA
W/O RAJASHEKHARA,
AGED ABOUT 53 YEARS,
HOUSE WIFE,
R/AT NO.LIG 1037,
5TH CROSS, 6TH MAIN,
SHARADEVINAGARA,
MYSURU-570022.

...PETITIONER

(BY SRI. RUDRAPPA P., ADVOCATE)

AND:

SRI. RAJASHEKHARA
S/O LATE SHIVANNA,
AGED ABOUT 63 YEARS,
R/AT NO.2792/3, 2ND MAIN,
1ST CROSS, JAYANAGAR,
MYSURU-570014.

...RESPONDENT

(SERVICE OF NOTICE HELD SUFFICIENT,
VIDE COURT ORDER DATED 28.07.2025
BY WAY OF PAPER PUBLICATION - ABSENT)

THIS REVISION PETITION FAMILY COURT IS FILED UNDER SECTION 19(4) OF FAMILY COURT ACT, AGAINST THE ORDER DATED 14.08.2023 PASSED IN CrI.MIS.586/2022 ON THE FILE OF THE II ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, MYSURU, DISMISSING THE PETITION FILED UNDER SECTION 125 OF CR.P.C FOR MAINTENANCE.

THIS REVISION PETITION FAMILY COURT HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 03.03.2026 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/wife seeking to set aside the impugned order dated 14.08.2023 in Crl.Misc.No.586/2022 on the file of the II Additional Principal Family Court, Mysuru ('the Family Court', for short) and award maintenance amount of Rs.25,000/- per month to the petitioner.

2. The petitioner is second wife and respondent is husband.

3. The brief facts of the case are that:-

The marriage between the petitioner and the respondent was solemnized approximately 25 years ago at Srikanteshwara Temple, Nanjanagudu. The petitioner is the second wife of the respondent. The marriage having been solemnized with the consent of his first wife, Smt.Susheela, as no issues were born out of the first

wedlock. After the marriage, the petitioner commenced her matrimonial life with the respondent in a rented house at Mysuru. Out of the said wedlock, the petitioner gave birth to three male children, including male twins during her second delivery. Out of the twin children, one male child was forcibly taken by the respondent and handed over to his first wife. Subsequent to the birth of the children, the respondent resumed cohabitation with his first wife, neglecting and ignoring the petitioner.

4. The respondent failed to provide financial assistance, neglected the education and welfare of the remaining two children residing with the petitioner, and did not pay the house rent, compelling the petitioner to work as a housemaid at various places to sustain herself and educate her two children. A panchayath was convened, wherein, it was resolved that the respondent would look after the basic needs of the petitioner and the two children, to which he agreed. However, he failed to comply with the said resolution except for paying the house rent. Despite repeated requests by the petitioner to

permit her to reside with him, the respondent deserted her and failed to provide maintenance, constraining the petitioner to file a petition under Section 125 of the Code of Criminal Procedure, 1973 ('the Cr.P.C' for short) before the Family Court seeking maintenance of Rs.25,000/- per month.

5. Upon service of notice, the respondent entered appearance before the Family Court and filed a detailed statement of objections seeking dismissal of the maintenance petition. The petitioner examined herself as PW1 and marked documents as Ex.P1 to Ex.P11, while the respondent examined himself as RW1 and marked documents as Ex.R1 to Ex.R3.

6. Based on the pleadings, oral and documentary evidence, the Family Court has framed following issues for its consideration:-

(a) Whether the petitioner is entitled to get maintenance as prayed in the petition?

7. Based on the pleadings, oral and documentary evidence, the Family Court rejected the petition filed by the 2nd wife-petitioner under Section 125 of the Cr.P.C and held that the petitioner – wife was not entitled to maintenance from the respondent as claimed in the petition.

8. Being aggrieved by the impugned order dated 14.08.2023, the petitioner has preferred the present petition.

9. The learned counsel for the petitioner would contend that the Family Court has failed to properly appreciate the oral and documentary evidence produced by the petitioner, including Ex.P1 to Ex.P11, which, according to the petitioner, sufficiently established the income of the respondent/husband. The Family Court has not considered the income of the respondent/husband, who is stated to be earning more than Rs.1,30,000/- per month and also drawing pension of more than Rs.12,000/- per month, apart from income derived from other business activities. Despite such material on record, the Family

Court is stated to have dismissed the petition without proper evaluation of the documentary evidence. The petitioner contends that she is entitled to maintenance of more than Rs.25,000/- per month, inclusive of house rent, medical expenses and other basic amenities.

10. It is contended that the respondent, though having entered appearance, has neither produced any documentary evidence nor led cogent evidence to disprove the marital relationship. In the absence of rebuttal evidence, mere oral denial could not have been accepted. The petitioner further urged that she is suffering from health problems and is unable to bear hospital and medical expenses on her own. It is contended that the respondent has failed to provide for her day-to-day expenses, medical expenditure and the needs of the two children. These material aspects, according to the petitioner, have not been adverted to by the Family Court, warranting interference by this Court and grant appropriate maintenance.

11. In support of his contentions, learned counsel appearing for the petitioner has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Chanmuniya v. Virendra Kumar Singh Kushwatha*** reported in ***2010 AIR SCW 6497***.

12. Heard learned counsel for the petitioner.

13. Upon consideration of the material placed on record and the reasoning assigned by the Family Court, this Court finds that the Family Court has properly appreciated the oral and documentary evidence of both parties. Though the respondent initially denied the marriage in his statement of objections, during the course of cross-examination RW1 admitted that he had married the petitioner since his first wife Susheela had no children. The wedding photographs produced at Ex.P1 and Ex.P2 and the documents such as Aadhaar Cards and educational records of the children (Ex.P3 to Ex.P6) disclose the name of the respondent as their father. However, the Family Court has noticed categorical

admission of the petitioner that at the time of the alleged marriage, the first wife of the respondent was alive. In view of such admission, the Family Court has rightly observed that the alleged marriage between the petitioner and the respondent was in contravention of Section 5(i) of the Hindu Marriage Act, 1955 ('Act of 1955' for short) and consequently, void in terms of Section 11 of the said Act.

14. In that view of the matter, the Family Court has proceeded to examine the maintainability of the claim under Section 125(1) of the Cr.P.C, which provides for grant of maintenance to a wife, who is unable to maintain herself. The expression "wife" occurring in the said provision necessarily refers to a legally wedded wife, subject to the inclusive definition contained in Explanation (b) to Section 125(1) Cr.P.C., which includes a divorced wife who has not remarried. In the present case, the finding of the Family Court that the petitioner had knowledge of the subsistence of the first marriage of the respondent clearly indicates that the petitioner cannot claim the status of a legally wedded wife. Once the

marriage itself is void under Sections 5(i) and 11 of the Act of 1955, the petitioner cannot invoke the benefit of Section 125 Cr.P.C. as a "wife" within the meaning of the said provision.

15. The Family Court has also taken into consideration the earlier civil proceedings initiated by the first wife in O.S.No.17/2014 (also referred to as O.S.No.14/2017 in the evidence), wherein the dispute between the parties was settled by way of a compromise dated 24.04.2017. In support of the said fact, the respondent has produced a certified copy of compromise petition as per Ex.R1, certified copy of the order passed in O.S.No.17/2017 as per Ex.R2 and certified copy of compromise decree as per Ex.R3. The said compromise discloses that Smt.Susheela was the legally wedded wife of the respondent. That the respondent agreed to pay a sum of Rs.2,50,000/- to the petitioner-second wife from his retirement benefits and to provide her with Auto bearing No.KA-09-7485 for running a fast-food business for her livelihood. The petitioner has admitted in her cross-

examination the existence of the compromise decree and receipt of the said amount and vehicle. Therefore, the Family Court was justified in observing that the compromise decree passed by a competent Civil Court cannot be disregarded in a summary proceeding under Section 125 of the Cr.P.C.

16. Further, the arrangement recorded in the compromise decree also attracts the principle contained in Section 125(4) of the Cr.P.C., which stipulates that a wife shall not be entitled to receive maintenance from her husband if they are living separately by mutual consent. The compromise dated 24.04.2017 clearly indicates that the parties had settled their disputes and agreed to live separately after payment of a lump sum amount and provision of a means of livelihood to the petitioner. In addition, the Family Court has also noticed that there was no cogent evidence to establish that the respondent was earning Rs.1,30,000/- per month and the available material only indicated that he was receiving pension of about Rs.7,000/- per month and earning modest income

through small works. In view of the void nature of the marriage under Sections 5(i) and 11 of the Act of 1955, the settlement between the parties attracting Section 125(4) of the Cr.P.C., and the absence of proof regarding the respondent's substantial income, the Family Court has rightly held that the petitioner is not entitled to maintenance under Section 125 of the Cr.P.C.

17. In view of the above, this Court does not find any illegality or perversity warranting interference in the Order of the Family Court.

18. Accordingly the present petition is ***dismissed.***

No order as to costs.

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

MH/-