IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

RPFC NO.96 OF 2019

BETWEEN:

1. SMT.SOWMYA,
W/O VENUGOAPL,
AGED ABOUT 26 YEARS,

2. MASTER. A.V.PUNITH,
S/O VENUGOPAL,
AGED ABOUT 4 YEARS,

SINCE THE 2ND PETITIONER IS A MINOR
HE IS REPRESENTED
THROUGH HIS MOTHER
SMT.SOWMYA.

BOTH THE PETITIONERS ARE
R/A JAYANAGARA,
CHIKKAMAGALORE – 577 135.

…PETITIONERS

(BY SRI.LOKESH BOOVANAHALLI, ADVOCATE)

AND:

SRI.VENUGOPAL,
S/O LATE GOVINDAPPA,
AGED ABOUT 30 YEARS,
R/A AGRAHARA VILLAGE,

NAGENAHALLI POST,
SAKRAYAPATTNA HOBALI,
KADUR TALUK,
CHIKKAMAGALORE DISTRICT – 577 101.

...RESPONDENT

(BY SRI.KISHAN G.S., ADVOCATE)

THIS RPFC IS FILED UNDER SECTION 19(4) OF THE FAMILY COURTS ACT, CHALLENGING THE ORDER DATED 26.03.2019 PASSED BY THE PRINCIPAL JUDGE, FAMILY COURT, CHIKKAMAGALUR IN CRL.MISC.NO.15/2017.

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

O R D E R

Sri.Lokesh Boovanahalli, learned counsel for petitioners and Sri.Kishan G.S., learned counsel for respondent has appeared through video conferencing.

2. The matter is listed for admission after notice to respondent.

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 26.03.2019, passed by the Family Court, Chikkamagaluru in Crl.Misc.No.15/2017 is called in question in this revision petition whereby, learned Judge has rejected the petition filed under Section 125 of Cr.P.C. It is this order which is called in question on various grounds as set out in the revision petition.

5. Learned counsel Sri.Lokesh Boovanahalli, appearing for petitioners submits that the order of the Family Court suffers from serious infirmities and the same is liable to be set aside.

Next, he submitted that petitioner No.1 is always ready and willing to perform her marital obligations. But respondent never shown any interest to take back his wife and child and discharge his marital obligations.

A further submission was made that learned Judge has failed to appreciate that petitioner was continuously inflicted with domestic violence, dowry harassment. She was unable to live with her husband and hence, she left

the matrimonial home. He submitted that petitioner has justifiable grounds/reasons to stay away from respondent.

Counsel submitted that respondent has willfully neglected and refused to maintain his wife and minor son. Hence, petitioner and her minor son were constrained to take shelter at her parental house.

Lastly, he contended that petitioner No.1 has no income of her own and she is unable to maintain herself and her minor son. Therefore, she was constrained to initiate action against respondent seeking maintenance. But, learned Judge has rejected the claim petition.

Therefore, he submitted that viewed from any angle, the order passed by the Family Court is arbitrary, illegal, and unsustainable in law. Hence, the same is liable to be set aside. Accordingly, he made a submission that the order of the Family Court requires re-consideration and the matter may be remitted back to the Family Court.

6. Per contra, Sri.Kishan. G.S., learned counsel justified the order of the Family Court.

Next, he submitted that respondent was always ready and willing to discharge his marital obligations. But petitioner herself left the company of her husband and started living apart from her husband without justifiable grounds.

A further submission was made that learned Judge has taken into consideration of material evidence on record and has rightly concluded that petitioners are not entitled for any maintenance.

Therefore, counsel submitted that the revision petition is devoid of merits and the same is liable to be dismissed.

7. Heard and perused the records with care.

8. The only question involved in this revision petition is whether the order of the Family Court requires any interference by this Court?

It is not in dispute that petitioner No.1 and respondent are husband and wife and their marriage was solemnized on 20.05.2013. They are blessed with one child. They lived blissfully for sometime. Due to difference of opinion and misunderstanding, petitioners were constrained to live apart from respondent. Contending that her husband has sufficient means, willfully neglected and refused to maintain his wife and son, petitioner No.1 was constrained to seek aid of the Court by initiating proceedings under Section 125 of Cr.P.C.

To substantiate her claim, petitioner No.1 was examined as PW.1. She has stated that her marital life was quite normal and she has given birth to petitioner No.2 on 15.09.2015. She has deposed that there was some financial transaction between respondent and her family members.

She has further deposed that she was inflicted with domestic violence and dowry harassment. She has stated that respondent driven her out of the matrimonial home.

Respondent examined as DW.1. He has stated that he was always ready and willing to discharge his marital obligations, but petitioner No.1 has voluntarily left the company of respondent without any reasons.

He has deposed that he was working as school van driver and getting a salary of Rs.6,000/- per month. In the cross examination, he has stated that he does not know the whereabouts of his wife and child. He has denied the suggestion that his son is pursuing his nursery education.

In this Court, respondent adhered to the contention that petitioners have voluntarily stayed away from him without any reasons. He is not obliged to maintain them. Therefore, they are not entitled for maintenance.

Learned Judge held that petitioners are not entitled for maintenance only on the ground that petitioner has failed to substantiate that respondent has willfully neglected and refused to maintain his wife.

It is true that a wife seeking maintenance under Section 125 has to prove the neglect or refusal on the part of the husband to maintain her or her children. It is needless to observe that neglect or refusal can be inferred from the words and conduct of the husband. If there is justification for refusal to live separately 'neglect' can be inferred.

In the present case, petitioner No.1 specifically stated that she was continuously inflicted with domestic violence, dowry harassment.

I have gone through the evidence of petitioner and respondent.

The finding of the Family Court that petitioner No.1 has left the company of respondent and, therefore, she

and the minor child would be dis-entitled to claim maintenance is clearly erroneous and incorrect.

I am not satisfied on the appreciation of evidence by the Family Court.

In my opinion, the finding on this aspect requires reconsideration.

It is perhaps well to observe that the Hindu law places on every man a personal obligation to maintain his aged parents, his virtuous wife and his minor sons and unmarried daughters. It is needless to observe that father has a legal and moral obligation to take care of the child.

Therefore, this Court deem it appropriate to remand the matter to the Family Court for re-consideration. In the result, the impugned order dated 26.03.2019 passed in C.Misc.No.15/2017 on the file of the Principal Judge, Family Court, Chikkamangaluru is set aside and the matter is remanded back to the Family Court, Chikkamangaluru

for fresh consideration. Parties are at liberty to lead further evidence, if they choose to do so.

The revision petition is ***allowed*** and disposed of in the aforesaid terms.

It is needless to observe that the Family Court is directed to issue notice to the parties and to dispose of the matter in accordance with law.

In view of the disposal of the main petition, I.A.No.2/2019 does not survive for consideration and the same is disposed of.

Sd/-
JUDGE

SB