
(2009) 08 KAR CK 0060
In the Karnataka High Court
Case No : Writ Petition No. 13601 of 2009

Sri. H. Ananda Gowda

APPELLANT

Vs

Smt. G. Poornima Gowda, Master Bharath Kumar and Kum.
Bhavya represented by their natural guardian and next
friend, mother, Smt. G. Poornima

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2009) 08 KAR CK 0060

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : S.M. Usha, for the Appellant; M.K. Bhaskariah, for R1, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioner in this petition has sought for quashing the order passed in C.Misc. No. 384/2007, on 22nd January 2009, on the file of the Principal Judge, Family Court, at Bangalore vide Annexure A on the ground that, the maintenance awarded by the Family Court is excessive and needs to be modified.

2. Facts in brief are that, the first respondent is the wife of petitioner and respondents 2 and 3 are their son and daughter. The respondents herein had filed the application u/s 125 of the Code of Criminal Procedure seeking maintenance. The said application had come up for consideration before the learned Judge, Family Court on 22nd January 2009. The application filed by the respondents was allowed and maintenance was awarded at the rate of Rs. 3,000/- per month in respect of first respondent and a sum of Rs. 1,500/- each in respect of respondents 2 and 3 from the date of petition and a sum of Rs. 1,000/- towards litigation expenses.

3. Being aggrieved by the order impugned passed by the learned Judge, Family Court vide Annexure A, petitioner has presented this petition.

4. After careful perusal of the grounds urged by the petitioner, after hearing the learned Counsel for respondents and after perusal of the order passed by the Family Court, it emerges that, the application filed by respondents for maintenance is allowed and maintenance of Rs. 3,000/- per month is awarded to first respondent and Rs. 1,500/- each in favour of respondents 2 and 3. The said order is passed by taking into consideration the status of the parties, basic necessities of the respondents and the fact that the respondents 2 and 3 are school going children and that they also have to live with dignity and honour like any other person in the society etc. It was the case of respondents before the Family Court that, the petitioner is addicted to drinks and is having illicit relationship with a lady conductor and has failed to maintain the respondents Due to the harassment both physical and mental to the respondent No. 1 and totally neglecting to maintain the respondents, they were constrained to file necessary application for maintenance. The prayer for maintenance was considered taking into consideration the relevant material available on file. Further, it is not in dispute from the statements made in the order passed by the Family Court that, the petitioner is a driver working in BMTC and getting salary of Rs. 10,000/- per month and he has not denied the salary drawn by him. However, he submitted that he is paying Rs. 2,396/- towards home loan payment. But, intentionally and deliberately, he has not produced the salary certificate. Taking into consideration the paramount consideration of respondents 2 and 3 and having regard to the status and relationship between the parties, the matter was first referred for Conciliation, but the same was in vein. The parties could not settle the dispute amicably. Therefore, having no other option, the learned Family Court Judge took up the matter to consider and decide the matter on merits. The Family Court after considering all the relevant factors into consideration, specifically taking into consideration the welfare of respondents 2 and 3, who are school going children, to meet out their day to day expenses, such as payment of tuition fee, purchase of text books, note books, uniform, medical expenses, transportation charges and other expenses that may be incurred by the first respondent and also the fact that she also has to live with dignity and honour along with others, has awarded the just and reasonable maintenance to meet the day to day requirements such as food, clothing, and shelter including the medical expenses and other incident expenses,. The learned Family Court Judge has rightly arrived at and awarded a sum of Rs. 3,000/- per month as maintenance to first respondent and Rs. 1,500/- each in respect of respondents 2 and 3 by assigning valid reasons at paragraph 15 of his order. The said reasoning given for passing the impugned order is just and proper and I do not find any arbitrariness or unreasonableness or illegality in passing the same.

5. In view of the finding of fact recorded by the Family Court, taking into consideration the cost of living and other aspects, I am of the view that, the amount awarded is not excessive but the same is just and reasonable. I do not find any good grounds to interfere in the well considered order passed by the Family Court Hence, I decline to interfere and the writ petition filed by petitioner

is liable to be dismissed as misconceived.

6. Yet another ground on which the writ petition is liable to be rejected at the threshold is, as rightly pointed out by learned Counsel appearing for respondents that, when this matter had come up for preliminary hearing on 21st May 2009 the conditional interim order was granted in favour of petitioner, staying the impugned order subject to petitioner paying a sum of Rs. 2,000/- per month to the first respondent and Rs. 1,000/- each per month in respect of respondents 2 and 3 during the pendency of this petition. But after obtaining the interim order, the petitioner has paid the maintenance amount only once and thereafter he has not complied with the interim order. Therefore, taking into consideration the conduct of the petitioner in not complying with the interim order dated 21st May 2009, the writ petition is liable to be dismissed. Accordingly, it is dismissed.