

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20th DAY OF NOVEMBER 2000

BEFORE

THE HON'BLE MR.JUSTICE HARI NATH TILHARI

R.P.(F.C.) No.104/1999

**Between:**

Smt.Rajeshwari,  
w/o.Suryakant Shende,  
major,  
Occ: Household work,  
r/o. c/o.Ashok Thalu Madde,  
Bhatkande Building,  
Laxmi Nagar,  
Ganeshpur,  
Po: Hindalaga,  
Belgaum. .. PETITIONER

( By Sri.H.S.Chandramouli & Sri.Chandrashekar,  
Adv. )

**And:**

Shri.Suryakant,  
s/o.Sadanand Shende,  
age:major,  
Occ: Syndicate Bank Employee,  
Presently at: c/o.Syndicate  
Bank, at & Post:Naragund,  
Dist: Dharwad. .. RESPONDENT

( By Sri.I.G.Gachchinamath, Adv. )

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This R.P.(F.C.) is filed u/s.19(4)  
of the Family Court Act against the order  
dt.30-9-1999 passed in Crl.Misc.No.198/98 on  
the file of the Judge, Family Court, Belgaum,  
partly allowing the petition filed u/s.125 of  
Cr.P.C.

This R.P.(F.C) coming on for final  
hearing this day, the Court made the  
following:-

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ORDER

This is wife's petition under Section 19(4) of the Family Court's Act from the judgment and order dt.30-9-1999.

2. The revision petitioner along with her daughter had filed a petition under Section 125 of Cr.P.C. for grant of maintenance. There is no dispute between the parties that the revision petitioner and the respondent had been married and are husband and wife and from the marital relationship of the two, a daughter Kum.Sonia was born. The trial Court granted the maintenance in favour of Kum.Sonia, daughter of present revision petitioner and her husband, but refused to grant any maintenance to the present revision petitioner on the ground that under law wife is not entitled to live separately and to claim maintenance unless the wife establishes sufficient cause and just ground for living separately and for refusing to live with her husband. The trial Court opined that she had

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failed to establish sufficient cause or just ground for living separately and to claim maintenance. Feeling aggrieved from the order whereby the trial Court had rejected the claim of the revision petitioner for maintenance, the revision petitioner has come up before this Court.

3. The learned counsel for the revision petitioner contended that the evidence on record which consisted of P.W.1 to P.W.3 very <sup>4p</sup>clearly establishes that the respondent - husband was carrying on with another lady Geeta Patil and was keeping her as a mistress or concubine. The Court below rejected the evidence taking the view that it is really not possible to believe that said Geeta Patil would just go to the house of 1st petitioner's father and introduce herself and then say that the respondent had kept her. The Court below expressed the view that no person would do this under the normal circumstances. The Court below observed that it is also not brought out by the petitioners as to why at all she did such thing.

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4. If a person carries on with a lady and betrays her and marries some other woman, that may be a circumstance that in order to take revenge, the lady with whom the husband had been carrying on relationship, contacts the parents of the wife and narrates her relationship with their son-in-law, then considering those circumstances, the Court below should have applied its mind to such circumstances. It appears that <sup>if not</sup> on substantial grounds the Court below has refused to rely on the evidence and the finding really appears to be perverse and incorrect. I set aside that part of the finding on issue No.2 given by the trial Court. This fact that respondent was carrying on with Geeta Patil or keeping her as a concubine or anything like that, whether in his own house or at different place, could really provide a sufficient ground to the revision petitioner for refusing to live with the respondent and entitle her to claim maintenance.

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5. The basic principle of law that a husband is bound to maintain his wife and further even under the personal law or Hindu law namely the Hindu Adoptions and Maintenance Act, Section 18(2) further declares that a Hindu wife's right to claim maintenance will not be forfeited from reason of living separately from her husband if the reason for living separately from the husband appears to be one covered within the clauses (a) to (g) of Section 18(2). Similarly Code of Criminal Procedure vide proviso to Section 125(3) thereof very clearly provides that a wife is justified to live separately from husband and in claiming maintenance. Proviso to Section 125(3) provides and reads as under:-

"Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing."

The explanation contained in Section 125 after the above proviso reads as under:-

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"Explanation.- If a husband has contracted marriage with another woman or keeps mistress, it shall be considered to be just ground for his wife's refusal to live with him."

6. In view of the above principles of law and particularly basic principle of law i.e., personal law which entitles a Hindu wife to be maintained by her husband and which declares that a Hindu wife living separately from her husband will not be deprived of and will not be forfeited of her right of maintenance simply on the ground of her living separately from her husband if the circumstances or case is made out ~~as per~~ <sup>if under</sup> either of the clauses (a) to (g) of Section 18(2). The just ground can be those as under Section 18(2) which entitles a Hindu wife to live separately and claim maintenance from the husband. But in case no ground is made out under either of those clauses, the wife living separately from her husband may not be entitled to claim maintenance.

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7. In the present case, the evidence of P.W.1 to 3 prima facie shows that the revision petitioner had sufficient good ground to live separately as the respondent husband was carrying on with another woman.

8. In this view of the matter, the order rejecting the maintenance to the revision petitioner suffers from jurisdictional error and legal error. The order rejecting the maintenance to the revision petitioner has got to be set aside.

9. The remaining question is, how much maintenance should be awarded?

10. The learned counsel for the respondent Sri.I.G.Gachchinamath contended that Rs.500-00 had already been awarded and that is the amount in the whole which could be awarded under Section 125. The learned counsel emphatically contended that the expression "at such monthly rate, not

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exceeding five hundred rupees in the whole" means maintenance to all the claimants in the application for maintenance.

11. I am unable to accept this contention of the respondent's counsel. The expression "in the whole" does not represent or mean what Sri.Gachchinamath has contended. That maintenance in the whole means the said amount of maintenance includes in itself provision for food, clothing, shelter etc. and towards all items required under term maintenance as the whole the maximum amount of maintenance be granted to a single claimant or where there are more dependent claimants the each one separately not more than Rs.500-00. That is if there are two or more claimants, then each of the claimants and dependents shall be entitled to maintenance to the extent of Rs.500-00 each. When I so opine and hold, I find support for my view from the decision of Their Lordships of the Supreme Court in the case of CAPTAIN RAMESH CHANDER KAUSHAL v. Mrs.VEENA KAUSHAL & OTHERS reported in A.I.R. 1978 Supreme Court 1807. In that case dealing with such a contention raised before Their Lordships of the Supreme Court, as has been raised by

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Sri.I.G.Gachchinamath, Their Lordships of the Supreme Court repelled such<sup>a</sup> contention as was raised by the petitioner. Hon'ble Mr. Justice V.R.Krishna Iyer was pleased to observe as under:-

"Indeed, an opposite conclusion may lead to absurdities. If a woman has a dozen children and if the man neglects the whole lot and, in his addiction to a fresh mistress, neglects even his parents and all these members of the family seek maintenance in one petition against the delinquent respondent, can it be that the Court cannot award more than Rs.500-00 for all of them together? On the other hand if each filed a separate petition there would be a maximum of Rs.500-00 each awarded by the Court. We cannot, therefore, agree to this obvious jurisdictional inequity by reading a limitation of Rs.500-00 although what the section plainly means is that the Court cannot grant more than Rs.500-00 for each one of the claimants. 'In the whole' in the context means taking all the items of maintenance together, not all the members of the family put together. To our mind, this interpretation accords with social justice and semantics and, more than all, is obvious:

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'It is sometimes more important to emphasize the obvious than to elucidate the obscure.' - Attributed to Oliver Wende 11Holmes.'

Their Lordships further observed,

"14. We admit the marginal obscurity in the diction of the section but mind creativity in interpreting the provision dispels all doubts. We own that Judges perform a creative function even in interpretation.

15. The conclusion is inevitable, although the argument to the contrary is ingenious, that the Magistrate did not exceed his powers while awarding Rs.1,000-00 for mother and children all together."

12. In this view of the matter, even if grant of Rs.500-00 as maintenance has been made in favour of the daughter, it will not debar this Court to award maintenance in favour of the revision petitioner.

12. The learned counsel further suggested that wife may be granted maintenance of Rs.250-00. To grant Rs.250-00 as maintenance is too meagre looking to the erosion of value of rupee and soaring

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inflation. Even grant of Rs.500-00 as maintenance is inadequate. But as the law as it stands at present it indicates that maximum maintenance to a person for all that he needs can be granted only to the extent of Rs.500-00. Hence, I grant maintenance of Rs.500-00 in favour of the revision petitioner.

Before completing this judgment, I will appeal to the Legislature to consider the present situation of erosion of value of rupee and soaring inflation, it may consider it appropriate to make proper <sup>the amendment in Law 46/25 of 1964</sup> ~~arrangement~~ for enhancing the maximum maintenance from Rs.500-00 to any sum which it considers just.

Any way, revision petition (F.C.) is allowed. The revision petitioner is granted maintenance of Rs.500-00 for herself as well with effect from the date of application for maintenance apart from the maintenance granted to her child i.e., daughter.

Let a copy of this judgment be sent to the Law Secretary, Government of India and Law Secretary, Government of Karnataka, to

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make necessary suggestion for changing the maximum maintenance as mentioned in Section 125.

Sd/- JUDGE

bss.