



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 7TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

CRIMINAL PETITION NO. 103364 OF 2024 (482(CR.PC)/528(BNSS))

BETWEEN:

TH

... PETITIONER

(BY SRI. NAVEEN CHATRAD, ADVOCATE)

AND:

... RESPONDENT

(BY SRI. C.S. SHETTAR AND
SMT. KAVYA C. SHETTAR, ADVOCATES)

THIS CRIMINAL PETITION IS FILED U/SE. 482 OF CR.P.C. (U/S. 528 OF BNSS, 2023) PRAYING TO QUASH THE ORDER DATED 25.09.2024 PASSED BY THE PRINCIPAL JUDGE, FAMILY COURT, GADAG IN CRIME MISC.NO.97/2022 AND CONSEQUENTLY RELEASE THE PETITIONER FROM THE CIVIL IMPRISONMENT.

THIS PETITION IS COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR





ORAL ORDER

1. The petitioner challenges the order passed under Section 125(3) of the Code of Criminal Procedure, 1973, by the learned Magistrate, sentencing him to undergo imprisonment for an additional period of two months for non-payment of arrears of maintenance.

2. The respondent-wife had earlier initiated criminal miscellaneous proceedings under Section 125 of Cr.P.C., seeking maintenance. The Family Court, after considering the matter, passed an order granting maintenance. The petitioner's failure to comply with the order prompted the respondent to file an application under Section 125(3) of Cr.P.C. for recovery of arrears of maintenance. The learned Magistrate allowed the application and sentenced the petitioner to civil imprisonment for a period of one month due to his non-compliance with the maintenance order under Section 125(1) of Cr.P.C.

3. Upon completion of the one-month imprisonment, the respondent filed another application under Section 125(3) of Cr.P.C., alleging non-payment of arrears of maintenance for 24 months. The learned Magistrate, by the impugned order, sentenced the petitioner to undergo further imprisonment for a period of two months. Aggrieved by the said order, the petitioner has approached this Court.



4. Heard the learned counsel for the petitioner and the respondent.

5. The issue raised in this petition has been addressed by a Co-ordinate Bench of this Court in the case of Shri. Kallappa vs. Smt. Yallaubai, where the Court, interpreting Section 125(3) of Cr.P.C., held as follows:

- A wife or person entitled to maintenance may file an application for recovery of arrears of maintenance either for the whole amount due or for each month's allowance separately.
- If the application is for the whole amount of arrears, the imprisonment may extend to one month, unless the payment is made sooner.
- Successive applications can be filed for each month's maintenance; however, where an application is filed for the entire arrears, the imprisonment imposed cannot exceed one month.
- The Co-ordinate Bench in the aforementioned case observed that confinement beyond the prescribed period for a single application claiming arrears of maintenance is illegal.

6. In the present case, the respondent initially filed an application for recovery of arrears of maintenance for 24 months, and the petitioner was sentenced to imprisonment for one month, which was in accordance with the law. Subsequently, the respondent filed a second application for recovery of maintenance arrears for the said 24 months. In light of the principles laid down



by this Court in Shri. Kallappa vs. Smt. Yallaubai, the impugned order of the learned Magistrate sentencing the petitioner to further imprisonment for two months is not legally sustainable.

Hence, I pass the following:

ORDER

- i) Accordingly, the criminal petition is allowed.
- ii) The order dated 25.09.2024 passed in Crim. Misc. No.97/2022 by the Principal Judge, Family Court, Gadag, is hereby quashed.
- iii) Liberty is reserved with the respondent to make a fresh application under Section 125 Cr.P.C. in respect of the future claim.

Sd/-
(HEMANT CHANDANGOUDAR)
JUDGE