

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 31<sup>ST</sup> DAY OF JANUARY, 2022

BEFORE

THE HON'BLE MR.JUSTICE S.VISHWAJITH SHETTY

R.P.F.C.No.100059/2018

BETWEEN:

Smt. Tabassum W/o. Ziauddin Bangi  
Age: 28 years, Occ: Housewife  
R/o. #139, Near Ice Factory  
High Street, Camp, Belagavi.  
Now Residing at # 3313,  
BasshibanDurga, Bhendi Bazar  
Belagavi.

...PETITIONER

(By Sri. Shreevatsa Hegde and Sri. Sourabh Hegde, Advocate –  
Through VC)

AND:

Shri Ziauddin  
S/o. Iqbalahmad Bangi  
Age: 36 years, Occ: Custom Officer (Dubai)  
R/o. # 139, Near Ice Factory  
High Street, Camp, Belagavi 590 005.

...RESPONDENT

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THIS RPFC IS FILED UNDER SECTION 19(4) OF THE FAMILY  
COURTS ACT, 1984, PRAYING TO SET ASIDE THE IMPUGNED ORDER  
DATED 03.01.2018 PASSED IN CRL.MISC.NO.593/2016 BY THE  
JUDGE, FAMILY COURT, BELAGAVI.

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

ORDER

This Revision Petition is filed by the wife challenging the order dated 03.01.2018 passed by the Judge, Family Court, Belagavi (hereinafter referred to as 'the Family Court', for brevity), in Crl.Misc.No.593/2016, dismissing the petition filed by the petitioner-wife under Section 125 Cr.P.C, against her husband, with costs.

2. Heard the learned counsel for the petitioner. Though the respondent – husband is served, he has remained absent.

3. The brief facts of the case that would be relevant for the purpose of disposal of this petition are:

The marriage of the petitioner with the respondent was solemnized on 24.01.2015 at Anjuman Hall, Belagavi. Immediately after the marriage, the petitioner went along with her husband to her matrimonial house. At the time of marriage,

the respondent was admittedly working at Dubai. He used to visit India once in every three months. After the marriage, the petitioner and the respondent had gone to Kerala for honeymoon. It is the case of the petitioner that, after about one month from the date of marriage, the respondent-husband had gone to Dubai and thereafterwards, her in-laws were ill-treating her. She had further contended before the Family Court that, since her mother was not well, she had gone to visit her and thereafterwards, when she had returned to her matrimonial house, her in-laws did not allow her to enter the house and threw her out of the house stating that, she should come back only after her husband returns from Dubai. In this regard, there was a meeting held at Jamat and in spite of the same, the respondent and his parents did not take back the petitioner and under the said circumstances, she had filed a maintenance petition under Section 125 Cr.P.C. seeking monthly maintenance of ₹20,000/- from the respondent.

In the said proceedings, the respondent was served and he had filed a statement of objection contending that his marriage with the petitioner was not consummated and she had refused to have any physical relationship with him. It was further stated by him that the petitioner was only interested in leading a lavish life and she was not interested in doing any household work and every alternate day she used to go to her parents' house. He had also contended that, even at Kerala, when they had gone for their honeymoon, he was not allowed to have any physical relationship with her and therefore, there was a quarrel between them and ultimately she had left the matrimonial house and started residing with her parents. He had contended that the panchayat before the Jamat was one sided. He had denied his income as contended by the petitioner and on the other hand, he had stated that he was earning only ₹68,000/- per month and he was working as a Dispatch Clerk in the Customs Office at Dubai. He had also stated that the petitioner had initiated

various proceedings against him and his family members under Section 498A of the IPC and also under the Provisions of the Domestic Violence Act etc., and accordingly, prayed to dismiss the petition.

The learned Judge of the Family Court, after appreciating the oral and documentary evidence available on record, vide the impugned order has dismissed the maintenance petition filed by the wife and being aggrieved by the same, the present revision petition is filed.

4. Learned counsel for the petitioner submits that the learned Judge of the Family Court has erred in dismissing the petition on the ground that the petitioner had voluntarily left the company of her husband. He submits that the material on record would go to show that, within one month from the date of marriage, the husband had gone to Dubai and thereafterwards, the petitioner was with her in-laws. He submits that the husband had failed to take care of his wife and he had neglected her. He submits that

the proceedings under Section 498A of the IPC and also under the provisions of the Domestic Violence Act have been initiated only in the year 2016, after all the efforts made by the petitioner and her parents had failed. He submits that the petitioner has no source of income and therefore, the husband, who is gainfully employed abroad, is under an obligation to maintain his wife and accordingly, prays to allow the petition.

5. I have carefully considered the arguments addressed on behalf of the petitioner and also perused the material on record.

6. The relationship between the parties is not in dispute. The marriage of the petitioner with the respondent was admittedly solemnized on 24.01.2015. The material on record would go to show that, within a period of one month from the date of marriage, the respondent-husband had gone abroad and thereafterwards, the petitioner was staying with her in-laws. The material on record

would also go to show that, the petitioner's mother had expired on 31.05.2015. It is the specific case of the petitioner that, prior to the date of her mother's death, she had gone to visit her mother on 15.04.2015 and she had stayed in her parents' house for about 2 days and thereafterwards, when she returned to her matrimonial house, her mother-in-law did not allow her to come inside the house and asked her to return only after her husband comes back from Dubai. Therefore, the petitioner was virtually thrown out from the matrimonial house somewhere during the third week of April, 2015 and thereafterwards, she started staying with her parents.

7. The material on record would also go to show that efforts were made by the petitioner and her parents for conciliation and therefore meeting was arranged at Jamat and it appears that the respondent and his parents did not cooperate even before the Jamat for settlement of the dispute between the couple. The husband after marriage was

supposed to take care of his wife and lookafter her. He left her in his parents' house and had gone to Dubai. The petitioner and respondent had lived as husband and wife for a very short period of time. The question whether the marriage was consummated or not during that period of time would not be relevant for the purpose of considering the petition under Section 125 Cr.P.C. The pleadings of the petitioner and the deposition made by her before the Family Court regarding consummation of marriage has been completely misunderstood by the learned Judge of the Family Court and resultantly, the learned Judge of the Family Court has come to a wrong conclusion that the pleadings and the deposition of the petitioner-wife regarding consummation of marriage were contradictory. It is not in dispute that the respondent is a gainfully employed in Dubai. Within a period of one month from the date of marriage, he had gone to Dubai leaving his wife behind at his parents' house. The proceedings under Section 498A of the IPC and also



under the provisions of Domestic Violence Act have been all filed after lapse of a year from the date of marriage. The respondent-husband has not stated in his statement of objection that, after he had gone to Dubai, he had sent any amount to his wife towards her maintenance, which would go to show that he has completely neglected her and did not take care of her. The learned Judge of the Family Court without appreciating these aspects has erred in dismissing the petition on the ground that the petitioner herself left the matrimonial house without there being any reason. This reasoning of the learned Judge of the Family Court is opposed to the oral and documentary evidence available on record. The petitioner-wife had been left behind in her in-laws' house and the respondent-husband did not even bother to take care of her maintenance and he did not make any efforts to take her along with him. On the other hand, the material on record would go to show that, after the petitioner went to visit her mother, who was ailing, her in-laws did not allow her to come back and

thereby virtually she was thrown out of the matrimonial house.

8. The material on record would go to show that, though the husband has contended before the Family Court that the marriage was not consummated and the petitioner-wife had not allowed him to have any physical relationship with her, though he was examined as RW1 before the Family Court, he had not appeared for his cross-examination and therefore, the averments made by him in that regard were not proved.

9. Under the circumstances, I am of the considered view that it is a fit case, wherein the order passed by the learned Judge of the Family Court is required to be set aside and the matter has to be remanded to the Family Court for fresh consideration of the petition in accordance with law, keeping open all the contentions of both the parties. Accordingly, the following order:

ORDER

The Revision Petition is ***allowed***.

The order dated 03.01.2018 passed by the Judge, Family Court, Belagavi in Crl.Misc.No.593/2016, is set aside.

The matter is remitted to the Family Court, Belagavi, to dispose of the petition afresh after giving both the parties an opportunity to lead additional evidence, if any. Since the petition claiming maintenance has been filed in the year 2016, the Family Court is requested to dispose of the petition as expeditiously as possible, but not later than a period of nine months from the date of receipt of this order.

**Sd/-  
JUDGE**

gab