

**IN THE HIGH COURT OF KARNATAKA,
KALABURAGI BENCH**

**DATED THIS THE 18TH DAY OF APRIL, 2023
BEFORE**

THE HON'BLE MR JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO.200044 OF 2018

BETWEEN

SHARNAVVA @ KASTURI
W/O SHIVAPPA BIRADAR
AGE: 36 YEARS, OCC:HOUSEHOLD
R/O GUNDKARJAGI VILLAGE
TQ. MUDDEBIHAL
DIST. VIJAYPURA-586101

...PETITIONER

(BY SRI MAHANTESH PATIL, ADVOCATE)

AND

SHIVAPPA S/O MAHADEVAPPA BIRADAR
AGED: 46 YEARS, OCC: AGRICULTURE
R/O GUNDKARJAGI VILLAGE
TQ. MUDDEBIHAL
DIST. VIJAYPURA-586101

....RESPONDENT

(BY SMT. RATNA N. SHIVAYOGIMATH, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER
SECTION 397 READ WITH SECTION 401 OF CR.P.C. PRAYING
TO SET ASIDE THE ORDER DATED 29.05.2018 PASSED IN
CRIMINAL APPEAL NO.64/2016, PENDING ON THE FILE OF I
ADDITIONAL DISTRICT AND SESSIONS JUDGE, VIJAYAPURA.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 14.03.2023 COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard Sri Mahantesh Patil, the learned counsel for the petitioner and Smt. Ratna N. Shivayogimath, the learned counsel for the respondent.

2. The brief facts of the case are as under:-

The petitioner is the wife of the respondent. Their marriage was solemnized 15 years ago, as on the date of filing of the criminal miscellaneous petition before the Trial Court. It is stated in the petition that, at the time of marriage dowry was given in the form of Gold and Cash. In spite of sufficient dowry having been paid by the petitioner, the respondent was demanding to bring additional dowry and used to harass and give torture to the petitioner in one or the other pretext. It is further stated that the petitioner was not being given food many times. It is further stated that the petitioner was thrown out of the matrimonial home by the respondent, on being

instigated by his mother and sister. As such, the petitioner constrained to file petition under Section 12 of the Protection of Woman from Domestic Violence Act, (for short 'the Act').

3. The Trial Court allowed the petition partly and ordered the respondent to pay Rs.3,000/- per month as maintenance. Being aggrieved by the same, the husband of the petitioner had preferred an appeal before the Appellate Court. The Appellate Court after re-appreciating the case arrived at a conclusion that the petitioner has failed to establish that she is the legally wedded wife of the respondent herein, as such, the appellate Court allowed the appeal and set aside the order of maintenance. Being aggrieved by the same, the petitioner approached this Court.

4. It is the submission of the learned counsel for the petitioner that the Appellate Court has committed an error by exceeding its jurisdiction to decide the legality of

the marriage or otherwise. Hence, the order has to be set-aside.

5. It is further submitted that the petitioner is having election voter Identity Card, which clearly indicates that the respondent is the husband of the petitioner. It is not the case of the respondent that the said Identity Card has been obtained by fraud or it is fabricated. The evidence of P.W.2 and P.W.3 have substantiated the relationship of the petitioner and the respondent. Such being the fact, the Appellate Court while analyzing the factum of maintenance exceeding its jurisdiction, has set-aside the order passed by the Trial Court, the same is erroneous and illegal. As such, the learned counsel for the petitioner prays to set-aside the order of the Appellate Court.

6. *Per contra*, the learned counsel for the respondent justifying the order passed by the Appellate Court stated that there are a lot of inconsistencies and contradictions among the witnesses namely, P.W.1 to P.W.3. The petitioner has failed to establish that she

married the respondent and she is the legally wedded wife of respondent. As such, the Appellate Court appreciated the facts and circumstances of the case appropriately and denied the maintenance in accordance with law. Therefore, the learned counsel for the respondent sought to dismiss the petition.

7. Heard the learned counsel for the respective parties and also perused the divergent view of the Trial Court and the Appellate Court, in respect of marriage and its solemnization. It is necessary to analyse the evidence of P.W.1 to P.W.3 and also required to be perused the documents, which are marked as Exs.P.1 to 4.

8. P.W.1 says that she married the respondent 10-12 years ago and she led her married life along with respondent. It is stated that she was being harassed in the matrimonial house by the respondent and his mother and sister in one or the other pretext and did not allow her to lead happy marital life. It is further stated that number of panchayats were held to set her family right. However,

the respondent and his mother and sister did not mend their ways. To substantiate the relationship of husband and wife, she has produced Voter ID, which was marked as Ex.P.4 and also examined P.W.3 and P.W.4. In spite of cross-examination, having been done nothing has been elicited to discredit trustworthiness. Except denied that the petitioner is not wife of respondent, no independent witnesses have been examined on behalf of respondent.

9. P.W.2 Chandappa Biradar, is the relative of both petitioner and respondent. The age of P.W.2 shows that he is aged about 60 years. He has substantiated the marriage of the petitioner and respondent, in spite of lengthy cross-examination being done to him. P.W.3 is the person who performed the marriage of petitioner and the respondent. The evidence of all these witnesses clearly and consistently indicate that the petitioner is the legally wedded wife of respondent.

10. The Appellate Court ought not to have gone into the validity of the marriage between the petitioner and the

respondent, unless and until the validity of the marriage has been challenged by the respondent before the appropriate Court and it is nullified by the competent Court having jurisdiction to pass such order. The Courts while dealing with the maintenance matters, either under Section 12 of the Act or under Section 125 of Cr.P.C. should not go into the validity of the marriage. However, the Court may peruse the evidence of the wife as to whether she is able to maintain herself or not. Once the trial Court appreciated the evidence and passed an order of maintenance, the appellate Court may either modify it or set aside the same in case it is found that the wife is able to maintain herself. If any order passed by the appellate Court regarding the validity of the marriage or otherwise, it de hors its jurisdiction. In the present case, the Appellate Court gone into the validity of the marriage and set aside the order of maintenance passed under Section 12 of the Act, which is beyond its jurisdiction and hence, it is liable to be set aside.

11. Hence, I proceed to pass the following:

ORDER

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

The order dated 29.05.2018 in Criminal Appeal No.64/2016 passed by the I Additional District and Sessions Judge, Vijayapura is set aside and the order dated 26.10.2016 in Criminal Miscellaneous No.42/2013 passed by the JMFC, Muddebihal is ordered to be confirmed.

**Sd/-
JUDGE**

RSP