



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

DATED THIS THE 4TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR.JUSTICE G BASAVARAJA

REV.PET FAMILY COURT NO. 200095 OF 2023

BETWEEN:

LAKSHMAYYA S/O GOVIND,
AGED ABOUT 31 YEARS, OCC: AGRICULTURE
R/O. D. NO.1/207/1, B.C. COLONY,
PESALABANDA VILLAGE-518323
ADONI MANDAL, KARNOOL DISTRICT,
ANDHRA PRADESH STATE.

...PETITIONER

(BY SRI A.R. TARANATH AND
SRI MAHADEV S. PATIL, ADVOCATES)

AND:

1. SMT. M. SHIVALINGAMMA
W/O LAKSHMAYYA,
AGED ABOUT 30 YEARS, OCC: HOUSEWIFE,
2. GOKUL DAS S/O LAKSHMAYYA,
AGED ABOUT 05 YEARS,
RESPONDENT NO.2 MINOR UNDER
GUARDIAN OF RESPONDENT NO.1

BOTH ARE R/O. NEAR DR. AMBEDKAR BHAVAN,
AMBA BHAVANI STREET, STATION ROAD,
RAICHUR-584101.

...RESPONDENTS

(NOTICE TO R1 HELD SUFFICIENT V/O DATED 14.09.2023)





THIS RPFC IS FILED U/S. 19(4) OF THE FAMILY COURTS ACT, PRAYING TO CALL FOR RECORDS AND SET ASIDE THE ORDER DATED 19.02.2021, PASSED BY THE PRINCIPAL JUDGE, FAMILY COURT, RAICHUR IN CRL. MISC. NO: 100/2019, VIDE ANNEXURE-B, FILED BY THE RESPONDENTS.

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

ORDER

This petition is preferred by the petitioner - Laksmayya S/o Govind who was the respondent in Crl.Misc.No.100/2019 to set aside the *ex parte* order dated 19.02.2021 in Crl.Misc.No.100/2019 passed by the Principal Judge, Family Court, Raichur [for short, '*the Family Court*'].

2. Notice was duly served to respondent No.1 she remained absent and un-represented as per order dated 14.09.2023.

3. Heard the arguments of the learned counsel for the petitioner.



4. The petitioner's counsel has submitted his arguments that the petitioner is residing with his wife Adilakshmi and children in Pesalaband village, Adoni Mandal, Kurnool district since the date of his marriage. The respondent purposefully has shown the address of the petitioner as Yeragera village, taluk and district Raichur and obtained *ex parte* order of maintenance. Further he submits that the respondent No.1 has suppressed several material facts before the Family Court and obtained *ex parte* order of maintenance by misrepresenting facts and committed fraud on the Family Court. It is well settled law that any order obtained by fraud on the Court is *non-est* in the eye of law. Further, he submits that as per Annexure-K charge sheet the respondent No.1 herself admits that she is the wife of Nagesh and not the wife of the petitioner. Hence, maintenance awarded by the Family Court is liable to be set aside. As per the pleadings at para-2 of the respondent No.1, she claims that her marriage has taken place on 27.03.2007 but in the complaint dated 02.04.2015 the respondent No.1 states



that she is married to one Nagesh and she knows the petitioner herein for about four years. This on record proves that respondent No.1 is not the wife of the petitioner. As such, granting of maintenance to the respondents is illegal on the face of it. The respondent is not legally wedded wife of the petitioner. The Family Court, without verifying the documents produced by the respondents and taking into account that petitioner herein was *ex parte*, saddled the liability of paying the maintenance on the petitioner. Even for the sake of argument if it is accepted that respondent No.1 is the wife of the petitioner, she becomes second wife (as the petitioner is having another wife) and she is not entitled for maintenance under law. The respondent has not produced marriage card and marriage registration certificate before the Family Court. If she had produced them, truth would have come out. The respondent No.1 in her pleadings at para-2 and 4 states regarding marriage and registration of marriage, as such the Family Court, without insisting on the production of the marriage card



and marriage registration certificate, as per the pleadings of respondent No.1 in her maintenance petition has come to a wrong conclusion and awarded maintenance. The order sheet produced at Annexure-P does not disclose when the notice was served on the petitioner. However, without serving the notice of CrI.Misc.No.75/2021 NBW has been issued against the petitioner which is illegal and unsustainable. The Family Court has sent the petitioner to judicial custody/civil prison on 31.07.2023 which is also illegal and unsustainable. Further, he submits that opportunity has to be given to the petitioner to file his statement of objection to the petition and also to adduce oral and documentary evidence before the Family Court. On all these grounds he sought for allowing this petition and for remanding the matter to the Family Court to provide an opportunity to the petitioner to file his statement of objection and contest the case.

5. Having heard the arguments of the petitioner's counsel and on perusal of the materials placed before this



Court, the following points would arise for my consideration:

(i) Whether the petitioner has made out a ground to set aside the ex parte order dated 19.02.2021 passed by the Family Court in Crl.Misc.No.100/2019 and remand the matter to the Family Court?

(ii) What order?

My answer to the above points are as under:

Point No.(i) – Affirmative

Point No.(ii) – As per final order

Reasons to point No.(i):

6. I have carefully examined the materials placed before this Court. The respondent No.1 Smt. M. Shivalingamma had filed a petition under Section 125 Cr.P.C. seeking maintenance for herself and minor son petitioner No.2 - Gokul Das. The impugned judgment reveals that the Family Court has passed the *ex parte* order. It is submitted by the learned counsel for the



petitioner that only after execution of NBW which was executed in Andhra Pradesh, the present petitioner came to know about this *ex parte* proceedings passed against him. Intentionally the respondent has not shown the correct address of the petitioner in Crl.Misc.No.100/2019. The petitioner had not received the notice in Crl.Misc.No.100/2019. The respondent has suppressed the material facts and filed the false petition before the Family Court and obtained *ex parte* order of maintenance. To substantiate his arguments, he produced the copy of the Arogashri health card, a copy of the SSLC marks card of the petitioner, a copy of FIR pertaining to Crime No.49/2015, the charge sheet pertaining to Crime No.49/2015, statement of witnesses, wound certificate of Shivalingamma W/o Nagesh and the copy of the petition pertaining to Crl.Misc.No.75/2021 and order sheet pertaining to Crl.Misc.No.75/2021.

7. On examination of the materials placed by the petitioner i.e., the health card issued by the concerned



authority, reveals that the name of the wife of the petitioner is shown as Adilakshmi and name of this petitioner's son as D. Vamshi Krishna and they are residing in Pesalabanda, D.No.1/207/1, Pesalbanda (VS), Pesalabanda (V), Adoni (M), Kurnool district. This document is not disputed by the other side as the respondent No.1 has remained absent as per the order dated 14.09.2023. The impugned order passed by the Family Court does not reveal that whether the respondent No.1 has complied mandatory provisions under Order VI Rule 14A of Code of Civil Procedure, 1908 or not. Keeping in mind the non-compliance of mandatory provisions of Order VI Rule 14A of Code of Civil Procedure, 1908 and also the address shown in the health card issued by the concerned authorities to the present petitioner, it is just and proper to set aside the *ex parte* order passed by the Family Court and remand the matter to the Family Court by providing an opportunity to the petitioner to file his statement of objection. Accordingly, the petitioner has made out a ground to set aside the *ex parte* order passed



by the Family Court and remand the matter to the Family Court. Accordingly, I answer point No.(i) in the affirmative.

Reasons to point No.(ii):

For the aforesaid reasons and discussion, I proceed to pass the following:

ORDER

- (i) The petition is allowed.
- (ii) The impugned order dated 19.02.2021 passed by the Principal Judge, Family Court, Raichur in Crl.Misc.No.100/2019 is set aside. The case is remitted back to the Principal Judge, Family Court, Raichur with a direction to provide an opportunity to the present petitioner to file his statement of objections to the petition filed by the respondents and thereafter to proceed with the case in accordance with law and dispose of this case as early as possible.



- (iii) The petitioner shall appear before the Principal Judge, Family Court, Raichur without seeking for any further notice on **01.04.2024.**
- (iv) The Family Court is directed to issue Court notice to respondent Nos.1 and 2 who are the petitioners in CrI.Misc.No.100/2019 to appear before the Family Court and thereafter the Family Court is directed to dispose of the case in accordance with law.
- (v) The Registry is directed to send the copy of this order to the Principal Judge, Family Court, Raichur. The Registry is also directed to send copy of this order to the respondent No.1 by speed post.

Sd/-
JUDGE

SWK
List No.: 1 Sl No.: 57
CT-VD