

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 28<sup>TH</sup> DAY OF MARCH, 2024**

**BEFORE**

**THE HON'BLE MR. JUSTICE S RACHAIAH**

**CRIMINAL REVISION PETITION NO. 6 OF 2024**

**BETWEEN:**

YOGANANDA D V  
S/O VENKATESH D K  
AGED 32 YEARS  
R/O DESHAHALLI VILLAGE AND POST  
MADDUR TALUK, MADDUR  
MANDYA DISTRICT – 571 429.

...PETITIONER

(BY SRI. SHIVA PRASAD M., ADVOCATE)

**AND:**

SMT. LIKITHA P B  
W/O YOGANANDA D V  
D/O PARIVARA  
LATE BHARATH  
AGED 29 YEARS  
R/O CHERANGALA VILLAGE  
MADIKERI TALUK  
KODAGU DISTRICT

...RESPONDENT

THIS CRL.RP IS FILED U/S.397 R/W S.401 CR.P.C  
PRAYING TO SET ASIDE THE ORDER PASSED ON 13.01.2023  
IN CRL.MISC.68/2022 BY ADDITIONAL CIVIL JUDGE AND JMFC,  
MADIKERI AND ORDER PASSED ON 02.11.2023 IN CRIMINAL  
REVISION PETITION NO.82/2023 BEFORE 1<sup>ST</sup> ADDITIONAL  
DISTRICT AND SESSIONS JUDGE, KODAGU AT MADIKERI AND  
ETC.,

THIS CRIMINAL REVISION PETITION HAVING BEEN  
HEARD AND RESERVED ON 16.01.2024, COMING ON FOR  
PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE  
THE FOLLOWING:-

**ORDER**

1. This revision petition is filed by the petitioner, who is the husband of the respondent herein. The respondent herein filed a criminal miscellaneous case before the Trial Court seeking for maintenance and also for an order of protection in terms of Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'Act'). She has contended that her marriage was solemnized on 23.02.2018 at Sri Dharmasthala Manjunatha Swamy Temple, Dharmasthala, as per Hindu customs and traditions. After the marriage, she left her job and started residing with her husband for 2-3 years. Due to the said wedlock, a boy baby was born to them. The petitioner herein was addicted to alcohol and he used to consume alcohol everyday. In addition to drinking alcohol, it is alleged that, he was demanding dowry from the respondent herein. It is stated that the mother of the respondent herein had paid Rs.1,00,000/- to the petitioner herein through the bank account. After having received the said amount, the petitioner and the respondent were living at Desahalli, Mandya, for four months. On 01.05.2022, the petitioner herein abused the respondent in a filthy language and assaulted her. It is further stated that the respondent herein was neglected by not

only the petitioner herein, but also by her in-laws too. She approached Mahila Sangha on several occasions and the members of the said Mahila Sangha advised the petitioner and his parents to take care of the respondent herein properly. Despite the instructions or advice, the petitioner herein and his parents used to harass the respondent in one or other pretext and the petitioner herein failed to provide food, clothing and shelter to the respondent. She being a female and not able to maintain herself and her child, has approached the Court by seeking maintenance of Rs.25,000/- per month.

2. The Trial Court after having considered the evidence on record and also the documents available on record, directed the petitioner herein to pay maintenance of Rs.3,000/- per month to the respondent herein from the date of filing of the said petition. Being aggrieved by the same, the respondent herein had approached the I Additional District and Sessions Judge, Kodagu, at Madikeri by filing a revision petition, seeking enhancement of maintenance awarded by the Trial Court. The Appellate Court allowed the revision petition and set aside the order passed by the Trial Court. The Appellate Court directed the petitioner herein to pay maintenance of Rs.20,000/- per month to the respondent from the date of the petition. Hence,

the petitioner has approached this Court seeking to set aside the order passed by the Appellate Court.

3. Admittedly, the Trial Court passed an order on the interim application filed by the respondent herein. The provision under Section 23 of the said Act provides the Court to pass interim and *ex parte* orders. Section 23 of the Act reads thus:

**"23. Power to grant interim and ex parte orders.—** (1) *In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.*

(2) *If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent."*

As against any such order, the aggrieved party shall file an appeal before the Appellate Court in terms of Section 29 of the said Act. Section 29 of the Act reads thus:

**"29. Appeal.—***There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the*

*aggrieved person or the respondent, as the case may be, whichever is later."*

4. On careful reading of the above two provisions, it makes it clear that if any order passed by the Trial Court, the aggrieved party has to approach the Appellate Court by filing an appeal as stated supra. However, the respondent had filed a revision petition, which is not maintainable. Such being the fact, the Sessions Court entertained the revision and passed an order, which is considered to be *non-est* in law. Notwithstanding any such order being passed, the revision petition before this court by unsuccessful person is also not maintainable.

5. Learned counsel for petitioner has produced the copy of the judgment of the Co-ordinate Bench of this Court in the case of **B.A.Harish Gowda v. P.Lankesh**<sup>1</sup> and copy of the judgment of the Bombay High Court in the case of **Inayatullah Rizwi v. Rahimatullah & Ors.**,<sup>2</sup> and tried to convince the Court that the revision is maintainable before this Court.

6. On careful reading of the judgment of the Co-ordinate Bench of this Court in **B.A.Harish Gowda** case,

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<sup>1</sup> ILR 2000 Karnataka 2657

<sup>2</sup> 1981 CrLJ 1398

referred to supra, it is observed in paragraph No.9 that, the revision is maintainable even though there is a bar under Section 397(2) of the Code of Criminal Procedure. Similarly, the High Court of Bombay has opined that the second revision to the High Court, even at the instance of the unsuccessful opponents before the Sessions Court, the revision is maintainable. The said observations are made in paragraph Nos.19 and 20, which read thus:

*"19. We are, therefore, of the view that a revision to the High Court would be tenable at the instance of a party who is unsuccessful before the Sessions Judge, or who is aggrieved by his order. In other words, a concurrent finding of the Sessions Judge and of the Courts below becomes final, but when the Sessions Judge reverses the order of the Court below in revision the defeated party is not precluded from moving the High Court. The consensus of judicial opinion as can be seen supports only this view.*

*20. We, therefore, hold that these two criminal applications filed here by the persons who were non-applicants before the Sessions Judge in the Criminal Revisions and who are aggrieved by the decisions of the Sessions Judge are tenable and competent. There is no need to convert these petitions into applications under Section 482 of the Code. These criminal revisions shall be dealt with and disposed of by the learned single Judge according to law."*

On careful reading of the judgment of the Bombay High Court, the facts of the case are not forthcoming. Therefore, the ratio of the judgment is not applicable to the present case.

7. On careful reading of the facts of the present case, I am of the considered opinion that the revision petition is not maintainable. Without advertting to the merit of the case, the revision petition stands disposed of. Ordered accordingly.

The liberty is reserved to the petitioner herein to approach the appropriate forum to seek remedy in accordance with law and all contentions are kept open.

**Sd/-  
JUDGE**

Bss