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KARNATAKA HIGH COURT

DHARWAD BENCH

P. B. BAJANTHRI, J.R. P. F. C. - 00047 of 2018 **D/- 7 - 1 - 2019**

Irpasha Babajan Inamdar and Anr. v. Babajan Mahamoodpasha Inamdar

Criminal P.C. (2 of 1974), S.125 - Maintenance - Challenge by husband - Ground that opportunity of being heard not given to him -Evidence showing order for payment of maintenance given exparte - Maintenance awarded to wife and child Rs.4,000/- each per month set aside - Court below directed to decide matter afresh after giving due opportunity to parties within three months.

(Paras 4, 5)

Vitthal S. Teli for Petitioner; Deepak S. Kulkarni for Respondent.

Judgement

1.**ORDER :-**In the instant petition the petitioner has questioned the validity of the order dated 07.02.2018 passed in Crl. Misc. No. 596/2016. One of the contentions urged by the petitioners that order dated 07.02.2018 is an exparte order. Therefore, there is violation of principles of natural justice to the extent that, without hearing the petitioners the Court below has proceeded to pass the order.

2. On the other hand, learned counsel for the respondent has not disputed that it is an exparte order at the same time learned counsel for the respondent submitted that respondent is the father of the petitioners. There is no error committed by the Court below in directing the petitioners to pay a sum of Rs.4,000/- each per month to the respondent and so also payment of costs of Rs.1,000/- towards litigation expenses.

3. Heard learned counsel for the parties.

4. On the basis of the order dated 07.02.2018 it is evident that petitioners have not been heard, in other words, petitioners have been placed exparte. Without hearing the petitioners the Court below has proceeded to pass order which has got a civil consequence on the petitioners. Therefore, order dated 07.02.2018 passed in Crl. Misc. No. 596/2016 is set aside. Parties are directed to appear before the trial court on 31.01.2019.

5. The Court below is directed to decide Crl. Misc. No. 596/2016 afresh after giving due opportunity to the parties, within a period of three months from the date of receipt of a copy of this order. In the meanwhile, petitioners are directed to pay a sum of Rs.4,000/- each per month to the petitioners from the date of petition until disposal of Crl. Misc. No. 596/2016. Parties are directed to produce copy of this order before Court below at the earliest.

With the above observations, petition stands allowed.

In view of disposal of the main petition, I.A. No. 1/2018 filed for stay of the impugned order also stands disposed off.