

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2026

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BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

WRIT PETITION NO.29455 OF 2025 (GM-FC)

BETWEEN:

SRI SAILESH KUMAR
AGED ABOUT 57 YEARS
S/O. A. JANARDHANA ACHAR
R/A: SHAGIL PRESISION INDIA UNIT-II,
100% EXPORT ORIENTED UNIT,
DERLAKATTE, MANGALURU TALUK,
MANGALURU - 575 001.

...PETITIONER

(BY SRI.P.N.MANMOHAN, ADVOCATE FOR
SRI. VINAY N.,ADVOCATE)

AND:

MRS. NISHA S. KUMAR
AGED ABOUT 47 YEARS
W/O. SAILESH KUMAR
R/A: 302, DECCAN CHAMBERS,
136, J.S.S ROAD
MUMBAI - 400 004.

...RESPONDENT

(BY SMT.NISHA S KUMAR, PARTY-IN-PERSON)

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED
ORDER DATED 11.09.2025 PASSED IN CRL. MISC NO. 68/2023
BY THE LEARNED PRL. JUDGE, FAMILY COURT DAKSHINA
KANNADA, MANGALORE DIRECTING THE ISSUANCE OF AN
ARREST WARRANT AND FLW AGAINST THE PETITIONER
(PRODUCED AS ANNEXURE-N).



THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13.03.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV ORDER

The present petition is filed seeking to issue writ of certiorari by quashing the impugned order dated 11.09.2025 passed in Crl.Misc.No.68/2023 on the file of the Principal Judge, Family Court, Dakshina Kannada, Mangalore ('the Family Court' for short) directing the issuance of an arrest warrant and FLW against the petitioner.

2. The petitioner herein/husband is the respondent before the Family Court and the respondent herein/wife is the petitioner before the Family Court.

3. For convince of reference, the parties herein are referred as arrayed before this Court.

4. The brief facts of the case are that:-

The marriage between the petitioner and the respondent was solemnized on 19.03.1998 and out of the said wedlock, a son, namely Yash Sailesh Kumar, was born on 12.10.2000. The respondent initiated proceedings in Crl.Misc.No.50/2014 before the learned Principal Judge, Family Court, D.K., Mangalore, under Section 125 of the Criminal Procedure Code, 1973 ('the Cr.P.C.' for short)., seeking maintenance of Rs.5,00,000/- per month. In the said proceedings, the Family Court directed the petitioner to pay interim maintenance of Rs.12,750/- to the respondent.

5. By order dated 30.05.2023, the Family Court partly allowed Crl.Misc.No.50/2014 and held that the respondent is entitled to maintenance at Rs.1,80,000/- per month from 01.01.2012 to 31.12.2016, Rs.2,30,000/- per month from 01.01.2017 to 31.12.2021, and Rs.2,80,000/- per month from 01.01.2022 onwards. The Court further directed payment of arrears in installments falling due on 01.08.2023, 01.12.2023, 01.04.2024 and 01.08.2024, with a stipulation that the interim maintenance already

paid in the proceedings and in the divorce case shall be deducted. The respondent was also awarded litigation costs and interest at the rate of 7.5% per annum on the arrears of maintenance and costs.

6. Aggrieved by the order dated 30.05.2023, the petitioner filed RPFC No.163/2023 before this Court, which is pending consideration. By interim order dated 13.12.2023, this Court directed the petitioner to deposit a sum of Rs.12,96,00,000/- being 50% of the accrued maintenance, on or before 13.01.2024. Challenging the same, the petitioner preferred SLP (Crl.) No.447/2024 before the Apex Court. In the meanwhile, on 04.08.2023, the respondent initiated execution proceedings in Crl.Misc.No.68/2023 alleging non-payment of maintenance for June 2023 and July 2023 and the first instalment, seeking recovery of Rs.73,06,937.50/- as on 01.08.2023 and issuance of a non-bailable warrant.

7. On 12.01.2024, in SLP (Crl.) No.447/2024, the Apex Court stayed the operation of the order dated 13.12.2023 subject to the condition that the petitioner

shall pay Rs.1,00,000/- per month towards maintenance commencing from January 2024, which the petitioner complied with until dismissal of the SLP on 26.11.2024. Thereafter, in Crl.Misc.No.68/2023, the respondent sought coercive steps and by order dated 21.02.2025, the Family Court directed issuance of a Look-Out Circular. Subsequently, by order dated 04.04.2025 in RPFC No.163/2023, this Court directed the respondent not to precipitate execution proceedings till 04.06.2025. However, the said interim protection was not extended thereafter. The petitioner was arrested on 03.05.2025 on his arrival at Mangalore and was produced before the Family Court, and on the same day, upon an application under Section 70(2) of the Cr.P.C., the warrant was recalled and the petitioner was released on bail on execution of a personal bond for Rs.5,00,000/-.

8. The petitioner thereafter challenged the orders dated 21.02.2025 and 03.05.2025 in W.P.No.18472/2025, which came to be allowed by order dated 29.07.2025. Subsequently, on 30.08.2025, the respondent filed an

application in Crl.Misc.No.68/2023 seeking issuance of an arrest warrant alleging wilful non-compliance, which was opposed by the petitioner by filing objections and placing material regarding payments made and other circumstances. However, without conducting an inquiry as contemplated under Section 125(3) read with Section 421 of the Cr.P.C., the Family Court passed the impugned order dated 11.09.2025 issuing arrest warrant and FLW against the petitioner. It is the case of the petitioner that he is drawing a monthly salary of Rs.42,000/- and has paid a total sum of Rs.58,03,750/- towards maintenance, and being aggrieved by the said order dated 11.09.2025, he has filed the present petition.

9. The impugned order discloses that the respondent/wife sought issuance of an arrest warrant for non-payment of maintenance, contending that a sum of Rs.3,67,05,472/- was due, supported by a memo of calculation. The petitioner/husband filed objections placing reliance on the pendency of RPFC No.163/2023, compliance with the condition of payment pursuant to

orders passed in SLP (Crl.) No.447/2024, and his alleged financial constraints, including medical expenses incurred for his son who underwent surgery on 03.09.2025.

10. The Family Court, upon hearing both sides and perusing the material on record, noted that W.P.No.18472/2025 challenging the Look-Out Circular had been allowed on 29.07.2025, that the interim protection in RPFC No.163/2023 stood vacated on 11.06.2025, and that there was no subsisting stay against recovery of arrears. The Family Court further observed that the son of the parties, aged 24 years, was not dependent, and found no material to justify non-payment. The Family Court held that the substantial arrears exceeding Rs.3.67 crores were due from the petitioner/husband. Accordingly, the Family Court allowed the application and directed issuance of arrest warrant and FLW against the petitioner/husband, returnable by 31.10.2025.

11. The learned counsel appearing for the petitioner would contend that the Family Court has not adhered to the mandate of Section 125(3) of the Cr.P.C. It is

contended that before resorting to coercive measures for enforcement of a maintenance order, the Family Court ought to have conducted an inquiry to ascertain whether the alleged default is without sufficient cause. In the present case, despite the petitioner placing material on record indicating sufficient cause, including the pendency of RPFC No.163/2023 and financial constraints, no such inquiry has been undertaken nor any finding recorded as to willful default.

12. It is further contended that the Family Court has proceeded to issue an arrest warrant and FLW without following the statutory mechanism prescribed under Section 421 of the Cr.P.C., which provides for recovery of dues by attachment and sale of property or as recovery of fine. According to the petitioner, arrest and detention can be resorted to only as a last measure upon failure of such modes and after recording reasons. Further, proceedings under Section 125 of the Cr.P.C. are essentially civil and remedial in nature, though embodied in a criminal statute, and are intended as a measure of social justice. Issuance

of warrant of arrest, particularly a non-bailable warrant, cannot be resorted to as a matter of course in such proceedings and that recovery is ordinarily to be effected through civil modes.

13. It is also contended that the impugned order results in deprivation of the petitioner's personal liberty, protected under Article 21 of the Constitution of India, without following the procedure established by law. The petitioner contends that no inquiry has been conducted, no satisfaction has been recorded regarding willful default, and statutory remedies for recovery have not been exhausted. It is further submitted that the pendency of RPFC No.163/2023 before this Court, wherein the matter was posted for hearing on 23.09.2025, was not duly considered, and therefore, the initiation of coercive action was unwarranted.

14. It is contended that the Family Court has not taken into account the amounts already paid by the petitioner pursuant to orders of this Court and the Apex Court, nor the petitioner's financial capacity and other

relevant circumstances. It is submitted that the statutory safeguards available for recovery, including attachment of salary and property, were neither invoked nor considered.

15. In support his contentions, the learned counsel for the petitioner has placed reliance on the following judgments:-

- ***Rina Kumari Alias Rina Devi Alias Reena v. Dinesh Kumar Mahto Alias Dinesh Kumar Mahato and another* reported in (2025) 3 SCC 33;**

31. Another contention that was urged before us is that the findings in the judgment for restitution of conjugal rights by the Family Court, being a civil court, would be binding on the court seized of the petition under Section 125 CrPC, as they are to be treated as criminal proceedings. This specious argument needs mention only to be rejected outright. No doubt, in Shanti Kumar Panda v. Shakuntala Devil, this Court held that a decision by a criminal court would not bind the civil court while a decision by the civil court would bind the criminal court. However, maintenance proceedings are essentially civil in nature and the reason for inclusion of the provisions dealing therewith in the Code of Criminal Procedure was clarified by the Law Commission of India in September 1969.

32. Significantly, as long back as in the year 1963, in Jagir Kaur v. Jaswant Singh²², a three-Judge Bench of

this Court held that proceedings under Section 488 of the Code of Criminal Procedure, 1898, the precursor to Section 125 CrPC, are in the nature of civil proceedings; the remedy, being a summary one; and the person seeking that remedy, ordinarily being a helpless person. Therefore, even if non-compliance with an order for payment of maintenance entails penal consequences, as may other decrees of a civil court, such proceedings would not qualify as or become criminal proceedings. Nomenclature of maintenance proceedings initiated under the Code of Criminal Procedure, as those provisions find place therein, cannot be held to be conclusive as to the nature of such proceedings.

- **Vipin Kumar v. State of U.P. and another** reported in **2022 4 ILR (ALL) 679**;

10. On a plain reading of sub-section (3) of Section 125 Cr.P.C., it is apparently clear that in the event of any failure on the part of any person to comply with an order to pay maintenance allowance, without sufficient cause, the Magistrate is empowered to issue warrant for levying the amount due in manner provided for levying of fines for every breach of the order. Section 421Cr.P.C. prescribes the manner for levying fine and clause (a) of sub-Section (1) of Section 421 provides for issuance of warrant for levy of the amount by attachment and sale of any movable property belonging to the offender. In other words, in the event of any failure without sufficient cause to comply with the order for maintenance allowance, the Magistrate is empowered to issue distress warrant for the purpose of realization of the amount, in respect of which default has been made, by attachment and sale of any movable property, that may seized in execution of such warrant. Sub-section (3) of Section 125 Cr.P.C. makes it further clear that the jurisdiction of the Magistrate for

sentencing such person to imprisonment would arise only after the maintenance allowance, in whole or in part, remains unpaid after the maintenance allowance, in warrant. It is only after the sentence of imprisonment is awarded by the Magistrate under sub-section (3) of Section 125 that the occasion may arise for issuance of warrant of arrest for bringing the person concerned to Court for his committal to prison to serve out the sentence.

- **Sri Shailesh Kumar v. Mrs. Nisha S Kumar** by order dated 19.12.2025 passed in **RPFC 163/2023;**

22. *Having heard the learned counsel for the petitioner and the party-in-person, perused the material on record. The important factors from the above facts as observed by the Family Court and as submitted by the parties are that after the disputes have started, the Proprietorship was changed into a private limited company. The persons who were working as the employees are shown as the directors and the husband is the CEO of the company. Earlier, his income was an amount of Rs.52,000/- and after 2019, he is having salary of Rs.42,000/-. He is paying 13500 US Dollars towards his son's tuition fees. He transferred certain properties in the name of the son and obtained GPA which is revocable at any time without assigning any reasons. It is the case that he has property which is given on rent, in this factual backdrop, the husband says that his salary is Rs.42,000/- and he has lot of loans. It is the argument of the learned counsel for the petitioner that the Family Court basing on the newspaper publications cannot grant maintenance. In these kinds of litigations, where both the wife and husband are fighting against each other, even these kind of information will assume some significance. When the son is*

in the custody of the husband and he says that his son is traveling out of country, he has performed so many scuba diving, all these reflects the financial capacity of the husband. It may not exactly quantify the income, but it definitely reflects the financial capacity of the husband. The Family Court had categorically discussed the conduct of the husband from the beginning by way of a lengthy judgment, the manner in which the husband had suppressed and distorted the facts for his advantage and to defraud the interest of the wife from claiming the maintenance. A person who is having an amount of Rs.42,000/- as monthly salary from 2019 till 2025, is able to pay an amount of Rs.12 lakhs per annum towards the education of the son. All these facts on the face of it are not believable. In the considered opinion of this Court, the Family Court has in detail considered and passed the order.

16. The respondent/party-in-person would contend that the petitioner has persistently failed to comply with the order of maintenance despite having sufficient financial capacity. It is submitted that the she is not presently earning and is entirely dependent on the maintenance awarded by the Family Court. Reliance is placed on the observations made in RPFC No.163/2023, wherein the Family Court has already examined the financial capacity of the petitioner and found that the plea of limited income is not credible.

17. The party-in-person further contended by referring to the memo dated 20.07.2026 filed in W.P.No.18474/2025, to substantiate that the petitioner has the financial means to comply with the maintenance order. It is therefore submitted that the Family Court has rightly exercised its jurisdiction in issuing FLW, having regard to the continued default and substantial arrears.

18. Heard the learned counsel for the petitioner and the respondent/party-in-person and perused the material on record.

19. The principal contention urged on behalf of the petitioner is that the impugned order is contrary to Section 125(3) of the Cr.P.C inasmuch as no proper inquiry has been conducted to ascertain whether the default is without sufficient cause. Section 125(3) Cr.P.C. contemplates that where a person fails, without sufficient cause, to comply with an order of maintenance, the Court may issue a warrant for levying the amount due in the manner provided for levying of fines and may also impose

imprisonment. The corresponding provision under Section 144(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 is *pari materia*.

20. In this regard, the above mentioned sections read as under:-

Section 125(3) Cr.P.C.:

"If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such

offer, if he is satisfied that there is just ground for so doing."

21. The corresponding provision under the Bharatiya Nagarik Suraksha Sanhita, 2023 reads thus:

Section 144(3) BNSS:

"If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made within one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses, such Magistrate may consider any grounds of refusal stated by her and pass appropriate orders."

22. Further, Section 421 Cr.P.C. provides as under:

Section 421: Warrant for levy of fine.

(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

Section 461 of BNSS corresponding to Section 421 of Cr. P.C.

23. A conjoint reading of the above provisions makes it clear that the jurisdiction to enforce a maintenance order arises when the Court is satisfied that the default is without sufficient cause. The formation of such satisfaction is the *sine qua non* for exercise of power. The contention that no inquiry has been conducted is liable to be rejected. Proceedings under Section 125 of the Cr.P.C. are summary in nature. What is required is that the defaulter is afforded an opportunity to place material showing sufficient cause and that the Court considers such material. A detailed or roving inquiry akin to a trial is neither contemplated nor required.

24. In the present case, the material on record discloses that the petitioner has filed objections placing reliance on pendency of RPFC proceedings, alleged financial constraints and payments said to have been made. The Family Court has considered the said objections and has recorded a finding that no sufficient cause is made out. The said finding is based on material on record and does not suffer from perversity.

25. In view of the foregoing discussing, it is relevant to notice that the Kerala High Court in ***Lovely Baiju v. State of Kerala***, reported in **2024 SCC OnLine Ker 7151**, wherein it has been observed that though issuance of notice is not expressly mandated under Section 421 of the Cr.P.C., the Court, while exercising jurisdiction under Section 125(3) of the Cr.P.C, may issue notice to ascertain whether the default is without sufficient cause. The emphasis, therefore, is on the formation of judicial satisfaction regarding absence of sufficient cause before resorting to coercive measures. Though the said judgment is only of persuasive value, this Court is in

respectful agreement with the principle laid down therein, as the same is in consonance with the statutory scheme and the requirement of procedural fairness. The emphasis, therefore, is on the satisfaction of this Court regarding absence of sufficient cause.

26. In the present case, it is evident that the petitioner was afforded due opportunity to place his objections, and the Family Court, upon consideration of the material on record, has arrived at a finding regarding absence of sufficient cause for non-compliance. The further contention that the Court ought to have first resorted to recovery under Section 421 of the Cr.P.C. is also untenable. The statutory scheme does not prescribe any mandatory sequence of enforcement. The modes provided are enabling in nature and can be invoked depending on the facts and circumstances of the case. In cases of persistent default and substantial arrears, the Family Court is not precluded from adopting coercive measures, including issuance of warrant. The magnitude of

arrears in the present case justifies the exercise of such power.

27. The contention that proceedings under Section 125 of the Cr.P.C. are civil in nature and therefore arrest cannot be ordered is also without merit. It is no doubt true, as held by the Apex Court in the case of ***Rina Kumari Alias Rina Devi Alias Reena v. Dinesh Kumar Mahto*** reported in **(2025) 3 SCC 33**, that proceedings under Section 125 of the Cr.P.C. are essentially civil in nature. However, the statute itself provides for enforcement through coercive mechanisms. The civil nature of the proceedings does not denude the Court of such statutory powers. The reliance placed on ***Vipin Kumar v. State of U.P.*** reported in **2022 4 ILR (All) 679** is also of no assistance to the petitioner. The said decision explains the manner of recovery under Section 125(3) r/w. Section 421 of the Cr.P.C., but does not lay down that arrest cannot be ordered in appropriate cases where default without sufficient cause is established.

28. The contention that issuance of FLW and arrest warrant violates Article 21 of the Constitution of India is without merit. Deprivation of personal liberty, when effected in accordance with a procedure established by law, does not offend Article 21. The enforcement measures, including detention, are permissible where authorised by law and preceded by due consideration of the circumstances of default. In the present case, the impugned action is traceable to statutory provisions and is preceded by consideration of the petitioner's objections. Hence, it cannot be termed arbitrary or unconstitutional.

29. It is well settled that coercive measures such as arrest are not to be resorted to in a mechanical manner, and that deprivation of personal liberty must follow judicial satisfaction regarding willful default without sufficient cause. In the present case, the material on record clearly discloses that the petitioner was afforded due opportunity and was heard. Upon consideration of the objections and material placed, the Family Court has recorded a finding that the petitioner has failed to establish sufficient cause

for non-compliance. In such circumstances, the impugned action cannot be characterized as arbitrary or violative of Article 21 of the Constitution of India.

30. The reliance placed on the order passed by this Court in W.P.No.18472/2025 is misplaced. The said case dealt with issuance of a Look-Out Circular, which was held to be beyond the jurisdiction of the Family Court. The present case stands on a different footing, as issuance of arrest warrant is expressly contemplated under Section 125(3) of the Cr.P.C.

31. At this stage, it requires to be observed that an order of maintenance is not a mere adjudicatory declaration, but a continuing obligation cast upon the person bound by it. The statutory scheme does not permit a litigant to defer compliance on the pretext of pendency of proceedings or selective adherence to interim directions. Where a party, despite opportunity and in the absence of any subsisting stay, allows arrears to accumulate to a substantial extent, such conduct can only

be construed as wilful disobedience of a lawful order. The Court exercising jurisdiction under Article 226 cannot lend its hands to dilute or obstruct the enforcement of such obligation.

32. It is well settled that discretionary jurisdiction under Article 226 of the Constitution is not intended to protect a defaulter who approaches the Court without demonstrating bona fides. A litigant who is in continuing breach of a maintenance order and seeks to challenge coercive steps, without first complying or showing genuine inability, does not merit equitable consideration. Interference in such cases would not only defeat the object of Section 125 of the Cr.P.C., which is a measure of social justice, but would also erode the authority of judicial orders. This Court, therefore, finds no justification to interdict the enforcement action undertaken by the Family Court.

33. Interference under Article 226 of the Constitution of India, in the facts of the present case,

would amount to placing a premium on non-compliance of a lawful order, which this Court cannot countenance.

34. In view of the above, this court proceeds to pass the following:-

ORDER

(i) The writ petition is ***dismissed.***

No order as to costs.

Pending IA's if any shall stand *disposed of.*

**SD/-
(DR.K.MANMADHA RAO)
JUDGE**

BNV