

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 16.03.2022

Pronounced on: 28.03.2022

CRM(M) No.24/2021

CrIM No.100/2021

CrIM No.99/2021

ABDUL QAYOOM BHAT

...PETITIONER(S)

Through: Mr. Shuja-ul-Haq, Advocate.

Vs.

DANISH UL ISLAM & ANR

....RESPONDENT(S)

Through: Mr. Salih Pirzada, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner has challenged order dated 21.01.2021, passed by learned Judicial Magistrate, 1st Class(3rd Additional Munsiff), Srinagar, in an execution petition filed by the respondents against the petitioner seeking execution of order of maintenance passed by the learned Magistrate on 21.15.2015.

2. It appears from the record that the petitioner, who happens to be husband of one Laila Khalid, developed a matrimonial discord with his wife. As a consequence of this discord, the respondents, who happen to be the minor children of the petitioner and aforementioned Laila Khalid,

filed a petition under Section 488 of the Jammu and Kashmir Code of Criminal Procedure before the learned Magistrate. The said petition was disposed of on 21.12.2015 with a direction to the petitioner to pay an amount of Rs.9000/ each to the respondents as maintenance. The aforesaid order came to be challenged by the petitioner in a revision petition before the learned Additional Sessions Judge, Srinagar, who reduced the amount of maintenance from Rs.9000/ each to Rs.6000/ each. The said order again came to be challenged before this Court and vide order dated 02.03.2017, the order of the revisional court was set aside and the order passed by the learned Magistrate was maintained. Accordingly, the petitioner was directed to pay an amount of Rs.9000/ per month to each of the respondents.

3. It appears that during the pendency of the execution petition before the learned trial Magistrate, a compromise was arrived at between the petitioner and mother of the respondents and an agreement in this regard was executed by them. The execution petition, accordingly, came to be dismissed as settled in terms of order dated 18.07.2019 passed by the learned trial Magistrate. It seems that the settlement could not work, as a result of which respondents again approached the learned trial Magistrate by way of an execution petition. The impugned order has been passed by the learned trial Magistrate in the said execution petition and a direction has been issued to the DDO(Chief Medical Officer, Kupwara) to deduct an amount of Rs.18,000/ on account of monthly maintenance from the salary of the

petitioner. The DDO has also been directed to deduct a further amount of Rs.30,000/ from the monthly salary of the petitioner on account of arrears of maintenance.

4. The petitioner has challenged the impugned order on the ground that the learned Magistrate while passing the impugned order has ignored the fact that the petitioner and his wife along with respondents lived together from 06.07.2019 till 12.07.2020 pursuant to the settlement and, as such, during this period, the petitioner was not obliged to pay any maintenance to the respondents. It is also contended that pursuant to the terms of the settlement, an amount of Rs.3.00 lacs has been paid by the petitioner to his wife. A further sum of Rs.1.00 lac has also been paid by the petitioner to his wife on account of Mehar. The petitioner has further contended that once the matter was settled during the execution proceedings, the claim of maintenance of the respondents stood settled and without there being a fresh order of maintenance, the learned Magistrate was not justified in passing the impugned order against the petitioner. However, it has been submitted by the petitioner that he has no grievance so far as the direction regarding payment of Rs.9,000/ per month to each of the respondents as maintenance is concerned.

5. I have heard learned counsel for the parties and perused the record of the case.

6. The only grievance that has been projected by the petitioner in this petition is that the learned Magistrate, while passing the impugned

order, has not taken into account the fact that the wife and the children lived with the petitioner with effect from 06.07.2019 till 12.07.2020 in terms of the settlement arrived at during the execution proceedings and, as such, for the aforesaid period, he is not obliged to pay any maintenance to the respondents. The other grievance of the petitioner is that the learned trial Magistrate has not taken into account the fact that pursuant to the settlement, the petitioner has paid an amount of Rs.3.00 lacs and another sum of Rs.1.00 lac to his wife.

7. Before dealing with the aforesaid contentions, it would be apt to make it clear that merely because a settlement has taken place between warring spouses or between the father and the minor children during the pendency of execution proceedings, the order of maintenance passed by a Magistrate under Section 488 of J&K Cr. P. C does not get wiped out if the settlement does not work. In holding so, the learned trial Magistrate has rightly relied upon the ratio laid down by the Supreme Court in the case of **Mahua Biswas(Smt) vs. Swagata Biswam and anr., (1998) 2 SCC 359**, wherein it has been clearly laid down that when a settlement has been arrived at in maintenance proceedings, the previous orders of maintenance in such a case could at best be taken to have been suspended but not wiped out altogether. The Supreme Court has further observed that once settlement fails, the wife's claim to maintenance has to be activated so as to put her in the same position as before.

8. That takes us to the contentions raised by the learned counsel for the petitioner. So far as the payment of Rs.3.00 lacs and Rs.1.00 lac by the petitioner pursuant to the settlement, is concerned, the same has been made by him to his wife and not the respondents who happen to be his minor children. So, while settling the claim of maintenance awarded in favour of the minor children, the petitioner cannot take benefit of the amount which he has paid to his wife.

9. So far as the contention of the petitioner that respondents have lived with him for a certain period of time and for the said period, they are not entitled to any maintenance is concerned, the said plea, it seems, has not been raised by the petitioner before the learned trial Magistrate and, obviously, the learned Magistrate has not dealt with this aspect of the matter. The plea, it seems, has been raised by the petitioner for the first time in these proceedings. The same, therefore, cannot be entertained.

10. Apart from above, it comes to the fore from a perusal of the impugned order that at the time when settlement was arrived at between the petitioner and his wife during the earlier execution proceedings, an amount of Rs.3,52,000/ on account of arrears of maintenance was due from the petitioner regarding which the learned trial Magistrate had passed an order of attachment of land of the petitioner which came to be withdrawn upon disposal of the execution petition in terms of the settlement. Besides this, as observed hereinbefore, upon failure of the settlement, the children are relegated to the same position as before,

meaning thereby they are entitled to the maintenance as if the settlement had not taken place. Thus, the respondents cannot be denied the amount of maintenance for the period the settlement between the parties was in operation. The fact that the respondents may have resided with the petitioner during the period the settlement was in operation, is immaterial as the order of maintenance remained only suspended and the same was not wiped out. It got revived retrospectively after the failure of the settlement.

11. For the foregoing reasons, I do not find any ground to interfere with the impugned order passed by the learned trial Magistrate so far as it pertains to direction for recovery of arrears of maintenance against the petitioner.

12. Accordingly, I do not find any merit in this petition. The same is dismissed.

13. Before parting, it is necessary to make certain observations with regard to the manner in which the learned trial Magistrate has drafted the impugned order. The said order runs into 22 pages but the contents which are relevant, run into only less than four pages. The learned trial Magistrate has, while drafting the impugned order, delivered sermons addressed to counsel appearing for the petitioner as regards justice and delay in dispensation of justice by quoting different authors, research papers and judicial precedents.

14. It is imperative for the Judicial Officers to keep in mind while drafting their orders and judgments that the same are precise and specific dealing with the issues arising in the case. The matters which are not germane to the facts of the case should not be written in the judgments/orders. The Judicial Officers are not expected to load their judgments and orders with all the legal knowledge on the subject and citation of too many judgments, research papers and reputed authors. The clarity and precision should be goal of any judgment. The purpose of a judgment is not to show judge's knowledge of legal maxims but to decide disputes in a competent manner and state the law in clear terms.

15. In the instant case, the learned trial Magistrate has, while drafting the impugned order, tried to justify the reasons for delay in disposal of the cases and it appears that the same has been done in response to the grievance raised by counsel for the petitioner in the execution petition. The learned Magistrate has tried to explain the compulsions which a Judicial Officer goes through while disposing of cases. The course adopted by the learned trial Magistrate, is absolutely un-necessary. The aggrieved counsel or party would have got his answer if a short and precise order dealing with his contentions had been passed expeditiously, instead of explaining the difficulties experienced by the Courts. The hard work which the learned Trial Magistrate has put in by writing the impugned order could have been utilized in disposing of more matters expeditiously. The Judicial Officer concerned appears to be a bright officer with excellent control over language and good legal

acumen. She is at the threshold of her career. It will be better if she utilises her talent and potential for expeditious disposal of cases instead of delivering sermons in her judgments/orders.

(Sanjay Dhar)
Judge

Srinagar,
28.03.2022
“Bhat Altaf, PS”

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

