

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

Reserved on: 11.09.2023
Pronounced on:20.09.2023

CRM(M) No.45/2021

ZAHOOR AHMAD DAR **...PETITIONER(S)**

Through: - Mr. Mufti Mehraj-ud-din, Advocate.

Vs.

JAMEELA BANO & ANOTHER **...RESPONDENT(S)**

Through: - Mr. Wani Manzoor, Advocate.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) The respondents had filed an application against the petitioner under Section 488 of the J&K Cr. P. C for grant of maintenance and along with the same, an application for grant of interim maintenance was also filed. The respondents had pleaded that respondent No.1 was the legally wedded wife of the petitioner and out of the wedlock, respondent No.2, who was seven years old at the time of filing of the application under Section 488 of the J&K Cr. P. C, was born and one female child was also born who was residing with the petitioner. It was stated that the petitioner and his family members were greedy by nature and they always demanded dowry despite the fact that the parents of the respondent No.1 had given sufficient dowry to the petitioner and his family and in the month of June, 2019, the respondents were thrown out of the residence by the petitioner. It was also pleaded that the petitioner was plying a transport vehicle in different districts and was earning an amount of Rs.20,000/ per month.

2) In opposition to the application under Section 488 of Cr. P. C, the petitioner filed his response stating therein that he had already divorced respondent No.1 by virtue of divorce deed dated 28th June, 2019. It was also pleaded that the respondent No.1 on her own opted to leave the company of the petitioner along with minor son Mohammad Hadi and she had taken away all the things from his home.

3) The Special Mobile Magistrate/Passenger Tax & Electricity Magistrate, Srinagar (hereinafter referred to as “the trial court”) after hearing the parties and considering the material on record, vide order dated 19.01.2020 directed the petitioner to pay a monthly interim maintenance of Rs.7000 (Rupees seven thousand) and Rs.4000 (Rupees four thousand) to the respondents No.1 and 2 respectively.

4) The petitioner has assailed the order dated 19.01.2020 passed by the learned trial court on the ground that the learned trial court could not have directed the petitioner to pay interim maintenance to the respondent No.1 because she had already been divorced by the petitioner and the trial court should have framed an issue in this regard and deferred the payment of the maintenance to the respondent No.1 till the factum of divorce was proved. It is also urged by the petitioner that the petitioner is a driver by profession and is earning his livelihood on daily basis and without there being any evidence, the maintenance of Rs.7000/ and Rs.4000/ has been awarded to the respondents.

5) The learned counsel for the petitioner restricted his argument only to the extent of grant of maintenance to the respondent No.1 and vehemently argued that the learned trial court has very lightly brushed aside the contention raised by the petitioner that the respondent No.1 was no more the legally wedded wife of the petitioner. Learned counsel for the petitioner has placed reliance upon the judgment of a Coordinate Bench of this Court in the case of **Masrat Begum vs. Abdul Rashid Khan & anr** (561-A Cr. P. C No.110/2010 decided on 03.03.2014).

6) *Per contra*, Mr. Wani Manzoor, learned counsel for the respondents, vehemently argued that whether the marriage between petitioner and respondent No.1 has been dissolved or not is an issue of fact which is required to be proved and the learned trial court has considered the contention raised by the petitioner in respect of the divorce allegedly pronounced by the petitioner.

7) Heard and perused the record.

8) The sole contention of the petitioner is that the respondent No.1 was divorced by the petitioner, as such the learned trial court could not have directed him to pay maintenance to the said respondent.

9) The initial relationship of husband and wife between petitioner and respondent No.1 is not in dispute. The ground urged by the petitioner is that he had divorced the respondent No.1. The perusal of the impugned order reveals that the learned trial court has taken note of the divorce deed produced by the petitioner before it and after taking note of the contention

of the petitioner in respect of the dissolution of marriage between petitioner and respondent No.1, the learned trial court has directed the petitioner to pay an amount of Rs.7000/ per month to respondent No.1.

10) From the response filed by the petitioner before the trial court, it appears that contradictory stands have been taken by the petitioner. In para (2) of the response, he has stated that he has divorced the respondent No.1 by virtue of divorce deed dated 28th June, 2019 whereas in para (4) of parawise reply, he has stated that the respondent No.1 herself left her matrimonial home in July, 2019.

11) The issue of dissolution of marriage by virtue of divorce deed dated 28th June, 2019, is required to be proved like any other fact and till the same is proved in accordance with law, the respondent No.1 cannot be asked to live her life without any maintenance from her husband. It shall defeat the whole purpose of Section 488 of Cr. P. C. Taking into consideration the object of the said provision, the concept of interim maintenance was evolved by the Supreme Court in '**Savitri v. Govind Singh Rawat [(1985)4SCC 337]**'. This Court in the case of **Mushtaq Ahmad Badyari vs Ruquya Akhter [2020(6) JKJ(HC)182]** has already considered an identical issue and has observed as under:

13. Learned counsel for the petitioner has placed much reliance upon the judgment of the coordinate bench of this Court, titled, Masarat Begum vs Abdul Rashid Khan and another. The said judgment also cannot come to the rescue of the petitioner. The application for interim relief has been decided by the trial court on the basis of admitted fact about the marriage between the parties in the year 2014 and whether there was valid talaq and whether

talaqnama was communicated to the respondent are the disputed questions of facts those can be adjudicated upon only during trial and if the wife is denied any maintenance till the proof of the said fact, it will defeat the very purpose for which the Apex Court has evolved the principle of grant of interim maintenance. The admitted fact remains that there was a relationship of husband and the wife and once there is a plea of dissolution of marriage by a husband, the onus is always on the husband to prove the same by way of cogent evidence. The respondent-wife cannot be denied interim maintenance solely on the plea taken by the petitioner-husband in his objections that he has sent the divorce deed to the respondent and when there is nothing on record to demonstrate that the respondent-wife has ever received the divorce deed particularly when the stand taken by the petitioner before the two courts is contradictory.

12) In view of the above, this Court does not find that there is any abuse of process of law or the indulgence of this Court is warranted in the interests of justice. The present petition is found to be misconceived and the same, accordingly, dismissed.

13) A copy of this order be sent to the learned trial court for information.

(Rajnish Oswal)
Judge

SRINAGAR
20.09.2023
“Bhat Altaf, PS”

<i>Whether the order is speaking:</i>	Yes/No
<i>Whether the order is reportable:</i>	Yes/No