

Married Man With Capacity To Earn Obligated To Maintain Wife & Children, Cannot Plead Penury: J&K&L High Court Reiterates

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HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

VINOD CHATTERJI KOUL; J.

CRM(M) no. 241/2021 CrIM no. 885/2021; 17.11.2022

Shashi Paul Singh versus Gurmeet Kour

Petitioner(s) / Appellant(s) through: Mr. Inayat Jamal, Advocate

Respondent(s) through: Mr. Mir Javaid, Advocate

JUDGMENT

1. This petition filed under Section 482 Cr.PC challenges the order dated 08.03.2021, passed by the learned Principal Sessions Judge, Budgam (for short “Revisional Court”) upholding the order dated 31.01.2020 passed by the court of Chief Judicial Magistrate, Budgam (for short “Trial Court”) and rejecting the revision petition.

2. The petitioner has thus challenged both the orders in this petition. The grounds taken up for challenge of the orders are:

“(i) That impugned order has been passed arbitrarily and mechanically fixing quantum of maintenance at an exorbitant rate without taking into consideration the liabilities of the petitioner and the total payable salary of the petitioner, which after making all necessary deductions including deductions towards loan raised by him, is around Rs. 12000/- only as on date.

(ii) That impugned order has been passed in contravention to the law laid down by the Apex Court stating that the object of the provisions of maintenance being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The object of maintenance proceedings is not to punish a person for his past neglect.

(iii) That rationale behind grant of maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constrains of a dependant spouse hamper their capacity to be effectively represented before the Court but in the instant case the respondents were already receiving the maintenance still the impugned order was made applicable from the date of application on this count also the impugned order deserves to be set aside.

(iv) That at the time of institution of petition under 488 J&K Cr.PC, petitioner was drawing a net salary of around Rs. 11, 264/- only, after making all the deductions and making the order, enhancing the amount of maintenance at an exorbitant rate, applicable from the date of application is arbitrary and in fact punitive to the petitioner. On this count also the impugned order deserves to be set aside. A copy of Salary slip of the petitioner for the month of March, 2014 is annexed herewith this petition and is marked as annexure VII.

(v) That the petitioner has made a bona fide offer to the Respondent to resume the matrimonial ties and the respondent, without any plausible ground, is not inclined to resume the matrimonial ties with the petitioner.

(vi) That respondent no. 01 is living separately on her own accord without showing any predilections to resume the matrimonial ties with the petitioner. In the matter, learned trial judge, CJM, Budgam has observed at page no. 23 of his order/judgment dated 31.01.2020. as follows: Line 8-13”...However, during evidence of the applicant it has come that applicant no. 01 is ready to join the company of non applicant subject to fulfillment of certain conditions which have been followed by the non applicant as per the evidence on the file and as per the evidence of presidents of various committees that non applicant in their presence apologized for the past...”

Petitioner has made bona fide offer to resume matrimonial ties to the respondent, the impugned order is liable to be set aside.”

3. Briefly stating, the facts are that there are no dispute with regard to the fact that petitioner and respondent no.1, after marriage, have been living separately due to differences. The respondent no.1, being the wife and respondent no.2 being daughter of the petitioner while residing separately, approached the Trial court for maintenance under Section 488 Cr.PC. The said petition was filed before the Trial court on 05.11.2013, which after long spell more than six years, was decided 31.01.2020. The Trial court after having given sufficient opportunities to both the parties for leading evidences and after appreciating the evidences, concluded that the petitioner herein had sufficient source of income and has neglected to maintain the respondents, wife and child, and directed him to pay maintenance of Rs. 2500/- and 3000/- respectively. Though the petitioner herein pleaded that his wife has left the company without any reason and cause, is ready and willing to maintain her provided she joins his company and resides with him. On perusal of the record, it shows that he has refused to take her back and live with her and reside with him. The allegations also would show that the respondent no. 1 herein wife of the petitioner had sufficient reasons to reside separately from the company of petitioner-husband.

4. On perusal of the record, it is clear that the Trial court has dealt with the petition and has properly appreciated the evidences and has recorded the finding, in which no fault can be found. The Revisional court has also after taking into consideration the grounds of challenge made in the revision petition and also taking into account the earning capacity of the petitioner, has dismissed the revision petition filed by the petitioner herein and enhanced the amount of the maintenance from Rs. 2500/- to Rs.8000/- per month, insofar as respondent no.1, Gurmeet Kour, is concerned and Rs. 3000/- to Rs. 5000/- per month as regards respondent no.2.

5. The petitioner herein while challenging the order passed by the Trial court as well as by the Revisional court, has submitted that the marriage between him and respondent no. 1 was solemnized way back in the year 2011, according to Hindu Law, applicable to them and out of said wedlock a girl child respondent no. 2 was born and after few years of their marriage, respondent no.1 left his company without any rhyme and reason and despite approached by him, she did not resume the matrimonial ties. So main ground of challenge by the petitioner is that the respondent-wife has left his company without any reason and despite his offer to maintain her and request to resume matrimonial ties, she did not. So the refusal of the respondent no.1 is main ground taken up to challenge the orders passed by the Trial court as well as by the Revisional court.

6. The record of the Trial court and the Revisional court would show that the Trial court had after the evidence was produced, found that the respondent no.1 had been subjected to cruelty by the petitioner herein and he neglected to maintain her as well as their child. Though the petitioner herein submitted that he approached the respondent no.1 to resume matrimonial ties, but she refused to, is negatived by the record on file. Record of the Trial court as well as the Revisional court would reveal that it is the petitioner who has refused to take her back.

7. The learned Principal Sessions Judge, in its order, whereby, the revision was rejected has recorded that:-

“... During the arguments of this revision petition when this court asked the revisionist in the open court whether he is even at this point of time ready to take the respondent back to their maternal home and live with them he categorically refused and stated that he will prefer death then to resume matrimonial relation with the respondent No. 1 and respondent No. 1 in reply to same question stated that she wants to resume the relation with the revisionist if he likes so without any pre condition”.

8. The Revisional court has taken into account the statement of the parties and given a finding that the petitioner is a Government employee working in the PD Department and draws salary of Rs.50,000/- per month. There is no dispute with regard to the fact that petitioner herein is a husband of respondent no.1 and father of respondent no.2. The relationship is still in existence. There is no evidence on record to show that respondent no.1, has any source of income on which she could maintain herself. So far as the respondent no.2 is concerned, being child of petitioner, she is entitled to receive maintenance for education and day today expenses.

9. The evidence on the record and finding would show that respondent no.1 is residing separately from the petitioner and the petitioner has himself stated as has been recorded in the order of the Revisional court that he has refused to take respondent no.1 back and reside with him, so respondent no.1 has a sufficient ground for residing separately from the petitioner herein. The petitioner being the husband of respondent no.1 and father of respondent no.2, is bound to maintain the both. The provisions contained in Section 125 of the Code of Criminal Procedure (Central), which is *pari materia* to Section 488 of J&K Code of Criminal Procedure, are meant to provide maintenance to the neglected and discarded wife as well as neglected children. The provisions provide for maintenance to such persons and the petitioner being the Government employee has sufficient source of income and therefore, he cannot avoid his liability to provide maintenance to his wife and children. The Trial court, while allowing the petition under Section 488 Cr.P.C., has considered and appreciated the facts as well as evidence produced. The Trial court on appreciation of the evidence and facts of the case has come to the conclusion that the petitioner is having sufficient source of income, and that he has neglected to provide maintenance to the respondents, but while granting the maintenance it has awarded meager amount of maintenance of Rs.2500/- and Rs.3000/-. While granting the maintenance status, requirements of the party is required to be taken into account. It is not possible for a person to maintain herself on an amount of Rs.2500/- or Rs.3000/- whatever awarded by the Trial court. The petitioner is getting salary of Rs.50,000/- per month. The Revisional court has taken this fact into consideration and rightly enhanced the amount of maintenance and directed the petitioner herein to pay the respondent no.1 an amount of Rs. 8000/- and respondent no.2 Rs.5000/-.

10. The orders passed by the Trial court as well as by the Revisional court have been called in question in this petition which has been filed under Section 482 Cr.P.C. The scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Code, to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about existence of sufficient ground for proceedings against accused and the court cannot look into materials, acceptability of which is essentially a matter for trial.

11. The judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C., if answer to all the steps, as enumerated herein after, is in affirmative, has been so said by the Supreme Court in ***Rajiv Thapar v Madan Lal Kapoor, 2013 (3) SCC 330***:-

“Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

i. Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

- ii. Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.
- iii. Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?
- iv. Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

12. The case in hand, when examined on the touchstone of law laid down by the Supreme Court, does not at all persuade this Court to grant the relief prayed for by the petitioner in the instant petition. It is well settled law that Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court.

13. It is to be seen what is aim and purpose of Section 488 Cr.P.C., which for facility of reference is reproduced hereunder:

"488. Order for maintenance of wives, children and parents. —

- (1) If any person having sufficient means neglects or refuses to maintain—
 - (a) his wife, unable to maintain herself, or
 - (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
 - (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or (d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate 1[x x x], as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. Explanation. —For the purpose of this Chapter, "minor" means a person who, under the provisions of the Majority Act, Samvat 1977 is deemed not to have attained his majority].

(2) Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance.

(3) 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 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 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.

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(6) All evidence under this Chapter shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made or when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases:

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any order so made may be set aside for good cause shown, on an application made within three months from the date thereof.

(7) The Court in dealing with applications under this section shall have power to make such order as to costs as may be just.

(8) Proceedings under this section may be taken against any person in any district where he is or he or his wife resides or where he last resided with his wife, or, as the case may be, with the mother of the illegitimate child.”

14. The main object of provisions of Section 488 of the Code is to give social justice to the woman, child and infirm parents etcetera and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. It provides that any person, who has sufficient means to maintain himself, cannot deny maintenance to his wife and children. The object is to prevent vagrancy and destitution. It provides a speedy remedy for supply of food, clothing and shelter to deserted wife.

15. Right to seek maintenance by the wife from her husband, is a statutory right and this right is guaranteed under Section 488 Cr.P.C. Right to get maintenance is not obliterated or affected by a custom nor would custom absolve the husband from his obligation to pay maintenance to his wife. [See: ***Hamida v. Ahmedullah Wani 2010 (7) JKJ HC-701***].

16. Perusal of orders impugned reveals that the Revisional Court has rightly dismissed the revision petition of petitioner. It is bounden duty of petitioner to pay maintenance to his wife and child. He cannot plead penury to avoid his statutory duty to maintain his wife and child. It is settled law that the nature of duty cast on a person to maintain his wife, child/children and parents that sufficient means has been interpreted to include capacity to earn and as long as a person is able bodied with capacity to earn, he cannot escape his legal duty to maintain his wife, children and parents, who are unable to maintain themselves, on the ground that he does not actually have any income. Once a person enters into wedlock and decides to raise a family he cannot turnaround and say that he is not ready to perform his moral and legal obligation flowing out of the wedlock as he is in no mood to earn livelihood. It is for the person to decide to marry or not to marry, but once a person decides to marry, he is duty bound to perform all the duties and discharge all obligations that the society and law expect and require him to discharge. Reference in this regard is made to ***Vikram Jamwal v. Geetanjali Rajput and another (2010) 1 JKJ 236 (HC)***. Thus, it is statutory duty of petitioner to maintain respondent. In that view of matter, impugned order does not call for any interference and as a corollary thereof petition in hand is liable to be dismissed.

17. For the reasons discussed above, the instant petition is without any merit and is, accordingly, **dismissed** with connected CM(s). Interim direction, if any, shall stand vacated.

18. Copy be sent down along with the record.