

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

Reserved on 17.03.2021

Pronounced on 26.03.2021

CRMC No.364/2018

ABDUL MAJEED DAR

...Petitioner/Applicant(s)

Through :- Mr. Parvaiz Nazir, Advocate

V/s

HAFIZA BEGUM AND ANR.

....Respondent (s)

Through :- Mr. Shabir Ahmad, Advocate

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

JUDGMENT

1. The present petition has been filed by the petitioner for quashing the order dated 29th April, 2017 passed by Sub-Judge JMJC, Pattan (hereinafter referred to as the "trial court") as well as the order dated 7th August, 2018 passed by the learned Principal Sessions Judge, Baramulla, , whereby the petitioner has been directed to pay maintenance to the allegedly divorcee lady. However,
2. The only ground which the petitioner has raised in the present petition is that he had already divorced his wife vide 'Talaq Nama' dated 2nd August, 2011 which was sent to her through registered post.
3. From the perusal of the record it transpires that the respondent(wife) had filed a petition for grant of interim maintenance under Section 488 Cr.P.C against the petitioner herein who contested the said petition before the trial court on the ground that he had already divorced her on 2nd August, 2011 and as such, the petitioner herein was not under any obligation to maintain divorced lady. The respondents herein in support of their case had examined the witnesses namely Abdul Rashid Wani, Ghulam Hassan and Ghulam Hassan Dar, whereas the petitioner herein had examined Ghulam

Hassan Hajam, Abdul Hamid Dar, Ghulam Hassan, Mohammad Yousuf and Ghulam Mohi-ud-din(Postman). The learned trial court after considering the evidence led by both the parties and after hearing the arguments from both the sides granted maintenance of Rs.2000/= (Rupees Two thousand) per month to each of the respondents. The petitioner herein assailed the said order before the Court of learned Principal Sessions Judge, Baramulla by virtue of revision in which the sole ground was that the petitioner was not under any obligation to maintain his divorced wife so the order passed by the trial court vis-à-vis grant of maintenance to the non-applicants in the revision petition be set-aside. However, the learned Revisional Court vide order dated 7th August, 2018 dismissed the said petition.

4. Learned counsel for the petitioner herein has vehemently argued that he had proved the divorce by examining the scribe of the divorce deed and also the postman who delivered the registered letter to the respondent herein.
5. Per contra, Mr. Shabir Ahmad, vehemently argued that the petitioner had miserably failed to prove the divorce before the learned trial court and the said finding based on evidence has not been interfered by the court of revision and now the petitioner cannot dispute the said finding through the medium of present petition.
6. Heard and considered.
7. The perusal of the order passed by the learned trial court reveals that the learned Magistrate has held that the petitioner has miserably failed to prove the requisites of Talaq and also that Talaknama was sent to the respondent no.1.

8. Needless to mention here that if the plea of Talak is taken then the same is required to be proved like any other fact. The learned Magistrate has recorded that the petitioner has not been able to prove as to on which date the divorce was pronounced upon the respondent(wife), as the petitioner did not record his statement and simultaneously the trial court has observed that witness Ghulam Hassan Hajam has simply stated that Mst. Hafeeza was divorced by her husband but has not stated in which month and which year she was divorced. The learned trial court has also observed that the delivery of the envelope is also doubtful as the postman has not seen any such record in which he has obtained signatures of the respondent. The learned Magistrate simultaneously has observed that none of the witnesses produced by the petitioner herein has stated whether any-one tried to reconcile the parties before the divorce or who was present from the side of the respondent (wife) and the petitioner.
9. While referring the judgment reported in *AIR 2002 S.C. 355 titled Shameem Ara Versus State of U.P.*, the learned Magistrate in his order has disbelieved the plea of divorce taken by the petitioner in his pleadings. The learned court of revision has also upheld the said finding. Needless to mention here that the law laid down in *Shameem Ara (Supra)* has been affirmed by the Supreme Court in *Sharaya Bano Versus Union of India reported in 2017 (9) SCC 1*. Under Section 561-A Cr.P.C (now 482 Cr.P.C) the Court can exercise powers only for the purpose of securing ends of justice or to prevent the abuse of law.
10. So far as the instant case is concerned, this Court does not find any substance in the contentions raised by the petitioner herein that he has successfully proved the divorce particularly in view of the fact that the

petitioner has not bothered to appear as his own witness before the trial court. More-so there is not even an iota of evidence that any reconciliation efforts were made by two arbiters one chosen by the wife from her family and the other by the husband from his family. So there is no perversity in the finding returned by the learned Magistrate and upheld by the learned court of revision that the petitioner has not been able to prove the plea of Talak taken in his objections. Furthermore, the petitioner has not led any evidence as to who sent the divorce to the respondent (wife) to prove the plea of Talak. Otherwise also a meager amount of Rs.2000/- (Rupees Two thousand) as has been awarded to the respondent no.1 herein, that in the present era of inflation can in no way be termed as either exorbitant or excessive.

11. In view of what has been discussed above, this Court does not find any reason, whatsoever, to interfere with the orders impugned, as such, instant petition is found to be without any merit, same is dismissed accordingly.

(RAJNESH OSWAL)
JUDGE

SRINAGAR
26-03-2021
Shameem H.

Whether the order is reportable: Yes/No