

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

...  
CRMc no.116/2019 [CRM(M) no.116/2019]

*Reserved on: 17.08.2021*

*Pronounced on: 08.10.2021*

**Farooq Ahmad Naikoo**

.....Petitioner(s)

Through: Mr M. Ayoub Bhat, Advocate

**Versus**

**Haseena and others**

.....Respondent(s)

Through: Mr S. M. Ayoub, Advocate

***CORAM:***

**HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE**

**JUDGEMENT**

1. In this petition, preferred under Section 561-A Cr. P. C. (which is *pari materia* to Section 482 of the Code of Criminal Procedure (Central), quashment of execution proceedings pending before the court of Judicial Magistrate, Pulwama (for short "*Trial Court*") in the case titled *Mst. Haseena and others v. Farooq Ahmad Naikoo*, as also quashment of order dated 6<sup>th</sup> October 2017 passed by the Trial Court. He also seeks quashment of order dated 23<sup>rd</sup> March 2018, passed by Additional District & Sessions Judge, Pulwama (for brevity "*Revisional Court*") in a Revision Petition titled *Farooq Ahmad Naikoo v. Mst. Haseena and others*.
2. I have heard learned counsel for parties and considered the matter.
3. According to learned counsel appearing for petitioner, impugned orders and judgement have been passed by both the Trial and Revisional Courts without appreciation of facts and circumstances of the law. He states that order dated 6<sup>th</sup> October 2017 has been passed in *ex parte*, denying opportunity of being heard to petitioner. He also avers that

application seeking execution of the order dated 6<sup>th</sup> October 2017 is a gross abuse of process of court as it was brought to the notice of Trial Court that question of seeking execution of order awarding maintenance to respondents does not arise as respondents are and have been living with petitioner.

4. Perusal of the order dated 6<sup>th</sup> October 2017 reveals that respondents herein have preferred a petition under Section 488 Cr.P.C. (which is *pari materia* to Section 125 Cr.P.C. (Central), and sought grant of maintenance therein. The Trial Court directed petitioner to make monthly maintenance @ Rs.750/- in faovur of petitioners.
5. Against the order dated 6<sup>th</sup> October 2017, petitioner preferred a Revision Petition before the Revisional Court. The said revision petition vide order dated 23<sup>rd</sup> March 2018 has been dismissed as it has been found that petitioner has a remedy in terms of proviso to Subsection 6 of Section 488 Cr.P.C., whereunder he can approach the Trial Court for setting aside *ex parte* proceedings.
6. Taking into account case set up by petitioner and submissions made by learned counsel for petitioner, it may be mentioned here that if a person, notwithstanding having sufficient means, neglects or refuses to maintain his wife, his legitimate or illegitimate minor child, whether married or not, can be directed to pay monthly allowance for maintenance of his wife or child. It would be appropriate to reproduce Section 488 Cr. P.C. 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.

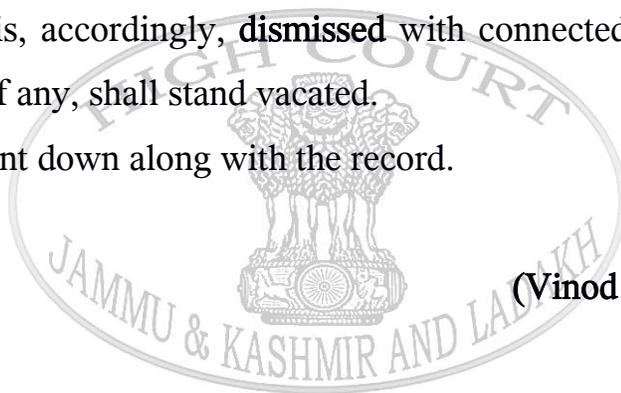
(7) The Court in dealing with applications under this section shall have power to make such order as to costs as may be just.

(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.”

7. Dominant and primary object of Section 488 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.

8. 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*].
9. When the case in hand is analysed in the backdrop of above settled position of law, it does not make out any case to set-aside impugned orders or for that matter the proceedings under Section 488 Cr.P.C. Petitioner cannot deny to pay maintenance to his wife and/or children. He is otherwise obliged to make payment of maintenance. Petition on hand clearly reflects and portrays disinclination on the part of petitioner to pay maintenance that has been directed by courts below to be paid by him to his wife and/or children. Resultantly, petition is liable to be dismissed.
10. 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.
11. Copy be sent down along with the record.



(Vinod Chatterji Koul)  
Judge

Srinagar

08.10.2021

Ajaz Ahmad, PS

Whether the order is reportable: Yes/No.