

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

CRM(M) No.443/2024

Bashir Ahmad Sheikh

... Petitioner(s)

Through: -Mr. Mir Majid Bashir, Advocate

Vs.

Mehran Ibn Bashir and Ors

...Respondent(s)

Through: -None

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

29.07.2024

1. The petitioner through the medium of present petition has challenged order dated 11.07.2024, passed by learned Principal Sessions Judge, Budgam, whereby revision petition filed by the petitioner against order dated 30.01.2024 passed by learned Chief Judicial Magistrate Budgam in a proceeding filed under Section 125 Cr.P.C has been dismissed.

2. Heard and considered.

3. It appears that the respondents filed a petition under Section 125 Cr.P.C against the petitioner through their mother Shafiqa Bano before the Court of Chief Judicial Magistrate, Budgam. As per the case set up by the respondents in their petition marriage between the petitioner and mother of the respondents had taken place in the year 2011 and out of the said wedlock the respondents were born. It was alleged by the respondents in their petition that the petitioner treated their mother with

cruelty and made the life of respondents miserable. It was pleaded that the petitioner neglected to maintain them, as result of which they had to remain dependent upon the earnings of their mother who is working as a teacher. It was further pleaded by the respondents before the trial Magistrate that the petitioner is a technical Engineer by profession and that he has served in Saudi Arabia and earned a huge amount of money. Therefore, he has resources to maintain the respondents who happen to be his minor children. It was also pleaded that the respondents are school going children and they have to incur huge expenses on their education, food and shelter which is being presently borne by their mother.

4. The petitioner, it seems, filed his objections to the petition before the trial Magistrate in which he blamed mother of the respondents for the matrimonial dispute between the two. He denied the allegations leveled by the respondents against him. It was pleaded by the petitioner in his objections that he is a caring father and that he is paying monthly school fee and other expenses of the respondents but at present he is jobless. It was also pleaded by the petitioner that he had worked in Saudi Arabia for a certain period and has given his entire earnings to the mother of respondents who has purchased property out of that amount in her own name. It has been also pleaded by the petitioner that mother of the respondents is a Government teacher and she has sufficient earnings to take care of the needs of the respondents.

5. It seems that after filing his objections, the petitioner remained absent from the proceedings before the trial Magistrate and he was set *ex*

parte on 23.08.2023. It also transpires that later on during the trial of the case the petitioner participated in the proceedings and cross examined the witnesses produced by the respondents. The learned trial Court, after appreciating the evidence on record, came to the conclusion that the respondents who are children of the petitioner, have been neglected and deserted by him and that they are unable to maintain themselves. Accordingly, the petitioner has been directed to pay monthly maintenance of Rs.4500/- each in favour of the respondents. The aforesaid order came to be challenged by the petitioner by way of revision petition before the learned Sessions Judge, Budgam who vide impugned order dated 11.07.2024 dismissed the revision petition.

6. The petitioner has challenged the impugned order on the grounds that his monthly income is only Rs.12000/- and, as such, it is not possible for him to pay Rs.13500/- to the respondents, particularly when he has also to support his ailing parents. It has been contended that the mother of the respondents is a Government teacher drawing a handsome salary, as such, liability to maintain the children cannot be fastened upon him only.

7. So far as the relationship between the petitioner and respondents is concerned, the same is not in dispute. It is also not in dispute that the respondents are minors. Therefore, it is the legal as well as moral obligation of the petitioner being the father of the respondents to maintain them. It is true that mother of the respondents is a working lady and she has her own income but that does not absolve the petitioner, being the father of the respondents, of his legal and moral responsibility

to maintain his children. Therefore, the contention of the petitioner that because mother of the respondents is earning, therefore, he cannot be directed to pay maintenance, is without any substance.

8. That takes us to the quantum of compensation awarded by the trial Court as upheld by the revisional Court. It is not in dispute that the petitioner is a qualified Engineer. It is also not in dispute that he has worked in Saudi Arabia for a number of years and earned income from there. The contention of the petitioner that he has given whole of his earnings to his wife is not established from the evidence led before the trial Magistrate. So far as the contention of the petitioner that he is only earning Rs.12000/- per month is concerned, the same is not established from the evidence on record. In-fact the petitioner has not led any evidence before the trial Magistrate to rebut the evidence produced by the respondents with regard to his income obviously because he has been set ex-parte. Even otherwise, it is not open to this Court to re-appreciate the evidence led by the parties before the trial Magistrate while exercising its powers under Section 482 of Cr.P.C.

9. In view of the foregoing reasons, I do not find any merit in this petition. The same is accordingly dismissed.

(SANJAY DHAR)
JUDGE

SRINAGAR
29.07.2024
Sarveeda Nissar

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