

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

Crl R 23/2021 CrIM(1183/2021)

AFROOZA AND ANR.

...Petitioner/Appellant(s)

Through: Mr. Noman Shafi, Advocate.

Vs.

MOHAMMAD ASLAM DAR

...Respondent(s)

Through: Mr. Huzaif Ashraf Khanpori, Advocate.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

25.10.2024

1. The instant petition has been filed by the petitioners against order dated 23rd of September 2021 (for short the impugned order) passed by the Court of Principal Sessions Judge, Family Court, Srinagar, (for short the court below) in case titled as "*Mst. Afrooza and Anr. Vs. Mohammad Aslam Dar*".
2. Facts giving rise to the filing of instant petition would reveal that the petitioners herein have filed maintenance proceedings under Section 488 CrPC against the respondent herein on 21st of August 2019 before the Court of 2nd Additional Munsiff, Srinagar, claiming maintenance therein from the respondent herein on the premise that the petitioner 1 is his legally wedded wife and from the said marriage petitioner 2 came to be born and that the respondent herein failed to maintain the petitioners and instead subjected the petitioner 1 to mental and physical torture, compelling her to leave the company of the respondent herein along with the minor child and to undertake a job of labour in the Srinagar Municipal Corporation and the earnings out of which job do not meet the expenses incurred by her on herself and of the minor child and that the respondent herein has sufficient source of income besides, having agricultural income around Rs.30,000/- per month.

3. In the said maintenance proceedings, the aforesaid Court on 29th October 2019 passed an order of interim maintenance in favour of petitioners herein to the tune of Rs.3,000/- and Rs.1,500/- respectively to be payable by the respondents herein. The said maintenance proceedings came to be opposed by the respondent herein by filing objections thereto admitting therein the relationship of husband and wife between him and the petitioner 1 herein as also the birth of the child therein the said marriage, however, alleged in the objection that the petitioner 1 herein left his company and the matrimonial home and shifted to her parental home without any justification, and though umpteen efforts were made by the respondent herein for the resumption of the matrimonial relationship with the petitioner 1, yet the said efforts failed, and that he-the respondent is a carpet weaver labourer earning Rs.5,000/- per month, and has out of said earnings not only to maintain his old aged parents, but also his younger ailing brother and that the petitioner 1 herein is a Government employee working in the Srinagar Municipal Corporation, Soura, Srinagar, and is drawing a handsome salary therein thus, is not dependent on the maintenance of the respondent herein.
4. During the pendency of the said proceedings before the Court of 2nd Additional Munsiff, Srinagar, same came to be transferred to the court of Principal Sessions Judge, Family Court, Srinagar, on 7th of June 2021 in the light of provisions of Section 8 of the Family Courts Act 1984, whereafter the said Court proceeded in the matter under the Act of 1984, and after directed the parties to lead evidence in the matter, whereupon the petitioner 1 herein appeared as her own witness, besides producing one Mst. Zareefa W/o Abdul Majeed Sheikh, as her witness, while the respondent herein as well appeared as his own witness and also produced one Ghulam Qadir Dar S/o Abdul Rehman Dar, as his witness.
5. The court below after considering the matter in its entirety and taking into consideration the evidence led by the parties before it in terms of the impugned order dated 23rd of September 2021, dismissed the maintenance proceedings qua the petitioner 1 herein and recalled the order of interim maintenance passed in her favour, however, enhanced

the amount of maintenance to the petitioner 2 from Rs.1,500/- to Rs.2,500/- payable from the date of the order.

6. The petitioners herein have questioned the impugned order qua the recalling of maintenance to the petitioner 1 herein on multiple grounds urged in the petition.

Heard counsel for the parties and perused the record.

7. Before proceeding to advert to the impugned order, it is significant to mention here that under the Act of 1984, the primary object and duty of Family Court is to make an endeavour and persuade the parties in arriving at a settlement in respect of the proceedings and for the purpose the Family Court may follow any procedure which it deems appropriate and has also to adopt a balanced approach, avoiding procrastination as well as undue haste while considering the matter under the Act of 1984, and also has to be sensitive to the cause of the parties for which the Act has been enacted.

It is significant to mention here that the Apex Court in case titled as “**Aman Lohia v. Kiran Lohia**” reported in **2021 (5) SCC 489** has provided in regard to the Family Courts that the said courts can inquire into the matter as per procedure prescribed by law and has not a special power to do away the mandatory procedural requirements, in particular, fairness and transparency in the process to be followed for adjudication of claims of both sides and that the nature of inquiry before Family Court is indeed adjudicatory requiring the Family Court to resolve rival claims of the parties and in doing so Family Court has to follow and adhere to the norms laid by the statute in that regard besides the foundational principles of fairness of procedure and natural justice.

It is also significant to mention here that the Apex Court in in case titled as “**Rajnish vs. Neha and Anr**”., reported in **AIR 2021 SC 569** has also laid down criteria for determining the quantum of maintenance under Family Courts Act and has, inter alia, held that the objective of grant of maintenance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of failure

of the marriage and not as a punishment to the other spouse and that there is no straight-jacket formula for fixing the quantum of maintenance, having further held that the factors which weigh with the Court for determining quantum of maintenance, inter alia, are the status of the parties, reasonable needs of wife and dependent children besides whether the applicant is an educated and professionally qualified, whether the applicant has any independent source of income, whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home, whether the applicant was employed prior to her marriage, whether she was working during the subsistence of the marriage, whether the wife was required to sacrifice her employment opportunities for nurturing the family, child-rearing and looking after adult members of the family and reasonable costs of litigation for a non-working wife.

It has further been held in the judgment supra by the Apex Court that on the basis of the pleadings filed by both the parties and the affidavits of disclosure of assets and liabilities, the Court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance.

8. Having regard to the aforesaid parameters setup in the judgments supra by the Apex Court, a deeper and closer examination of the impugned order would tend to show that though the Family Court has taken into consideration the facts and circumstances of the case inasmuch as the evidence led by the parties, before it yet has failed to take into account the necessity of filing an affidavit of disclosure of assets and liabilities before it by the parties in order to advert to the matter in its true and correct perspective and seemingly has overlooked the aforesaid important and fundamental aspects of the matter and has proceeded to decline the maintenance to petitioner 1 herein while taking into consideration employment of the petitioner 1 herein without having taken into cognizance the criteria laid down by the Apex Court in the judgment **Rajnes** supra for determining the entitlement and quantum of maintenance. The matter thus, has not

- received appropriate consideration by the court below, necessitating its remand back to the court below for its reconsideration.
9. Accordingly, petition is allowed and the impugned order insofar it declines the grant of maintenance to petitioner 1 herein is set aside while upholding the award of maintenance granted to petitioner 2 herein and consequently the matter is directed to be revisited and reconsidered by the court below afresh qua petitioner 1 herein taking into consideration the aforesaid observations made as also the law laid down by the Apex Court in the judgements supra in this regard and pass appropriate order in accordance with law.
 10. Parties to appear before the court below on 8th November 2024.

SRINAGAR
25.10.2024
Ishaq

