

(2018) 10 J&K CK 0012

Jammu & Kashmir High Court

Case No: Criminal Miscellaneous Case No. 08 Of 2018, IA No. 01, 02 Of 2018

Aashiq Feroz Ahanger
@APPELLANT@Hash
Shayista Akhter

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 3, 2018

Acts Referred:

- Code Of Criminal Procedure 1973, - Section 488

Hon'ble Judges: M. K. Hanjura, J

Bench: Single Bench

Advocate: Aamir Latoo, M. Ashraf Bhat

Final Decision: Disposed Off

Judgement

1. The background facts of the case are that the petitioner and the respondent married on 17.07.2011. The behaviour of the respondent towards the petitioner and his old ailing mother remained uncordial from the very inception of the marriage, but the petitioner tried to maintain the relationship. In spite of all these efforts of the petitioner, the respondent left her matrimonial home without the consent of the petitioner. The petitioner made umpteen requests to the respondent to resume the marital tie. He with the aid and help of some of the members of the Mohalla Committee and by taking the brother of the respondent into confidence motivated the respondent to resume the relationship. The respondent came back to her matrimonial home where she again started creating problems and as such the petitioner was forced and coerced to call the brother of the respondent, so as to make his

sister understand as to why she has been creating unnecessary problems for the petitioner and his mother. On 20.06.2012, the respondent's brother

took his sister with him to her parental home. He told the petitioner that he will bring her back after some time. Thereafter the respondent never

returned back in spite of many requests of the petitioner and on 11.06.2015 that is after a period three years of leaving from the date of matrimonial

home she filed an application under section 488 of Cr. P.C before the Court of Judicial Magistrate 1st Class Bijbehara. The Court directed the

petitioner to pay an amount of Rs. 2000/- per month to the respondent as interim maintenance. The petitioner paid the interim maintenance to the

respondent without any default. The petitioner submitted his objections before the Court and stated that he is not having any source of income as the

petitioner was an employee of J&K Bank, but was removed from the services on 18.03.2015 i.e. before filing of complaint under section 488 Cr.P.C.

He also submitted before the Court that he is liable to pay an amount of Rs. 2500/- per month in favour of a son bores from the other marriage. The

respondent neither proved the income of the petitioner before the said court, nor could she prove that the petitioner was still an employee of the J&K

Bank and despite that the Court of Judicial Magistrate 1st Class Bijbehara passed the impugned order of maintenance.

2. On the above set of facts, the petitioner has filed this revision petition before this Court wherein he has challenged the judgement dated 30.01.2018

passed by the learned Judicial Magistrate 1st Class Bijbehara. in case titled ""Shayista Akhter Vs. Ashiq Feroz Ahanger

3. Heard and considered.

4. The petitioner has chosen to file this petition in this Court instead of filing it before the concerned Sessions Court which ordinary is the proper Court

in the first instance. This makes it incumbent for this Court to place reference to an observation of this Court made in the Order dated 7.3.2006 passed

in a Criminal Revision Petition No. 118/2005 wherein this aspect has been considered by the Court by making the following observations:-

Before concluding, however, it would be appropriate to observe that the present revision petition which arises out of an order of judicial Magistrate,

Anantnag could and perhaps should well have been instituted in the Sessions Court at Anantnag where respondents would find it easy to prosecute

their case rather than in this Court which must have put them to greater inconvenience and expenditure. That the revision petition has been instituted

in this Court instead of concerned Sessions Court perhaps appears to have been occasioned by the fact that petitioner resides at Srinagar and instead

of going to prosecute the revision petition at Anantnag he chose to drag the respondents all the way from Pahalgam to Srinagar, which even though

permissible in view of the concurrency of revisional jurisdiction of this Court and the court of Sessions can perhaps not be approved in attending

realities of the case. Given that it would perhaps be advisable that as a matter of practice institution of revision petitions against Magisterial orders be

restricted to courts of Sessions, which besides being convenient for the parties would also be in the interest of proceedings because being nearer to

ground realities the court of Sessions can ascertain facts and circumstances of a particular case more clearly, and if necessary from parties directly

and in suitable cases try negotiated settlements also.

5. The para quoted above applies to the instant petition in all the fours because of the identity of circumstances involved in both the cases, and

Â therefore, both for the reasons of consistency and fitness, these are adopted in their fullness to determine the cause of this revision petition.

06. Accordingly, the petition is disposed of with leave to the petitioner to agitate the case before the concerned Sessions Court irrespective of the time

factor involved, for conducting the matter in accordance with the observation made.

07. Disposed of.