

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

...

CM(M) No.275/2023

FIRDOUS AHMAD GANIE

... Petitioner(s)

Through: -Mr.Ahmad Aarash, Advocate vice
Mr. N.A.Malik, Advocate

Vs.

**PRESIDING OFFICER PRINCIPAL DISTRICT AND SESSIONS
JUDGE KUPWARA AND OTHERS**

...Respondent(s)

Through: -None

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
27.12.2023

1) The petitioner has challenged order dated 23.06.2023, passed by learned Principal Sessions Judge Kupwara, whereby the learned Sessions Judge has dismissed the revision petition filed by the petitioner against order dated 25.02.2023 passed by learned Judicial Magistrate First Class (Sub Judge) Kupwara (hereinafter for short "the trial Magistrate") in a petition under Section 125 of Cr.P.C filed by respondent No.2 against the petitioner.

2) It appears that respondent No.2 had filed a petition under Section 125 Cr.P.C against the petitioner before learned trial Magistrate seeking maintenance from him. The application for grant of interim maintenance was also filed by respondent No.2 in the said proceedings. The learned trial Magistrate vide his order dated 25.02.2023 has

allowed the application of respondent No.2 and held her entitled to interim maintenance of Rs.4600/-which was to be payable by the petitioner. The aforesaid order came to be challenged by the petitioner by way of a revision petition before learned Sessions Judge Kupwara (hereinafter for short “the revisional court”), who vide impugned order dated 23.06.2023 refused to interfere with the order passed by the learned trial Magistrate.

3) The petitioner has challenged the impugned order, primarily, on the ground that respondent No.2 had pronounced a khula-nama against the petitioner and she has no intention to fulfill her responsibilities as a wife and that the petitioner has fulfilled all his responsibilities till date. It has been further contended that the petitioner made all efforts to maintain matrimonial relationship with respondent No.2 and also filed a suit for restitution of conjugal rights, but respondent No.2 is reluctant to resume the relationship. It has been further contended that respondent No.2 was already married and she has been divorced by her first husband and now she is getting a sum of Rs.4000 from first husband, therefore, she is not entitled to any maintenance from the petitioner.

4) I have heard learned counsel for the petitioner and perused the record.

5) So far as relationship between the petitioner and respondent No.2 is concerned, same is not in dispute. While the petitioner claims that respondent No.2 is not resuming matrimonial relationship with him

despite his efforts, the same is being denied by respondent No.2. Thus it is an issue which can be decided only after trial of the case. Similarly, the question whether respondent No.2 has executed khula nama is also a matter to be decided during the trial of the case. At this moment of time the relationship between the petitioner and respondent No.2 is not in dispute. It is also not in dispute that respondent No.2 is unable to maintain herself. Therefore, it is the duty of the petitioner to maintain respondent No.2.

6) So far as contention of petitioner that respondent No.2 is getting maintenance from her first husband is concerned, the documents placed on record by the petitioner belie this assertion. The order of maintenance that has been passed by Judicial Magistrate 1st Class on 26.11.2020 is in respect of minor son of respondent No.2 from her first marriage and not in her favour. Therefore, respondent No.2 cannot be denied maintenance by the petitioner with whom she is legally wedded and their marriage is still subsisting.

7) For the foregoing reasons I do not find any ground to interfere with the order passed by the learned trial Magistrate as upheld by the revisional court. The petition lacks merit and is dismissed accordingly.

(SANJAY DHAR)
JUDGE

SRINAGAR
27.12.2023
Sarveeda Nissar

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