

Sr. No. 116

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Crl R No.34/2024

Reserved on : 30.08.2025.
Pronounced on: 15.09.2025.

Ashok Kumar
S/O Sh. Krishan Lal,
R/O Village Rattanpur,
Tehsil Akhnoor, District Jammu.

....Petitioner(s)

Through :- Mr. Ajay Bakshi, Advocate.

V/s

1. Asha Kumari
W/O Sh. Ashok Kumar
D/O Prabh Dayal,
R/O Village Doomi,
Tehsil Bhalwal, District Jammu.
2. Sumit Kumar
S/O Ashok Kumar
3. Amit Kumar
S/O Ashok Kumar
Both R/O Village Doomi
Tehsil Bhalwal, District Jammu.

....Respondent(s)

Through :- Mr. S. Rupinder Singh, Advocate.

CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

1. Through the medium of this judgment, it is proposed to decide the above titled criminal revision petition filed by the petitioner, against the order dated 02.07.2024 ('impugned order') passed by the court of learned Principal Judge, Family Court, Jammu ('Trial Court') in maintenance petition No.4761/2021; U/S 488 CrPC titled '*Asha Kumari & Ors. V. Ashok Kumar*' whereby the interim maintenance granted to respondents was enhanced to Rs.20,000/-, as per their share, enumerated in the order impugned.

2. The impugned order has been assailed by the petitioner-State on the following grounds:

- “a. Because the order Passed by the trial court is against the fact and law and is arbitrary, which is required to be set aside.
- b. Because the trial court had failed to appreciate that there is no change in circumstance and without appreciating the facts of the case had passed the impugned order, wherein the interim maintenance is enhanced that the petitioner no.1 is entitled for an amount of Rs 15000 per month and petitioner no.2 is entitled to Rs 5,000 per month.
- c. Because the trial court fails to appreciate while passing the impugned order that the respondent had made the unconditional statement that he is providing all the amenities of life to the petitioner/respondents herein and also provide separate accommodation which has been constructed by the petitioner by his dint of hard earned money.
- d. Because the trial court have not dealt with the objection filed by the respondent/petitioner herein and straightway enhanced the amount from Rs 8000/- to Rs 20,000/- of interim maintenance without giving the cogent reason in the impugned order.
- e. Because the trial court has taken the full salary of the respondent/petitioner herein including the allowances which may vary from place to place of posting i.e. when the petitioner is being transferred from peaceful station to disturbed station and the trial court has placed much reliance on the salary by ignoring the basic salary in hand which the petitioner is getting.
- f. Because the trial court have not appreciated the statement made by the petitioner that his both sons are not studying and the elder son of the petitioner is doing private job in Hero Agency and getting the salary of Rs 12,000 per month and younger son have also left the studies, despite this fact the trial court had observed that the responsibility of maintaining the 2nd son also rest upon the petitioner no.1/respondent herein and she had to take care of his education and other basic needs of life as such

there is a need for enhancement of interim maintenance of the petitioner/respondent herein.

- g.** Because the trial court has also ignored the law settled by the apex court that no wife shall be entitled to receive allowance of maintenance or interim maintenance, if without any sufficient means, she refuse to live with her husband and the petitioner has specifically stated in his objection that the petitioner/respondent herein had withdrawn her accompany from the respondent/petitioner herein on her own despite the fact that the respondent/petitioner has given separate accommodation to the petitioner/respondent herein with all the basic facilities which are required to meet the ends of life.
- h.** Because the trial court also fails to appreciate that the respondent/petitioner herein had made the statement in open court that during the pendency of the application his elder son has left his studies and younger son has also left the school and further that the respondent no. 1 is doing the private job in Ayushman Bharat Centre in Panama Chowk, Jammu though this fact was not in knowledge at the time of filing of reply to the application filed by petitioner/respondent no.1 herein and she is withdrawing salary of Rs 13000.”

3. It appears that the respondents herein as petitioners in a maintenance petition under Section 488 CrPC had been granted maintenance by the learned Magistrate vide order dated 13.12.2017 @ ₹ 5,000/- in favour of the wife and ₹ 3,000/- in favour of the minor sons. Later, an application seeking enhancement of the interim maintenance came to be filed by the wife and the sons before the Principal Family Court, Jammu and the learned Presiding Officer vide impugned order dated 02.07.2024 taking note of the fact that the father as respondent therein, was receiving gross salary to the tune of ₹ 42,800/- besides gross allowances to the tune of ₹ 53,290/- which had been subjected to deduction of

income tax to the tune of ₹ 7,659/- and a monthly subscription towards GPF to the tune of ₹ 30,030/- and keeping in view the other factors allowed the application and enhanced the maintenance allowance @ ₹ 15,000/- in favour of the petitioner no.1-wife, and ₹ 5,000/- in favour of petitioner no.2, a total of ₹ 20,000/-. The Family Court observed that after deducting the compulsory deductions from the gross salary, the actual income from salary and allowance comes to the tune of ₹ 80,748/- and that the respondent by showing his less salary with huge deduction of GPF cannot escape from maintaining the petitioners in view of High Price Rise Index.

4. Learned Family Court rejected the plea of the respondent father that one of his sons has become major and was thus not dependent upon him and held that it is the duty of the respondent to maintain his children if they are not in a position to earn.

5. Learned counsel for the petitioner-father has restricted his arguments on three points, firstly that both the sons of the petitioner having attained the age of majority, as such, they are not entitled to any kind of maintenance to be provided by father, therefore, the impugned order granting maintenance in favour of one of the sons was bad and is not sustainable that both the sons of the petitioner, after their studies, having joined employment and have their own sources of income and cannot be stated to be dependent on their father; and secondly the Court below has taken into account all the allowances along with salary to reckon his income as ₹80,000/- whereas fact of the matter is that the allowances go on fluctuating having regard to the place of posting of the petitioner who has been serving in the paramilitary force; that the petitioner who

was earlier posted in Srinagar was getting higher allowances and now being posted to a soft station was not getting all the allowances which has decreased his income; and thirdly that respondent had also her own income as she was working on a private job with monthly income of ₹13,000/- which was not within the knowledge of petitioner and respondent-wife had not disclosed the same while pleading enhancement of maintenance.

6. It appears that the petitioner had neither pleaded, nor led any evidence, while opposing application for enhancement, on the ground that the wife and son who have been granted enhanced maintenance, had their own income, so as to enable the family court to properly assess the plea for enhancement.

7. Section 489 of the J&K CrPC deals with the alteration in allowance; granted in terms of Section 488 of the J&K CrPC, under Chapter XXXVI, about the Maintenance of the wife/children/parent. The respondents had invoked this provision to seek enhancement of the maintenance allowance already granted in their favour by the Court. So far as the first plea with regard to the attaining of the majority by both the sons of the couple, it is indisputable that they have attained the age of the majority and petitioner claims they have their own incomes, as such, in view of the provisions of Section 488 CrPC, they are not entitled to seek maintenance in view of their age, after attaining the age of majority. He also took a plea that respondent-wife also has her own income, which she had not disclosed, but he can prove it.

8. Section 489 CrPC is reproduced below for the sake of reference:

“489. Alteration in allowance.

(1) On proof of a change in the circumstances of any person receiving under Section 488 a monthly allowance, or ordered

under the same section to pay a monthly allowance to his [wife, child, father or mother] the Magistrate may make such alteration in the allowance as he thinks fit.

- (2) *Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under Section 488 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.*
- (3) *At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance has been ordered to be paid under Section 488, the Civil Court shall take into account the Sum which has been paid to, or recovered by, such person as monthly allowance in pursuance of the said order.”*

9. The petitioner herein had not taken such a plea before the court below to seek alteration of the order in terms of Section 489 CrPC, in opposition to the application moved by the opposite side. Even now, the petitioner has a right to seek the modification/alteration of the order in terms of Section 489 seeking alteration in the allowance taking both the plea raised before this court with regard to attaining of the age of majority by the sons and also that both of them have been working after completing of their studies, with their own income and also that his income has undergone changes with his posting. He has the remedy to approach the court below to seek alteration in allowance having regard to his reduced income. Both these aspects are based on the record with regard to the age of the sons, their independent sources of income of respondents-wife and children and the reduction in income of the petitioner herein. Since the impugned order has been passed a year back, the petitioner shall be well advised to approach the court below seeking alteration of the order in view of his change in

income, if any, and the income of the respondents and the court below shall be within its jurisdiction to entertain and decide the matter.

10. Having regard to the afore-stated facts and circumstances, and the legal position, the petition is dismissed for want of merit and substance. The petitioner, however, shall be at liberty to approach Trial court, seeking alteration of maintenance.

11. Petition is accordingly ***dismissed*** along with connected applications, with liberty as to seek alteration of maintenance from the Family Court. Interim order, if any, shall stand vacated.

(MA CHOWDHARY)
JUDGE

Jammu:
15.09.2025.
Raj Kumar

Whether the order is speaking: Yes
Whether the order is reportable: Yes