

Regular List
Serial No. 04

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

MA No.69/2025

Date of pronouncement : 30.12.2025
Uploaded on : 16.01.2026

Pawan Kumar

.... Appellant(s)

Through:- Mr. Vinay Choudhary, Advocate vice
Mr. Zulker Nain Sheikh, Advocate

V/s

Ranju Choudhary & Ors.

.....Respondents

Through:- Mr. Karman Singh Johal, Advocate

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
JUDGMENT (ORAL)

1. The appellant-Pawan Kumar is husband of the respondent No.1-Ranju Choudhary and father of respondent No.2-Riya Choudhary (daughter) and respondent No.3-Master Shine Choudhary (minor son).
2. The marriage between the appellant and the respondent No.1 is of **24.02.2004** but in the course of time, the matrimonial relationship between the two is reported to have gone bad in terms whereof the respondent No.1-Ranju Choudhary reckoned herself and her two children i.e., respondents No.2 & 3, who

then were in the age of minority, being subjected to willful and deliberate neglect.

3. Therefore, proceedings under section 488 of Jammu and Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) came to be initiated on **19.05.2015** before the Special Railway Magistrate, Jammu, in which the appellant came to cause his appearance for contesting the petition by submitting his reply but then absenting himself from the proceedings which consequently resulted in *ex parte* proceedings initiated against him by virtue of an order dated **29.12.2016** and, finally, maintenance proceedings disposed of by virtue of final order dated **29.05.2017** by the court of Special Railway Magistrate, Jammu on its file **No.12/Main**.
4. In terms of said final order dated **29.05.2017**, the court of Special Railway Magistrate, Jammu came to hold the respondents entitled for monthly maintenance from the appellant's end with **Rs.4000/-** per month payable to the respondent No.1- Ranju Choudhary and **Rs.3000/-** per month each to the respondents No.2 & 3 who were held to be in care and custody of the respondent No.1.
5. Thus, in aggregate, the appellant was obliged to pay **Rs.10,000/-** per month in favour of the respondents No.1 to 3 as monthly maintenance payable with

effect from the date of institution of the proceedings under section 488 of Jammu and Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) which was **19.05.2015**.

6. The appellant is an Ex-Army personnel, having retired in **September 2015** from **24- Punjab Regiment** as **NK ACP-1** with a pensionable service, earning monthly pension.
7. The appellant made an application for seeking setting aside of ex-parte final order dated **29.05.2017**, passed by the court of Special Railway Magistrate, Jammu.
8. Said application of the appellant resulted in its disposal by a mutual understanding which came to be recorded by the Special Railway Magistrate, Jammu in its order dated **23.08.2019** resulting in setting aside of final order dated **29.05.2017** on the terms and conditions settled between the appellant-Pawan Kumar and the respondent No.1-Ranju Choudhary and in reviving the maintenance proceedings in the main case.
9. As per the purported settlement between the appellant-Pawan Kumar and the respondent No.1-Ranju Choudhary, on the basis of which the final order dated **29.05.2017** was set aside and the same was recalled by the court of Special Railway

Magistrate, Jammu, in terms of order dated **23.08.2019** whereby the appellant was directed to pay the school fee and medical expenses with respect to respondents No.2 & 3, with a corresponding right to visitation to them on second and fourth Sunday and further, the maintenance of **Rs.10,000/-** per month to be counted as an interim maintenance till final disposal of the proceedings under section 488 of Jammu and Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.).

10. For the sake of reference, this Court re-produces said order dated **23.08.2019** passed by the court of Special Railway Magistrate, Jammu in recalling its final order dated **29.05.2017:-**

“The parties alongwith their Ld. counsel present. As the arguments on the application for setting aside of ex parte order dt. 29.05.2017 were being heard, a consensus emerged between the parties that the court may set aside ex parte order supra, by making amount of maintenance i.e. Rs.10,000/- awarded by court vide order dt. 29.05.2017, as interim maintenance till the final disposal of the petition. It was also settled that the respondent shall pay the reimbursed school fee and medical expenses to the appellants and shall have visitation right to meet his children on 2nd & 4th Sunday. The respondent shall take them along at 10 am and will drop

them back at the residence of appellants at 5 pm.

Signature of parties are taken on the margin of the order sheet. The compromise/settlement is accepted. The order dt. 29.05.2017 is set aside on the terms and conditions settled by the parties above. The file shall be restored from the point of setting ex parte and shall come up for hearing on 13.09.2019. This application is disposed of accordingly.”

11. On the other hand, the appellant ventured to file a petition on **27.02.2023** under section 12 of the Guardian and Wards Act, 1980 thereby seeking the custody of the respondents No.2 & 3 from the respondent No.1 in which, by virtue of an order dated **15.04.2023** passed by the court of learned Additional Principal Judge (Family Court), Jammu, a direction for facilitating the meeting of the appellant with respondents No.2 & 3 came to be placed into effect.

12. In the meanwhile, in the revived proceedings under section 488 of Jammu and Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.), the respondents came forward with an application dated **05.01.2024** stating therein that there are arrears of maintenance recurring

against the appellant, for seeking recovery of which the respondents solicited indulgence of the Court of learned Additional Principal Judge (Family Court), Jammu before whom the proceedings under section 488 of Jammu and Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) came to be transferred in the course of time because of J&K Reorganisation Act, 2019 whereby the Family Courts Act, 1984 came to be applicable in the UT of Jammu & Kashmir.

13. In order to relieve himself from the burden of recurring payment of maintenance and the arrears in favour of the respondents due from the his end, the appellant solicited the indulgence of the court of learned Additional Principal Judge (Family Court), Jammu for staying the execution of the order dated **23.08.2019** passed by the court of Special Railway Magistrate, Jammu whereby the recurring liability of **Rs.10,000/-** as maintenance was set into effect against the appellant while recalling the final order dated **29.05.2017**.

14. The appellant made said application on **20.04.2024** before the court of learned Additional Principal Judge (Family Court),

Jammu which has come to suffer dismissal in terms of order dated **29.10.2025** against which the appellant has rushed to this Court with present appeal purported under section 19(1) of the Family Courts Act, 1984.

15. In terms of order dated **24.11.2025**, this Court came to respond to the statement of the counsel for the appellant that as on date out of arrears of **Rs.7,40,000/-**, **Rs.2,21,000** has been paid to the respondents and a balance of **Rs.5,19,000/-** is payable.

16. This Court, thus, directed the appellant to deposit an additional amount of **Rs.2,50,000/-**, which came to be paid by the appellant through Bank Draft in the name of respondent No.1- Ranju Choudhary, as came to be reflected in an order dated **17.12.2025**.

17. Now coming to the issue in hand in the context of appeal so preferred by the appellant, this Court is to examine as to whether the appellant, at first instance, was entitled to make an application before the court of learned Additional Principal Judge (Family Court), Jammu for seeking stay of execution of order dated **23.08.2019** passed by the court of Special Railway Magistrate, Jammu which then

was seized of the proceedings under section 488 of Jammu and Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) before transfer of case taking place.

18. In this regard, the fact needs to be kept in perspective that otherwise the proceedings so initiated by the respondents under section 488 of Jammu and Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) had been decided in terms of final order dated **29.05.2017** against which the appellant did not avail any remedy, be it appellate or revisional under J&K Code of Criminal Procedure, Svt., 1989 (1933 A.D.), but instead the appellant had sought setting aside of final order dated **29.05.2017** as being an ex parte order but without citing as to under which provision of J&K Code of Criminal Procedure, Svt., 1989 (1933 A.D.) said course of action was available at his end.

19. Jammu and Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) no-where provided any scope for any such application for setting aside of a final order, be it ex parte or otherwise, disposing of proceedings under section 488 of Jammu and Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.).

20. It is only when the respondent No.1-Ranju Choudhary through her counsel consented to setting aside of said final order dated **29.05.2017**, which otherwise was operating in favour of the respondents, that the court of Special Railway Magistrate, Jammu granted indulgence but by retaining the obligation upon the appellant to continue to pay **Rs.10,000/-** per month as interim maintenance to be resting upon him and, as such, is a self-invited liability wherefrom the appellant could not have any escape on any pretext whatsoever much less on the pretext of being not granted access to meet the respondents No.2 & 3.

21. The only scope for the appellant to escape out of latch of liability resting upon him in terms of order dated **23.08.2019** was to have first cleared all the pending arrears leaving nothing outstanding whatsoever and then making a plea to the court to relieve him from the burden by show of reasons as to how he expected himself to be relieved from the responsibility of providing recurring maintenance and sustenance to the respondents all dependent upon him for their bare sustenance and maintenance.

22. In his entire memo of appeal, the appellant has not come forward with any claim that in terms of order dated **23.08.2019**, there was and is no outstanding against him and further that he has been paying recurring maintenance amount in favour of the respondents without a miss and also correspondingly liquidating the arrears.

23. The appellant did not seek setting aside of order dated **23.08.2019** by restoring final order dated **29.05.2017** and, therefore, there was no basis factual as well as legal with the court of Additional Principal Judge (Family Court), Jammu to order stay of execution of said order dated **23.08.2019** and rightly resulted in passing of the order dated **29.10.2025**.

24. Therefore, this Court is not inclined to grant indulgence in response to the present appeal preferred by the appellant as this Court seriously doubts whether the present appeal is even maintainable under section 19(1) of the Family Courts Act, 1984.

25. Impugned order dated **29.10.2025** in itself is not an order which has carried out adjudication of any sort of an issue related to the pending maintenance proceedings under section 488 of Jammu and Kashmir Code of Criminal

Procedure, Svt., 1989 (1933 A.D.). Impugned order dated **29.10.2025** has simply turned down the application of the appellant in terms whereof stay of operation/execution of order dated **23.08.2019** was solicited.

26. Order dated **23.08.2019** is a consent order and, therefore, in real sense of the situation, the appellant is actually coming forward assailing the consent order so passed by the court of Special Railway Magistrate, Jammu.

27. This Court, before undertaking the adjudication of the matter, had interaction with the respondents No.2 & 3 in the Chamber wherefrom this Court came to the realization that both respondents No.2 & 3 are very bright minds who are very serious with respect to their career through the mode of their education and, as such, have expressed their earnest desire for assurance that their education does not become casualty on account of lack or deficit of maintenance to be provided from the appellant's end particularly when their mother-respondent No.1 is a household women and just 12th pass.

28. The respondents No.2 & 3 have also shared their apprehension that their place of abode in

residential house **No.G-124**, Sainik Colony, Jammu be secured so that their dislodgment from the said residence by any act of omission or commission on the part of the appellant on the pretext of the said property, being his parental property, may leave all the respondents on the road side.

29. Having considered said aspirations and apprehension of the respondents No.2 & 3 and also considering the fact that maintenance proceeding is still going on by reference to section 488 of Jammu and Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) before the court of Additional Principal Judge (Family Court), Jammu institution of which dates back to 2015, some meaningful indulgence on the part of this Court in the matter is warranted and for that purpose the scope is provided under section 19(4) of the Family Courts Act, 1984.

30. Therefore, this Court *disposes of* this appeal by upholding the impugned order dated **29.10.2025** passed by the court of learned Additional Principal Judge (Family Court), Jammu with the following directions:-

(i) The court of learned Additional Principal Judge (Family Court), Jammu shall direct the bank through its concerned branch in which the monthly pension of the appellant is credited, to deduct an amount of **Rs.15,000/-** per month for the purpose of its payment to the respondent No.1- Ranju Choudhary so as to ensure recurring payment of **Rs.10,000/-** monthly maintenance settled as per order dated **23.08.2019** and **Rs.5,000/-** towards recovery of recoverable arrears.

(ii) Insofar as the full and final recovery of arrears to whatever amount the same may be obtaining, the same shall take place upon the final conclusion of the maintenance proceedings under section 488 of Jammu and Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.).

(iii) The appellant is hereby directed not to dislodge the respondents from their residential accommodation of **house No.G-124**, Sainik Colony, Jammu without permission of this Court for which he may lay a motion stating facts as to why the respondents are intended to be dislodged

from said house and what is alternate residential accommodation meant to be arranged by him.

- (iv) Incharge Police Post, Sainik Colony is directed to ensure the safety and security of the person of the respondents from being subjected to any wrong/harassment from the end of the appellant in the context of their continuing habitation in house **No.G-124**, Sainik Colony, Jammu.

31. The court of learned Additional Principal Judge (Family Court), Jammu is directed to conclude the maintenance proceedings under section 488 of Jammu and Kashmir Code of Criminal Procedure, Svt., 1989 (1933 A.D.) within a period of next six (6) months by or before **31.07.2026**.

32. ***Disposed of.***

33. Copy of this order be provided by the Registrar Judicial, Jammu to the court of learned Additional Principal Judge (Family Court), Jammu for being taken on record.

(RAHUL BHARTI)
JUDGE

JAMMU
30.12.2025

Sneha

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