

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Crl R No. 1/2024

Reserved on: 08.09.2025
Pronounced on : 17 .10.2025
Uploaded on: 23.10.2025
Whether the operative part or
full judgment is pronounced **Full**

KISMAT JAN ALIAS MALIHA

...PETITIONER (s)

Through: Mr. Shehayar, Advocate vice
Mr. Nissar Ahmad, Advocate.

VERSUS

HILAL AHMAD MALIK

Through: Mr. I. Sofi, Advocate.

...RESPONDENT(s)

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE.

JUDGMENT

01. The present Revision petition has been filed by the petitioner herein against the order dated 2nd of November 2023, passed by the Court of learned Principal Judge Family Court, Srinagar.

02. Facts emerging from the record reveals that the petitioner herein had instituted maintenance proceedings before the court of 3rd Additional Munsiff, Srinagar, under Section 488 Cr.P.C. on 16.02.2011 against the respondent herein, being his minor daughter and had averred therein that she was born to the respondent's first wife and, since her birth, had been ignored and not maintained by the respondent herein.

03. In the said proceedings initially an amount of ₹1,200/- as maintenance was ordered to be paid by the respondent herein to the petitioner herein which was subsequently enhanced to ₹1,700/- per month pursuant to an

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order dated 09th of April 2013 passed by the said Court upon an application filed by the petitioner herein for enhancement of maintenance and thereafter upon another application filed by the petitioner herein before the same Court on 11th of August 2014 under Section 489 Cr.P.C., seeking further enhancement of the said maintenance amount was sought which application, after contest by the respondent herein, came to be allowed, and the respondent herein was directed vide order dated 22.05.2018 to pay an enhanced amount of ₹5,000/- per month to the petitioner herein as maintenance with effect from the date of filing of the application.

04. Aggrieved by the said order dated 22nd of May 2018, the respondent herein filed a Revision petition before the Court of the Principal Judge, Family Court, Srinagar, which court in terms of the impugned order dated 2nd November 2023, allowed the application, holding that the payment of maintenance to the petitioner herein by the respondent herein could not continue beyond the age of majority as the petitioner herein having attained the same.

Heard learned counsel for the parties and perused the record.

05. Perusal of the record in general and the impugned order in particular would reveal that the court below has allowed the respondent's plea that the petitioner is not entitled to maintenance after having attained the age of majority, while misplacing reliance on various judgments of this Court as well as of the Apex Court referred to in the impugned order, however has overlooked the true scheme and object underlying the provisions of Section 488 Cr.P.C. in that, the said provision have to be read and interpreted so as to advance the justice and to protect, *inter alia*, an unmarried daughter who

is unable to maintain herself, notwithstanding the fact that she has attained majority as the said provision besides having been enacted to advance cause of justice has also to provided to protect an unmarried daughter from leading a life of destitution and starvation, as the scheme of said maintenance provisions contained in the Code of Criminal Procedure makes it evident that these provisions are intended to serve a social purpose with an object to provide social justice to the destitute wives, children, and parents who are neglected by the person under an obligation to maintain them. Though the said provision does stipulate that maintenance may not be granted to a daughter after she has attained majority, yet the said provision has to be read in conjunction with the main provision inasmuch as with the aforesaid object and is also further subject to proof that a major daughter upon attaining such majority is able to maintain herself now and also that she is not suffering from any physical or mental infirmity, as well.

06. The trial court, seemingly, has only referred to the provisions of law contained in Section 488 & 489 Cr. P.C, inasmuch as the judgements referred therein, without critically examining the application in order to arrive at a reasonable and just conclusion that the petitioner herein is disentitled to receive maintenance from the respondent herein after having attained majority as evidence whatsoever has been produced by the respondent herein before the court below to establish or justify that the petitioner herein, despite having attained majority, is physically and mentally sound and able to maintain herself, or possesses sufficient means and resources for her sustenance. The court below appears to have decided

the matter in a casual and mechanical manner, without due appreciation of legal position applicable to the case.

A reference in this regard to the judgment passed by the Coordinate Bench in the case titled “**Tariq Mehmood Bhat v. Zubaida Akhtar & Anr**” passed in CRM(M) No. 139/2020 dated 02.09.2021, would be relevant wherein para 14 and 15, the following has held that:-

“14. Section 488 Cr. P. C., as enacted, has to be read and construed having regard to its beneficent nature and cause of social justice embedded therein. Where a son or daughter reaches the age of majority, it does not mean that as from that date he or she has to starve. That is not the law. It only means that as from the age of majority, the law takes note of the fact that he has capacity to earn. But if he or she still depends on his or her mother either for study or for shelter, that fact will have to be taken into account, when a mother (or wife) is given maintenance. It, therefore, follows that all persons eligible to claim maintenance must be unable to maintain himself or herself.

It is not understandable that the child who even though attained the age of majority is not given any maintenance but the one who looks-after him or her gets it. The emphasis is on the phrase "neglect and refusal to maintain" and inability of the child to maintain itself not on the reason for inability to maintain. Therefore, simple and plain meaning has to be assigned as is implied in the provision. The provision is aimed at not only to remedy the neglect and refusal to maintain but also to prevent the evil consequence of such neglect or refusal to maintain. That being so, it cannot be so the intention of the legislation that a girl child who first develops a mental injury on account of neglect or refusal so as to fall within the exceptional clause of section 488 (1)(c) of Cr. P.C. and then the preventive measures would operate. Therefore, the word "neglect" used in the provision not only means a tacit non-performance of such a duty by father but also embraces the duty of a father to maintain his unmarried major daughter. It clearly postulates not only the existence of absolute nature of such duty and responsibility of a father, but also corresponding legally enforceable right of such a daughter. It is, thus, abundantly clear from the aforesaid discussion, that when an unmarried major daughter, taking education in the college, claims maintenance, taking education in the college, what is required to be proved is the financial dependence of the mother. As the word "Neglect" has not to be construed in a limited sense but in a broader prospect and needs of the children includes affection, due care, education etc. When a child suffers neglect in context with all these basic things, she is sure to be emotionally hit and amounts to mental injury reflecting upon her mental faculty. This also causes an intense mental suffering where children are left to suffer mental suffering and then permitted to claim maintenance from her father who is under statutory obligation to maintain them who are unable to maintain itself would amount to

wilful and unjustifiable infliction of pain and would amount to put clogs on the word "maintenance" which itself is very eloquent to express that it is a summary remedy given to serve the wife, children, parents so that they may not go astray and oppose to the very purpose for which this enactment is made. In other words, section 488 of the Code is designed to prevent vagrancy and destitute, and provides summary and speedy summary. It starts with the word "maintenance". The very meaning of maintenance is not to provide breathing spur to live but includes clothes, food education etc.

15. This leads to the irresistible conclusion that any child who has attained majority does not automatically cease to claim maintenance and allowed to starve if he is unable to maintain himself/herself. So long as the major unmarried daughter is despondent upon the mother, particularly pursuing study in the college and unable to maintain herself, would be entitled to claim maintenance from her father, cannot be allowed first wait to suffer mental injury so as to come within the ambit to sub-section (1) (c) and then ask for maintenance."

07. For what has been considered, observed, and analysed hereinabove, the impugned order is held to be legally unsustainable.

08. Accordingly, the instant petition succeeds, and the impugned order is hereby set aside and the respondent herein is directed to continue to pay maintenance to the petitioner as granted in terms of order dated 22nd of May 2018, passed by the Court of the 3rd Additional Munsiff (Judicial Magistrate 1st Class), Srinagar. However, the respondent herein shall be at liberty to seek modification or recall of the said order, in case circumstances necessities so.

08. ***Disposed of.***

(Javed Iqbal Wani)
Judge

SRINAGAR
17.10.2025
Showkat Khan