

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRMC No. 280/2015
MP No. 01/2015

Reserved on: 27.11.2025

Pronounced on: 03.12.2025

Uploaded on: 08.12.2025

*Whether the operative part or full
judgment is pronounced-**Full Judgment***

Parvaiz Ahmad Malik

...Petitioner(s)

Through: Mr. Z.A.Qureshi, Sr.Advocate with
Mr. Babar Bilal Malik, Advocate.

Vs.

Sahail Ahmad Malik

...Respondent(s)

Through: Ex Parte

CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. This is a petition filed under Section 561-A of J&K Cr.PC (akin to Section 528 of BNS) for quashing the orders dated 02.07.2014 and 19.06.2015 (impugned herein) passed by the court of learned Chief Judicial Magistrate, Shopian in a petition U/S 488 CrPC for grant of maintenance and the court of learned Principal District & Sessions Judge, Shopian, in the Criminal Revision against the order passed by the Magistrate, respectively.
2. The case in nutshell is that the petitioner herein got married with the mother of the respondent herein in August, 1998 and at the time of the said marriage the mother of the respondent herein was already pregnant and gave birth to a child (respondent herein) after 5-6 months of

marriage giving rise to the dispute between the petitioner and the mother of the respondent herein about the paternity of the said child.

3. Petitioner further pleads that due to the sincere efforts of the locals, the mother of the respondent herein voluntarily asked for 'khula-nama' from the petitioner herein, which got executed on 20th May, 1999, wherein, it was agreed upon that the mother of the respondent will not claim any maintenance for herself as well as for her son in future from the petitioner and the respondent herein will have no right to claim any maintenance or share from the property of the petitioner.
4. It is alleged that, after a period of almost 17 years, the respondent herein through his mother filed a petition under Section 488 of Cr.PC for grant of maintenance from the petitioner herein; that, the petitioner herein filed a detailed objections thereto and also filed an application for conducting DNA test of the respondent herein to ascertain his paternity; that, the court of learned CJM, Shopian allowed the application of the respondent herein for grant of maintenance vide its order dated 02.07.2014, granting interim maintenance of Rs.2500/- per month in favour of the respondent herein till final disposal of the main petition from the date of the said application i.e. 23.04.2013; that, aggrieved of the said order dated 02.07.2014, a revision petition came to be filed by the petitioner herein, which came to be dismissed by the court of learned Principal District & Sessions Judge, Shopian on 19.06.2015, with an observation that the revision does not sustain and needs no consideration by the court.
5. The petitioner herein through the medium of the present petition under Section 561-A of Cr.PC has challenged both the impugned orders, *inter alia*, on the following grounds:-

- (a) That, the petition filed by the respondent herein through his mother under Section-488 of Cr.Pc is a false, concocted, baseless, and untenable as the said petition has been filed after a period of almost 17 years.
- (b) That, the marriage of the petitioner with the respondent's mother was solemnized in the August, 1998 and a child (respondent herein) was born after a period of five months, and that the fact of pregnancy of the mother of the respondent was concealed to the petitioner. It was admitted by the respondent's mother in the 'khula-nama' that she was already pregnant at the time of marriage.
- (c) That, in the 'khula-nama' which was executed on 20th May, 1999, all the terms and conditions were mentioned and it was the respondent's mother who paid the petitioner Rs.5000/- for signing the said 'khula-nama'.
- (d) That, in view of above mentioned 'khula-nama' executed between the parties the petition under 488 Cr.PC itself was not maintainable before the CJM Shopian and was liable to be dismissed.
- (e) That, the petitioner filed his objections to the said petition of the respondent under Section-488 Cr.Pc, and along-side the objections an application for conducting of DNA test of the parties was required, but the learned trial court in a hot haste manner decided the said application without deciding application for conducting of DNA test of the parties.
- (f) That, conducting of DNA test in a matter relating to paternity of the child should be directed by the court, whenever, such request is made in a matter where paternity of the child is in issue before the court.

- (g) That, the judgment passed by the learned CJM dated 02-07-2014 reveals that the said application has been decided on 02-07-2014 but the announcement has been made on 10-05-2014, which shows clear non-application of mind on behalf of learned trial court.
- (h) That, the learned trial court has totally ignored the legal aspect of the matter that it was supposed to decide the application for conducting of DNA test but the learned trial court has not applied its judicial mind while deciding the said application, and that the same has been done by the learned Revisional Court vide its order dated 19-06-2015 dismissing the revision petition filed by the petitioner herein.
- (i) That, the learned trial court has treated the question of law as a question of fact thereby the learned trial court has adjudicated the matter in its wrong perspective otherwise the application moved by the respondent herein was liable to be rejected at its very outset.
- (j) That, the impugned orders passed by the learned trial courts are non-est in the eyes of law as the learned Magistrate by issuance of interim relief in favour of the respondent has over reached the main relief which could not have been granted at the conclusion of the proceedings and further the impugned order is bad in law as the learned Magistrate has not held any enquiry into the fact of paternity of the child which was prime duty of the court before passing any interim maintenance in favour of the respondent and the learned trial court has not appreciated the legal aspect of the matter that the application for DNA test was still pending before the learned trial court.

(k) That, the impugned orders passed by the learned trial courts are ultra-vires to the concocts of the 'Shariat' and the learned trial court has not appreciated the fact that the respondent is 17 years of age and within these 17 years the respondent has never agitated the said matter and the order smacks misinterpretation of the law, as such, on this count alone same deserves to be set aside.

(l) That, finally prayer is made for quashment of both the impugned orders passed by the learned trial courts.

6. While considering the petition on hand, this Court vide order dated 10.03.2017 directed conducting of DNA test of respondent-Suhail Ahmad Malik on the expenses of the petitioner, and accordingly the Head of Department, Forensic Medicine & Toxicology, Govt. Medical College, Srinagar was directed to collect the sample of the respondent-Suhail Ahmad Malik in presence of the petitioner herein. Thereafter, in terms of the order dated 15.12.2017, the report of the DNA test was submitted by the Central Forensic Science Laboratory, Ministry of Home Affairs, Government of India, Hyderabad which was produced in the open Court by Mr. M.I.Dar, the then AAG, in a sealed cover which after its perusal was directed to be re-sealed and to be kept in the custody of the Registrar Judicial, High Court wing Srinagar. This Court vide the said order dated 15.12.2017 observed that the matter needs to be considered finally.

7. What can be gathered from the perusal of the interim orders of this Court, the instant case has come up for consideration on a number of dates of hearing but due to non-appearance of counsel for the respondent herein the case got adjourned. In terms of the order dated 30.06.2022, Mr. F.A.Bhat, learned Advocate, while appearing for the

respondent submitted that he has no contact with the respondent and sought time to contact his client and report instructions in the matter. Same submission was made in terms of the order dated 04.08.2022. Thereafter, in terms of the order dated 13.09.2022, Mr. Mansoor Ahmad, Advocate appeared and submitted that he has been recently engaged as the counsel for the respondent and sought adjournment on that count. Then, in terms of the order dated 27.05.2024, respondent was set ex-parte due to his non-appearance on that date as well as on the previous date of hearing. That is how this matter is being considered in exparte.

8. Heard learned senior counsel for the petitioner and perused the trial court record available on file.
9. Mr. Z.A.Qureshi, learned senior counsel appearing for the petitioner vehemently argued that the learned Chief Judicial Magistrate, Shopian while deciding the application under Section 488 Cr.PC filed by the respondent herein through his mother seeking grant of interim maintenance, has not considered the application of the petitioner for conducting DNA test of the parties, filed by the petitioner along-side the objections to the application under Section 488 Cr.PC, and without considering this aspect the learned trial court, in a hot haste allowed the application of the respondent granting in his favour the interim monthly maintenance of Rs.2500/-. He further argued that it is a settled principle of law that with regard to conducting of DNA test, the putative father in the event of his unwillingness to subject himself to DNA test, coercive measures can be taken to obtain his blood samples.
10. It is the further argument of the learned senior counsel for the petitioner that in terms of the 'khula-nama' dated 20.05.1999, it is

clearly mentioned that the mother of the respondent will not claim any maintenance for herself as well as for her son (respondent herein) in future from the petitioner and the respondent herein will have no right to claim any maintenance or share from the property of the petitioner. How come the respondent herein came after a period of almost 17 years to claim maintenance from the petitioner herein, is the next argument of the learned senior counsel for the petitioner.

11.Learned senior counsel for the petitioner would further argue that the learned trial court has adjudicated the matter in its wrong perspective otherwise the application under Section 488 Cr.PC moved by the respondent was liable to be rejected at its threshold stage. He further contended that without considering and deciding the application of the petitioner for conducting of DNA test, the learned trial court should not have granted interim maintenance in favour of the respondent herein that too claiming the same after almost 17 years.

12.Since the paternity of the respondent soon after he was delivered by his mother had been disputed by the petitioner/father and this became a reason for the dissolution of the marriage solemnized between the petitioner and mother of the respondent in terms of 'khula-nama' executed between the parties at the instance of the mother of the respondent, wherein, she had agreed that she will not claim any maintenance for herself as well as for her son in future from the petitioner and the respondent shall have no right to claim any maintenance or share from the petitioner's property besides making a payment of Rs.5,000/- to the petitioner by the mother of the respondent on 20.05.1999. The marriage between the petitioner and the respondent's mother had been conducted in the month of August 1998

and after the respondent having been delivered by his mother just after 5/6 months of the marriage, the marriage was dissolved in the month of May 1999. The petitioner claims to have made strong objections to the maintenance to the application for grant of maintenance moved by the respondent through his mother in terms of Section 488 JK CrPC and also moved an application for subjecting him along with the respondent to DNA test so as to ascertain the paternity. It appears that the court of learned Magistrate without looking into this aspect of the matter raised by the petitioner herein as respondent before the court below granted interim monthly maintenance to the tune of Rs.2500/- vide order dated 02.07.2014.

13. Having been aggrieved of the order passed by the learned Magistrate, the petitioner preferred a criminal revision before the Sessions Court, Shopian which also dismissed his revision vide order dated 19.06.2015. As such, aggrieved of the orders passed by both the courts below i.e. of the Magistrate as well as Revisional Court were sought to be quashed invoking the inherent jurisdiction of this court in terms of Section 561-A of J&K CrPC.

14. During the pendency of the petition, this court deemed it proper and vide order dated 10.03.2017 directed to conduct DNA test of the parties on the expenses of the petitioner which was conducted by Central Forensic Science Laboratory (CFSL), Hyderabad, who opined as under:

“Statement of Results: Alleged relationship is excluded.

Parvaz Ahmad Malik (the alleged father) and Sahil Parvaiz (the child in focus) do not share alleles at sufficient genetic markers. Of the Genetic Identity

Systems tested 7 of 15 (D21S11, D13S317, D251338, D19S433, vWA, D18S51 and FGA) do not match and the combined paternity index is zero.

***Opinion:** Based on the DNA analysis the alleged father Parvaiz Ahmad Malik is excluded as the biological father of the male child Sahil Parvaiz of Azmat Akhter.”*

15. The respondent after receipt of DNA report absented from the proceedings and on his behalf, Mr. F A Bhat and Manzoor Ahmad, Advocates appeared on some odd dates but no exception or objection was raised to the veracity of the DNA report and the respondent was proceeded ex parte vide order dated 27.05.2024.
16. On perusal of the DNA report dated 22.06.2017 received from the CFSL, Hyderabad, it reveals that the paternity of the respondent has not been confirmed of the petitioner. Thus, in view of both the important factors of the case, firstly, of having agreed by the mother of the respondent in her 'khula-nama' at the time of dissolution of her marriage with the petitioner that no claim with regard to maintenance or property shall be laid on behalf of respondent from the petitioner herein and, secondly, that as per DNA report, it has not been proved that the respondent's father is the petitioner herein.
17. Under Section 488 J&K CrPC, a child or an illegitimate child is entitled to seek maintenance from his father. However, in the present case, there is overwhelming evidence in the form of DNA test which does not confirm to such a relationship between the petitioner and the respondent. The respondent though was born to the wife of the petitioner, after their marriage but within 5-6 months, as such on determination of the DNA of the parties, was got conducted in terms of the interim orders of this court. The

respondent, in view of the DNA Report, formulated by CFSL, Hyderabad was not proved to be even illegitimate son of the petitioner. In view of strong evidence on the aforesaid counts, the impugned orders passed by the learned Magistrate as well as the Revisional Court do not sustain.

18. Viewed thus, both the impugned orders being not sustainable are liable to be quashed. As a result, the petition is allowed and the impugned orders are quashed. The learned Magistrate shall take into consideration all the proofs such as 'khula-nama' and the DNA test for the disposal of the petition before it.

19. A copy of this order shall be forwarded to the court of learned Chief Judicial Magistrate, Shopian for information and compliance.

20. The petition is disposed of along with pending applications.

(M. A. CHOWDHARY)
JUDGE

Srinagar
03.12.2025
Muzammil. Q

Whether the judgment/order is reportable: Yes / No