

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

CRM(M)/282/2025

SHEIKH ABDUL AHAD ZARGAR(Senior Citizen) ...Appellant/Petitioner(s)

Through: Mr. Faheem Nisar Shah, GA

Vs.

SAKEENA BEGUM ...Respondent(s)

Through: Mr. B.A. Tak, Advocate

CORAM:
HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

ORDER
21.09.2026

- 1.** Heard learned counsel for the parties at length.
- 2.** The parties are stated to have married in the year 2010 and lived together for some time. According to the petitioner, they mutually separated in 2018. Thereafter, in 2023, the respondent-initiated proceedings under the Domestic Violence Act. In those proceedings, the Trial Court directed the petitioner to pay maintenance of ₹5,000/- to the respondent. The petitioner challenged that order before the Appellate Court. The Appellate Court set aside the order and remanded the matter to the Trial Court for fresh consideration. The petitioner contends that, after the order of remand was passed by the Appellate Court, the respondent did not pursue the proceedings under the Domestic Violence Act and chose not to lead evidence therein. Instead, she instituted separate proceedings under Section 125 of the Code of Criminal Procedure (Cr.P.C.) seeking maintenance.

3. During those proceedings, on 30 August 2024, while considering the report regarding service upon the petitioner, the Trial Court was informed that the petitioner had been suffering from ill health for the preceding two years. The Lamberdar had reported that the petitioner was suffering from dementia, was unable to move from his place, and was completely bedridden.
4. In view of the said report, the Trial Court directed the Chief Medical Officer (CMO), Baramulla, to constitute a Medical Board. The Board was directed to visit the petitioner's residence, medically examine him, and submit a report regarding his mental and physical condition. However, on the very same day, the Trial Court passed another order directing the petitioner to pay interim maintenance of ₹8,000/- to the respondent.
5. The petitioner challenged the order granting interim maintenance by filing a revision petition before the Revisional Court. The Revisional Court dismissed the revision on the ground that the order granting interim maintenance was interlocutory in nature and, therefore, was not amenable to interference in exercise of revisional jurisdiction. Aggrieved thereby, the petitioner has approached this, Court.
6. Learned counsel for the petitioner submits that the petitioner suffers from dementia and mental incapacity, a condition which was subsequently confirmed by the Medical Board. It is contended that the Trial Court committed an error in passing two separate orders on the same day.
7. On the one hand, having regard to the reports submitted by the Lumberdar and the serving agency concerning the petitioner's medical condition, the Trial Court considered it necessary to constitute a

Medical Board to ascertain his mental and physical health. On the other hand, without awaiting the report of the Medical Board, the Trial Court proceeded to direct the petitioner to pay interim maintenance.

8. According to learned counsel for the petitioner, the order granting interim maintenance ought not to have been passed until the petitioner's medical condition had been duly ascertained. When confronted with these circumstances, learned counsel for the respondent was unable to justify the legality and propriety of the order dated 30 August 2024 whereby interim maintenance was granted in favour of the respondent.

9. During the course of the hearing, learned counsel for the respondent initially expressed ignorance regarding the proceedings instituted by the respondent under the Domestic Violence Act. Subsequently, however, learned counsel fairly conceded that such proceedings had indeed been initiated by the respondent and that she had not pursued them after the appeal against the maintenance order passed in those proceedings was allowed. In the aforesaid circumstances, once material had been brought before the Trial Magistrate indicating that the petitioner might be suffering from a mental incapacity, it was incumbent upon the Trial Magistrate, before proceeding to grant maintenance, to satisfy itself as to whether the petitioner was capable of effectively defending himself in the proceedings.

10. Although proceedings for grant of maintenance are summary in nature and a husband has a moral obligation to maintain his wife, the circumstances of the present case required the Trial Court to first ascertain the petitioner's medical condition. Particularly when the

parties were living separately and the proceedings under the Domestic Violence Act had not been pursued by the respondent, the Trial Court ought to have awaited the Medical Board's report before deciding the question of interim maintenance.

11. Passing an order directing the constitution of a Medical Board to ascertain the petitioner's mental and physical condition and, on the very same day, directing him to pay interim maintenance, without awaiting the medical report, was likely to cause prejudice to the petitioner. It is in these circumstances that the legality and propriety of the impugned order fall for consideration.

12. Having heard learned counsel for the parties and considered the matter, this Court finds merit in the submissions advanced on behalf of the petitioner. The impugned order suffers from impropriety, as an order granting interim maintenance ought not to have been passed without first awaiting and considering the medical assessment of the person against whom such an order was being made.

13. Accordingly, the impugned order is *set aside*. The matter is remanded to the Trial Court for fresh consideration in accordance with law. The Trial Court shall reconsider the issue after examining and taking into account the medical report, if any, concerning the petitioner's mental and physical condition. The parties shall appear before the learned Trial Magistrate.

(SANJAY PARIHAR)
JUDGE

SRINAGAR
21.09.2026
Shabroz