

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

CRM(M) 215/2020 in[WP(C) 2737/2019]
CrIM(186/2025) CrIM(769/2020)

JAVAID AHMAD BHAT

...Petitioner(s)

Through: Mr. Rizwan Bhat, Advocate.

Vs.

IRSHRAT JAN

...Respondent(s)

Through: Mr. Mukhtar Ahmad, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

18.09.2026

- 1.** Heard learned counsel for the parties at length.
- 2.** The principal ground urged by learned counsel for the petitioner in assailing the order passed by the learned Revisional Court, as also the order of the learned Trial Court, is that both the Courts below failed to appreciate that the respondent-wife had not established that the petitioner had refused or neglected to maintain her. Learned counsel for the respondent-wife, on the other hand, has strongly controverted the submission and contended that the concurrent findings recorded by the Courts below clearly establish that the petitioner had failed to discharge his matrimonial obligations and had refused and neglected to maintain the respondent-wife and their minor child.
- 3.** A perusal of the testimony of the respondent-wife recorded before the learned Trial Court reveals that she categorically deposed that she had married the petitioner about twelve years prior to the filing of the

petition and that a child was born out of the wedlock. She further deposed that, while she was seven months pregnant, she was turned out of the matrimonial home by the petitioner and, since then, has been residing with her parents. The aforesaid testimony remained uncontroverted, as the petitioner neither cross-examined the respondent-wife nor led any evidence in rebuttal.

4. Learned counsel for the petitioner, however, submits that the petitioner was not afforded an effective opportunity to cross-examine the respondent-wife and her witnesses. It is contended that the petitioner, being in service, had engaged counsel to represent him before the learned Trial Court; however, the counsel so engaged failed to appear and effectively prosecute the matter on his behalf, as a consequence whereof the petitioner was proceeded against ex parte. The order dated 27.09.2019, which subsequently came to be assailed before the learned Revisional Court, was thus passed ex parte.

5. It is further submitted that even before the learned Revisional Court a specific plea was raised that the finding regarding refusal and neglect could not have been sustained when the petitioner had not been afforded an effective opportunity to contest the proceedings and cross-examine the respondent-wife and her witnesses.

6. Learned counsel for the respondent-wife, while opposing the aforesaid contention, submits that it was the petitioner's own conduct and his continued absence from the proceedings that constrained the learned Trial Court to proceed against him ex parte. Attention of this Court has been invited to paragraph 2 of the order dated 27.09.2019 to contend that sufficient opportunity had been available to the petitioner to participate in the proceedings, but he failed to avail of the same.

Learned counsel for the respondent-wife, however, fairly concedes that the evidence relating to refusal and neglect could effectively be tested by the petitioner through cross-examination of the respondent-wife and her witnesses.

7. Having considered the rival submissions and examined the record, this Court finds that although the learned Revisional Court affirmed the finding of the learned Trial Court on the issue of refusal and neglect, it did not adequately consider the fact that such finding was essentially founded upon the evidence led by the respondent-wife, which had remained untested by cross-examination. No evidence had been led on behalf of the petitioner either.

8. The record further indicates that the petitioner had initially been serving in the Police Department and was thereafter serving in the Army and, therefore, his personal presence before the learned Trial Court on every date of hearing may not have been possible. It also appears that the counsel engaged by him did not effectively participate in the proceedings, eventually resulting in the petitioner being proceeded against ex parte.

9. In these circumstances, the finding on the issue of refusal and neglect, having been returned without affording the petitioner an effective opportunity to cross-examine the respondent-wife and her witnesses, ought not to be allowed to attain finality without such opportunity being afforded to him. There can be no dispute that proceedings under Section 488 of the Code of Criminal Procedure are summary in nature and are intended to provide speedy relief to a person unable to maintain himself or herself. The summary character of such proceedings, however, does not dispense with the requirement of

observing the principles of natural justice. Before an adverse finding is returned against a party, such party must ordinarily be afforded a reasonable and effective opportunity to contest the case and test the evidence relied upon against him.

10. At this stage, learned counsel for both the parties submit that the ends of justice would be met if the orders passed by the learned Trial Court and the learned Revisional Court are modified to the extent of permitting the petitioner to cross-examine the respondent-wife and her witnesses, whereafter the learned Trial Court may determine the application for maintenance afresh, in accordance with law.

11. Learned counsel for the petitioner has also fairly submitted that, pending such determination, the petitioner is ready and willing to continue paying the maintenance awarded by the learned Trial Court vide order dated 27.09.2019, subject to the said amount being treated as interim maintenance and being made subject to the final determination of the maintenance application.

12. In view of the foregoing discussion and having regard to the facts and circumstances of the case, this Court is of the considered opinion that the orders passed by the learned Trial Court and affirmed by the learned Revisional Court warrant interference to a limited extent. The petitioner ought to be afforded an effective opportunity to cross-examine the respondent-wife and her witnesses before the issue of refusal and neglect is finally determined. At the same time, having regard to the object underlying proceedings for maintenance, the respondent-wife and the minor child cannot be left without financial support during the pendency of the proceedings. Accordingly, the

order dated 27.09.2019 passed by the learned Trial Court, as affirmed by the learned Revisional Court, is modified to the following extent:

(i) The maintenance awarded by the Trial Court vide order dated 27.09.2019, whereby the petitioner was directed to pay ₹6,000/- per month to the respondent-wife and ₹4,000/- per month to the minor daughter, shall, until final determination of the maintenance application, be treated as interim maintenance.

(ii) The petitioner shall continue to pay a total amount of ₹10,000/- per month, comprising ₹6,000/- per month to the respondent-wife and ₹4,000/- per month to the minor daughter, as interim maintenance until the application for maintenance is finally decided by the Trial Court.

(iii) The evidence already recorded on behalf of the respondent-wife shall be made available to the petitioner, and he shall be afforded an effective opportunity to cross-examine the respondent-wife and her witnesses.

(iv) Upon conclusion of such cross-examination, the petitioner shall be afforded an opportunity to lead evidence in rebuttal, if he so chooses and subject to such evidence being permissible in law.

(v) Thereafter, the learned Trial Court shall consider and decide the application for maintenance afresh, on its own merits and in accordance with law, uninfluenced by the findings recorded in its order dated 27.09.2019 or by the findings recorded by the learned Revisional Court.

13. The arrears of maintenance, if any, calculated in terms of the order dated 27.09.2019, shall be cleared by the petitioner within a period of two months from today. The Trial Court shall endeavor to conclude the proceedings expeditiously, having regard to the nature and object of the proceedings, and shall ensure that no unnecessary adjournments are granted to either party. It is made clear that the observations made

herein are confined to the disposal of the present petition and shall not be construed as an expression of opinion on the merits of the maintenance application. The learned Trial Court shall determine the matter independently on the basis of the evidence before it and in accordance with law.

14. The petition is, accordingly, **disposed of** in the above terms. Copy of order be notified to trial court for compliance.

(Sanjay Parihar)
Judge

SRINAGAR:

18.09.2026

Shaista-PS

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

