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Supp

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) No. 305/2025
CrIM No. 727/2025

Aijaz Ahmad Sofi

..... Petitioner (s)

Through: Mr. Usman Gani, Adv.

V/s

Mst. Rukhsana Akther

..... Respondent(s)

Through:

Coram:

Hon'ble Mr. Justice Sanjay Dhar, Judge

ORDER

05.06.2025

1. The petitioner, through the medium of present petition filed under Section 482 of Code of Criminal Procedure/Section 528 of BNSS has challenged order dated 30.11.2022 passed by the learned Judicial Magistrate 1st Class (Munisff) Magam (hereinafter as the trial Magistrate) whereby in a petition under Section 125 of Code of Criminal Procedure filed by the respondents against the petitioner, monthly maintenance of Rs. 4000/- has been awarded in favour of

- respondent No. 1 and an amount of Rs. 3000/- per month has been awarded in favour of respondent No. 2.
2. It appears that the respondents had filed an application under Section 125 of Cr.PC against the petitioner herein claiming maintenance before the learned trial Magistrate. It was alleged by the respondents in their application that marriage between the petitioner and respondent no. 1 had taken place 11 years back and out of this wedlock, two issues were born. It was further averred that the petitioner has thrown out the respondents from his house and that he has not even bothered about their survival. According to the respondents, the petitioner has neglected to maintain them. It was pleaded that the petitioner is a man of means, doing business and earning more than 30,000/- per month whereas the respondents have no means to sustain.
3. It appears that the petitioner herein did not contest the petition and he was set exparte, whereafter, the respondents led evidence in exparte before the learned trial Magistrate. After analyzing the evidence led by the respondents herein, the learned trial court passed the

- impugned order whereby the petitioner was asked to pay monthly maintenance of Rs. 4000/- to respondent No. 1 and Rs. 3000/- to respondent No. 2. When the petitioner did not pay the said amount, the respondents filed execution petition before the learned trial Magistrate.
4. The petitioner, has challenged the impugned order on the grounds that the behavior of respondent No. 1 has not remained good towards him ever since her marriage with him. It has been contended that respondent No. 1 was requested to return to the matrimonial fold but she refused to do so. It has been further pleaded that respondent No. 1 filed petition under Section 97 of Cr.PC before the Judicial Magistrate 1st Class, Magam in which search warrants were issued against the petitioner for recovery of the minor children. It has been contended that the order of the learned Magistrate was challenged by way of petition bearing CRM(M) No. 380/2023 before this Court and the order of the learned trial Magistrate was stayed. It has been submitted that during the pendency of the said petition before this Court, efforts were going on for settlement

between the parties and in fact, orders were passed for personal appearance of the parties so that the matter could be settled but instead of getting the matter settled, the respondents filed petition under Section 125 of Cr.PC before the learned trial Magistrate. It is submitted that the petitioner was never served with the summons and the learned trial Magistrate, without hearing the petitioner, has passed the impugned order

5. I have heard learned counsel for the petitioner and perused the material on record.
6. So far as the contention of the petitioner that during the pendency of the petition bearing CRM(M) No. 380/2023, the parties were trying to enter into negotiable settlement, as such it was not open to the respondents to file petition under Section 125 of Cr.PC against the petitioner is concerned, the same does not hold any merit. This is so because the subject matter of the proposed negotiations that were going on before this Court during pendency of CRM(M) No. 380/2023 were with regard to the custody of the minor children and not with regard to maintenance of

the respondents. The subject matter of the dispute between the parties in CRM(M) No. 380/2023 was pertaining to the custody of the minor children and not pertaining to the payment of maintenance.

7. That takes us to the contention of the petitioner that the conduct of respondent No. 1 was blame worthy. It has been contended that the said respondent left matrimonial fold out of her own will and volition and she also acted in cruel manner against the petitioner. In this regard, it is to be noted that the petitioner has not chosen to contest the application filed by the respondents under Section 125 of Cr.PC. He has neither filed reply before the learned trial Magistrate nor has he cross examined the witnesses produced by the respondents during trial of the case. Without participation of the petitioner before the learned trial Magistrate in the proceedings, it was not possible for the learned trial Magistrate to know the stand of the petitioner. This Court while considering the legality of the impugned order has to consider the material that was available before the trial Magistrate and not what the

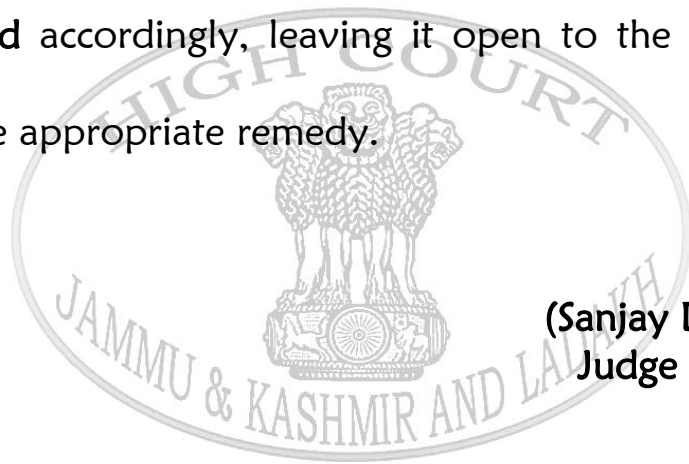
petitioner is pleading now. In the absence of stand of the petitioner before the trial magistrate, the only course open to the learned Magistrate was to pass order on the basis of un rebutted material brought before him by the respondents. The impugned order, in these circumstances cannot be termed as either illegal or based on no material.

8. The proper course for the petitioner would have been to approach the learned trial Magistrate by way of an application in terms of proviso to Sub Section (2) of Section 126 of Cr.Pc seeking setting aside of the exparte order made by the learned trial Magistrate against him or to file a revision petition against the impugned order. Instead of doing so, the petitioner has rushed to this Court and invoked its jurisdiction under Section 482 of Cr.PC/528 of BNSS without availing appropriate and efficacious remedy that was available to him

9. It is a settled law that the High Court would generally be reluctant to entertain a petition under Section 482 of Cr.PC/528 of BNSS if the petitioner has alternate and efficacious remedy available to him. In the present case, the

petitioner has without availing the appropriate and efficacious remedy available to him, filed the present petition. On this ground also, the present petition is held to be not maintainable.

10. For the foregoing discussions, the petition lacks merit and is **dismissed** accordingly, leaving it open to the petitioner to avail the appropriate remedy.



(Sanjay Dhar)
Judge

SRINAGAR
05.06.2025
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