

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No.1022/2022
CrIM No.2132/2022

.... Petitioner/Appellant(s)

Through:- Mr. Surjeet Singh Andotra, Advocate.

V/s

.....Respondent(s)

Through:- Ms. Pariksha Parmar, Advocate.

CORAM: HON'BLE MR.JUSTICE VINOD CHATTERJI KOUL,JUDGE

ORDER

1. Petitioners feeling aggrieved of an order dated 07/12/2021 passed by the learned Principal Sessions Judge, Kathua, (Revisional Court) have filed the instant petition under Section 482 of Code of Criminal Procedure, in which they seek setting aside of the said order, whereby the Revisional Court has set aside the order dated 22.08.2017 of the learned trial Magistrate, i.e., the Court of learned District Judicial Mobile Magistrate (T), Kathua, in terms whereof an interim maintenance of Rs.2,000 and Rs.1,000 in favour of petitioner nos.1 and 2 respectively has been granted.
2. Heard learned counsel for both the parties at length and also perused the file.
3. The grounds on which the order impugned passed by the Revisional Court is challenged and sought to be set aside are that; (i) the said order is contrary to the facts of the case and law on the point; (ii) the

Court of learned Sessions Judge, Kathua has miserably failed to appreciate the evidence placed on record; (iii) the Revisional Court has not considered the law as settled by the Hon'ble Supreme Court in the case titled **Chanmuniya vs. Virendera Kumar Singh Kushwaha (2011 SCC 141)**, wherein it has been held that, the provision of Section 125 Cr.P.C is a measure of social justice enacted with an intention of prevention of vagrancy and destitution, especially enacted to protect and inhibit neglect of women, children, old and infirm and falls within the constitutional sweep of Article 15(3) reinforced by Article 39 and referring to its earlier decisions passed in case of **Vimal vs. Verraswamy**, it was held that, the provisions of section 125 Cr.P.C is meant to achieve the social purpose and the object by providing speedy remedy for the supply of food, clothing and shelter to the deserted wife. It went on to decide the fact that a women not having a legal status of wife was also brought within the inclusive definition of term wife in **(SC Online GAU 314)** and **(2005 (3) SCC 636)** in right perspective.

4. The said law as settled by the Hon'ble Supreme Court in the aforesaid case, is squarely applicable in the facts and circumstances of the present case. For facility of reference, what law is held by Hon'ble Supreme Court, is reproduced below;

“where a man, who lived with a women for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and

obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in section 125 is meant to prevent...”

5. The learned Revisional Court in its order impugned has recorded the following finding;

“So far as the interim maintenance granted in favour of the respondent No.1 is concerned, when on the complaint of the respondent No.1 for commission of rape upon her by the petitioner, the petitioner has been convicted, it cannot be said that the petitioner and the respondent no.1 were living in relationship as husband and wife. Relationship between parties as husband and wife imposes an obligation on both the parties to cohabit and to live with each other. Then in that case there should not have been any complaint made by the wife that the male spouse committed rape upon her. In this way, prima-facie it cannot be said that the petitioner and respondent no.1 was living in relation as husband and wife under the same roof...”

6. It is stated by the learned counsel for the petitioners that the aforesaid finding on the facts is contrary to the pleadings and material on record, therefore, the order impugned deserves to be rejected and set-aside.
7. The petitioner no.1 admittedly is not the wife of respondent as she has stated in her petition that he (respondent) allured her to contract marriage by expressing his willingness for the same and with such allurements, respondent while posing himself to be an unmarried man, maintained physical relations with her and consequently, they started living together in live-in-relationship and for the last 10 years they appeared as husband and wife and also while in live-in-relationship

in 2016, she became pregnant, and gave birth to respondent no.2. She thereafter started asking him to contract marriage with her and give her the status of legally wedded wife in the society, but he refused to do so. It is stated that he also asked her to abort the pregnancy and when he refused to marry her, she filed a complaint against him with the Police Station concerned.

8. The petitioner no.1 is admittedly not the wife of respondent on the ground that she was living with respondent as wife sought maintenance from him for herself and her child by filing Petition under Section 125 Cr.P.C and the trial Magistrate directed the respondent to pay interim maintenance of Rs.2000/- per month, despite the fact that he was convicted for offence punishable under Section 376 IPC on the complaint filed by her.
9. Respondent being aggrieved of the said order dated 14.08.2021 passed by the learned trial Magistrate granting interim maintenance to petitioner nos.1 and 2 @ Rs.2000 and Rs.1000 respectively, challenged the same before the learned Principal Sessions Court, Kathua in revision. The Revisional Court after taking into consideration the fact that the petitioner no.1 was not wife and that on the complaint filed by her the respondent was convicted, the Revisional Court set aside the order passed by the learned trial Magistrate granting interim maintenance to her, but maintained the order to the extent of granting interim maintenance to petitioner no.2.
10. The petitioner no.1 has taken up the ground that she was living with him and their relationship was as husband and wife, therefore, she is entitled to claim maintenance from him. Admittedly no marriage

had ever been solemnized between her and respondent

She claimed that she had been in live-in-relationship and was neglected by the respondent, thereafter she could claim maintenance.

In the present case, on her complaint, the respondent was charged and convicted for offence punishable under Section 376 IPC. She had leveled charge of rape against him and on such allegation and evidence of the petitioner no.1, he has been convicted under Section 376 IPS and sentenced.

11. As the respondent was admittedly charged with an offence punishable under Section 376 IPC on the complaint of the petitioner, therefore, they cannot be treated as husband and wife for claiming maintenance under Section 125 Cr.PC. The relationship between the parties as husband and wife imposes an obligation on both to live together with each other as they were living as husband and wife and if they are living together as husband and wife and have lived years together, as such, then living together and cohabiting may not be an offence punishable under Section 376 IPC. The offence under Section 376 IPC would arise when such relationship is missing.
12. The fact that the respondent on the complaint of the petitioner no.1 had been prosecuted and ultimately convicted for an offence under Section 376 IPC and he having been sentenced to imprisonment for such offence makes it difficult to hold that he would be liable to maintain and pay expenses for her maintenance.
13. Having regard to the facts and circumstances of the case at this stage, while the petition is yet to be decided, she would not be entitled to grant of any interim maintenance under Section 488/125 of the Code

of Criminal Procedure. The learned trial Court has fallen in error, while granting interim maintenance in her favour.

- 14.** The learned Principal Sessions Judge, Kathua, while dealing with the revision in detail has rightly come to the conclusion that petitioner no.1 would not be entitled to interim maintenance and, accordingly, set-aside the order of the trial Magistrate granting interim maintenance under section 488 Cr.P.C in her favour.
- 15.** After carefully going through the file and hearing learned counsel for both the sides, it is found that no illegality has been committed by the Revisional Court, while setting aside the order of the trial Magistrate so far as it pertains to granting of interim maintenance in favour of petitioner no.1. In my opinion, there is neither any irregularity in the order impugned passed by the learned Sessions Judge, Kathua nor it can be said that passing of the order would cause miscarriage of justice. As the order impugned of the Revisional Court, is well reasoned, therefore, the same is upheld and the present petition being without any merit is, accordingly, **dismissed**.

(Vinod Chatterji Koul)
Judge

Jammu
16.09.2025
Ved-Secy.