
(2002) 02 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : Criminal Revision No. 68 of 2001

Anita Nargotra and Others

APPELLANT

Vs

Shri Rajinder Nargotra

RESPONDENT

Date of Decision : 22-02-2002

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 — Section 488

Citation : (2003) 1 JKJ 587

Hon'ble Judges : Sudesh Kumar Gupta, J

Bench : Single Bench

Advocate : C.S. Gupta, for the Appellant; Y.P. Koushal, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gupta, J.—This Revision is directed against order dated 8-3-2001 formulated by Sub-Registrar Judicial Magistrate, 1st Class, Jammu, whereby he has awarded an amount of Rs. 2,200/- per month as maintenance allowance to the wife and two minor children payable from the date of the order.

2. Facts relevant for the disposal of this Revision Petition put tersely are that Mrs. Anita Nargotra for herself and guardian of two minor

daughters, Arti and Rucheeta, commenced a petition u/s 488, Code of Criminal Procedure, 1989 (1983 A.D) (hereafter referred to as Code). In

that petition maintenance was claimed of the three neglected and refused to be maintained by the respondent, Rajinder Nargotra. On the filing of

the disclaimer he persisted the grant of the maintenance allowance to the petitioners and after recording the evidence and hearing the rival

contentions of the parties, the Judicial Magistrate awarded an amount of Rs. 2,000/- per month as maintenance payable from the date of the order.

3. The sole grievance of the petitioners is that the Judicial magistrate has allowed maintenance from the date of the order and not from the date of application without any justification or assigning any reason and has occasioned serious prejudice to the petitioners. It is further submitted that the petitioners are contesting claim for maintenance since 1985 and are surviving with a meagre amount of allowance of Rs. 400/- granted as interim maintenance. This aspect has also been considered by the Judicial Magistrate while granting the maintenance from the date of order instead of from the date of application.

4. The expression "date of the order" signifies the date on which the maintenance was granted. Under Section 488 (2) of the code, "maintenance allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance". The Sub-section clearly directs that on proof of the allegation made by the wife, such allowance shall accrue from the date of the order. In other words, it must be payable from that date. It is this power of judicious discretion of the Magistrate, which shall be exercised in such case and if he considers that the circumstances justify as to the grant of maintenance as on prior to the date of the order viz, from the date of the application, he has been fully empowered u/s 488 (2) of the code to make such an order.

5. It, therefore, follows, ordinarily the maintenance is to be ordered from the date of the passing of the order. Where there are circumstances justifying it, can be ordered from the date of application. The Trial Magistrate, therefore, can award maintenance either from the date of application or from the date of order taking into consideration the facts and circumstances of the case. Where the husband has been paying interim maintenance to his wife and children, maintenance, in such circumstances, normally should not be granted from the date of the application unless there is justifiable and cogent reasons given by the wife. It is clearly gatherable from the record that during the pendency of the proceedings u/s 488 Cr. P.C interim maintenance of Rs. 400/- (Rs. 200/- to the wife and Rs. 100/- each to two minor daughters) per month was awarded by the Court. This itself provided sufficient and justifiable reasons for the Trial Magistrate to pass an order of maintenance on finality of the proceedings from the date of the order and not from the date of application.

6. For the aforesaid reasons there is no merit in this Revision and is hereby dismissed, and the order dated 8-3-2001 passed by the Trial

Magistrate granting maintenance from the date of the order in favour of the petitioners is hereby upheld. Record in favour of the petitioners is

hereby upheld. Record shall be remitted back to the Trial Court.