

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M)/177/2022

ABDUL RAHEEM BHAT (Senior Citizen)

...Petitioner(s)

Through: Mr. G.N. Sofi, Advocate

Vs.

BEAUTY JAN AND ORS.

...Respondent(s)

Through: None

CORAM:

HON'BLE MR. JUSTICE RAHUL BHARTI JUDGE

ORDER
25.03.2025

1. The petitioner when he came to enter the age of senior citizen found himself caught between devil and deep sea as his two daughters joined by his son came forward with a petition on file No. 17/Jeem instituted on 10.07.2014 before Judicial Magistrate 1st Class, Anantnag under section 488 of the Code of Criminal Procedure, 1973 claiming maintenance from the petitioner.
2. All the three children of the petitioner at the time of filing of the petition for maintenance were in the age of majority.
3. The petitioner, at his own end reckoning, himself to be dependent upon his son for his maintenance came to file maintenance petition on file No. 54/M on 31.12.2014 before the same very court of Judicial Magistrate 1st Class, Anantnag invoking maintenance jurisdiction under section 488 of the J&K Code of Criminal Procedure.

4. The petition filed by the petitioner on file No. 54/M came to be allowed in terms of an order dated 28.08.2017 by the Judicial Magistrate 1st Class Anantnag holding him entitled to earn monthly maintenance of Rs. 2000/- from his son, the respondent No. 3- Sameer Ahmad Bhat.
5. In holding the petitioner entitled to earn maintenance from his son, the Judicial Magistrate 1st Class, Anantnag held the petitioner to be unable to maintain himself.
6. On the other hand, the maintenance petition filed by his two daughters and son against him on file No. 17/Jeem remained pending for a period of almost five years when it came to be disposed of by the same very Judicial Magistrate 1st Class, Anantnag vide order dated 09.04.2019 thereby holding the respondents No. 1 and 2 (two major unmarried daughters) entitled to maintenance of Rs. 1200/- each from the petitioner w.e.f. 10.07.2014.
7. The petitioner being aggrieved of the order dated 09.04.2019 of Judicial Magistrate 1st Class, Anantnag fastening liability of Rs. 2400/- per month reckoning upon him payable in favour of the respondents No. 1 and 2 assailed the said order in a criminal revision on file No. 32/N before the Court of Principal Sessions Judge Anantnag but failed to get any reprieve as his revision petition came to be dismissed by virtue of an order dated 26.02.2021 against which the petitioner came rushing to this Court with the present petition

under section 482 of the Code of Criminal Procedure 1973 invoking inherent jurisdiction of this Court to unburden him from the liability so fasten upon him.

8. Section 488 of the Jammu and Kashmir Code of Criminal Procedure, Svt, 1989 which was in force at the relevant point of time when the two daughters of the petitioner had come forward to claim maintenance from the petitioner requires to be set out.

(1) If any person having sufficient means neglects or refuses to maintain

[\(a\)](#) his wife, unable to maintain herself, or

[\(b\)](#) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

[\(c\)](#) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury finable to maintain itself, or

[\(d\)](#) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding two thousand rupees in the whole, as such Magistrate thinks fit, and to pay the same to

such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation.- For the purpose of this Chapter, "minor" means a person who, under the provisions of the Majority Act, Samvat 1977 is deemed not to have attained his majority"].

9. A bare perusal of section 488 would show that the two unmarried daughters of the petitioner, being of major age but suffering no physical/mental abnormality or injury rendering them unable to maintain themselves, were not supposed to invoke section 488 Cr.P.C. by any stretch of claim or reasoning but this legal aspect of section 488 was missed out by both courts below by passing the orders against the petitioner in favour of the respondents No. 1 and 2 and therefore both the orders are held to be illegal and are hereby set aside.

10. The petition is allowed.

11. Disposed of.

(RAHUL BHARTI)
JUDGE

SRINAGAR
25.03.2025.
Hilal Ahmad