**Sr. No. 100**

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

*Case No.:* CRM(M) No. 444/2020
CrlM Nos. 220/2022, 1709/2020,
1710/2020 & 1711/2020
c/w
CRM(M) No. 279/2021
CrlM Nos. 789/2021, & 790/2021

Reserved on:- 13.02.2026
Pronounced on:- 06.03.2026
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*Whether the operative part*
*or full judgment is pronounced* ***Full***

**Sarita Devi** …. Petitioner(s)

Through: - Mr. Jasbir Singh Jasrotia, Adv.

V/s

**Mohan Singh** …..Respondent(s)

Through: - Mr. Vishal Kapur, Advocate.



**CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**JUDGMENT**

**1.** The present judgment shall dispose of two connected petitions. CRM(M) No. 444/2020 has been filed by the petitioner–wife laying challenge to the order dated 03.11.2020 passed by Principal Sessions Judge, Ramban (hereinafter referred to as "***the Revisional Court***"), whereby the order dated 29.06.2020 passed by the Chief Judicial Magistrate, Ramban "***the trial court***" in proceedings under Section 488 Cr.P.C was set aside. CRM(M) No. 279/2021 has been preferred by the respondent, calling in question the order directing deduction of ₹5,35,192/- from his salary at the rate of ₹20,000/- per month till realization.

**2.** Briefly stated, the parties were married in the year 1990 and one son was born out of the wedlock, who by now has already attained majority. The petitioner alleged that the respondent contracted a second marriage, whereupon she instituted proceedings under Sections 494/109 RPC along with a petition under Section 488 Cr.P.C. before the Court of Sub-Judge, Ramban. On 28.08.1995, the parties entered into a compromise, in pursuance whereof the wife withdrew the complaint and the maintenance petition upon receipt of ₹10,000/- as full and final settlement. The proceedings were accordingly dismissed as withdrawn. It is also alleged that a customary divorce (farakhtnama) was executed and thereafter the parties started living separately.

**3.** Subsequently, the petitioner filed an application on behalf of her minor son seeking maintenance in the year 2003 which was settled before Lok Adalat with the respondent agreeing to pay ₹300/- per month till the child attained majority. In later proceedings, maintenance was enhanced to ₹600/ and in terms of another order dt.31.07.2007 same was enhanced to Rs.1000/-per month w.e.f 1.1. 2007.In all subsequent proceedings she only claimed maintenance for her minor child and projected herself as a divorcee.

**4.** On 29.06.2007, the petitioner lodged a fresh complaint alleging bigamy. FIR No. 86/2007 was registered and charge-sheet filed before the Court of Sessions Judge, Ramban. The said court, taking into account the earlier compromise dated 28.08.1995 and invoking Section 403 Cr.P.C., discharged the respondent vide order dated 31.12.2007.

**5.** Thereafter, on 14.03.2008, the petitioner filed a fresh petition under Section 488 Cr.P.C. without disclosing the earlier proceedings. The Chief Judicial Magistrate, Ramban, vide order dated 07.12.2011 dismissed the petition holding that the petitioner had failed to establish subsistence of marital relationship and that the respondent had placed sufficient material to show dissolution of marriage by mutual/customary divorce.

**6.** The petitioner challenged the said order in revision. The Sessions Judge, Ramban, vide order dated 07.12.2012, set aside the dismissal and remanded the matter with directions to either call upon the respondent to seek determination of dissolution of marriage from a competent Court or frame an issue regarding the existence and proof of customary divorce and permit the parties to lead evidence and decide the matter afresh.

**7.** During the pendency of the proceedings after remand, the matter was referred to Lok Adalat and on 23.11.2013 the parties entered into a settlement whereby the respondent agreed to pay ₹2,50,000/- as full and final permanent alimony and the marriage was to stand dissolved. The amount was to be paid by 20.12.2013. On account of non-payment, the petitioner challenged the Lok Adalat award in writ proceedings and the same was set aside, directing the trial Court to decide the maintenance petition afresh.

**8.** Upon reconsideration, the Chief Judicial Magistrate, Ramban, vide order dated 29.06.2020 allowed the petition and directed the respondent to pay maintenance at ₹2,000/- per month from the date of filing of petition i.e. 14.03.2008 with 10% annual enhancement.

**9.** The respondent preferred a revision petition, which was allowed by Principal Sessions Judge, Ramban vide order dated 03.11.2020, holding that the parties were living separately by mutual consent and therefore the petitioner was disentitled to maintenance under Section 488(5) Cr.P.C.

**10.** Ld. counsel for the petitioner contended that there was no proof of lawful dissolution of marriage; that customary divorce was neither proved nor established in terms of law; that in absence of a decree of divorce, the petitioner continued to be legally wedded wife; and that the Revisional Court travelled beyond its jurisdiction in reappreciating evidence. Reliance has been placed upon the judgment of the Supreme Court in "***Shail Kumari Devi v. Krishan Bhagwan Pathak*** *(2008) 9 SCC 632"*, to contend that revisional jurisdiction cannot be exercised as if it were appellate jurisdiction. Further reliance is placed on the Division Bench judgment of this Court in "***Vijay Kumari v. Ashwani Kumar***, *AIR 2021 J&K 74*", wherein it has been held that statutory right of maintenance cannot be waived by private agreement as it is founded on public policy.

**11.** Per contra, ld. Counsel for the respondent argued that the petitioner had unequivocally admitted separation by way of customary divorce; that she had lived separately since 1995 and revived the claim only after the respondent secured Government employment; and that the evidence on record clearly established that the parties were living separately by mutual consent. Reliance is placed upon ***Popat Kashinath Bodke v. Kamalabai Popat Bodke***, 2003 2 MHLJ 608 and ***Vitthal Hiraji Jadhav v. Harnabai Vitthal Jadhav***,

*2003 3 Civil CC 412* to contend that where parties are living separately by mutual agreement, maintenance cannot be granted.

**12.** Having considered the rival submissions and upon examining the records of both the trial and revisional courts, there is not any dispute on the settled law that custom must be specifically pleaded and strictly proved. The earlier remand order dated 07.12.2012 had directed framing of an issue regarding proof of customary divorce. The record reveals that no cogent evidence was led to establish existence of a valid custom governing divorce in the community and both of the courts below have affirmed this position. In absence of proof of such custom or decree of divorce from competent Court, the marital tie cannot be said to have been lawfully severed.

**13.** However, Section 488(5) Cr.P.C. independently disentitles a wife from maintenance if she is living separately by mutual consent. The material on record reflects that the petitioner withdrew earlier proceedings upon compromise dated 28.08.1995; admitted separation in subsequent proceedings; sought maintenance for the child describing herself as divorced; and remained separate for over a decade. These circumstances were taken into account by the Revisional Court.A close examination of the record reveals that the petitioner withdrew earlier proceedings upon compromise dated 28.08.1995 after accepting ₹10,000/- as full and final settlement. In subsequent proceedings pertaining to maintenance of the minor child, she described herself as divorced. She remained separate from the respondent for more than a decade without asserting any

subsisting marital rights. These are not isolated statements but consistent representations forming part of judicial record.

**14.** It is not in dispute that in the earlier round of litigation, the Trial Court, vide order dated 07.12.2011, had categorically recorded a finding that on the strength of the agreement executed between the parties, they had mutually agreed to dissolve the matrimonial tie and were residing separately by consent. The said finding was based upon the admitted conduct of the parties and the terms of the settlement arrived at between them.

**15.** When the matter travelled in revision, the Revisional Court, while restoring the petition vide order dated 15.12.2013, did not disturb or set aside the specific finding of the Trial Court that the parties were living separately by mutual consent. The Revisional Court merely directed the Trial Court to decide the petition afresh in accordance with law. The remand was thus limited in scope and did not obliterate the earlier factual determination regarding consensual separation.

**16.** It is a settled principle that an admission constitutes substantive evidence against its maker unless satisfactorily explained. In "***Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi,*** 1960 1 SCR 773", the Hon'ble Supreme Court held that admissions, if clear and unequivocal, are the best evidence against the party making them, though not conclusive, and shift the burden upon the maker to explain them. In the present case, the petitioner had earlier withdrawn proceedings, accepted monetary settlement, described herself as divorced, and remained separate for a

considerable period. These acts constitute clear admissions of consensual separation.

**17.** Since the impugned order passed by the Revisional Court has reversed the order of maintenance granted by the Magistrate, it becomes necessary to restate the settled legal position governing the scope of revisional jurisdiction in proceedings under Section 488 Cr.P.C. Such a proceedings are summary and preventive in nature, intended to provide a swift remedy against destitution. The Magistrate is not required to adjudicate intricate questions of matrimonial law or validity of marriage in strict sense. His inquiry is limited to a prima facie satisfaction as to whether the parties were married, whether they lived together as husband and wife, and whether the husband neglected or refused to maintain the wife during the subsistence of such relationship. In ***Sethurathinam v. Barbara*****,** (1970) 1 SCWR 589, the Supreme Court held that once affirmative evidence exists on these aspects, the Magistrate need not enter into complicated questions of sacramental validity or personal law compliance, which fall within the exclusive domain of the civil court. If evidence raises a presumption that the applicant is the wife, that is sufficient for the purpose of maintenance proceedings.

**18.** The Supreme Court in ***Rajathi v. C. Ganesan*****,** AIR 1999 SC 2374, further clarified that Section 125 Cr.P.C. proceeds on de facto marriage and not marriage de jure. The validity of marriage in its strict legal sense is not a ground to deny maintenance if other statutory ingredients are satisfied. Equally well settled is the

limitation on revisional interference. In ***Santosh (Smt.) v. Naresh Pal*****,** (1998) 8 SCC 447, and ***Parvathy Rani Sahu v. Bishnu Sahu***, (2002) 10 SCC 510, as reiterated in AIR 2011 SC 755, it was held that a revisional court cannot reassess evidence and substitute its own findings in place of the Magistrate's positive findings of fact. Only where the finding is negative and results in serious consequences to the wife or child can the revisional court re-evaluate the evidence to test the legal sustainability of the order. Ordinarily, therefore, a positive order granting maintenance should not be disturbed unless shown to be perverse or manifestly illegal.

**19.** In the present case, it is admitted that the marriage between the parties was solemnized in the year 1990 and that they have a son. It is also not in dispute that earlier proceedings under Section 488 Cr.P.C. and under Section 494 RPC were compromised on 28.08.1995, where the petitioner made a statement on oath that she had received ₹10,000/- as full and final settlement and that she would not pursue further proceedings. A document of "farkhati" was executed, and thereafter the parties admittedly lived separately. Significantly, from 1995 till 2003 the petitioner did not claim maintenance for herself. When she filed proceedings for maintenance of her minor son in 2003 and again in 2007 seeking enhancement, she described herself as having been divorced by the respondent in terms of the earlier settlement. These admissions have not been denied.

**20.** Both the Trial Court and the Sessions Court have concurrently held that the respondent failed to prove the existence of a valid custom

permitting dissolution of marriage by way of "farkhati". Under the J&K Hindu Marriage Act 1980, marriage between Hindus can only be dissolved by a decree of divorce in accordance with statutory provisions, unless a specific custom is pleaded and strictly proved. Mere execution of a settlement deed dated 28.08.1995, therefore, could not by itself dissolve the marriage. In this respect, the concurrent finding that customary divorce was not proved does not call for interference.

**21.** However, the crucial question is distinct from dissolution of marriage, namely, whether the petitioner established neglect and refusal on the part of the respondent and whether she was living separately for sufficient cause or by mutual consent. The law is equally settled that if spouses enter into an agreement to live separately on permanent basis and such agreement is acted upon, Section 488(5) Cr.P.C. disentitles the wife from claiming maintenance if she is living separately by mutual consent. Courts have consistently held that even if such an agreement does not amount to a valid dissolution of marriage, it can be relied upon to ascertain the intention of parties and the nature of separation.

**22.** In the case at hand, the conduct of the petitioner assumes decisive importance. She withdrew earlier proceedings after acknowledging settlement. She did not seek restitution of conjugal rights. For several years she did not claim maintenance for herself. In subsequent proceedings she repeatedly asserted that she had been divorced. The respondent, acting on that understanding, contracted a second marriage. Though the petitioner initiated criminal

proceedings under Section 494 RPC, those proceedings did not culminate in conviction. These admitted facts indicate that the parties had acted upon the settlement and were living separately on the strength of that arrangement.

**23.** Even assuming that the marriage legally subsisted for want of proof of custom, the petitioner cannot be permitted to approbate and reprobate by asserting divorce in earlier proceedings and later claiming desertion. The principle of estoppel by conduct would operate against her. Her consistent admissions in judicial proceedings that she was divorced and living separately disentitle her from now asserting that she was deserted without cause. Maintenance under Section 488 Cr.P.C. is conditional upon proof of neglect or refusal, and where separation is by mutual consent, the statutory bar under sub-section (5) applies.

**24.** In 1998 Criminal Law Journal 4749**,** where the wife had earlier compromised her claim for maintenance by executing an agreement and receiving a consolidated amount in lieu of future maintenance, it was held, relying upon the Division Bench judgment reported in 1990 MLJ 81 (Bombay High Court)**,** that once such an agreement was voluntarily entered into and acted upon, the wife could not subsequently re-agitate a claim for maintenance. The Trial Court having declined maintenance on the strength of the agreement, and the Sessions Court having affirmed the same, it was observed that no illegality or perversity was committed by the Courts below.

**25.** Similarly, in 2003 Vol. 2 Crimes 300**,** dealing with cases involving execution of a *farkhatnama* (mutual separation agreement), the Court held that the true nature of such a document must be discerned from its language, intention and surrounding circumstances. It was observed that where spouses execute an agreement clearly expressing their intention to reside separately by mutual consent, and such agreement has been acted upon with appropriate provision for maintenance or settlement, the bar under Section 125(4) Cr.P.C. would operate. Consequently, if separation is by mutual consent, the wife would not be entitled to claim maintenance from the date of such agreement, provided the arrangement has been implemented in letter and spirit.

**26.** In ***Manju Ramchandani v. Manish Ramchandani*****,** the High Court of Madhya Pradesh examined a case where the Family Court had recorded a finding regarding an agreement of dissolution of marriage between the parties. The High Court clarified that a marriage solemnized under the Hindu Marriage Act, 1955 can be dissolved only by a decree of divorce under the Act, including by mutual consent under Section 13-B. Although Section 29(2) saves customary divorce, such custom must be specifically pleaded and proved. The agreement relied upon by the husband could not dissolve the marriage in absence of proof of custom. However, the Court held that such agreement was admissible to show that the parties were living separately by mutual consent. On appreciation of evidence, the Court upheld the finding that the wife had left the matrimonial home without sufficient cause and that both parties

had agreed in a Panchayat to live separately. Consequently, maintenance was denied under Section 125(4) Cr.P.C., and the revisional jurisdiction was not invoked to interfere with concurrent findings of fact.

**27.** Likewise, in ***"Dharampal v. Shakun Bai"***, the High Court of Chhattisgarh dealt with a case where the husband relied upon an agreement evidencing mutual consent for dissolution of marriage and full and final settlement of alimony. On factual appreciation, the High Court concluded that the wife was not entitled to maintenance, and the findings of the Family Court were neither perverse nor illegal. The said judgment was carried in challenge before the Hon'ble Supreme Court by way of SLP No. 7524/2019, which came to be dismissed on 09.07.2024, thereby affirming the view taken by the High Court.

**28.** Thus, from the aforesaid judicial pronouncements, the principle that emerges is that while an agreement per se may not dissolve a statutory marriage unless backed by a decree under the Hindu Marriage Act or by a proved custom, such agreement is certainly relevant to determine whether the parties are residing separately by mutual consent. If it is found, on appreciation of evidence, that the spouses have voluntarily agreed to live apart and the agreement has been acted upon with due settlement of rights and liabilities, the bar under Section 488(5) Cr.P.C. would disentitle the wife from claiming maintenance thereafter. Conversely, if neglect and refusal on the part of the husband is established and separation is not by

mutual consent, the statutory right to maintenance would subsist notwithstanding any informal arrangement.

**29.** The Sessions Court, while agreeing that customary divorce was not proved, returned a finding that the parties were living separately by mutual consent and that the petitioner had failed to establish neglect or refusal. This finding was based on documentary record and admissions of the petitioner herself. It cannot be characterized as perverse or as an impermissible substitution of findings. Rather, it represents a legally sustainable appreciation of conduct and evidence within the permissible scope of revisional scrutiny.

**30.** Thus, although the marriage may not have stood dissolved in strict legal sense, the petitioner's long-standing conduct, admissions and acquiescence demonstrate that she was residing separately by mutual consent and not on account of proved neglect. Consequently, the interference by the Revisional Court does not appear to suffer from any jurisdictional error warranting further interference.

**31.** There is no dispute to the fact that in terms of the agreement dated 28.08.1995, the parties got separated and in lieu thereof, the respondent provided ₹10,000/- as lump sum alimony in the shape of future allowance to the petitioner and thereafter until 2008, there was no cause pleaded by her for either enhancement of that lump sum allowance or to seek any remedy of grant of maintenance, assuming that she continued to be the legally wedded wife irrespective of the dissolution of the marriage dated 28.08.1995. It is also an admitted case of the parties that after second round of

litigation started in the year 2008, both the parties had in terms of settlement dated 23.11.2013, agreed that the respondent would provide ₹2.5 lac as final settlement. This appears to have been based because at the time of initial settlement of 1995, the respondent was unemployed and subsequently appeared to have got appointed in Government service, thereby raising his financial capacity. It was in that background, he agreed to pay ₹2.5 lacs, though the same as per the petitioner could not materialize because the respondent chose not to clear that liability, forcing her to challenge the settlement by way of writ petition and subsequently the order of mutual settlement was set aside. The said settlement was not challenged by the respondent, in fact, challenge was thrown by the petitioner, meaning thereby that the respondent too had consciously felt that the earlier settlement of ₹10,000/- was too meagre to satisfy the case of the petitioner and it was in that background that he proposed to pay allowance of ₹2.5 lacs to the petitioner. The Division Bench of this Court in case titled, ***Vijay Kumari v. Ashwani Kumar*** (supra) has held that there was a settlement between the parties, that resulted into consent decree of divorce and the wife was allowed permanent alimony @ ₹1000/- per month. After ten years, the wife moved an application to the Matrimonial Court for enhancement of the alimony by taking recourse to Section 31 of the J&K Hindu Marriage Act, 1980, which application was declined by the Matrimonial Court and even also rejected by the Single Bench of this Court and when the matter landed before the Division Judge of this Court, it opined that wife's

right to future maintenance is a matter of public concern, which she cannot barter away even if there is, *inter-se*, agreement between the parties. In that background, it was held that she is entitled to maintain an application for enhancement, as contemplated under Section 31 of the J&K Hindu Marriage Act. Thus, the wife was permitted to apply for enhancement of alimony.

**32.** Taking guidance from the aforesaid citation and bearing in mind the pendency of the present petitions filed under Section 482 of the Cr.P.C, this Court has already returned a finding that the Revisional Court was justified in holding that the petitioner was not entitled to maintenance under Section 488 of the Cr.P.C., as she had been living separately by mutual consent, thereby disentitling her from claiming maintenance in view of Sub-Section (5) of Section 488 of the Cr.P.C. However, such a finding does not absolve the Court from remaining conscious of the circumstances and necessities which the petitioner may presently be facing. It is borne out from the record that the petitioner has been living separately since the year 1995 and had a son from the wedlock, who is now stated to be married. The petitioner appears to have no independent source of income and is stated to be dependent upon the earnings of her son for sustenance. In the absence of any legally recognized dissolution of marriage between the parties, the civil status of the petitioner remains that of a legally wedded wife of the respondent. Had the petitioner been vigilant in asserting her rights at the appropriate stage, the agreement executed in the year 1995 would not have operated as an impediment in seeking

maintenance from her husband. Such an agreement, even if executed by consent between the parties, could not have the effect of overriding the statutory entitlement provided under the law. It is well settled that a private agreement cannot defeat or nullify the operation of statutory provisions meant to secure maintenance and prevent destitution, particularly when such arrangements may run contrary to public policy.

**33.** It is precisely in this backdrop that Section 31(2) of the J&K Hindu Marriage Act assumes significance, as the said provision contemplates the possibility of changed circumstances over a period of time, including escalation in the cost of living and the inability of a spouse to maintain herself with the amount earlier settled. The legislative intent behind such a provision is to ensure that the economic realities faced by a dependent spouse are duly addressed. Viewed in that perspective, the conduct and intention of the parties in the subsequent round of litigation also assume relevance. The respondent, who was earning, had agreed to pay an amount of ₹2.50 lakhs in addition to the sum of ₹10,000/- already paid in the year 1995, as a full and final settlement. Significantly, the respondent never withdrew his consent to the said settlement. The arrangement, however, failed to materialize on account of the petitioner challenging the award of the Lok Adalat before this Court on the ground that the amount had not been paid within the stipulated time.

**34.** In order to advance the cause of justice and to prevent the petitioner from falling into a state of vagrancy, this Court, while

exercising its inherent jurisdiction to achieve substantial justice, considers it appropriate to direct the respondent to pay a sum of ₹2.50 lakhs to the petitioner as a one-time settlement. The said amount shall be paid by the respondent within a period of six months from the date of receipt of a certified copy of this order. In the event of failure to comply within the stipulated period, the petitioner shall be entitled to recover the said amount along with interest at the rate of 6% per annum until its realization in full.

**35.** As per the record, the respondent had already deposited an amount of ₹1.50 lakhs, out of which a sum of ₹50,000/- has been released in favour of the petitioner. As reported by the Registry, an amount of ₹1,40,091/- is presently lying in the form of an FDR. The said amount, along with the interest accrued thereon, shall stand released in favour of the petitioner. The remaining balance, if any, shall be paid by the respondent in the manner and within the time frame indicated hereinabove. In view of the foregoing discussion, the impugned order passed by the Revisional Court does not call for any interference by this Court. Accordingly, CRM(M) No. 444/2020 stands dismissed. Consequently, CRM(M) No. 279/2021 also stands dismissed, having been rendered **infructuous** upon the dismissal of the former petition.

**36.** ***Disposed off*** alongwith all connected applications.

**(SANJAY PARIHAR)**
**JUDGE**

**JAMMU**
**06.03.2026**
*Ram Krishan*

**Whether the order is speaking? Yes**
**Whether the order is reportable? Yes**