

**HIGH COURT OF JAMMU AND KASHMIR**  
**AT SRINAGAR**

561-A No. 256/2015  
MP No. 01/2015

Date of Order: 31<sup>st</sup> January, 2018.

Mst. Kulsuma

Vs.

Mohammad Latif Dar

**Coram:**

**Hon'ble Mr Justice Ali Mohammad Magrey, Judge.**

**Appearance:**

For the Petitioner(s):     None.

For the Respondent(s):   Mr S. N. Ratanpuri, Advocate.

i) *Whether approved for reporting in  
Law Journals etc.:* *Yes*

ii) *Whether approved for publication  
in Press:* *Yes*

**{Oral}:**

**01.** The petitioner, in the instant petition, has questioned the order dated 14<sup>th</sup> of October, 2015, passed by the Court of learned Principal Sessions Judge, Srinagar, passed in a criminal revision directed against the order of learned Sub-Judge/Special Mobile Magistrate (Under 13<sup>th</sup> Finance Commission), Srinagar, (hereinafter to be referred as the learned trial Magistrate), on 3<sup>rd</sup> of September, 2014, passed in an application

titled **“Mst. Kulsuma Akhter & Anr. vs. Mohammad Latief Dar in file No. 06/A”**.

**02.** In terms of the order dated 3<sup>rd</sup> of September, 2014, passed by the learned trial Magistrate, the application for maintenance has been finally disposed of and the respondent has been directed to pay maintenance allowance to the non-applicant Nos. 1(petitioner herein) and 2 @ Rs. 3500/- per month. The non-applicant No.2 is admitted to be the daughter of the petitioner, whereas the non-applicant No.1 (petitioner herein) is ruled to be the wife of the respondent, however, the said status was disputed by the respondent herein, on the ground, that the non-applicant No.1 (petitioner herein) has been already divorced. The learned trial Magistrate, on consideration of the matter and after scanning the evidence on record, has granted the maintenance, both in favour of the daughter and the wife, ignoring the objections raised by the respondent herein with reference to the entitlement of the maintenance to non-applicant No.1 (wife/ petitioner herein), on the ground, of her having been divorced.

**03.** The matter became the subject matter of a criminal revision before the Court of learned Principal Sessions Judge, Srinagar and, on proper consideration and examination of the issues raised with reference to the evidence on record, the revisional Court, in terms of the judgment passed on 14<sup>th</sup> of October, 2015, reversed the order of the learned trial Magistrate to the extent of grant of maintenance to the respondent herein (wife). The finding recorded by the learned trial Court, to the effect that no divorce has taken place, was found as without having any basis and perverse. The

revisional Court has discussed the evidence in detail and has also referred to the document which has been proved by the respondent. It would be advantageous to take note of the relevant portion of the judgment dated 14<sup>th</sup> of October, 2015, passed by the revisional Court, which reads as under:

*“Now let a look be made at the evidence produced by the petitioner.*

*Latief Ahmad Dar has stated as under:-*

*“.....After full satisfaction and identification by said Kulsuma of all items, Mr. Mohammad Yousuf Parray Advocate drafted a document of compromise/ divorce deed in presence of me and said Kulsuma and relatives of both the side. After writing the said documents, the contents were read over and explained by Mr. Mohammad Yousuf Parray to parties in presence of our relatives, and Mr. Mohammad Yousuf Parray (Adv) handed over cash and other items to said Kulsuma, on completion of all these formalities I pronounced talak to said Kulsuma and thereafter I and said Kulsuma signed the document prepared by Mr. Mohd. Yousuf Parray in presence of our relatives.....in this way I have divorced above named Kulsuma and have already paid Mehar, Than-i-nikah and also delivered all items of both sides to said Kulsuma and also paid an amount of Rs. 1.00 lac as past maintenance to said Kulsuma and minor and thus I have no connection or concern with her.....”*

*Other witnesses Mohammad Ashraf Bhat who was present at the time of compromise between the parties has stated as under on affidavit.*

*“.....On completion of all the formalities Mohd Latief Dar (Respondent) pronounced talak to Mst. Kulsuma and thereafter both of the parties and*

witnesses signed the deed in my presence. That in this way Mohd Latief has divorced above named Mst. Kulsuma and has already delivered all items of both sides in my presence to said Mst. Kulsuma and also paid an amount of Rs. 1.00/ lac.....”

Other witnesses Ajaz Ahmad Bhat who is marginal, witness to the document has stated as under on affidavit.

“\_\_\_\_\_ the counsel for the applicant No.1 handed over the said items to the applicant No.1 and the applicant No.1 after identification received the said items and cash of Rs. 1.00 lac. That after full satisfaction and identification by Mst. Kulsuma of all the items the counsel Mr. Mohammad Yousuf Parary drafted a document of compromise/ divorce in presence of both the parties and in presence of other persons which includes me and father of the applicant No.1. The applicant No.1 willingly put her signatures unto the said document. In this way the parties (applicant No.1 and non-applicant) dissolved the marriage mutually in my presence and I put my signatures unto the document supra as witness.”

Other witness Mr. Mohamamd Yousuf Parray, Advocate, who has drafted the document and in whose office Chamber negotiation have taken place, being the counsel of the respondent in Budgam Court, has stated as under:

“.....that he knows the parties and was representing the applicants before the Budgam Court. During proceedings parties expressed their desire to compromise. Both parties came to his office chamber with relatives. After lots of deliberations parties compromised which was documented by me on 12-06-2008. I wrote the compromise.

.....parties signed the document in my presence.....That applicant collected her property from my office when her father was accompanying her and besides that an amount of Rs. 1.00 lac was also taken by applicant as is

*mentioned in the document. According to compromise the non-applicant divorced applicant and relieved her from the status of being his consort. I (i.e. witness) after writing the document send the parties to Court for notarizing the document.....”*

*Other witness Mr. Tufail Ahmed Mir, Advocate, who was present during compromise proceedings and also identified the parties before the notary public, has stated as under:*

*“.....after writing the said document the contents were read over and explained by Mr. M. Y. Parray Advocate to parties in presence of their relatives/ respectable including me, and Mr. Mohd Yousuf Advocate handed over cash and other items to the said Mst. Kulsuma, and on completion of all the formalities Mohd Latief Dar (Respondent) pronounced talak to Mst. Kulsuma and thereafter both of the parties signed the document in my presence and Ajaz Ahmad Bhat and one other person on the side of applicant also signed the document as witness thereof. Thereafter the document was presented before public notary at saddar court complex Srinagar along with parties for attestation and before him, I identified the parties and bear my signatures.”*

*There is no evidence to contradict the aforesaid evidence. The statement of respondent No.1 is contradictory. At one place she says that she signed a blank document, however, in cross examination has stated that she does not remember as to whether document in question was written or blank when she signed it. And the fact that she has taken goods and cash is admitted by her.*

*Other witnesses produced by the respondent No.1 namely Mehraj-din Dar, Shabir Ahmad Wani and Mohammad Ismail Dar have expressed their ignorance about the negotiations/ settlement that had taken place in the office chamber of Mr. Mohammad Yousuf Parray, Advocate. The father of respondent who was, as per the statement of*

*respondent No.1, present in negotiations has not come forward to support the cause or case of her daughter. The marginal witness to the document who represented cause of the respondents during negotiations has also not come forward to support her cause/ case. It cannot be lost sight of.”*

**04.** The law regarding the grant of maintenance and granting of divorce has been recently considered by me in 561-A Cr. P.C. No. 110/2010 decided on 3<sup>rd</sup> of March, 2014, titled **“Masrat Begum vs. Abdul Rashid Khan & Anr”**, wherein it has been held as under:

*“Coming to the instant case, respondent No.1 has taken the plea that he has divorced the petitioner by a written deed, ‘talaqnama’ executed by him on 30.07.2009 in presence on witnesses. The original of the talaqnama has been placed on record. It bears the signatures of the respondents as well as the scribe of the deed and two witnesses. It has been attested by notary Public and bears the seal and signatures of the Notary Public. Though executed prior to the date of filing of the application for maintenance by the petitioner, it cannot be said that the plea taken is simple to wriggle out of the liability to maintain the petitioner. Of course, this talaqnama is required to be proved for final determination of the question whether or not the petitioner is entitled to the grant of maintenance in her favour.”*

**05.** The revisional Court has, in tune with the mandate of law and with the support of the evidence on record, reversed the order of the learned trial Magistrate to the extent of grant of maintenance to the respondent No.1(wife/ petitioner herein). There is no scope for any interference in the matter in the present petition filed by the petitioner under Section 561-A of the Criminal Procedure Code, which vests a Court with inherent powers.

**06.** In the above background, this petition is found to be meritless, as such, same, alongwith all connected MP(s), is **dismissed**. Interim directions, if any, in force as on date, shall stand vacated.

(Ali Mohammad Magrey)  
Judge

**SRINAGAR**

January 31<sup>st</sup>, 2018

*"TAHIR"*

