

IN THE COURT OF ADDITIONAL SESSION JUDGE BARAMULLA

CNR No.	JKBA01-001024-2025
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Date of Institution	01-11-2025
Date of Order	11-08-2026

In the case of:-

Irshad Ahmad Kar S/O Late Habibullah Kar R/O Jaded Road
Baramulla, District Baramulla.

.....Petitioner

Advocate Mr. Abrar Ahmad Khan for petitioner

V/S

Nuzhat Irshad W/O Irshad Ahmad Kar D/O Late Mohammad
Maqbool R/O Jadeed Road Baramulla.

..... Respondent

Advocate Mrs. Neelofer Masood for respondent

In The Matter of:- Revision against the order dated 09-10-2025 passed
by the learned Judicial Magistrate (Sub-Judge)
Baramulla in an application under and in terms of section
144 BNSS titled “*Nuzhat Irshad V/S Irshad Ahmad
Kar*” for setting aside the same.

Present:- Aadil Mushtaq

JCO Code: JK00163

ORDER

1. The present revision petition calls in question the legality, propriety and correctness of the order dated 09.10.2025 passed by the learned Judicial Magistrate (Sub-Judge), Baramulla, in proceedings instituted under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the "BNSS"), whereby the application preferred by the respondent-wife seeking interim maintenance came to be allowed and the revision petitioner was directed to pay a sum of Rs.10,000/- per month as interim maintenance with effect from the date of filing of the application.
2. I have heard learned counsel appearing for the parties at considerable length. The Trial Court record, including the Xerox lower court record, has been carefully perused.

3. The factual backdrop giving rise to the present revision, shorn of unnecessary details, is that the respondent instituted proceedings under Section 144 BNSS before the learned Judicial Magistrate asserting that her marriage with the petitioner was solemnised in the year 2022 according to Muslim rites and customs. No child has been born out of the said wedlock. It was alleged that though the matrimonial relationship initially remained cordial, the conduct of the petitioner underwent a substantial change after a few months of marriage. According to the respondent, the petitioner, allegedly under the influence of his family members, started subjecting her to physical and emotional cruelty, levelled false accusations against her, questioned her mental health, and frequently assaulted her. It was further pleaded that for several months preceding the institution of the petition she had been compelled to live separately in a single room within the matrimonial house and had been deprived of financial support by the petitioner.
4. The respondent further asserted that despite possessing sufficient means, the petitioner had wilfully failed and neglected to maintain her. It was alleged that the petitioner is employed as a Government teacher in the Education Department, is simultaneously engaged in a footwear business, and earns an income exceeding Rs.80,000/- per month besides owning substantial movable and immovable properties. The respondent pleaded that she had no independent source of income and was entirely dependent upon the petitioner for her maintenance, thereby seeking an order directing payment of maintenance during the pendency of the proceedings.
5. Upon notice, the petitioner entered appearance before the learned Trial Court and contested the proceedings by filing objections. While admitting the marital relationship, he denied each and every allegation levelled against him. According to him, the respondent had deliberately distorted the factual position with the sole object of harassing him and extracting monetary benefits. The petitioner maintained that the respondent was never expelled from the matrimonial home and continues to reside therein. It was pleaded that she enjoys all household facilities and that the petitioner has throughout been bearing the household expenses, including expenses relating to food and other necessities. Consequently, according to the petitioner, there had neither been any neglect nor any refusal on his part to maintain the respondent. The petitioner also levelled

counter-allegations against the respondent regarding her conduct within the matrimonial home. It was alleged that the respondent habitually left the matrimonial home without information and that disputes between the parties ultimately resulted in execution of a mutual agreement dated 28.08.2024. Certain allegations regarding alleged occult practices were also levelled by the petitioner in his objections, asserting that he possessed electronic evidence in support thereof. The petitioner further questioned the bona fides of the proceedings and sought dismissal of the application in its entirety.

6. It was specifically contended that since the respondent was admittedly residing in the matrimonial home, no occasion arose for directing payment of maintenance. It was further pleaded that the respondent herself was gainfully employed in a private establishment and had deliberately concealed her independent source of income from the Court. The petitioner also pleaded that he was suffering from hypothyroidism and cardiac ailments requiring continuous medical treatment and that he was burdened with various financial liabilities.
7. Upon consideration of the rival pleadings and the material placed before it, the learned Trial Court passed the impugned order holding that a prima facie case for grant of interim maintenance had been made out. Taking note of the income of the petitioner, the learned Magistrate directed payment of interim maintenance at the rate of Rs.10,000/- per month, payable from the date of filing of the application, while observing that the amount would sufficiently cater to the respondent's basic necessities pending disposal of the main petition.
8. Aggrieved thereof, the petitioner has invoked the revisional jurisdiction of this Court. Learned counsel appearing on his behalf submitted that the learned Trial Court has exercised its jurisdiction in a wholly mechanical manner without appreciating the material placed before it. It was argued that the respondent admittedly continues to reside in the matrimonial home and enjoys all household facilities, which fact completely demolishes the allegation that she has been neglected or refused maintenance. According to the petitioner, the learned Magistrate failed to appreciate that maintenance under Section 144 BNSS presupposes neglect or refusal on the part of the husband and that no such circumstance exists in the present case. It has further been argued that the respondent is not without means, inasmuch as she is gainfully employed in a

private establishment and earns sufficient income for her sustenance. It is submitted that concealment of such material fact disentitled her from claiming any discretionary relief. Learned counsel also contended that the petitioner is himself suffering from serious ailments requiring continuous treatment and has various financial commitments which were completely ignored by the learned Trial Court while determining the quantum of interim maintenance. According to the petitioner, the order under challenge suffers from non-application of mind, ignores relevant considerations and therefore deserves to be set aside.

9. Per contra, learned counsel appearing for the respondent supported the impugned order and submitted that the learned Magistrate has exercised a purely discretionary jurisdiction after considering the pleadings of both parties and the material available before the Court. It was argued that all the pleas now sought to be urged by the petitioner relate to disputed questions of fact which can only be adjudicated after recording evidence in the main proceedings. It was further contended that the petitioner has not produced any reliable material to establish that the respondent has an independent source of income or that she is financially self-sufficient. According to learned counsel, the order granting interim maintenance neither determines the final rights of the parties nor causes any irreversible prejudice to the petitioner and therefore calls for no interference in exercise of revisional jurisdiction.
10. The present proceedings arise not out of an appeal but from a revision. The distinction between appellate and revisional jurisdiction is not merely procedural but conceptual. While an appellate Court is ordinarily entitled to reassess the entire factual and legal matrix and substitute its own conclusions for those of the subordinate Court, a revisional Court exercises a far more restricted supervisory jurisdiction intended to ensure that subordinate courts act within the bounds of law and jurisdiction. The revisional jurisdiction is primarily intended to correct jurisdictional errors, patent illegality, material irregularity and perversity resulting in miscarriage of justice. It is not designed to convert the revisional Court into another Court of first appeal. Merely because another view on facts may also be possible does not justify interference with an interlocutory order passed by the Court below in exercise of judicial discretion. Unless the discretion exercised is shown to be arbitrary, capricious, manifestly unreasonable or founded upon complete misreading of the material available on

record, the revisional Court ordinarily refrains from substituting its own discretion for that exercised by the Trial Court.

11. This restraint assumes greater significance where the order under challenge pertains to grant of interim maintenance. An order granting interim maintenance is, by its very nature, provisional and tentative. It neither finally adjudicates the rights of the parties nor determines the issues arising in the principal proceedings. Its purpose is not to pronounce upon the correctness of rival allegations but merely to ensure that the spouse who prima facie appears to lack sufficient means of sustenance is not rendered destitute during the pendency of the litigation. The Court dealing with such an application is therefore expected to arrive only at a prima facie satisfaction based upon the material then available, leaving the final adjudication to be made after evidence is led.
12. The jurisprudential basis of maintenance provisions deserves notice. Maintenance is not conceived as a bounty extended by one spouse to another, nor is it intended to operate as a measure of punishment. The obligation of maintenance is rooted in the recognition that marriage creates reciprocal legal obligations, one of which is the duty of a spouse possessed of sufficient means to ensure that the other spouse is not reduced to a state of economic vulnerability or destitution. The legislative philosophy underlying Section 144 BNSS is essentially welfare-oriented. The provision seeks to secure immediate social justice by protecting those who, because of their financial dependence upon another, may otherwise be left without the means of basic subsistence. The concept of maintenance is therefore inseparably connected with the constitutional values of dignity, equality and social justice. The object is not merely to provide food or shelter in the literal sense but to preserve the minimum conditions necessary for a life of dignity. Economic dependence frequently places one spouse in a position of severe disadvantage during the pendency of matrimonial litigation. The law, therefore, intervenes by empowering the Magistrate to grant interim assistance so that the economically weaker spouse is not compelled to abandon legal remedies merely because of financial incapacity. The provision must consequently receive a construction that advances its remedial object rather than defeats it by adopting an unduly technical approach.

17. The foremost contention advanced is that the respondent admittedly continues to reside in the matrimonial house and, therefore, the very foundation for grant of interim maintenance disappears. The argument, though apparently attractive, overlooks the distinction between a right of residence and the right to maintenance. The two, though often co-existing, are conceptually distinct legal entitlements and one cannot be treated as a substitute for the other. Maintenance is not synonymous with providing a roof over one's head. The obligation to maintain comprehends provision for food, clothing, medicines, day-to-day necessities, personal expenses and such other requirements as enable an individual to live with dignity consistent with the social status of the parties. A spouse may continue to occupy a portion of the matrimonial house and yet remain completely deprived of financial support. Residence within the same building does not necessarily imply that the matrimonial relationship is functioning in its ordinary course or that the spouse is receiving adequate maintenance.
18. Modern matrimonial jurisprudence recognises that separation between spouses is not always geographical. A marriage may, in substance, stand fractured notwithstanding that the parties continue to occupy different rooms under the same roof. Human relationships cannot be assessed merely by reference to physical proximity. There may exist emotional separation, financial separation and social separation despite common residence. Whether the parties are genuinely cohabiting as husband and wife or are merely residing under the same roof because circumstances leave them with no immediate alternative is ultimately a question of evidence.
19. In the present case, while the petitioner asserts that the respondent continues to enjoy every household facility, the respondent has specifically pleaded that she has been constrained to live separately in a single room, has been deprived of financial support and has been compelled to sustain herself without assistance from the petitioner. These rival assertions constitute disputed questions of fact which cannot be conclusively adjudicated at the stage of interim maintenance, much less in revisional jurisdiction. The learned Magistrate was only required to ascertain whether a *prima facie* case existed warranting interim financial assistance pending final adjudication.

20. Equally untenable is the submission that the petitioner cannot be said to have neglected or refused to maintain the respondent merely because she continues to reside in the matrimonial home. The expression "neglect or refusal" occurring in maintenance jurisprudence cannot be interpreted in a narrow or pedantic manner. Neglect is not always express; it may equally be constructive. A spouse possessed of sufficient means may technically permit the other spouse to reside in the matrimonial house while simultaneously withholding financial support necessary for daily sustenance. Such conduct may, depending upon the facts established, amount to constructive neglect. Whether such neglect ultimately stands proved is a matter for trial, but the possibility thereof cannot be excluded merely because the parties continue to occupy the same premises.
21. Learned counsel for the petitioner next argued that the respondent is gainfully employed in a private establishment and has deliberately concealed her independent source of income. It was submitted that the learned Trial Court failed to appreciate this aspect while granting interim maintenance. The submission, however, does not persuade this Court. The burden of establishing that the claimant possesses an independent and sufficient source of income necessarily rests upon the party asserting such fact. Mere allegations contained in objections, unsupported by any reliable material, cannot by themselves displace the prima facie claim for maintenance. No document indicating the nature of the respondent's employment, the identity of the employer, the duration of such employment or the remuneration allegedly earned has been brought to the notice of this Court. In absence of any cogent material, the learned Magistrate cannot be faulted for declining to reject the respondent's claim on the basis of a mere assertion.
22. It also deserves emphasis that even where a spouse is shown to have some independent earnings, that circumstance does not automatically disentitle such spouse from claiming maintenance. The determinative consideration is whether such income is sufficient to enable the claimant to maintain herself in a manner commensurate with the status of the parties and to meet her reasonable necessities. A nominal or uncertain source of income cannot be equated with financial independence. These aspects necessarily require appreciation of evidence and cannot be conclusively decided at the interlocutory stage.

23. Considerable emphasis was laid upon the petitioner's medical condition. It was argued that the petitioner suffers from hypothyroidism and cardiac ailments requiring regular treatment and, therefore, the quantum awarded by the learned Magistrate is excessive.
24. Undoubtedly, the financial liabilities and medical condition of the person liable to pay maintenance constitute relevant considerations while determining the quantum payable. Courts are expected to strike a balance between the needs of the claimant and the capacity of the person liable to pay. Maintenance cannot be fixed in a manner that becomes oppressive or impossible of compliance. Simultaneously, the obligation to maintain cannot be diluted merely because the person liable has certain personal expenses or health-related issues. Unless such ailments are shown to have substantially impaired earning capacity or rendered the person incapable of maintaining the claimant, they cannot by themselves furnish a ground for declining interim maintenance.
25. In the present case, the petitioner has asserted that he is undergoing treatment. However, the material presently available does not prima facie indicate that he has lost his source of livelihood or that he has become incapable of earning. On the contrary, even according to the petitioner himself, he continues to be employed. The precise impact of his medical condition upon his financial capacity is again a matter requiring evidence before the Trial Court. At this stage, therefore, the learned Magistrate cannot be said to have committed any jurisdictional error in awarding interim maintenance.
26. Learned counsel further contended that the learned Trial Court has not undertaken a detailed discussion while passing the impugned order and has awarded maintenance in a mechanical manner.
27. This submission also deserves rejection. The nature of an order granting interim maintenance is fundamentally different from a final adjudication. An interlocutory order is not expected to contain an elaborate evaluation of every factual controversy, for any such exercise may prejudice the ultimate trial. What is required is a prima facie assessment of the material then available. The impugned order indicates that the learned Magistrate has considered the pleadings of both parties, noticed the petitioner's earning capacity and thereafter exercised discretion in determining the amount payable. Merely because the

reasoning is concise cannot by itself furnish a ground for interference when the order otherwise discloses application of mind.

28. This Court also finds no substance in the argument that since serious allegations have been levelled against the respondent regarding her conduct, the learned Magistrate ought not to have granted interim maintenance. Allegations and counter-allegations are an unfortunate but common feature of matrimonial litigation. At the interim stage, the Court is not expected to pronounce upon the truthfulness of such accusations. Their veracity can only be determined after parties lead evidence and are subjected to cross-examination. Acceptance of the petitioner's contention would virtually require this Court to conduct a mini trial in revisional proceedings, which is impermissible.
29. The amount of Rs.10,000/- awarded by the learned Trial Court also cannot be characterised as arbitrary or excessive. The respondent is admittedly the legally wedded wife of the petitioner. The petitioner is stated to be in Government service, a fact not disputed before this Court. The quantum awarded is intended only as interim subsistence and not as a final determination of the respondent's entitlement. Should evidence subsequently reveal that the respondent possesses sufficient independent income or that the petitioner's financial capacity has been incorrectly assessed, the Trial Court would remain competent to mould the final relief appropriately. The interim arrangement, therefore, causes no irreversible prejudice to either party.
30. It is equally significant that the learned Magistrate has directed payment from the date of filing of the application. Such a direction cannot be said to be legally unsustainable. Grant of maintenance from the date of the application is intended to ensure that delays inherent in adjudicatory processes do not defeat the very purpose of providing immediate financial assistance to a spouse who prima facie appears to require support. The direction, therefore, discloses no illegality warranting interference.
31. Upon an overall appreciation of the record, this Court is satisfied that the learned Trial Court has exercised the discretion vested in it upon consideration of the pleadings and the material then available. None of the findings recorded by the learned Magistrate can be characterised as perverse, arbitrary or suffering from any jurisdictional infirmity. The petitioner, in substance, seeks a re-appreciation of disputed factual issues and substitution of the discretion

exercised by the learned Magistrate with another possible view. Such an exercise falls beyond the legitimate contours of revisional jurisdiction.

32. Consequently, this Court finds no merit in the present revision petition. The impugned order dated 09.10.2025 passed by the learned Judicial Magistrate (Sub-Judge), Baramulla, directing payment of interim maintenance of Rs.10,000/- per month in favour of the respondent does not warrant interference. It is, however, clarified that the observations made herein are confined solely to the adjudication of the present revision and the challenge to the order granting interim maintenance. They shall not be construed as an expression of opinion on the merits of the principal proceedings pending before the learned Trial Court. The learned Magistrate shall decide the main petition independently, on the basis of the evidence that may be adduced by the parties, uninfluenced by any observation contained in this order.
33. The revision petition is, accordingly, dismissed. The order dated 09.10.2025 passed by the learned Judicial Magistrate (Sub-Judge), Baramulla, is affirmed. The Trial Court Xerox record, along with a copy of this order, be transmitted back forthwith for information and further proceedings in accordance with law. Revision file be consigned to the records after due completion.

Announced.
11-08-2026
(Tanveer/P.A)

(Aadil Mushtaq)
Additional Sessions Judge
Baramulla.