

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

Case:- CM(M) No. 65/2024
CM No. 1748/2024

Shalini Sharma

....Appellant(s)/Petitioner(s)

Through: Mr. Zulker Nain Sheikh, Advocate

Vs

Vikas Bhardwaj and another

..... Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
19.04.2024

01. The respondent Nos. 1 & 2 are the husband and wife who have an ongoing matrimonial litigation between them obtaining in the form of a criminal case under section 498-A Ranbir Penal Code before the court of Judicial Magistrate Ist Class (Sub Registrar), Jammu and maintenance proceedings under section 488 of the Code of Criminal Procedure, Svt., 1989 before the court of Additional Principal Judge (Family Court), Jammu.

02. In connection with a criminal case under section 498-A of the Ranbir Penal Code, the respondent No. 2 came to be examined as a prosecution witness before the court of Judicial Magistrate Ist Class (Sub Registrar), Jammu.

03. By referring to her statement so made as a prosecution witness in the criminal case under section 498-A Ranbir Penal Code, the respondent No. 1 came forward with an application under section 488(4) of the Code of Criminal Procedure Svt., 1989 seeking cancellation/recall of interim order passed as well as also seeking rejection of maintenance petition under section 488 Code of Criminal Procedure Svt., 1989.

04. The basis for the respondent No. 1 to file this application is purportedly by reference to a statement of the respondent No. 2 as a prosecution witness in the case under section 498-A of the Ranbir Penal Code. By reference to the said statement of the respondent No. 2, the respondent No. 1 purported to maintain that the respondent No. 2 has admitted being in a state of adulterous life and also with respect to alleged impotency of the respondent No. 1.

05. In furtherance of the aforesaid application, the respondent No. 1 submitted an application on 20.07.2023 before the Additional Principal Judge (Family Court), Jammu for summoning of three witnesses, namely, the Reader of the court of Principal District Judge, Jammu, the petitioner herein as being

Assistant Public Prosecutor and also the then Judicial Magistrate Ist Class (Sub Registrar), Jammu.

06. This application seems to have earned an instant direction from the court of Additional Principal Judge (Family Court), Jammu with a direction to Nazir to deposit diet expenses of the witnesses figuring at Sr. No. 1 & 2 that means the clerk of the Principal District Judge, Jammu and the petitioner herein leaving out the then Presiding Officer (Judge) of the court of Judicial Magistrate Ist Class (Sub Registrar), Jammu.

07. It is in reference to this direction that the petitioner has been put to summons for appearance to depose as a witness by the court of Additional Principal Judge (Family Court), Jammu in terms of an order dated 28.02.2024.

08. This development has constrained the petitioner to approach this Court with the present petition under article 227 of the Constitution of India for seeking examination of legality and validity of the proceedings resorted to by the Additional Principal Judge (Family Court), Jammu.

09. This Court has been taken with a *prima-facie* concern with respect to the manner in which the court of Additional

Principal Judge (Family Court), Jammu has come to deal with the application of the respondent No. 1 in the matter of summoning the persons named in the application.

10. *Prima facie* case is made out.
11. Issue notice to the respondent No. 1 only.
12. Petitioner to furnish registered postal cover for the service of respondent No. 1 within a period of seven days, whereupon the Registrar Judicial, Jammu to issue notice to the said respondent.
13. In the meantime, send for the original record of the case file on file No. 70/CrPC in case titled "Madhu Vs Vikas Bhardwaj" from the court of Additional Principal Judge (Family Court), Jammu. Registrar Judicial, Jammu to requisition the said record in original.
14. List on 27.05.2024.

(RAHUL BHARTI)
JUDGE

JAMMU
19.04.2024
Muneesh