

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM(M) No.160/2024

MUDASIR AHMAD DAR

... Petitioner(s)

Through: -Mr.Hilal Ahmad Wani, Advocate.

Vs.

MST.MASHOOKA AND ANOTHER

...Respondent(s)

Through: -None

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT
Dt:20.05.2024

1. The petitioner has challenged the proceedings initiated against him by the court of learned Additional Special Judicial Mobile Magistrate (Munsiff) Ganderbal, on the basis of a petition filed by the respondents against him under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the D.V.Act").
2. It is averred in the petition that the petitioner had entered into wedlock with respondent No.1 and out of this wedlock respondent No.2 was born. However, relations between the

parties did not remain cordial, as a result of which the petitioner pronounced divorce upon respondent No.1 on 08.04.2023. Respondent No.1 is stated to have approached the Commandant of the Battalion in which the petitioner is working as an army personnel and she succeeded in getting a sum of Rs.5000/- per month from the salary account of the petitioner as maintenance charges. It has been further submitted that respondent No.1 has also filed application under Section 125 of the Code of Criminal Procedure before the court of learned Judicial Magistrate 1st Class, Ganderbal and in the said proceedings an amount of Rs. 10,000/- per month has been awarded as interim maintenance in favour of respondent No.1 and a interim maintenance of Rs.7000/- per month has been awarded in favour of respondent No.2.

3. It has been submitted that respondent No.1 has filed impugned petition under Section 12 of D.V.Act against the petitioner claiming, inter alia, interim monetary compensation from the petitioner and the trial Magistrate without considering the fact that respondent No.1 is already getting maintenance by way of deduction from the salary of

the petitioner and also by way of order of interim maintenance granted by the Judicial Magistrate 1st Class Ganderbal in the proceedings under Section 125 of Cr.P.C, has issued notice to the petitioner. It has been further contended that the petitioner has pronounced divorce upon respondent No.1, as such, she is not entitled to any maintenance from the petitioner but all these factors have been ignored by the trial Magistrate while issuing the notice in the impugned petition under Section 12 of the D.V.Act.

4. I have heard learned counsel for the petitioner and perused the material on record.

5. Learned counsel for the petitioner, has reiterated that because respondent No.1 is getting maintenance from salary of the petitioner as also from the proceedings under Section 125 Cr.P.C and further she has been divorced by him, as such, she is not entitled to any further monetary compensation from the petitioner. He has further argued that the petition under Section 12 of the D.V.Act filed by the respondents against the petitioner is barred by limitation. In this regard, the learned counsel has contended that in view of the

provisions of Section 468 of the Cr.P.C, cognizance of complaint under Section 12 of the D.V.Act cannot be taken by the Magistrate after the expiry of the period of limitation specified therein.

6. So far as the first ground urged by learned counsel for the petitioner is concerned, it is to be noted that the learned Magistrate has only issued notice to the petitioner calling the response from him in terms of the said Act. No interim order for monetary compensation has been passed in favour of respondent No.1 against the petitioner in these proceedings. A perusal of the documents filed by the petitioner reveals that he has filed reply to the notice issued to him only on 15.03.2024. Therefore, his reply to the petition under Section 12 of the D.V.Act is yet to be considered by the learned Magistrate.

7. In the above context, it is to be noted that a petition under Section 12 of the D.V.Act cannot be equated with lodging of criminal complaint or initiation of criminal prosecution. The Supreme Court in the case of *Kamatchi v. Lakshmi Narayanan*, Criminal Appeal No.627 of 2022 decided on April

13, 2022 has held that scope of notice under Section 12 of the D.V.Act, is to call for a response of respondents in terms of the statute so that after considering rival submissions appropriate order can be passed. The Supreme Court further held that the legal position, that a criminal court cannot review its own order, would not get attracted at a stage when the notice is issued under Section 12 of the Act. In view of this legal position, the petitioner should have waited for the order of the learned Magistrate after filing of objections under section 12 of the D.V.Act, but instead of doing so, he has prematurely filed the instant petition.

8. So far as the contention of the petitioner that the petition under Section 12 of D.V.Act filed by respondent No.1 is barred by time is concerned, the same is also without any substance. This question has been dealt with by the Supreme Court in *Kamatchi* case (supra) and it has been held that it is not necessary that application under Section 12 of the Act ought to be filed within a period of one year when the alleged acts of domestic violence have taken place. The contention of the petitioner is therefore without any substance.

9. For the foregoing reasons, I do not find any merit in this petition. The same is accordingly **dismissed**, leaving it open to the petitioner to pursue the matter before the learned trial Magistrate in accordance with law.

(SANJAY DHAR)
JUDGE

SRINAGAR
20.05.2024
Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

