

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

Reserved on: 24.05.2024

Pronounced on:31.05.2024

**CM(M) No.157/2024  
CM No.2833/2024**

**ABDUL ROUF SHAH**

**... PETITIONER(S)**

*Through: - Mr. S. H. Thakur, Advocate.*

Vs.

**ATIQA HASSAN & OTHERS**

**...RESPONDENT(S)**

*Through: - Mr. M. A. Wani, Advocate.*

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

**JUDGMENT**

1) The petitioner has challenged order dated 01.05.2024 passed by 1<sup>st</sup> Additional Sessions Judge, Srinagar, whereby in an appeal filed under Section 29 of the Protect of Women from Domestic Violence Act (hereinafter referred to as "the DV Act") against order dated 01.08.2023 passed by Judicial Magistrate 1<sup>st</sup> Class (2<sup>nd</sup> Additional Munsiff), Srinagar, interim monetary compensation in favour of respondents has been enhanced from Rs.15000/ to Rs.31,000/ per month.

2) It appears that the respondents had filed a petition under Section 12 of the DV Act against the petitioner herein claiming several reliefs including the relief of monetary

compensation. The marriage between the petitioner and respondent No.1 had taken place on 25.09.2002 and out of this wedlock, two children, respondents No.2 and 3, were born. Respondent No.2 is stated to be aged 19 years whereas respondent No.2 is stated to be aged 11 years. In the petition under Section 12 of the DV Act filed by the respondents, it was pleaded that respondent No.1 is studying in 12<sup>th</sup> standard in DPS, Budgam whereas respondent No.3 is studying in 4<sup>th</sup> Class in the same school. The respondents in their petition before the learned Trial Magistrate levelled serious allegations against the petitioner by contending that his attitude towards respondent No.1 was inhuman and cruel. A number of instances in this regard have been mentioned in the petition under Section 12 of the DV Act.

3) The learned Trial Magistrate in terms of *ex-parte* interim order dated 15.04.2022, *inter-alia*, directed the petitioner/husband to pay monthly monetary compensation of Rs.10,000/ to respondent No.1 and Rs.5500/ each to respondents No.2 and 3. After filing of objections by the petitioner, the said order was modified by learned Trial Magistrate in terms of order dated 01.08.2023, whereby, *inter-alia*, the relief of monetary compensation was modified by providing that the petitioner shall pay Rs.5000/ each to respondents herein, which means that the petitioner was

directed to pay monthly monetary compensation of Rs.15000/ to the respondents.

4) The aforesaid order came to be challenged by the respondents by filing an appeal under Section 29 of the DV Act before the learned 1<sup>st</sup> Additional Sessions Judge, Srinagar, who, vide the order impugned, modified the order passed by the learned Trial Magistrate and provided that the petitioner shall pay a monthly amount of Rs.13000/ in favour of respondent No.1, Rs.10,000/ in favour of respondent No.2 and Rs.8000/ per month in favour of respondent No.3.

5) The petitioner has challenged the impugned order passed by the Appellate Court on the grounds that the appeal against the order of learned Trial Magistrate granting interim monetary compensation is not maintainable. It has been further contended that respondent No.1 wilfully refused to reside with the petitioner and even when he offered unconditional resumption of matrimonial ties for the welfare of the children, she refused to reside with the petitioner. It has been also submitted that the learned Trial Magistrate had, after taking into account the conduct of the parties, pleadings of the parties and the material on record, come to the conclusion that monetary compensation

awarded in favour of the respondents deserves to be slashed down and the same could not have been enhanced by the Appellate Court without there being any material before the said Court. It has been further submitted that that respondent No.1 is running a boutique and, as such, is an independent working lady. Therefore, no monetary compensation could have been awarded in her favour. It has also been contended that respondent No.1 intends to grab the property of the petitioner and in the garb of petition under the provisions of the DV Act she is intending to take over possession of the immovable property of the petitioner, as is clear from the nature of reliefs prayed in the petition filed by respondent No.1.

6) I have heard learned counsel for the parties and perused the record of the case.

7) The first argument that has been advanced by learned counsel for the petitioner is that the appeal under Section 29 of the DV Act against the interim order passed by the learned Trial Magistrate is not maintainable, as such, the learned Appellate Court had no jurisdiction to entertain the appeal and to pass the impugned order. In this regard, the learned counsel has relied upon the judgment of Punjab & Haryana High Court rendered in the case titled **Sangeeta vs.**

**Om Parkash Balyan & another**, 2015 Cri. L. J 2635. In the said judgment, a Single Judge of Punjab & Haryana High Court has held that against an interim order no appeal under Section 29 of the DV Act is maintainable and that it is only maintainable against a final order.

8) In the above context, it is to be noted that subject matter of appeal before the learned 1<sup>st</sup> Additional Sessions Judge was an order passed by the learned Trial Magistrate in terms of Section 23 of the DV Act. The question that arises for determination is whether or not an appeal in terms of Section 29 of the DV Act would be maintainable against an interim order passed by a Magistrate under Section 23 of the DV Act. In this regard the provisions contained in Section 29 of the DV Act are required to be noticed, which reads as under:

*29. Appeal.—There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.*

9) From a perusal of the aforesaid provision, it is clear that an appeal lies to the Court of Sessions from an order made by the Magistrate and the said appeal has to be filed within thirty days. It is not specified in section 29 as to which type of orders would be appealable in nature. Section 29 neither bars filing of an appeal against an interim order nor

does it specifically provide for an appeal against an interim order.

10) Section 12 of the DV Act vests a right in an aggrieved person or a Protection Officer to present an application to the Magistrate for seeking one or more reliefs under the DV Act. These reliefs may include a relief for issuance of an order for payment of compensation or damages.

11) Section 23 of the DV Act vests power with a Magistrate to pass an interim order in a proceeding initiated before him under Section 12 of the Act. It provides that if the Magistrate is, prima facie, satisfied that the respondent has committed an act of domestic violence or there is apprehension of commission of such act, he can grant an *ex-parte* order in accordance with Sections 18, 19, 20, 21 or 22 against the respondent.

12) From the above, it is clear that two types of orders can be passed by a Magistrate while dealing with proceedings under DV Act. The Magistrate can pass a final order while dealing with a petition under Section 12 of the DV Act and as an interim measure, he can pass an order under Section 23 of the Act.

13) As already stated, there is no specific bar to the filing of appeal before the Sessions Court against an interim order passed under Section 23 of the DV Act. If the Legislature intended to bar filing of an appeal against an interim order passed in the proceedings under DV Act, it could have specifically provided so in Section 29 of the Act, as has been done in Section 28 of the Hindu Marriage Act. It is to be noted that prior to the amendment of Hindu Marriage Act in the year 1976, in terms of un-amended Section 28 of the said Act, all decrees and orders were made appealable but in the year 1976, Section 28 of the Hindu Marriage Act was amended and in terms of sub-section (2) of Section 28 of the said Act, it was specifically provided that the orders would be appealable if they are not interim orders. Similarly, in the instant case, if the Legislature intended to keep the interim orders out of the purview of Section 29 of the DV Act, the same could have been specifically provided. In the absence of any specific bar, an interim order, which is included in the definition of 'order' cannot be kept outside the purview of Section 29 of the Act.

14) In my aforesaid view, I am supported by the judgment of Uttarakhand High Court in **Manish Tandon vs. Richa Tandon and others**, 2008 (21) RCR (Criminal) 525, wherein

it has been held that an appeal is maintainable against an interim order passed under Section 23 of the DV Act. While holding so, Uttarakhand High Court held as under:

*“3. I totally and absolutely disagree with the aforesaid contention of Mr. Sharma. The word 'order' used in Section 29 connotes all types of orders passed by the Magistrates under the 2005 Act including orders granting interim maintenance under Sub-section (1) of Section 23 as well as ex- parte interim maintenance granted under Sub-section (2) of Section 23. Since the word 'order' has not been qualified by any suffix or prefix in Section 29, the clear legislative intent is that each and every type of order, irrespective of its description and nature, passed by a Magistrate has been made appealable to the court of Session Judge under Section 29. The remedy of filing an appeal under Section 29, therefore, being an alternative and equally efficacious remedy, this petition under section 482 Code of Criminal Procedure was not at all maintainable. It was not open to the Petitioner to have bypassed the appeal forum by straightway approaching this Court under section 482 Code of Criminal Procedure.”*

15) Again, a Single Judge of Delhi High Court, while considering a similar issue in the case of **Braham Pal Arya vs. Babita Arya @Kila Devi and others**, 2009 (12) RCR (Criminal) 699, observed as under:

*“7. In Abhijit Bhikaseh Auti v. State of Maharashtra and Anr., reported in 2009 CRI. L.J. 889 Bombay High Court categorically held that an appeal will lie against the order passed under Sub-section (1) and Sub-section (2) of the Section 23 of the said Act passed by the learned Magistrate.*

*8. This High Court in Amit Sundra & Ors. v. Ms. Sheetal Khanna, reported in 2008 CRI.L.J. 66 held that appeal under Section 29 of the said Act would be maintainable against the order passed by learned Magistrate granting said interim relief to a party in exercise of its power under the said Act. This view was expressed by the Court after scrutinising Sections 25 and 29 of the said Act.*



*9. In view of above discussion, I am of the opinion that the learned Additional Sessions Judge erred in coming to the conclusion that the order passed by the learned Metropolitan Magistrate was not appealable being purely an interlocutory order. Accordingly, I set aside the impugned order dated 19th July, 2008 and remand the appeal back to the learned Additional Sessions Judge, Rohini, New Delhi with the direction to dispose of the same in accordance with law.”*

16) In the backdrop of aforesaid legal position and the precedents referred to above, this Court respectfully disagrees with the opinion rendered by the Single Judge of Punjab & Haryana High Court in **Sangeeta’s** case (supra) and it is held that even an interim order passed by a Magistrate under Section 23 of the DV Act is appealable in terms of Section 29 of the said Act.

17) Now coming to the merits of the present case, initially the learned Trial Magistrate had, in *ex-parte*, awarded an interim monetary compensation of Rs.21000/ per month in all in favour of the respondents which came to be reduced to Rs.15,000/ by the learned Magistrate in terms of order dated 01.08.2023. The said order, so far as it relates to monetary relief, reads as under:

*“Keeping in view the contentions of both the sides and the material placed on record, the direction passed in ex-parte pertaining to interim maintenance is hereby modified to the extent that the respondent shall pay ₹ 5000/- each to the petitioners i.e. a total sum of ₹ 15000/ per month as maintenance from the date of institution of the application.”*

18) A perusal of the afore-quoted order clearly reveals that the same is cryptic in nature as it does not assign any reason, much less a cogent reason, for coming to the conclusion that the respondents are entitled to only Rs.5000/ each per month as monetary compensation. As against this, the learned 1<sup>st</sup> Additional Sessions Judge has while passing the impugned order, meticulously analysed the material on record by noting that respondent No.1 has two daughters, one of whom is studying in the University of Kashmir and the other is undergoing studies in DPS, Budgam. He has further noted that the petitioner is a Gazetted Officer and that he is getting a net salary of Rs.86,000/ per month. It is also noted in the impugned order that the monthly expenses of the petitioner, as per his version, are Rs.37,500/. After taking all these facts into account, the learned 1<sup>st</sup> Additional Sessions Judge has concluded that the amount of monetary compensation awarded in favour of the respondents deserves to be enhanced. Accordingly, the amount of monetary compensation in favour of respondent No.1 has been enhanced to Rs.13,000/, in favour of respondent No.2, the same has been enhanced to Rs.10,000/ and in favour of respondent No.3, it has been enhanced to Rs.8000/ per

month. There is nothing perverse in these findings of the learned Sessions Judge.

19) It is not in dispute that respondent No.2 is studying in higher classes and that respondent No.3 is studying in DPS, Budgam. It is also not in dispute that the petitioner is a Government employee earning a handsome salary. If the claim of the petitioner that he has to spend an amount of Rs.37,500/ on his person on monthly basis, is to be accepted, then how come he is expecting a family of three members to make their both ends meet with a paltry amount of Rs.15000/ per month as was awarded by the learned Trial Magistrate in favour of the respondents.

20) It is a settled law that the High Court, in exercise of its powers under Section 227 of the Constitution of India, cannot act as a court of appeal over the orders of the subordinate courts. The parameters of interference by High Court in exercise of its supervisory powers are very limited. It is only if there is gross and manifest failure of justice or if the basic principles of natural justice have been flouted that the High Court would interfere with the orders passed by the subordinate courts.

21) In the instant case, as already stated, the conclusions arrived at by the learned Sessions Judge are backed by

cogent reasons and the material on record. By no stretch of imagination, the said conclusions can be termed as perverse or resulting in manifest failure of justice. The same, therefore, cannot be interfered with by this Court in exercise of its jurisdiction under Article 227 of the Constitution.

**22)** For the foregoing reason, I do not find any merit in this petition. The same is, accordingly, dismissed along with connected CM.

**(Sanjay Dhar)**  
**Judge**

**Srinagar,**  
**31.05.2024**  
**“Bhat Altaf-Secy”**

*Whether the order is reportable: Yes/No*

