

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

**CM(M) No.245/2024
CM No.4171/2024
CM No.4172/2024**

KAMRAN KHAN AND & ORS. ...Petitioner(s)

Through: Mr. Saleem Gul, Advocate.

Vs.

BILKEES KHANAM ...Respondent(s)

Through: None.

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

ORDER(ORAL)
19.07.2024

1. The petitioners have challenged the petition filed by the respondent against them under Section 12 of the Protection of Women from Domestic Violence Act (hereinafter referred to as "the DV Act") as also the order whereby process has been issued by learned Judicial Magistrate 1st Class, Baramulla, against the petitioner.

2. As per case of the petitioners, petitioner No.1 was married to respondent in the year 2021 and out of the said wedlock no child was born. It is alleged that the respondent has filed a false and frivolous FIR against the petitioner which came to be stayed by this Court in terms of order dated 01.07.2024 passed in CRM(M) No.367/2024. It has been further submitted that the respondent has filed the impugned petition under Section 12 of the DV Act against the petitioners on the basis of false and frivolous allegations and the learned trial court without applying its mind has issued the

summons to the petitioners and has even gone on to issue warrants of arrest against them, even though the proceedings under the DV Act are not criminal in nature. It has been further contended that the matrimonial discord between petitioner No.1 and the respondent was caused due to the cruel behaviour of the respondent who has the tendency of involving the entire family of petitioner No.1 in frivolous cases so as to wreak vengeance upon them.

3. I have heard learned counsel for the petitioners and perused record of the case.

4. It is a settled law that the proceedings under Section 12 of the DV Act are not criminal in nature but are essentially of civil nature in which a Magistrate is not expected to procure the presence of the respondent(s) through coercive processes like warrants of arrest. If at all the petitioners were not responding to the summons issued by the trial court, they could have been proceeded ex parte but in no case it was open to the learned trial court to issue warrants of arrest against the petitioners.

5. The learned counsel for the petitioners has submitted that by now the petitioners have entered their appearance before the learned trial court and have even filed their reply to the petition filed by the respondent against them. In view of this, the warrants of arrest stated to have been issued by the learned Magistrate against the petitioner are not in operation. Therefore, there is no requirement of passing any direction to the learned trial Magistrate in this regard.

6. So far as the contention of the petitioners that the impugned petition has been filed by the respondent with a view to wreak vengeance upon them by levelling false allegations, is concerned, this aspect of the matter can be considered by the learned trial Magistrate upon taking into account the reply that has been filed by the petitioners before him. It is a settled law that in proceedings under Section 12 of the DV Act, a Magistrate is empowered to recall his order and to drop the proceedings against the respondent. The Magistrate is also empowered to dismiss the petition if it is found that the assertions made in the reply to the petition under Section 12 of the DV Act are full of substance. Therefore, in the instant case, it would be open to the learned Magistrate to pass appropriate orders upon consideration of the reply filed by the petitioners and it would also be open to him to consider the application for dropping of proceedings, if and when the same is made by the petitioners herein.

7. In the face of the above, the instant petition is **disposed** of with liberty to the petitioners to approach the learned trial Magistrate with an application for dropping of the proceedings and in case such an application is made by the petitioners, the same shall be dealt with by the learned trial Magistrate most expeditiously after hearing the parties and upon considering their pleadings.

8. A copy of this order be sent to the learned trial Magistrate for information and compliance.

(Sanjay Dhar)
Judge

Srinagar

19.07.2024

"Bhat Altaf-Secy"

Whether the order is reportable: Yes/No